

12211

HOUSE L&C

TABLE OF CONTENTS

	<u>Page</u>
Objectives, Scope, and Methodology.....	1
Organization and Function.....	3
Report Conclusions.....	5
Findings and Recommendations	7
Auditor's Comments.....	17
Analysis of Public Need.....	19
Appendices:	
A. Summary of Revenues.....	31
B. Summary of Expenditures	33
C. Licenses, Permits, and Fees	35
D. Summary of Responses from Active Licensees	37
E. Summary of Responses from Law Enforcement.....	43
F. Summary of Responses from Local Government	49
G. Summary of Responses from Community Groups.....	55
Agency Responses	
Department of Public Safety	59
Alcoholic Beverage Control Board.....	69

OBJECTIVES, SCOPE, AND METHODOLOGY

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

As required by AS 44.66.050(a), this report shall be considered by the committee of reference during the legislative oversight process in determining whether the ABC Board should be re-established. Currently, under AS 44.66.010(a)(1), the board will terminate on June 30, 2007 and will have one year from that date to conclude its administrative operations.

Objectives

The ABC Board was created to regulate the manufacture, sale, barter, and possession of alcoholic beverages in order to protect the public health, safety, and welfare of citizens in the State.

To this end, the primary objective of this audit was to determine whether there is a public need for the board and if its existence should be extended.

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

Scope

Alaska Statute 44.66.050 outlines the factors to be considered in determining whether the board has demonstrated a public need for its continued existence. We reviewed ABC Board activity that occurred from FY 03 through FY 06. We also reviewed the board's proceedings to determine whether it complied with Alaska Statutes and regulations.

Methodology

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

- Title IV and other applicable Alaska Statutes.
- Proposed and passed legislation concerning control of alcohol and the ABC Board since the previous sunset audit.
- Title 13, Chapter 104 of the Alaska Administrative Code.
- Department of Public Safety's (DPS) commissioner's office reading files.

- ABC Board executive director's reading files.
- ABC Board licensing files.
- ABC Board meeting minutes.
- ABC Board enforcement records and DPS' information system APSIN case data.
- ABC Board operating budgets.
- State Accounting System financial records.
- Newspaper articles pertaining to liquor licensing in Alaska.
- OMB's Review of Alcoholic Beverage Control Licensing Receipts, July 29, 2005
- Responses to the questionnaires sent to governing bodies, law enforcement agencies, community groups (community councils and Mothers Against Drunk Driving, and a sample of active licensees.
- Other documents related to the boards operations, as necessary.

In addition, we attended two board meetings, one in person and one via teleconference. We interviewed ABC Board staff, the current members of the ABC Board, and various individuals from other state agencies. We also contacted the Alaska Ombudsman, the Attorney General's office, the Office of Victim's Rights, the Human Rights Commission, the Department of Public Safety, the Department of Revenue, and the Office of the Governor.

ORGANIZATION AND FUNCTION

The Alcoholic Beverage Control Board (ABC Board or board) was established in 1959 as a regulatory and quasi-judicial agency in the Department of Public Safety¹ (DPS). The ABC Board controls the manufacture, barter, possession, and sale of alcoholic beverages in the State. The duties of the board include overseeing the issuance, transfer, renewal, suspension, and revocation of licenses, and proposing and adopting regulations necessary to carry out the purposes of governing statutes in a manner that will protect the public health, safety, and welfare. In addition, the board may grant to persons employed for the administration of Title IV peace officer powers. These powers are used as necessary for the enforcement of the criminally punishable provisions of the Title, regulations of the board, and other criminally punishable laws and regulations including laws against prostitution and gambling. These powers are subject to the concurrence of the DPS commissioner.

The board consists of five members—two industry members and three from the general public. State law requires the two board members be persons actively involved in the alcoholic beverage industry (excluding wholesale) and at least three members representing the general public. No three members of the board may be engaged in the same business, occupation, or profession. Board members (including their immediate family), representing the general public, may not have any financial interest in the alcoholic beverage industry. The board members are appointed by the governor and confirmed by the legislature. They are appointed for overlapping three-year terms. A director, appointed by the governor, serves as the executive officer and is responsible for enforcing Title IV and the regulations adopted by the board.

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

ABC Board employees ensure that the approximately 1,700 licensees comply with Title IV. Employees provide three functions including licensing, enforcement, and administration. These services are briefly described as follows:

Exhibit 1

Alcoholic Beverage Control Board
Members as of August 31, 2006

Michael W. Gordon, Chairman
Anchorage, Industry Member
Term expires March 1, 2008

Gail M. Niemi
Juneau, Industry Member
Term expires March 1, 2009

Shirley A. Gifford
Soldotna, Public Member
Term expires March 1, 2007

William F. Tull
Palmer, Public Member
Term expires March 1, 2008

William G. Andrews
Anchorage, Public Member
Term expires March 1, 2009

¹ Effective beginning FY 04. Prior to FY 04, the board was administered under the Department of Revenue.

- Licensing

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

- Enforcement

The five-member enforcement staff currently consists of two Anchorage-based investigators, one Fairbanks-based investigator, one Juneau-based investigator and one state trooper on assignment from DPS located in Anchorage. Investigators perform various duties including inspecting licensed premises, investigating complaints of suspected licensing violations, overseeing a federal underage drinking grant (responsibility of the state trooper), and responding to questions from licensees and the public. Investigators monitor server training courses and perform background checks on applicants. They also give lectures relating to alcoholic beverage control laws and regulations on behalf of the board and provide Title IV training to law enforcement agencies on request.

- Administration

The ABC Board director and an administrative assistant comprise the administrative staff. They have a wide variety of administrative duties including oversight of staff, preparation of budget documents, calculation and issuance of revenue sharing payments to local municipalities, direction of special enforcement investigations, and public hearings.

The ABC Board office is located in Anchorage. In FY 06, the board had an operating budget of almost 1.2 million for its ten staff positions and activities (excluding transfers to municipalities).

REPORT CONCLUSIONS

In our opinion, the Alcoholic Beverage Control Board (ABC Board or the board) should continue to regulate the manufacture, sale, barter, and possession of alcoholic beverages within the State of Alaska in order to protect the public's health, safety, and welfare. The board has demonstrated a need for its continued existence by providing protection to the general public through the issuance, renewal, revocation, and suspension of liquor licenses. Protection has also been provided through active investigation of suspected licensing violations and enforcement of the state's alcoholic beverage control laws and regulations.

As indicated in the Analysis of Public Need section of this report, the ABC Board has met the various statutory sunset criteria. With the exceptions noted in the Findings and Recommendations section of this report, the board is effectively and efficiently meeting its statutory responsibilities and is operating in the public interest. Beginning FY 04, the board was reorganized under the Department of Public Safety and improvements have been made in the regulatory aspect of the board's operations. However, the board lacks an overall strategy for accomplishing its enforcement goals. In addition, certain operational improvements are needed to allow for greater public participation and to improve the overall efficiency with which the board performs its administrative functions.

We recommend that Alaska Statute 44.66.010(a)(1) be amended to extend the termination date of the Alcoholic Beverage Control Board to June 30, 2013.

(Intentionally left blank)

FINDINGS AND RECOMMENDATIONS

Status of Prior Audit Recommendations

The previous sunset audit² contained eight recommendations. A current status is presented below.

Prior Year Recommendation No. 1 – The legislature should consider having the Department of Public Safety (DPS) conduct criminal investigations rather than the ABC Board.

This recommendation has been partially implemented. By executive order, the board was placed under DPS. DPS has been proactive in providing assistance to the board in carrying out enforcement activities. This includes assigning a state trooper to perform compliance checks³ full-time, and having troopers trained to perform premises inspections⁴ in areas of the State where ABC Board's enforcement presence has historically been weak. The board continues to perform criminal investigations, including those involving prostitution and gambling, under the authority of AS 04.06.110. Additional improvements for enforcement are discussed in the current year Recommendation No. 2.

Prior Year Recommendation No. 2 – The ABC Board should seek an amendment to Title IV to allow the board to summarily suspend liquor licenses.

This recommendation has been resolved.

Prior Year 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 (APSIN⁵).

This recommendation has been resolved. Starting with the 2006/2007 renewals, all licensees are required to submit fingerprints for a background check. Additionally, ABC staff now use APSIN. As background checks are performed, licensees will be entered in APSIN. Whenever a case entered in APSIN involves a licensee, ABC staff will receive an automatic electronic alert.

² *Department of Revenue, Alcoholic Beverage Control Board, November 29, 2002 (Audit Control No. 04-20019-03).*

³ Compliance checks are where minors employed by the board attempt to purchase alcohol from liquor establishments.

⁴ Premises inspections are a routine inspection for general compliance with Title IV and associated regulations. This includes server training requirements and, therefore, may result in a criminal citation.

⁵ Alaska Public Safety Information Network

Prior Year Recommendation No. 4 – The director should ensure that all fines are collected and deposited into the general fund.

This recommendation has been resolved. The board ended the practice that inappropriately diverted monies from the general fund.

Prior Year Recommendation No. 5 – The ABC Board and its director should provide goals for the enforcement staff.

This recommendation has been partially resolved. The board has provided the goal of 20 premises' inspections per month for each of the three investigators on the enforcement staff. To a certain extent, this has had the effect of refocusing ABC staff to their regulatory function. However, the board has not provided an overall strategy to ensure these goals are met in an efficient and effective manner. This issue is discussed further in Recommendation No. 2.

Prior Year Recommendation No. 6 – The director should upgrade the ABC Board licensing database.

This recommendation has been partially implemented but some problems remain. The board contracted for the development of a new database. The licensing, permitting, and payment functions are tracked on this database and work is currently being performed to integrate enforcement information. They expect this to be completed by the end of 2006. At completion, the board plans to make the database information available to the public on the ABC Board website. Problems remain with regard to licensing, permitting, and revenue sharing payments. These issues are addressed in Recommendation No. 1 of this report.

Prior Year Recommendation No. 7 – The director should require staff to prepare and maintain procedural manuals.

This recommendation has been partially implemented. Procedure manuals have been prepared for the licensing, permitting, and cash handling functions. However, the director did not take timely action on this recommendation. As a result, internal controls were inadequate for a significant portion of the audit period. We offer suggestions for additional specific controls in the current Recommendation No. 1.

Prior Year Recommendation No. 8 – The ABC Board members should urge the governor's office to fill board vacancies within the 30-day timeline required by statute.

This recommendation has been resolved. During the period FY 03 – FY 06, there was one instance of a board vacancy exceeding the 30-day requirement. This board seat was vacant for 3.5 months and resulted from the early resignation of a board member and a lack of applicants to fill the seat.

Recommendation No. 1

The ABC board and director should strengthen the control environment over alcohol regulatory functions.

Internal controls at the ABC offices are weak in a number of areas including the licensing and permitting functions, revenue sharing payments, licensee fee collection activities (including wholesaler fee collections), and the licensing database. Weaknesses are due to the lack of well-designed controls and/or the circumvention and neglect of established controls. Weaknesses are evidenced in certain aspects of the operations as outlined below:

1. Licensing. The ABC Board does not consistently adhere to procedures ensuring that proper documentation is received for licensing and that licensee information is accurately reflected in the database. Various information was missing from licensees applications or licensing files, including right of title and interest documents and a licensed premises diagram.

Title IV of the Alaska Statutes identifies specific information to be included in the application or renewal of a license. If proper documentation is not submitted and maintained, ineligible applicants may be licensed which could potentially lead to public safety issues.

To verify that only eligible applicants are licensed, the board must maintain adequate support to ensure compliance with Title IV requirements. The director should ensure that applications are complete and all required information is submitted and maintained.

2. Database Security. The licensing database has security weaknesses. The database password requirement can be easily bypassed on the terminals of some of the ABC staff. While a password is required to get access to the DPS network, once a person's computer is signed on, there is no way to keep someone from accessing and making changes to the ABC database. In addition, the licensing supervisor is a system administrator and a primary user of the database. This person is in a position to make unauthorized changes that may go undetected.

System security is crucial for ensuring no unauthorized changes are made to the data contained in the licensing database. In addition to licensing information, the database is used for recording payments and permits that have been issued and will soon include enforcement information. Therefore, integrity of this data is of utmost importance to ABC board activities as it is relied on for many decisions.

The director should ensure information in the licensing database is properly protected from unauthorized changes.

3. Permitting. Inadequate segregation of duties exists in the permitting process. The ABC investigators in Juneau and Fairbanks perform the whole process. They review and sign

the application and collect the money for the permit. They are also the individuals who may inspect a special event to ensure a permit has been obtained.

In addition, controls over the permit forms provide inadequate protection against permit misuse. The permit application, which is available on-line, acts as the permit once it is signed by the proper parties. These permits are not prenumbered and there are no procedures in place for reconciling permits issued to permit revenue received.

The inadequate segregation of duties and lack of prenumbering increases the risk of asset misappropriation. There is no effective control preventing staff from approving a permit, collecting the money, and never recording the issuance of the permit. Further, because the permits are available on-line, there is increased risk for misuse of permits by the public. To protect against misuse of permits by the public, the caterers' and special events' permits are required by AS 04.11.230(d) and AS 04.11.240(c), respectively, to be returned to ABC staff within 48 hours at the end of the event. The requirement is ineffective protection against permit misuse, given the ease with which a permit can be obtained and falsified. Enforcing this requirement is time consuming and an inefficient use of staff resources.

Overall, these issues create inefficiencies, increased risk of asset misappropriation, and the potential for decreased control over permitted events. The ABC Board and director should ensure all permits are prenumbered, remove investigators from involvement in the cash handling aspects of the process, and perform periodic reconciliation of permits issued versus permits receipts. After more effective controls have been implemented, the ABC Board should propose a statutory change to remove the requirement of permits being returned to the ABC Board.

4. Municipal Refunds. The ABC Board does not comply with either Title IV or its own procedures for municipal refunds. First, per AS 04.11.610(a), biennial license fees collected within a municipality shall be refunded semiannually to the municipality. This refund may be denied by the commissioner of Public Safety if the municipality fails to actively enforce local, state, and federal laws and regulations relating to the manufacture and sale of alcoholic beverages in the State. The commissioner of Public Safety is not currently involved in municipal refund decisions and the ABC staff has not been delegated the authority to deny refunds.

Secondly, the ABC Board's policy is to make refund payments to all municipalities that have a local law enforcement agency and deny refunds to those that do not. The decision to deny refunds is made by the ABC staff. From FY 03 through FY 06, the board did not follow their procedures and made revenue sharing refunds – totaling \$33,750 – to six municipalities who do not have local law enforcement.

In addition to the problems of determining which municipalities are eligible for refunds, the financial activity related to municipal refunds is not being reported accurately. Specifically, \$238,700 in 2002 expenditures was inappropriately recorded to 2003, due to

delays in providing the information necessary for the Department of Revenue (DOR) to process these payments.

The ABC Board and director should develop procedures to ensure municipal refunds are paid or denied in accordance with Title IV. Further, the director should ensure the information necessary to process these payments provided to the Department of Revenue is timely and accurate.

5. License Fee Collection Activities. The ABC Board is not performing the necessary basic accounting control procedures. The missing procedures include: (1) a periodic reconciliations of licenses issued to license receipts; (2) reconciliation of licenses issued to remaining license inventory; (3) compliance with daily deposits requirements; and (4) lack of oversight and review of financial activity.

Beginning April 2005, with the assistance of DPS' Administrative Services, the board initiated new cash handling procedures. While the new controls are an improvement, they still fall short of the necessary basic accounting control procedures identified in items 1 through 4 above.

The Alaska Administrative Manual (AAM 50.100) sets out the basic cash deposit requirements:

Collections should be deposited daily in a depository account prescribed by the cash management section of the treasury division. Only in unusual cases may small amounts (less than \$500) be held over for deposit the following day.

The ABC Board should ensure their cash deposit procedures match with the AAM requirements.

Additional areas for improved oversight and review of financial activities include: ensuring only the correct, common carrier fee is accepted after a statute change increased the fee; ensuring accuracy when recording licensing fees to licenses' type specific account codes, and establishing procedures for the tracking of fines to ensure they are paid within the time required by the board.

Exhibit 2

Cash Controls

During FY 03-05, the ABC Board's cash controls were insufficient. This resulted in a loss or theft of funds discovered January 2005. The amount missing was \$30,750, of which \$3,550 was cash. The checks were replaced but the cash was never recovered. No charges were filed and the case is closed.

Due to the loss or theft of funds, DPS requested the Alaska Office of Management and Budget (OMB) conduct an audit of ABC receipts. This was completed in July 2005. The audit covered the period July 1, 2003 - March 31, 2005 and found "at least \$35,150 in fees were not appropriately deposited to the ABC Board bank account." Of this, \$3,850 in cash has not been recovered. This amount includes funds noted above.

The audit concluded that the ABC Board's "internal controls were inadequate to prevent or detect diversion of funds."

Source of quotes: OMB's *Review of Alcoholic Beverage Control Licensing Receipts, July 29, 2005.*

6. Wholesale Fee. The board does not consistently require wholesalers to submit annual sale affidavits by the February 28th deadline as required by AS 04.11.160(c). Further, ABC staff did not receive affidavits from four wholesalers documenting their 2005 sales.

Per AS 04.11.160, in addition to the biennial license fee, wholesalers must pay an annual fee based on their gross sales. Gross sales information is provided to the board in the annual sales affidavits. ABC staff sends annual letters to wholesale licensees requesting sales information. For 2005, ABC staff did not send request letters to three wholesalers and one wholesaler simply did not submit an affidavit. This was apparently caused by miscommunication between the licensing staff and staff responsible for obtaining the required affidavits. If affidavits are not obtained, the board has no way of knowing if licensees are paying the required fees.

The ABC director should ensure all wholesalers are submitting the required affidavits within the statutory deadline and follow-up on those who do not submit the affidavit. In addition, the director should ensure the list of wholesalers, from whom it requests affidavits, is complete.

Internal control refers to a system of checks and balances designed to protect the integrity of information and the safeguarding of assets. These controls consist of policies, procedures, control activities, and measures designed to ensure the reliability of financial information, the effectiveness and efficiency of operations, and compliance with applicable laws and regulations.

The ABC Board and director should establish a stronger control environment. The control environment sets the tone of an organization, influencing the control consciousness of its people. It is considered the foundation for all other components of internal control providing discipline and structure.

Recommendation No. 2

The ABC Board and director should develop and implement an overall plan for enforcement activities to ensure the effective allocation of their resources.

The ABC Board lacks a systematic strategy for scheduling inspections and compliance checks to ensure effective enforcement. The enforcement staff has increased the number of regulatory inspections and compliance checks performed per year. However, this has not resulted in a significantly greater percentage of licensees being inspected.

ABC enforcement staff consists of three investigators based respectively in Juneau, Anchorage, and Fairbanks; an enforcement supervisor in Anchorage; and a state trooper assigned to the ABC Board also based in Anchorage. The state trooper is specifically assigned to conducting compliance checks. Premises' inspections are conducted by the three

investigators. In addition, some state troopers⁶ also perform inspections during periods of downtime in their primary responsibilities (fish and wildlife enforcement).

The selection of licensees to be inspected is left to the individual investigators who operate primarily in their home areas. Because there are unequal numbers of licensees in these areas, the result is a disparity in the frequency of inspections within the State. Some licensees were inspected multiple times during the period FY 03 – FY 06, while many were never inspected. This regional disparity also applies to the compliance checks. Exhibit 3 summarizes the number and percentage of licensed premises that received inspections and/or compliance checks during the last four years. The exhibit shows that only 54% of licensees were inspected and 44% were checked for compliance.

Exhibit 3		Inspections and Compliance Checks FY 03 to FY 06				
Region	Premises Inspections			Compliance Checks		
	Total Licensed Premises⁷	Premises Inspected	Percent Inspected	Total Licensed Premises⁸	Premises Checked	Percent Checked
Southcentral						
Anchorage	436	227	52%	425	263	62%
Mat-Su Borough	173	104	60%	172	86	50%
Kenai Borough	208	78	38%	203	94	46%
Central						
Fairbanks	97	97	100%	93	68	73%
Fairbanks North Star Borough	94	75	80%	92	56	61%
Southeast						
Juneau	77	80	104% ⁹	71	50	70%
Other Southeast	172	145	84%	170	44	26%
Alaskan Waters	79	15	19%	79	0	0%
Other ¹⁰	<u>347</u>	<u>93</u>	<u>27%</u>	<u>339</u>	<u>57</u>	<u>17%</u>
Total	<u>1683</u>	<u>914</u>	<u>54%</u>	<u>1644</u>	<u>718</u>	<u>44%</u>

Additionally, ABC investigators are not consistently or accurately entering case record information into APSIN. The accuracy and consistency of APSIN case records is of critical importance, considering the ABC Board is currently working on integrating enforcement

⁶ From FY 03 through FY 06, state troopers conducted 135 of the 2,154 inspections.

⁷ Licensed premises as of May 2006, however does not include common carriers designated as "Alaskan Skies."

⁸ Licensed premises as of May 2006, however does include common carriers designated as "Alaskan Skies," wholesale licenses, breweries, and wineries.

⁹ Juneau inspection coverage is greater than 100% due to year-to-year fluctuations in the number of licensees.

¹⁰ "Other" includes unorganized boroughs, the Denali, Kodiak Island, Aleutians East, and Bristol Bay Boroughs. Towns in these areas include Nome, Valdez, Delta Junction, and Unalaska.

information with the licensing database and making this information available to the public on its website. Further, investigators are not consistently recording all activities including investigation of complaints and "walkthroughs."¹¹ This is due to the lack of procedures, specific to ABC activities, for documenting cases in APSIN which result in a diminished ability to evaluate the performance of enforcement staff.

Under Title IV, for the protection of the public, the board is tasked with the responsibility to control alcoholic beverages in the State. Effective enforcement of Title IV laws and associated regulations are a crucial component of this responsibility. Currently, enforcement activities are not carried out with the level of planning necessary to maximize the effectiveness of these activities.

The ABC Board should develop and implement an overall strategy for enforcement that includes clear guidance to investigators as to priorities for inspections and compliance checks. This should include risk assessment, statewide scheduling of inspections, periodic review of progress, and formulating a plan of action to address the compliance check failure rate, which is currently high at 20%. Procedures should be improved to ensure an accurate, consistent, and complete record of enforcement activities in APSIN. These improvements will enhance the board's ability to make resource allocation adjustments when necessary and improve the overall efficiency and effectiveness of Title IV enforcement.

Recommendation No. 3

The ABC Board director should ensure compliance with public notice requirements and establish procedures to ensure board meeting records are complete and accurate.

The ABC Board potentially restricted public participation and public information by failing to provide consistent meeting notifications or maintaining an accurate record of meetings. Specifically, board meetings were not consistently advertised, affected parties were not promptly notified of statutory and regulatory changes, and the board minutes were inadequately documented.

ABC staff was either unaware of requirements or lacked procedures that promote a consistent and accurate flow of information. The specific issues are as follows:

1. Board Meeting Notification. There were 20 board meetings between July 9, 2002 and April 20, 2006. Six of these meetings were not advertised in the local paper of the city where the meeting took place. One meeting was not advertised in any newspaper and eight of the 20 meetings were not advertised on the Public Notice Website.

13 AAC 104.025(b) prescribes *the board will meet at the call of the chairman after reasonable public notice is given.* To satisfy this requirement, Board policy is to advertise

¹¹ A walkthrough is a covert inspection in which the investigator checks an establishment for under-aged or over-served customers and other Title IV violations.

meetings in the local newspaper of the city where the meeting is held. In addition, they advertise all meetings in the *Anchorage Daily News*. Further, Administrative Order No. 183 requires: "... all departments and other agencies of the executive branch must post on the State of Alaska's Online Public Notice website all new legal notices, notices of public meetings, notices of proposed actions, and other public notices required by statute or regulation."

Public participation in board deliberations, decisions, and changes to state law and regulation may be inhibited if adequate public notice of board meetings is not provided. To encourage public participation, the board should ensure all meetings are advertised in applicable local papers and posted on the State of Alaska's Online Public Notices website.

2. Statute and Regulation Change Notification. The ABC Board has not been promptly notifying affected licensees and municipalities of significant statute and regulation changes.

Alaska Statute 04.06.090 requires the board to promptly notify all licensees and municipalities of major changes to Title IV and associated regulations. If these changes affect only specific license classifications, the board need only notify licensees and municipalities directly affected by the changes.

The board was unaware of this requirement but does send updated Title IV books to licensees. However, because this is only done every two years, and changes are not specifically identified without close inspection of the book, this does not satisfy the requirement of prompt notification of changes. This inadequate notification could result in licensees being unaware of laws designed to protect the public. The board should ensure that all affected parties are promptly notified of significant changes to statutes and regulations.

3. Board Minutes. ABC Board's meeting minutes provide poor documentation of board deliberations and decision-making. Specifically, minutes posted on the website were incomplete or inconsistent with minutes on file with the board, they did not consistently record the members in attendance or the voting tallies, did not identify meeting locations, were frequently incomplete on administrative actions taken (fines and suspensions), and do not adequately document public testimony.

Board minutes are the public record of board deliberations. Without complete and accurate board minutes the transparency of board decision-making is significantly reduced affecting the public's ability to understand actions taken by the board. An accurate and complete record of board meetings, including documentation of public testimony, is vital to this understanding.

The ABC director should ensure adequate notification of ABC board meetings is provided to the public, and prompt notification of significant statute or regulation changes is provided to affected licensees and municipalities. Additionally, the director should ensure a consistent and accurate public record of board proceedings is created and maintained.

Recommendation No. 4

The legislature should consider amending Title IV to remove the voting ability of the board's director.

The board's director periodically votes on issues decided in board meetings. Alaska Statute 04.06.060 provides that ... *if a majority of the board is present and voting, the director, with the consent of the members present, may cast a tie-breaking vote.* The director's ability to vote is inappropriate for three primary reasons:

1. Allowing the director a vote removes an important check and balance of good government - the separation of the executive and quasi-judicial functions. Under Title IV, the director is delegated the responsibility of enforcing Title IV laws and regulations. This includes making recommendations to the board regarding administrative actions including fines, suspensions, nonrenewals, accusations, and revocations. In addition, the board often hears appeals from licensees of actions taken by the director or other employees. The director may be placed in a position of voting on his own recommendation or action. At least once during the audit period, the director was required to vote on a decision he made as an executive (issuance of a temporary license). Further, the director may be called to vote on proposed regulations that directly affect the duties of the director and staff.
2. When the director votes, he is acting as a de facto public member of the board. However, the director has not met the qualifications nor is subject to the requirements of being a board member under Title IV. The director was not appointed as a board member and, therefore, was not confirmed by the joint legislature. The director is neither subject to the three-year term limit nor to the public member restriction to be free from a financial interest in the alcohol industry.
3. The director's job duties include frequent contact and discussions with licensees, local government entities, or other interested persons. It would be impossible for the director to foresee issues upon which he may be called upon to vote. The director's objectivity may be impaired, or appear to be impaired, due to one-sided contact with licensees, and other individuals or entities in a dispute.

To ensure an appropriate balance of government, the legislature should consider amending AS 04.06.060 to remove the director's voting ability.

AUDITOR'S COMMENTS

The statutory structure for general wholesale license fees is based on a progressive tax rate; however, because of the increase in the sales volumes of the wholesalers, the licensee fee structure is actually regressive.

The annual license fee and wholesale volume fees have not changed since 1980, with the exception of golf course, brewpub, and common carrier licenses. All fees are established in Title IV. Per AS 04.11.160, wholesalers must obtain a license for each distribution point. In addition to the biennial fee of \$2,000, the wholesaler is required to pay an annual fee based on the total business transacted during the calendar year for each distribution location. The minimum annual amount is \$500 and the fee is capped at \$10,000 for sales of \$1 million or greater as is shown in Exhibit 5.

Exhibit 4

Wholesaler's Volume Fees

There are large differences in the percentage of sales the wholesalers remit as a volume fee. This is due to the structure of the fees. For example, one wholesaler accounted for 24% of the total 2005 wholesale sales and paid 6% of the total volume fees remitted. A second wholesaler made 0.08% of the total 2005 wholesale sales and paid 2.4% of the total volume fees remitted. This disparity is due to the fact that the fee structure only has brackets up to \$1,000,000 in sales.

Exhibit 5

General Wholesaler License Fees				
-----Statutory Structure-----			--2005 Actual License Holders--	
Sales Volume Ranges	License Fee	Estimated Tax Rate	Number of Wholesalers	Average Tax Rate
\$100,000 to \$150,000	\$500	.50%	1	.36%
\$150,000 to \$200,000	\$1,000	.67%		
\$200,000 to \$250,000	\$1,500	.75%		
\$250,000 to \$300,000	\$2,000	.80%		
\$300,000 to \$350,000	\$2,500	.83%		
\$350,000 to \$400,000	\$3,000	.86%		
\$400,000 to \$500,000	\$4,000	1.00%		
\$500,000 to \$600,000	\$5,000	1.00%		
\$600,000 to \$700,000	\$6,000	1.00%		
\$700,000 to \$800,000	\$7,000	1.00%		
\$800,000 to \$1,000,000	\$9,000	1.13%		
\$1,000,000 to \$5,000,000	\$10,000		2	.77%
\$5,000,000 to \$10,000,000	\$10,000		6	.12%
\$10,000,000 to \$20,000,000	\$10,000		3	.07%
\$20,000,000 to \$40,000,000	\$10,000		3	.03%
\$40,000,000 to \$60,000,000	\$10,000		1	.02%

From 2002 to 2005, the total statewide wholesale sales of alcohol increased 20.7%. Over the same period, revenues collected from the variable volume fees increased 6.5%. Alcohol sales are increasing at a much faster rate than the volume fees collected. The current structure has a regressive effect and puts low-volume wholesalers at a competitive disadvantage. This is illustrated in Exhibit 5 on the previous page.

Given the substantial increase in the sales volumes that have occurred since 1980, the legislature may want to reevaluate the general wholesales license fee structure. The ABC Board could assist by proposing new volume fee brackets that take into consideration the current and projected future sales.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses of the Alcoholic Beverage Control Board's (ABC Board or 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.

To help assess the impact of the board's programs and procedures, we sent out questionnaires to local governing bodies, law enforcement agencies, community groups (community councils and Mothers Against Drunk Driving), and active licensees. The survey covered a number of issues. Pertinent results are incorporated into applicable areas of this analysis. The complete results of the surveys are presented in Appendices D through G.

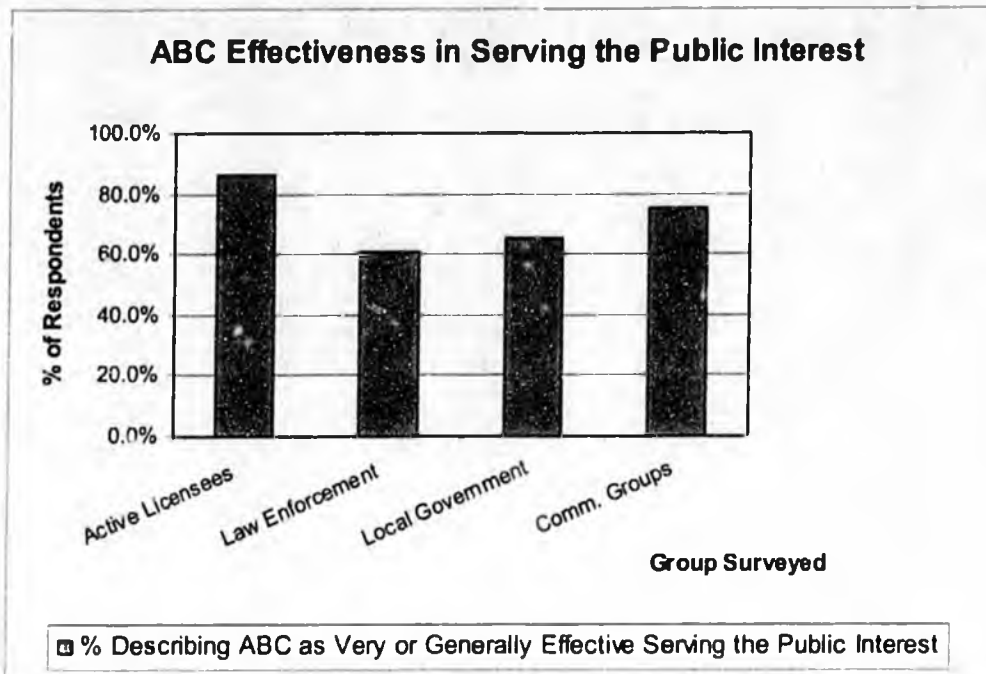
The extent to which the board, commission, or program has operated in the public interest.

The board is operating 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. It is in the process of conducting background checks on all licensees during their renewal and entering all licensees into the Department of Public Safety's (DPS) information system (APSIN) with unique identification numbers. Once completed, APSIN will provide automatic, real-time notification of criminal activity on the part of licensees.

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. These requirements are also reviewed during routine premises' inspections. The board provides license regulation and enforcement, investigates complaints, and when warranted, takes licensing actions such as revocation or suspension.

In addition, ABC Board employees monitor the alcohol server training courses and answers questions from members of the public, community groups, licensees, law enforcement agencies, and local governing bodies regarding alcoholic beverage control statutes and regulations. We asked the four survey groups their overall opinion as to how effective or ineffective the ABC Board is in serving the public interest. The majority opinion was favorable as is shown in Exhibit 6 on the next page:

Exhibit 6



Local law enforcement and community groups provided the most negative opinion. Fourteen percent of law enforcement respondents and 17% of public respondents felt the ABC Board is generally ineffective or very ineffective in serving the public interest.

The board imposes fines and may suspend or revoke licenses or permits previously authorized if it is in the best interest of the public. The actions taken by the board during the last five fiscal years are summarized in Exhibit 7.

Exhibit 7

ABC Board Disciplinary Actions FY 02 to FY 06						
	FY 02	FY 03	FY 04	FY 05	FY 06	Total
Fines	3	4	1	0	7	15
Suspensions	3	5	1	2	12	23
License Denial	6	3	4	5	13	31
Revocations	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u> ¹²	<u>0</u>
Total	12	12	6	7	32	69

The lack of revocations is due to the board avoiding the process when possible, purportedly due to budget constraints and the high cost of hearings. The board essentially 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

¹² One revocation was in progress at the end of FY 2006.

license holder must “voluntarily” relinquish it. This is done through an informal settlement process.

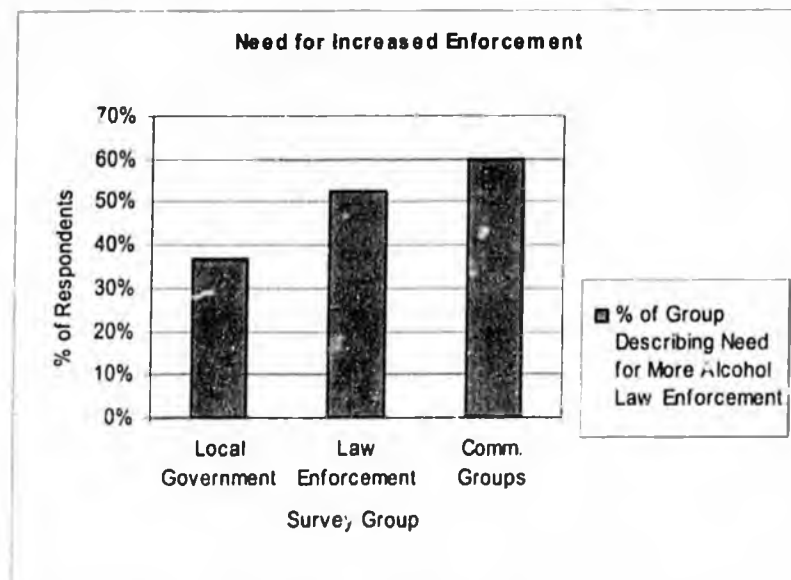
The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters.

There is no indication that statutes are obsolete, vague, or unduly restrictive.

Exhibit 8

The surveyed groups identified the need for improved or increased enforcement as a primary concern. See Exhibit 8.

It has not been the policy of the ABC Board to routinely inspect licensees located off the road system. According to the ABC staff, this is due to low staffing and budget constraints. From licensee comments, there appears to be a perception that some licensees are repeatedly inspected while many others are never inspected. Nineteen percent of licensee respondents indicated the ABC Board does not enforce laws and regulations equally and 21% that ABC enforcement staff is not active in their locale. Approximately one-third of licensee respondents indicated they have not been inspected during the period 2002–2005. Further, 42% of local law enforcement respondents indicated that ABC enforcement staff is not active in their jurisdiction. Many comments from local law enforcement indicated there is a need for more staff investigators.



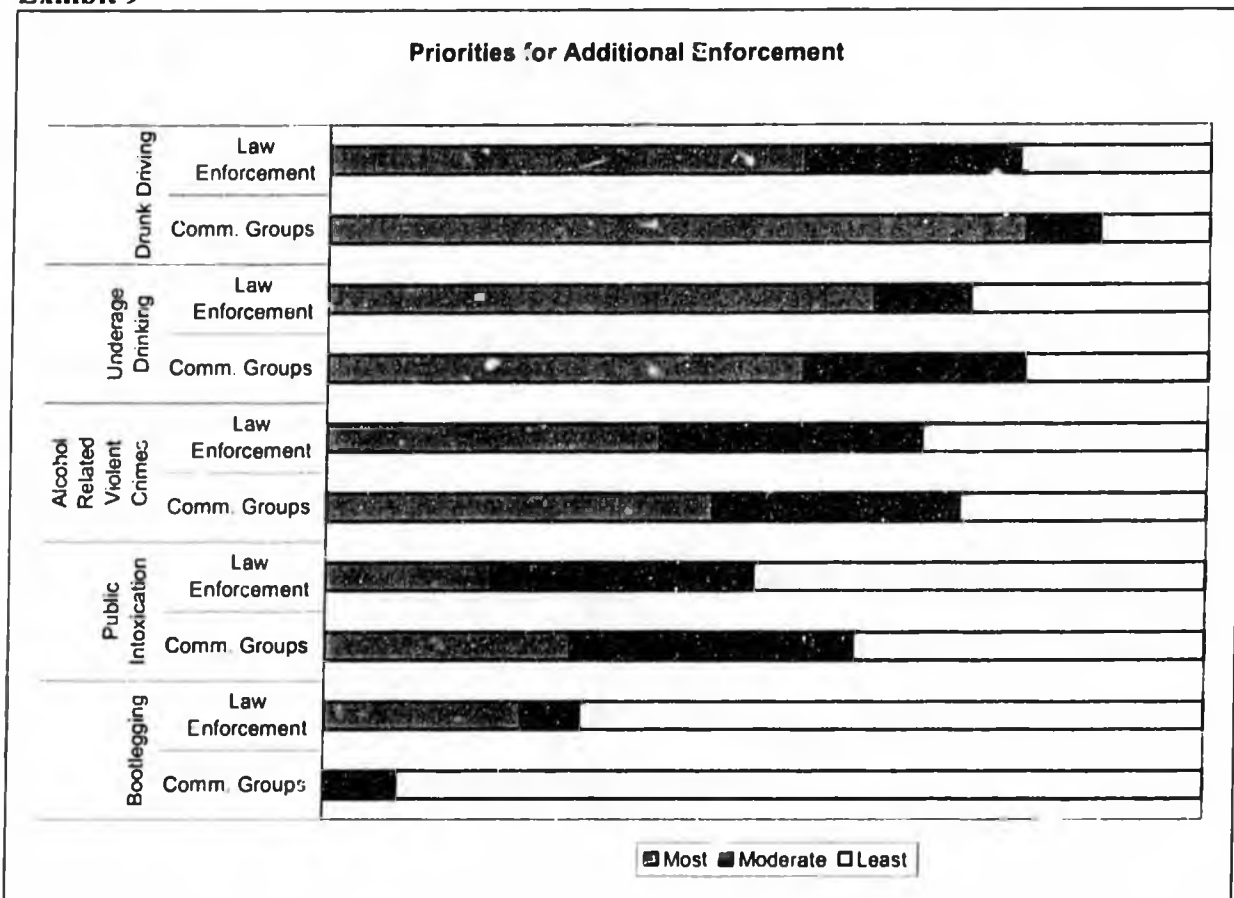
Further, 42% of local law enforcement respondents indicated that ABC enforcement staff is not active in their jurisdiction. Many comments from local law enforcement indicated there is a need for more staff investigators.

During FY 03 through FY 06, 2,154 inspections were conducted on 914 licensed premises. There were approximately 1,683 licensees during this period. Slightly over one-half of licensees were inspected during the last four years. Exhibit 3, on page 13, shows inspection coverage is highest in the Southeast and Central regions. The South Central region coverage is low due to the enforcement staff organization and the disparity in total number of licensees in their areas of operation. Anchorage, alone, has as many licensees as Southeast Alaska and Fairbanks/FNS Borough combined. Further, the Anchorage investigator also provides enforcement for the Mat-Su Borough.

There is a similar trend when reviewing the regional frequency of compliance checks. During FY 03 through FY 06, 1,589 compliance checks were performed on 718 licensees. There were approximately 1,644 licenses per year during this same period. Licensees in Juneau, Fairbanks, and Anchorage have the highest chance of being checked. Areas outside of these cities have much less chance. Less than half of the State's licensees have been checked during the last four years. The issue of enforcement resource allocation is discussed further in Recommendation No. 2.

There were many comments from licensees regarding the compliance checks. These were divided, nearly equally, between those who support the program and those who do not. Many felt the checks are a form of entrapment and that the board should focus on preventing minors from attempting to purchase alcoholic beverages, rather than penalizing licensees or employees who fail a check. Our survey asked for opinions as to priorities for enforcement. Survey results indicate that drunk driving and under-age drinking are primary concerns as is shown below.

Exhibit 9



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

The board has recommended or supported statutory changes of general benefit to the public interest. Most of the changes increased or expanded penalties for Title IV violations. A few changed qualifications of alcohol industry employees and several fine-tuned the requirements of certain liquor license types.

Changes to Specific License Types

Changes were made to address unique operational needs of several existing license types. The common carrier license statute¹³ was rewritten, brewpub sale quantities¹⁴ were specified, and additional allowances were made to accommodate deliveries to hotel and cruise visitors.¹⁵ There was also a new license-type created for outdoor recreational lodges.¹⁶ These changes clarified existing statutes and responded to changing industry needs. These activities serve the State economically, while providing regulation, and are of benefit to the public interest. The ABC Board supported these amendments with the exception of the brewpub change. The board did not take a position on this issue.

Enforcement Assistance

An amendment in 2005 to AS 04.16.060 made it legal for a person under 21, at the request of a peace officer, to violate the laws of purchasing or delivery of alcohol. A similar change to AS 04.16.049 made it legal for the minor to access licensed premises at a peace officer's request, to assist in enforcement of Title IV. These changes were recommended by the board and are directly aimed at the legality of the compliance checks performed by the DPS trooper assigned to the board. The goal of compliance checks is to stop the sale of alcohol to underage individuals. Statutes that promote this goal are clearly beneficial to the public.

Expanded Penalties

A 2004 amendment to the forfeiture and seizure statute¹⁷ added money, securities, and other financial instruments, as items subject to forfeiture; derived from activity prohibited under licensing or local option laws.

¹³ AS 04.11.180

¹⁴ AS 04.11.135 An insertion of "...sales under this paragraph may not exceed 15,000 gallons..." at (a)(5) and (d)(3)(b).

¹⁵ AS 04.11.150 Amendment in subsection (i) inserted "... not more than two bottles of distilled spirits, or not more than 72 ounces of beer..."

¹⁶ AS 04.11.225

¹⁷ AS 04.16.220 Added subsection (a)(6) which states the following are subject to forfeiture: "... money, securities, negotiable instruments, or other things of value used in financial transactions derived from an activity prohibited under AS 04.11.010 or in violation of a local option..."

A new statute, AS 04.16.065 in 2004, made individuals 18 years or older, emancipated minors, or a legal guardian of a minor, liable to licensees for civil penalties related to violations of AS 04.16.060 – the purchase by or delivery to persons under the age of 21.

A 2002 amendment to AS 04.16.051, regarding those who furnish alcohol to underage individuals, expands criminal liability to include criminally negligent acts of the minor.

These penalties are beneficial, as they inform and clarify expectations and responsibilities to the public, and potentially deter and discourage irresponsible actions. These statute changes were supported by the board.

Industry Employees

A 2005 amendment¹⁸ requires that individuals taking an alcohol server education course must pass a written test demonstrating an understanding of the course, before an alcohol server card will be issued. This is a clear effort to improve the quality of alcohol service, in order to decrease problems like underage drinking and over service. The board did not take a position on this issue.

Another statutory amendment¹⁹ allows persons aged 18-20 to be employed at a hotel, restaurant or eating place, without parental and Department of Labor permissions. These persons are restricted from serving, selling, delivering, or dispensing alcoholic beverages. This change evidences response to an industry-need, but still addresses the public interest, and was supported by the board.

Patriotic Organizations

In 2006, statute²⁰ was amended to allow active duty military or armed forces personnel, less than 21 years of age, access to premises of patriotic organizations with club licenses. The ABC Board did not recommend this amendment and gave testimony at legislative hearings against the change.

Statutory Changes Currently Under Consideration by the board:

1. Amend AS 04.11.295 to remove the requirement for submitting fingerprints when this information is already on file. The APSIN automatic notifications will eliminate the need for background checks during renewal. Criminal activity of licensees will be provided by APSIN on a real-time basis. Fingerprints will still be required for all new licensees.

¹⁸ AS 04.21.025 added to subsection (c)

¹⁹ AS 04.16.049 changed (d)

²⁰ AS 04.11.110 amended (g)

2. Amend AS 04.11.330(d) to include common carrier licenses, along with recreational sites, as exempt from the requirement that licenses be operated at a minimum of 30 eight-hour days each year. Due to the nature of their operations, a number of tourist vessels cannot meet the operation requirements and must apply for a waiver every year.
3. Amend AS 04.11.480 to correct an ambiguity concerning when a local governing body may protest the continued operation of license. Currently, the statute allows a local governing body to protest the continued operation of license during the second year of the biennial license period. This protest must be submitted by January 31 of the second year of the license. This appears to exclude the possibility of local government protest for a significant period of the two-year license.

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.

The board is required by statute²¹ to hold an annual meeting in each of the four judicial districts of the State in order to consider issues from both statewide and various local perspectives. It is also required to provide adequate public notice of these meetings. During the last four years the board met in Nome, Anchorage, Juneau, and Fairbanks at least once per year; however, it did not provide adequate public notice for every meeting. It failed to advertise all meetings on the State of Alaska's Online Public Notice System, and it did not consistently advertise meetings in newspapers.

Survey results show that 36% of active licensee respondents did not know that they could attend ABC Board meetings and 59% did not know they could participate via teleconference. Results also show that only 44% of the community groups, who responded, thought they had enough opportunity to provide input to the board. This raises concerns regarding the extent to which interested persons are encouraged to provide input and participate in the ABC Board's decision-making. This issue is discussed further in Recommendation No. 3.

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

The board has adequately encouraged public participation in making its regulations and decisions.

As required by statute,²² the board notifies the public and interested persons of proposed regulation changes. During FY 03 through FY 06, regulation changes were proposed by the

²¹ AS 04.06.050 directs the board to "...meet at least once each year in each judicial district of the state to study this title and to modify existing board regulation in lights of statewide and local problems."

²² AS 44.62.192 of the Administrative Procedures Act.

board twice. On both occasions the proposed changes were advertised on the State of Alaska's Online Public Notice system, in the newspaper, and where it was judged necessary, by mail.

The board encourages public participation in the making of its regulations. The board also solicits input at its public meetings, but as discussed in Recommendation No. 3, advertisement and public notification of meetings could be improved. This is echoed by survey results which revealed that only 65% percent of active licensee respondents reported receiving information, with regards to proposed regulation changes, in a timely manner so they could participate in board proceedings. Further, 30% of local government respondents did not know they could make public comment on proposed regulation or statutory changes and only 44% of community groups respondents feel the board's proposed regulation changes are published timely enough to participate in the public hearings.

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 Victims' Rights or the Office of the Ombudsman have been processed and resolved.

We contacted the Attorney General's Office, the Office of the Ombudsman, the Office of Victim's Rights, the Department of Revenue, and the Department of Public Safety and found that no complaints about the board or its actions were reported during the period FY 03-FY 06.

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

Overall, the board does an adequate job regulating entry into the alcohol industry. The board reviews liquor license applications to determine if the applicants meet all required, statutory qualifications. If a license is available and the applicant meets the requirements, the board issues a license. Some of the requirements include proving the applicant advertised the location and type of license in a local newspaper; proving the applicant posted the license application on the proposed licensed premises; proving right, title, or interest in the premises; and submitting fingerprint cards for completion of a background check.

While our review of license files did not find any violations of these requirements, there were numerous documentation errors. Most of these were minor and there is no indication of unqualified applicants receiving a license. These errors, and several areas where internal controls can be improved, are addressed in Recommendation No. 1.

One license was renewed while there were still outstanding questions regarding actual ownership of the establishment. In early 2005, ABC staff had reason to believe information submitted on a license renewal was false but did not take timely administrative action. Further, the applicant was renewed for the license period 2006/2007 without having

satisfactorily responded to the ABC staff's request for clarification. The "routine" renewal was approved by the ABC staff. The board was not informed of this situation until 2006 and the issues have yet to be resolved. In this instance, there is no evidence to suggest that lack of timely action created a threat to the public. However, submitting false information on a license renewal should have led staff to conduct an immediate investigation to determine if an administrative action (accusation) was warranted. The board director should ensure that timely investigations and administrative action are taken where necessary to enforce Title IV requirements.

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

We found no evidence that hiring practices or board appointments were contrary to state personnel practices. No complaints have been filed with the Human Rights Commission, the Governor's Office, the Office of the Attorney General, the Department of Revenue, or the Department of Public Safety.

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

Specific recommendations for statutory and operational changes, enabling the board to better serve the public interest, are described in Recommendations No. 1 through 4 of this report.

Determine the extent to which the board, commission, or agency has effectively attained its objectives and purposes and the efficiency with which the board, commission, or agency has operated.

Generally, the board has effectively attained its objective of regulating the manufacture, sale, barter, and possession of alcoholic beverages in Alaska. The board has protected the general public through the licensing process and administrative actions. It has proposed or supported statute and initiated regulation changes of benefit to the public, actively investigated potential violations of state liquor laws, and periodically inspected licensees to ensure compliance with Title IV requirements.

Results from our survey indicate the ABC staff is very effective in answering questions from community groups, licensees, law enforcement agencies, and local governing bodies regarding alcoholic beverage control statutes, regulations, and licensing processes.

Active licensees, local governments, and community groups indicated a favorable impression of the ABC Board based on their contact with the board. Responses indicated favorable impressions increased as the number of contacts increased.

However, numerous operational-related deficiencies hamper the efficiency of the board. DPS' Administrative Services has been working with the ABC staff to improve controls, and some progress has been made, but additional improvements are still necessary. Specific issues which are symptomatic of a substandard control environment are described in Recommendation No. 1 of this report.

Determine the extent to which the board, commission, or agency duplicates the activities of another governmental agency or the private sector.

The board is the only entity in the State that issues licenses for selling alcohol. In this regard, there is no duplication by another governmental agency or the private sector.

The enforcement activities of the ABC Board, including investigations of gambling and prostitution violations, duplicate the activities of state troopers and local law enforcement agencies throughout the State. All law enforcement agencies in the State contribute to the enforcement of alcohol laws so there is an overlap of jurisdiction. This duplication was the intent of the legislature in creating the ABC Board as a regulatory and quasi-judicial agency.

The perception among licensees and local law enforcement is that ABC Board enforcement is complementary rather than duplicative. Fifty-eight percent of local law enforcement responded that ABC enforcement complements local law enforcement. In the other 42%, ABC enforcement was not as active in their jurisdiction.

Sixty percent of active licensees believe ABC enforcement activities complement local enforcement agencies but 15% said ABC enforcement activities duplicate local enforcement activities. Based on our understanding of the board's enforcement activities and on the survey results; the board's duplication of activities is beneficial to the public interest.

APPENDICES

(Intentionally left blank)

APPENDIX A
Department of Public Safety
Alcoholic Beverage Control Board
Schedule of Revenues
FY 03 through FY 06
(unaudited)

	<u>FY 03</u>	<u>FY 04</u>	<u>FY 05</u>	<u>FY 06</u>
<u>Revenue</u> (rounded to nearest hundred)				
License Application Fees	\$ 267,000	\$ 249,800	\$ 247,900	\$ 275,400
Brewery Licenses	5,000	2,000	5,000	4,000
Beverage Dispensary Licenses	746,700	781,500	756,500	843,200
Club Licenses	48,100	52,800	52,300	54,000
Common Carrier Licenses	39,500	60,600	34,000	68,000
Restaurant Licenses	100,300	99,300	98,400	114,600
Retail Store Licenses	292,500	273,300	4,500 ¹	285,100
Wholesale Licenses	154,000	147,000	159,500	16,000 ²
Malt Beverage and				
Wine Wholesale Licenses	16,600	16,300	14,600	2,000
Miscellaneous ³	<u>124,800</u>	<u>102,700</u>	<u>416,700</u>	<u>356,200</u>
 <u>Total Revenues</u>	 <u>\$ 1,794,500</u>	 <u>\$ 1,785,300</u>	 <u>\$ 1,789,400</u>	 <u>\$ 2,018,500</u>

Source: Alaska State Accounting System.

¹ Low amount results from miscoding of retail store fees to miscellaneous fees

² Low amount results from miscoding of wholesale fees to miscellaneous fees

³ Includes low volume licenses such as Pub, Golf, Theatre as well as fines, penalties and other miscellaneous receipts.

(Intentionally left blank)

APPENDIX B
Department of Public Safety
Alcoholic Beverage Control Board
Schedule of Expenditures
FY 03 through FY 06
(unaudited)

	<u>FY 03</u>	<u>FY 04</u>	<u>FY 05</u>	<u>FY 06</u>
<u>Expenditures</u> (rounded to nearest hundred)				
Personal Services	\$ 593,100	\$ 629,700	\$ 683,200	\$ 775,100
Travel	17,100	17,000	13,600	19,000
Contractual	114,900	113,300	94,000	207,600
Commodities	4,000	7,200	6,200	5,900
Equipment	-0-	-0-	-0-	-0-
Transfers to Municipalities ¹	<u>1,079,400</u>	<u>855,500</u>	<u>806,100</u>	<u>860,000</u>
<u>Total Expenditures</u>	<u>\$ 1,808,500</u>	<u>\$ 1,622,700</u>	<u>\$ 1,603,100</u>	<u>\$ 1,867,600</u>

Source: Alaska State Accounting System.

¹ In accordance with AS 04.11.610, refunds of annual license fees, excluding annual wholesale license fees, collected within a municipality are to be given to the municipality semiannually. The total of these refunds is the "Transfers to Municipalities" amount. This activity is budgeted under the Department of Revenue as shared taxes.

(Intentionally left blank)

APPENDIX C
Alcoholic Beverage Control Board
Licenses, Permits, and Fees
FY 03 through FY 06

TYPES OF LICENSES	BIEN. ...L FEE
Application Filing Fee - renewal	\$ 200.00
Application Filing Fee - new, transfer, or relocation of premises	100.00
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
Caterer's Permit	50.00
Club License	1,200.00
Club License - Half Year	600.00
Club License - Public Convenience	1,200.00
Common Carrier License (after 11/4/2003)	1,000.00
Common Carrier License - Half Year (after 11/4/03)	500.00
Common Carrier License	700.00
Common Carrier License - Half Year	350.00
Distillery License	1,000.00
Golf Course	400.00
Outdoor Recreation Lodge (seasonal)	625.00
Outdoor Recreation Lodge (annual)	1,250.00
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
Special Events Permit (fee per day)	50.00
Theater License	600.00
Wholesale License - General (Basic Fee)	2,000.00
Wholesale License - Malt Beverage & Wine	400.00
Winery	500.00

Source of Information: Alcoholic Beverage Control Board

(Intentionally left blank)

APPENDIX D
 Department of Public Safety
 Alcoholic Beverage Control Board
 Summary of Responses from Active Licensees

Questionnaires sent: 317
 Responses received: 175¹ (55%)

1. How often do you contact the Alcoholic Beverage Control (ABC) Board or its staff on average during a year?

<u>Responses</u>	<u>Percentage</u>	
127	73%	1 - 6 times
27	16%	No contact with the Board
15	9%	7 - 12 times
4	2%	More than 12 times

1a. When you have contacted the Board, what was the nature of your inquiry? (Please select all that apply)

<u>Responses</u>	<u>Percentage</u>	
104	41%	Renewal of license
69	27%	Clarification of law
30	12%	Other ²
29	11%	Status of your license application
22	9%	Enforcement Activity

1b. Please select the number that best assesses your impression of the ABC Board staff.

	Disagree		Neutral		Agree	
Knowledgeable	7	5%	19	13%	121	82%
Friendly	13	9%	17	11%	118	80%
Helpful	8	5%	20	14%	120	81%
Responsive	12	8%	22	15%	112	77%
Timely	15	10%	24	17%	107	73%

¹ Item response totals may not equal the number of responses received. Some respondents did not answer all questions; others gave more than one response.

² Other responses were grouped as follows: 6 license, 13 permit, 1 poster, 1 clarification of law, 1 enforcement, 1 fingerprinting, and 4 general questions.

APPENDIX D
Department of Public Safety
Alcoholic Beverage Control Board
Summary of Responses from Active Licensees
(Continued)

2. Which classification is your license?

<u>Responses</u>	<u>Percentage</u>	
154	89%	Full year
16	9%	Seasonal
4	2%	Both

3. What type of license(s) do you currently have? (Please select all that apply)

<u>Responses</u>	<u>Percentage</u>	
74	33%	Beverage Dispensary
72	32%	Restaurant/Eating Place
46	21%	Package Store
10	5%	Tourism
10	4%	Club
5	2%	Common Carrier
3	1%	Recreational Site
2	1%	Pub
1	1%	Winery
0	0%	Golf Course
0	0%	Wholesaler
0	0%	Brewery

4. Do you feel there are enough ABC Board meetings held each year to adequately administer liquor licenses?

<u>Responses</u>	<u>Percentage</u>	
80	46%	Yes
70	41%	No Opinion
22	13%	No

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

<u>Responses</u>	<u>Percentage</u>	
107	65%	Yes
31	19%	No
27	16%	Sometimes

APPENDIX D
 Department of Public Safety
 Alcoholic Beverage Control Board
 Summary of Responses from Active Licensees
 (Continued)

6. Are you aware that you can participate in ABC Board meetings in person?

<u>Responses</u>	<u>Percentage</u>	
108	64%	Yes
62	36%	No

7. Are you aware that you can participate in ABC Board meetings by teleconference?

<u>Responses</u>	<u>Percentage</u>	
100	59%	No
69	41%	Yes

8. Have you attended an ABC Board meeting in the past four years, either in person or by teleconference?

<u>Responses</u>	<u>Percentage</u>	
134	78%	No
26	15%	Yes, in person
13	7%	Yes, by teleconference

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

<u>Responses</u>	<u>Percentage</u>	
148	88%	No
21	12%	Yes

10. How long does it normally take for your license application to be approved or denied by the ABC Board?

<u>Responses</u>	<u>Percentage</u>	
67	40%	0-45 days
58	35%	45-90 days
22	13%	90-120 days
19	12%	more than 120 days

APPENDIX D
Department of Public Safety
Alcoholic Beverage Control Board
Summary of Responses from Active Licensees
(Continued)

11. Approximately how many ABC Board premises inspections did you receive during each of the following years?

	<u>0</u>		<u>1-2</u>		<u>3-4</u>		<u>More than 5</u>	
2002	39	32%	75	62%	6	5%	1	1%
2003	39	31%	75	61%	8	7%	1	1%
2004	45	35%	68	53%	14	11%	1	1%
2005	45	31%	84	59%	11	8%	3	2%

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

<u>Responses</u>	<u>Percentage</u>	
111	68%	Yes
34	21%	Somewhat
18	11%	No

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

<u>Responses</u>	<u>Percentage</u>	
93	60%	Complements
32	20%	ABC Board enforcement staff is not active in my area
24	15%	Duplicates
7	5%	Conflicts

14. Do you feel the ABC Board enforces the laws and regulations on all licensees equally?

<u>Responses</u>	<u>Percentage</u>	
107	72%	Yes
29	19%	No
14	9%	Sometimes

APPENDIX D
Department of Public Safety
Alcoholic Beverage Control Board
Summary of Responses from Active Licensees
(Continued)

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

<u>Responses</u>	<u>Percentage</u>	
106	73%	No
40	27%	Yes

16. Overall, how effective or ineffective is the ABC Board in serving the public interest?

<u>Responses</u>	<u>Percentage</u>	
46	28%	Very effective
95	58%	Generally effective
14	9%	Neither effective nor ineffective
5	3%	Generally ineffective
4	2%	Very ineffective

(Intentionally left blank)

APPENDIX E
Department of Public Safety
Alcoholic Beverage Control Board
Summary of Responses from Law Enforcement

Questionnaires sent: 45
 Responses received: 38¹ (84%)

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

<u>Responses</u>	<u>Percentage</u>	
34	92%	Yes
3	8%	No

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

<u>Yes</u>		<u>No</u>		
24	63%	14	37%	Sale of alcohol to minors
20	54%	17	46%	Sale of alcohol to inebriated persons
16	43%	21	57%	Sale of alcohol before or after regulated hours of operation
16	43%	21	57%	Sale of alcohol without a valid permit or license
15	41%	22	59%	Employees without an alcohol servers training card
14	38%	23	62%	Gambling or prostitution on a licensed premises

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

<u>Responses</u>	<u>Percentage</u>	
24	63%	1 - 4 times
5	13%	5 - 8 times
3	8%	9 - 12 times
3	8%	More than 12 times
3	8%	We have no contact with the ABC Board enforcement staff

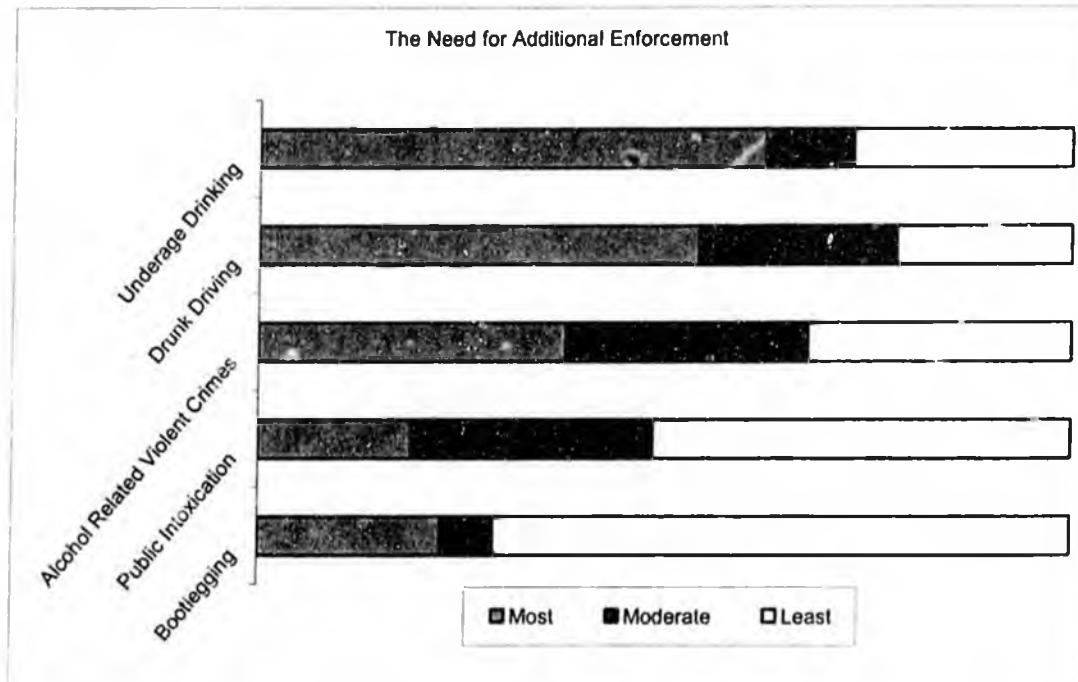
¹ Item response totals may not equal the number of responses received. Some respondents did not answer all questions; others gave more than one response.

APPENDIX E
Department of Public Safety
Alcoholic Beverage Control Board
Summary of Responses from Law Enforcement
(Continued)

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

<u>Responses</u>	<u>Percentage</u>	
19	27%	Notice of violation issued to licensee in your area
18	25%	Enforcement assistance
16	23%	License revocations or suspensions in your area
7	10%	None
7	10%	Other ²
2	3%	Suspected gambling activity in your area
1	1%	Available federal enforcement grants
1	1%	Available training sessions
0	0%	Suspected prostitution activity in your area

5. Please rank the following alcohol related issues from 1-5 in order of need of increased enforcement in your jurisdiction. (Enter 1 for the issue that needs the most enforcement. Enter 5 for the issue that needs the least enforcement.)



² Other responses grouped as follows: 2 general communication, 2 information about permit enforcement, 1 not specified, and 2 notice of enforcement or violation.

APPENDIX E
Department of Public Safety
Alcoholic Beverage Control Board
Summary of Responses from Law Enforcement
(Continued)

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

<u>Responses</u>	<u>Percentage</u>	
15	40%	Yes, always share information
11	30%	Occasionally ABC is sent copies of liquor-related arrests and reports
7	19%	Only when ABC requests the information
4	11%	No, never share information

- 6a. If you share information, which of the following types of information do you share? (Select all that apply.)

<u>Responses</u>	<u>Percentage</u>	
20	22%	After hours sales on a licensed premises
15	16%	Sales of alcohol on a non licensed premises
14	14%	Other ³
14	14%	Underage drinking
10	10%	Public intoxication
10	10%	Violent crimes involving alcohol
9	9%	Suspected gambling on a licensed premises
5	5%	Suspected prostitution on a licensed premises
0	0%	Not applicable

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

<u>Responses</u>	<u>Percentage</u>	
22	58%	Complements
16	42%	ABC Board enforcement staff is not active in my jurisdiction
0	0%	Duplicates
0	0%	Conflicts

³ Other responses grouped as follows: 7 crimes on licensed premises, 1 minor on licensed premises, 2 assistance/jurisdictional authority, 4 sales to intoxicated persons, and 1 not specified.

APPENDIX E
 Department of Public Safety
 Alcoholic Beverage Control Board
 Summary of Responses from Law Enforcement
 (Continued)

8. Which of the following statements best describes the level of enforcement of alcohol laws by ABC investigators in your jurisdiction?

<u>Responses</u>	<u>Percentage</u>	
20	52%	There needs to be more enforcement of alcohol laws.
9	24%	There is no enforcement of alcohol laws.
9	24%	There is the right amount of enforcement of alcohol
0	0%	There is too much enforcement of alcohol laws.

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

<u>Responses</u>	<u>Percentage</u>	
30	79%	No
8	21%	Yes

10. Is there a need for new laws or regulations to better serve the public interest when considering alcohol related issues?

<u>Responses</u>	<u>Percentage</u>	
22	59%	No
15	41%	Yes

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

<u>Responses</u>	<u>Percentage</u>	
7	18%	Very effective
14	37%	Somewhat effective
12	32%	Not effective
5	13%	Not applicable. We are a damp/dry community.

APPENDIX E
Department of Public Safety
Alcoholic Beverage Control Board
Summary of Responses from Law Enforcement
(Continued)

12. Overall, in your opinion, how effective or ineffective is the ABC Board in serving the public interest?

<u>Responses</u>	<u>Percentage</u>	
3	8%	Very effective
20	52%	Generally effective
9	24%	Neither effective nor ineffective
4	11%	Generally ineffective
2	5%	Very ineffective

(Intentionally left blank)

APPENDIX F
Department of Public Safety
Alcoholic Beverage Control Board
Summary of Responses from Local Governments

Questionnaires sent: 145
 Responses received: 82¹ (57%)

1. Is your local government given adequate notice by the Alcoholic Beverage Control (ABC) Board of proposed issuances of new licenses and transfers, relocations or renewals of existing licenses? (Relocation refers to moving the physical location of the premises. Transfer refers to a change in ownership.)

<u>Responses</u>	<u>Percentage</u>	
39	49%	Yes, always
21	26%	No, never notified
17	22%	Usually
2	3%	Sometimes

2. Since July 1, 2002, has your local government protested the issuance of a new license or the renewal, relocation or transfer of an existing license?

<u>Responses</u>	<u>Percentage</u>	
63	81%	No
15	19%	Yes

- 2a. What was the reason for the protest? (Please select all that apply.)

<u>Responses</u>	<u>Percentage</u>	
10	30%	Delinquent sales taxes
8	25%	Other ²
7	21%	Delinquent property taxes
3	9%	Public complaints
2	6%	Health and/or safety concerns
1	3%	History of criminal activity on premises
1	3%	Number of police reports
1	3%	Violation(s) of local ordinance

¹ Item response totals may not equal the number of responses received. Some respondents did not answer all questions; others gave more than one response.

² Other responses were grouped as follows: 2 delinquent utilities, 4 building or zoning issues, and 2 local government decisions.

APPENDIX F
 Department of Public Safety
 Alcoholic Beverage Control Board
 Summary of Responses from Local Governments
 (Continued)

2b. Was your protest upheld by the ABC Board resulting in the denial of a license issuance, transfer, relocation or renewal?

<u>Responses</u>	<u>Percentage</u>	
10	43%	ABC Board did not provide us with the results
8	35%	No
5	22%	Yes

3. Alaska statute (AS 04.11.080 (c)) allows 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. Are you aware of this option?

<u>Responses</u>	<u>Percentage</u>	
42	53%	Yes
37	47%	No

3a. In the last four years, has your local government placed any conditions on a license renewal, issuance, relocation or transfer?

<u>Responses</u>	<u>Percentage</u>	
42	81%	No
10	19%	Yes

3b. Were you notified of the time and place your protest(s) or proposed condition(s) would be considered by the ABC Board?

<u>Responses</u>	<u>Percentage</u>	
25	49%	Not applicable
15	29%	No, never
7	14%	Yes, always
4	8%	Sometimes

APPENDIX F
Department of Public Safety
Alcoholic Beverage Control Board
Summary of Responses from Local Governments
(Continued)

4. On average how many times a year does your agency contact the ABC Board or its staff?

<u>Responses</u>	<u>Percentage</u>	
35	45%	0 times
33	42%	1-7 times
4	5%	8-15 times
6	8%	more than 15 times

- 4a. If you have contacted the ABC Board, please select the number that best assesses your impression of the ABC Board staff.

	<u>Disagree</u>		<u>Neutral</u>		<u>Agree</u>	
Knowledgeable	2	5%	5	11%	36	84%
Friendly	1	2%	12	28%	30	70%
Helpful	1	2%	8	19%	34	79%
Responsive	1	2%	11	26%	31	72%
Timely	1	2%	10	23%	32	75%

5. Have you attended an ABC Board meeting in the past four years, either in person or by teleconference?

<u>Responses</u>	<u>Percentage</u>	
73	91%	No
4	5%	Yes, by teleconference
3	4%	Yes, in person

- 5a. If your representative attended the meeting for a specific matter, was your governing body satisfied with the Board's decision(s)?

<u>Responses</u>	<u>Percentage</u>	
6	50%	Yes
6	50%	No
0	0%	Not applicable

APPENDIX F
Department of Public Safety
Alcoholic Beverage Control Board
Summary of Responses from Local Governments
(Continued)

6. Which of the following statements best describes the level of enforcement of alcohol laws in your area?

<u>Responses</u>	<u>Percentage</u>	
38	50%	There is the right amount of enforcement of alcohol laws.
28	37%	There needs to be more enforcement of alcohol laws.
9	12%	There is no enforcement of alcohol laws.
1	1%	There is too much enforcement of alcohol laws.

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

<u>Responses</u>	<u>Percentage</u>	
63	89%	No
8	11%	Yes

8. Is there a need for new laws or regulations to help protect the public interest when considering alcohol related issues?

<u>Responses</u>	<u>Percentage</u>	
56	80%	No
14	20%	Yes

9. Has your governing body ever made public comment on proposed changes to state statute and/or regulations?

<u>Responses</u>	<u>Percentage</u>	
44	59%	No, have not felt the need
22	30%	No, did not know it was an option
8	11%	Yes, more than once
0	0%	Yes, only once

APPENDIX F
Department of Public Safety
Alcoholic Beverage Control Board
Summary of Responses from Local Governments
(Continued)

10. If your local governing body receives a share of alcoholic beverage license fees from the State (per Alaska Statute 04.11.610), what are the funds used for?

<u>Responses</u>	<u>Percentage</u>	
32	39%	Not applicable
23	28%	General fund
13	16%	Law enforcement
9	11%	Unknown
3	4%	Other ³
2	2%	Alcohol specific crime prevention

11. Overall, in your opinion, how effective or ineffective is the ABC Board in serving the public interest?

<u>Responses</u>	<u>Percentage</u>	
11	15%	Very effective
38	51%	Generally effective
18	24%	Neither effective nor ineffective
4	5%	Generally ineffective
4	5%	Very ineffective

³ Other responses were as follows: 1 fuel, 1 license processing, and 1 bootlegging enforcement.

(Intentionally left blank)

APPENDIX G
Department of Public Safety
Alcoholic Beverage Control Board
Summary of Responses from Community Groups

Questionnaires sent: 56
 Responses received: 27 (48%)

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

<u>Responses</u>	<u>Percentage</u>	
25	93%	Yes
2	7%	No

2. Has your group contacted the ABC Board in the last four years for information about a liquor license, enforcement or other alcohol related issues?

<u>Responses</u>	<u>Percentage</u>	
18	67%	No
9	33%	Yes

- 2a. Please select the number that best assesses your impression of the ABC Board staff.

	Disagree		Neutral		Agree	
Knowledgeable	0	0%	3	37%	5	63%
Friendly	0	0%	5	63%	3	37%
Helpful	0	0%	5	63%	3	37%
Responsive	0	0%	4	50%	4	50%
Timely	0	0%	4	50%	4	50%

3. Has your group ever submitted an objection or complaint with the ABC Board over a liquor license, enforcement, or other alcohol related issue?

<u>Responses</u>	<u>Percentage</u>	
15	60%	No
10	40%	Yes

APPENDIX G
 Department of Public Safety
 Alcoholic Beverage Control Board
 Summary of Responses from Community Groups
 (Continued)

4. Has your group ever attended an ABC Board meeting in the past four years either in person or by teleconference?

<u>Responses</u>	<u>Percentage</u>	
21	81%	No
4	15%	Yes, in person
1	4%	Yes, by teleconference

- 4a. If your group attended the meeting for a specific matter or submitted an objection or complaint, was your group satisfied with the Board's decision(s)?

<u>Responses</u>	<u>Percentage</u>	
3	60%	Yes
1	20%	No
1	20%	Not Applicable

5. Do you feel the public has enough opportunity to provide input to the Board on how liquor licenses in your area are issued, renewed, relocated, transferred or revoked?

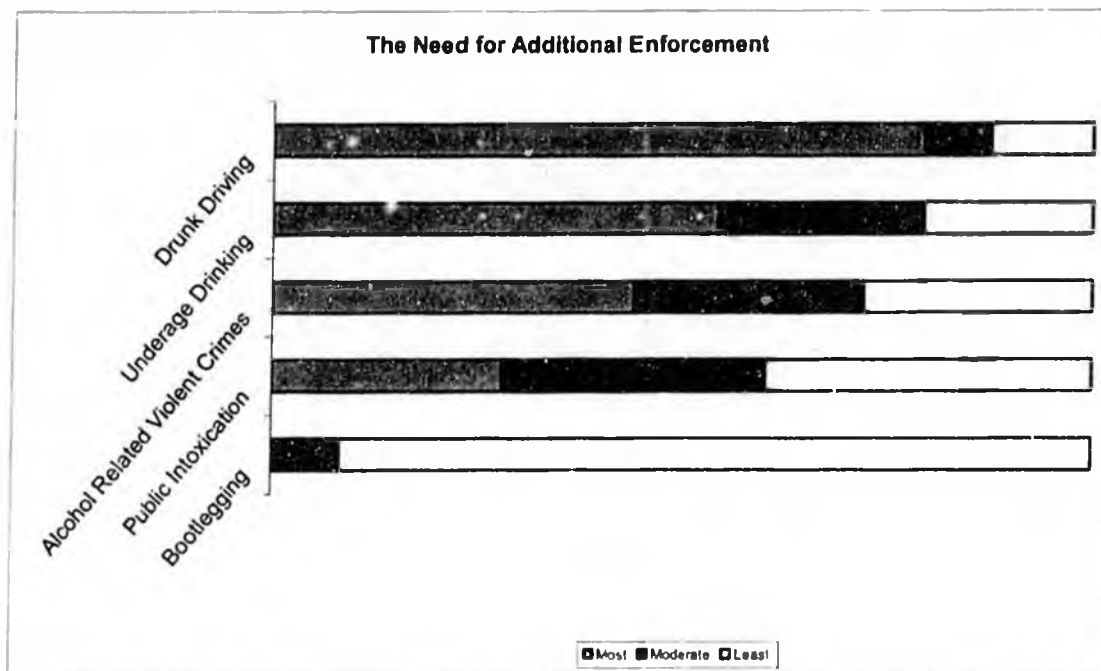
<u>Responses</u>	<u>Percentage</u>	
11	44%	Yes
9	36%	Sometimes
5	20%	No

6. Are proposed regulation changes published in a timely manner so that you are able to participate in the hearings?

<u>Responses</u>	<u>Percentage</u>	
11	48%	Yes
7	30%	No
5	22%	Sometimes

APPENDIX G
Department of Public Safety
Alcoholic Beverage Control Board
Summary of Responses from Community Groups
(Continued)

7. Please rank the following alcohol-related issues from 1-5 in order of need of increased enforcement in your group's area. (Enter 1 for the issue that needs the biggest increase in enforcement.)



8. What percentage of time does your group spend on alcohol related issues at your meetings?

<u>Responses</u>	<u>Percentage</u>	<u>% of Time</u>
12	46%	0%
10	38%	25%
3	12%	50%
0	0%	75%
1	4%	100%

APPENDIX G
 Department of Public Safety
 Alcoholic Beverage Control Board
 Summary of Responses from Community Groups
 (Continued)

9. Which of the following statements best describes the level of enforcement of alcohol laws in your area?

<u>Responses</u>	<u>Percentage</u>	
15	60%	There needs to be more enforcement of alcohol laws.
8	32%	There is the right amount of enforcement of alcohol laws.
2	8%	There is no enforcement of alcohol laws.
0	0%	There is too much enforcement of alcohol laws.

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

<u>Responses</u>	<u>Percentage</u>	
14	58%	Yes
10	42%	No

11. Overall, how effective or ineffective is the ABC Board in serving the public interest?

<u>Responses</u>	<u>Percentage</u>	
5	21%	Very effective
13	54%	Somewhat effective
2	8%	Neither effective nor ineffective
3	13%	Somewhat ineffective
1	4%	Very ineffective



State of Alaska
Department of
Public Safety

Frank H. Murkowski, Governor
William Tandeske, Commissioner

December 4, 2006

Mr. Mark Lundahl, CPA
In-Charge Auditor
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811-3300

Dear Mr. Lundahl:

Re: Department of Public Safety
Alcoholic Beverage Control Board Sunset Review
August 31, 2006, Audit Control Number 12020047-06

Thank you for the opportunity to comment on the results of the above audit. The department concurs with the overall finding that the Alcoholic Beverage Control Board (ABC) should continue to govern the alcoholic beverage industry and that AS 44.66.010(a) be amended to extend the termination date to June 30, 2013.

That being said, the department would like to comment further on the specifics of the individual recommendations and the findings reported in the audit document.

General Comments

AS 04.06.010 establishes the ABC board in the department, but for "administrative purposes only". The verbiage in this statute is similar to the statutes establishing other boards and commissions in this and other agencies. The intent of the language is fully understood by the department to insure that the board is able to accomplish its mission without undue or inappropriate influence from the department. The department takes no issue with the need for their autonomy with regard to regulating the alcoholic beverage industry. The problems with the statutory language are two fold:

1. The statute uses a single word, "administrative", to delineate the department's authority over issues related to ABC but does nothing to define the breadth or the limits of the term's meaning. This creates ambiguity with regard to the department's ability to insure good discipline, rule compliance, efficient and effective supervision and production of work as well as accountability. We see this manifested in many ways. For example, a first line of defense for employees and their bargaining units when an employee has run afoul of policy and is being held accountable is that the department has no authority to impose or enforce its rules of conduct on staff employees. While we strongly disagree with that assertion, it has the potential of negating our ability to insure good order and discipline every time that threshold test is put before an arbitrator.
2. The second difficulty created by how the statute establishes ABC is very closely intertwined with the first. In essence, the statute makes the department responsible for the actions and activities of

Office of the Commissioner
450 Whittier Street - Juneau, AK 99811 - Voice (907) 465-4322 - Fax (907) 465-4362

ABC and its employees but places undefined limitations on the department's authority. The department does not direct staff work nor does it have a role in staff business decisions that can adversely impact the public in general or the licensees specifically. However, when something inappropriate occurs, the department is viewed as responsible for actions that it had no part in or any authority to interfere with.

The board itself is ostensibly charged with governance of the staff, maintaining appropriate discipline, directing its work, resolving personnel and other matters and insuring that the public's money is spent in an efficient and effective manner that is focused on accomplishing ABC's primary mission purposes. The problem with that concept is that the board is made up of a group of uncompensated volunteer citizens whose focus is the regulation of the liquor industry and not on the operation of the staff.

The board is made up of people with other full time occupations. They each come from different businesses and different walks of life and have little or no familiarity with the multitude of systems and rules in place that define the work environment for state employees. While some might have an interest in insuring that the staff operates appropriately, most are disinclined to take any active role in oversight.

If the department were to make any recommendation for statutory changes it might well be to bring the staff of this and other boards more clearly under the overall control of and, perhaps more importantly, within the responsibilities of the parent agency while still insuring that the board itself had sufficient controls to steer the direction and focus of the work being accomplished by the staff.

More discussion on this topic will be included within our response to Recommendation No. 4.

Recommendation No. 1

The ABC Board and director should strengthen the control environment over alcohol regulatory functions.

1. Licensing. *The director should insure that applications are complete and all required information is submitted and maintained.*

We strongly agree and would recommend that the board take whatever action is necessary to insure that this is accomplished.

We believe that this is an example of an area that is directly related to the leadership responsibilities of the director. We believe that the autonomy from DPS that is inherent in the statutes establishing the board and providing for a director and staff, make it essential that the board take a more active role in providing clear direction and expectations to the director and then they must hold him accountable for carrying out those expectations through his giving clear direction, setting clear expectations and holding his subordinates accountable to insure that the board's direction and the laws and regulations are complied with.

2. Database security. *The director should ensure information in the licensing database is properly protected from unauthorized changes.*

We strongly agree and have taken the steps necessary to see that this is accomplished.

Recognizing a significant need to address recordkeeping and accountability issues, during FY06 DPS invested its own funds beyond the ABC budget to create a new ABC database. That first phase project has been completed and put into service and addressed many of the issues that had come to light. To carry that project forward to address additional security and data integrity related concerns that we have, we sought and obtained funding in the FY07 budget to complete a second phase of the database project that includes migration of the database to a modern system that is housed at a secure location off premises from ABC and which system will have sufficient security to address our

concerns and the concerns raised in the audit. The project is underway and is expected to be completed during the first quarter of CY07.

While the system security issues are being addressed, it is important to keep in mind that the weakest parts in the security of any system are users. It will be incumbent on the board to require that the director issue and enforce a policy concerning who may be given access to the system and for what purposes and other user related security issues such as leaving a session open when away from their desks and maintaining security of their user passwords.

3. Permitting. *The ABC Board and director should ensure all permits are pre-numbered, remove investigators from involvement in the cash handling aspects of the process, and perform periodic reconciliation of permits issued versus permits receipts. After more effective controls have been implemented, the ABC Board should propose a statutory change to remove the requirement that permits be returned to the ABC Board.*

We fully agree.

Having previously recognized the general lack of accountability with permits, we addressed the issues of number control of the permits and accountability for money received from the sale of permits and the ability to reconcile the money with permits issued when we designed the new ABC database already mentioned.

We agree that having the outlying ABC investigators involved in the cash handling aspects of the permitting process serves no useful investigative purpose and makes it very difficult to insure proper cash handling compliance. We also agree that the requirement to return a permit to ABC after an event serves little purpose and should be repealed.

We have already built in an accountability process for the permits themselves through design of the new ABC database system that will be deployed very shortly. That will allow permits to be issued from a central system that provides a unique number for each permit. The system also allows for reconciliation of money received for permits against permits issued.

What the new system does not address is investigators receiving and handling cash and other receipts. Our recommendation to ABC is to identify department cash handling systems already in place in Fairbanks and Juneau and establish a process whereby all receipts for permits and any other fees that had previously been collected by investigators now be collected directly by the agent of the currently existing department process. The receipts would not pass through the investigators and would be accounted for and processed by the department agent and in accordance with the Alaska Administrative Manual and other applicable rules.

Alternatively, ABC would have to collect all fees at their Anchorage office regardless of where in the state the permit was being applied for. This is a much less desirable solution.

Regardless of the solution ultimately put in place, the local investigators need to continue to be closely involved in all other aspects of the permitting process to insure that they are aware of permits being issued in their respective areas and to allow them an opportunity to have input prior to approval and to be aware of events that they may choose to inspect to insure compliance with the terms of the permit.

There is a further accountability piece that needs to be pointed out with regard to falsifying a permit completely using a downloaded application. While not impossible, we believe that falsifying a permit is not likely to occur nor are we aware of any past occurrence of this issue.

The validity of a permit is readily verifiable through ABC and will be even more readily verifiable once their new system is completed and the permits are numbered. The two most common permits are the caterer's permit and the special events permits. In the case of a caterer's permit, the permit is issued to an existing licensee. In the case of a special events permit, the permit is issued to a non-profit fraternal, civic or patriotic organization. Neither of these groups is likely to jeopardize their very existence by engaging in an act that would likely result in a license revocation or in irreparable harm to an organization's standing in a community. Neither of these groups is likely to engage in this kind of fraudulent activity nor are we aware of any occurrence of this in the past.

While we do not believe this to be a practical issue it is possible that a private citizen could falsify a permit but even then it would do little more than create grounds for additional charges against the citizen were they to be discovered. In this case, having had the ABC investigators involved in the issuance of the permits to begin with would make it more likely that the illegal event would be discovered in the first place.

We are in the process of modifying the ABC system and forms to physically separate the permit from the permit application as part of the accountability issue. We will continue to allow the application form to be downloadable from the internet and for the application process to continue largely as it currently does. What will be different will be that, once the application has been approved and fee payment received, the ABC database system would be used to print out a separate, numbered permit document for posting at the event. This change should adequately address the concerns with falsifying or forging a permit.

4. Municipal refunds. *The ABC Board and director should develop procedures to ensure municipal refunds are paid or denied in accordance with Title IV. Further, the director should insure the information necessary to process these payments provided to the Department of Revenue (DOR) is timely and accurate.*

We strongly agree.

We believe that the board and director should not only be responsible for providing timely and accurate information but also for implementing procedures and should be accountable for enforcement of the procedures as well.

We also believe that to be truly compliant with Title IV, the procedures must provide for some requirement that, in order to qualify to receive a refund of license fees, a municipality must provide a report of their alcoholic beverage law enforcement activities. We do not believe that simply having a police department is enough to meet the intent of the law and that affirmative enforcement is required.

Additionally, the procedures must clearly identify who the refund would be provided to given that Alaska law defines both cities and boroughs as "municipalities". It would be inappropriate, for instance, for a borough to receive a refund of license fees for licenses within the borough based on the enforcement activities of a police department in a city within that borough where no enforcement occurs in any parts of the borough outside that city.

We believe that this is another example of an area that is directly related to the leadership responsibilities of the director. Again, we believe that the autonomy from DPS that is inherent in the statutes establishing the board and providing for a director and staff, make it essential that the board take a more active role in providing clear direction and expectations to the director and then they must hold him accountable for carrying out those expectations through his giving clear direction, setting clear expectations and holding his subordinates accountable to insure that the board's direction and the laws and regulations are complied with.

It is ultimately the responsibility of the director to insure that refunds are accomplished in a timely manner and in compliance with the law. Failure to do so places the DPS commissioner in the position of having to demand money back from communities and reflects poorly on the agency overall.

5. License fee collection activities. *The ABC Board should ensure their cash deposit procedures match with the AAM requirements.*

Areas of improved oversight and review of financial activities include: ensuring only the correct, common carrier fee is accepted after a statute change increased the fee; ensuring accuracy when recording licensing fees to licenses' type specific account codes, and establishing procedures for the tracking of fines to ensure they are paid within the time required by the board.

We strongly agree.

DPS has provided the framework and direction to address each of the areas discussed in this section. To our knowledge, the daily cash and other receipt deposits are being made daily. The first phase of the new ABC database provided the reporting framework to allow money and license reconciliation. The ABC staff is small enough and can be kept abreast of any changes in laws, regulations or procedures quite easily through word-of-mouth, memorandum or even email. We see no reasonable explanation as to why incorrect fees would be collected nor why appropriate reconciliations are not well established internal practices at this point.

We believe that this is another example of an area that is directly related to the leadership responsibilities of the director. Again, we believe that the autonomy from DPS that is inherent in the statutes establishing the board and providing for a director and staff, make it essential that the board take a more active role in providing clear direction and expectations to the director and then they must hold him accountable for carrying out those expectations through his giving clear direction, setting clear expectations and holding his subordinates accountable to insure that the board's direction and the laws and regulations are complied with.

DPS can do little more than provide the administrative framework and direction as to what should be done. It is the director's responsibility to insure that he and his staff comply or the board must intervene to take corrective action.

6. Wholesale fee.

A. The ABC director should ensure all wholesalers are submitting the required affidavits within the statutory deadline and follow-up on those who do not submit the affidavit. In addition, the director should ensure the list of wholesalers, from whom it requests affidavits, is complete.

We strongly agree.

We believe that this is another example of an area that is directly related to the leadership responsibilities of the director. Again, we believe that the autonomy from DPS that is inherent in the statutes establishing the board and providing for a director and staff, make it essential that the board take a more active role in providing clear direction and expectations to the director and then they must hold him accountable for carrying out those expectations through his giving clear direction, setting clear expectations and holding his subordinates accountable to insure that the board's direction and the laws and regulations are complied with.

B. The ABC Board and director should establish a stronger control environment. The control environment sets the tone of an organization, influencing the control consciousness of its people. It is considered the foundation for all other components of internal control providing discipline and structure.

We strongly agree.

In broad terms, this paragraph describes what we believe to be necessary to address most of the issues identified by this audit. We recommend that the board consider this paragraph in light of each of the issues and hold the director accountable to establish a foundation within his organization that reflects the essence of your observation.

Recommendation No. 2

The ABC Board and director should develop and implement an overall plan for enforcement activities to insure the effective allocation of their resources.

The ABC Board should develop and implement an overall strategy for enforcement that includes clear guidance to investigators as to priorities for inspections and compliance checks. This should include risk assessment, statewide scheduling of inspections, periodic review of progress, and formulating a plan of action to address the compliance check failure rate, which is currently high at 20%. Procedures should be improved to ensure an accurate, consistent, and complete record of enforcement activities in APSIN. These improvements will enhance the board's ability to make resource allocation adjustments when necessary and improve the overall efficiency and effectiveness of Title IV enforcement.

We strongly agree.

The audit incorrectly states that there are 3 investigators, one each in Juneau, Anchorage and Fairbanks. In fact, there are 4. There are 3 Investigator IIIs, one each in Juneau, Anchorage and Fairbanks. There is also an Investigator IV in Anchorage. We believe that the positions could be used more productively if they developed a plan and made better use of the Investigator IV position in Anchorage.

We believe that a plan should be developed using all of the assessment criteria described in the audit and that requires that all licensed premises be inspected at least once in any given 2 year period. Given the sheer number of locations that would have to be visited, this would require active enforcement participation by the Investigator IV, a clear division of responsibilities among the Investigator IIIs, enlisting the assistance of local police departments and the Alaska State Troopers as well as developing a working method of tracking the work done and the work remaining.

Compliance checks are a little different and are somewhat restricted by resource availability. While a clear plan requiring that compliance checks be conducted at a set number of licensed premises per year would be appropriate, the plan would have to be flexible enough to allow the checks to be targeted on problem licensees as identified through police reports, citizen complaints and inspection discoveries.

Repeat inspections and repeat compliance checks of some licensed premises will always be appropriate to insure continued compliance with the law. This is particularly true with problem licensees. While this should normally be done in a manner that does not negatively impact their effort to inspect every licensed premise in a given two year period, it sometimes may if they are dealing with particularly difficult licensees.

We believe that this is another example of an area that is directly related to the leadership responsibilities of the director. Again, we believe that the autonomy from DPS that is inherent in the statutes establishing the board and providing for a director and staff, make it essential that the board take a more active role in providing clear direction and expectations to the director and then they must hold him accountable for carrying out those expectations through his giving clear direction, setting clear expectations and holding his subordinates accountable to insure that the board's direction and the laws and regulations are complied with.

Recommendation No. 3

The ABC Board director should ensure compliance with public notice requirements and establish procedures to ensure board meeting records are complete and accurate.

1. Board meeting notification.

To encourage public participation, the board should ensure all meetings are advertised in applicable local papers and posted on the State of Alaska's Online Public Notices website.

We strongly agree.

We believe that public participation in the board process is essential to insure the transparency of the process itself and to give the communities a voice in board decisions.

2. Statute and regulation change notification.

The board should ensure that all affected parties are promptly notified of significant changes to statutes and regulations.

We strongly agree.

We have embraced modern communication technologies to successfully address this very issue in several other business areas. We have aggressively asked various constituent groups to provide us with an email point of contact and have shifted expensive and burdensome antiquated notification processes to email with great success.

We recommend that the director adopt a similar solution and aggressively seek email points of contact for each licensee and each community that must be notified and then make prompt notification to all whenever there is even an insignificant change to statute, regulation or policy.

3. Board minutes.

An accurate and complete record of board meetings, including documentation of public testimony, is vital...

We strongly agree.

This is not only essential to provide that same level of transparency of government spoken to earlier, but is also essential to insuring that the board itself has a clear understanding and ready reference of its own actions during past meetings.

DPS has provided the director with a sample of the minutes of another board that should provide a solid template from which to restructure their minutes.

The ABC director should ensure adequate notification of ABC Board meetings is provided to the public, and prompt notification of significant statute or regulation changes is provided to affected licensees and municipalities. Additionally, the director should ensure a consistent and accurate public record of board proceedings is created and maintained.

We strongly agree.

As we focused on each of the individual issues in an effort to insure that they will be appropriately addressed, it became clear that at the core of each is a lack of clear direction and of individual accountability. As we have stated throughout this document, that is an essential responsibility of the

director and of the board to insure that the director is meeting their expectations. Again, we encourage the board to take a more active role in the day-to-day operation of the board staff and to hold the director accountable for proper leadership of the staff.

Recommendation No. 4

The legislature should seek an amendment to Title IV to remove the voting ability of the board's director.

To ensure an appropriate balance of government, the legislature should amend AS 04.06.060 to remove the director's voting ability.

We agree.

We believe that the Division of Legislative Audit recommendation in this audit will carry this issue forward. DPS will support this change if a bill is offered.

We agree with this recommendation and would recommend that the board voluntarily impose this change by procedural motion pending a statutory change. We believe that this is not appropriate for the reasons described and for the additional reason that it potentially places the director in a difficult position with regard to his relationship with the board. We believe that the board should formally stop any future approval for the director to cast a vote and should consider a tie vote to fail the issue before the board.

Additionally, the board should consider adopting a policy of requiring a 30 minute recess to allow board members to rethink their positions anytime there is a tie vote. If, after the recess, a second vote results in a tie, the issue would fail.

We also believe that this perhaps does not go far enough in illustrating the entire picture with regard to checks and balances and the concept of separating functions of government. Expanding on your theme, consider that the board actually performs roles similar to all 3 branches of government.

They promulgate regulations. While they obviously do not have the authority or ability to make laws (statutes), they do make many rules that impact communities and licensees similar to what the legislative branch of government does.

They enforce the laws made by the legislature and the regulations they make themselves and they collect taxes through license and permit fees similar to what the executive branch of government does.

They resolve issues and impose sanctions through their quasi-judicial authority similar to what the judicial branch of government does.

While your recommendation to remove the ability of the director to break a tie vote is a good first step in separating the functions, it may be time to rethink other separations that are equally as troublesome for this and other similar boards.

Many of the problems identified in this audit would not exist or would at least be more readily addressed if all of the executive branch types of functions were removed from the purview of the board and placed under the authority and responsibility of the parent agency. There would be little functional change in that the same positions would be dedicated to the enforcement and tax collection purposes and a close working relation would continue with the board. However, the positions and responsibility for insuring efficient and effective use of those positions would be placed in an environment where there are clear policies and expectations and where accountability is a hallmark.

Alaska Department of Public Safety - Page 9

In many ways, asking a board made up of uncompensated volunteers whose interests are focused on regulation of the alcoholic beverage industry and not on the good order and discipline of the staff is unfair to both the board and to staff. I can tell you that it certainly causes many difficulties for the parent agencies.

DPS would be happy to work with any legislator(s) who might wish to work toward a more workable organizational structure that establishes better controls, clearer lines of authority and that may ultimately serve the safety of the public better.

Sincerely,



William Tandeske
Commissioner

cc: Ted Bachman, Deputy Commissioner, DPS
Mr. Mike Gordon, Chairman, ABC Board
Mr. Doug Griffin, Director, ABC Board Staff
Mr. Dan Spencer, Director, Division of Administrative Services, DPS

(Intentionally left blank)



State of Alaska
Department of Public Safety
Alcoholic Beverage Control Board

Sarah H. Palin, Governor
Walter Monegan, Commissioner

December 4, 2006

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

RE Response to Alcoholic Beverage Control Board Sunset Review, AC# 12-20047-06

Dear Ms. Davidson:

Since there was such little change between Management Letter No. 1 and the Preliminary Audit Report, the Alcoholic Beverage Control Board would like Board Chairman Mike Gordon's letter of October 25, 2006 sent to In-Charge Auditor Mark Lundahl to serve as the ABC Board response to the Preliminary Audit Report. In the time since that letter, the ABC Board has worked to implement the charges set out in Mr. Gordon's letter.

At its ABC Board meeting of November 29, 2006 the ABC Board reviewed a copy of the Management Letter No. 1 version of the ABC Board Sunset Audit and draft policies and procedures for database security, noticing board meetings, collecting wholesale fees and affidavits, and documenting board meetings. The ABC Board also approved revising the way catering permits are issued to respond to concerns raised in the audit. An overall enforcement plan to include premise inspections and compliance checks is also being drafted and will be implemented beginning January 1, 2007.

The ABC Board did not discuss at any length the recommendation regarding allowing me to cast votes to break ties. There is a good chance this issue will be revisited at a subsequent ABC Board meeting.

Sincerely,

A handwritten signature in black ink that reads "Douglas B. Griffin".

Douglas B. Griffin
Director

Enclosure: Letter dated October 25, 2006 from ABC Board Chairman Mike Gordon

cc: Walter Monegan, Commissioner, Department of Public Safety
Ted Bachman, Deputy Commissioner, Department of Public Safety
ABC Board Members

Alcoholic Beverage Control Board
5P48 E. Tudor Road - Anchorage, AK 99507 - Voice (907) 269-0350 - Fax (907) 272-9412



State of Alaska
Department of Public Safety
Alcoholic Beverage Control Board

Frank H. Murkowski, Governor
William Tandeske, Commissioner

October 25, 2006

Mark Lundahl, CPA
In-Charge Auditor
Division of Legislative Audit
P.O. Box 113300
Juneau, Alaska 99811-3300

RE: Response to Management Letter No. 1, Department of Public Safety
Alcoholic Beverage Control Board Sunset Audit

Dear Mr. Lundahl:

I have reviewed your Management Letter No. 1 and met with Alcoholic Beverage Control (ABC) Board Director Doug Griffin regarding the recommendations and findings contained in this correspondence. I have also had the benefit of reviewing the response of Commissioner Tandeske dated October 13, 2006. I appreciate the Division of Legislative Audit granting me additional time to thoroughly review your Management Letter and confer with Mr. Griffin.

I am responding as Chairman of the ABC Board and my opinions and views may not reflect the wishes of the ABC Board as a whole. I have asked Mr. Griffin to place the ABC Board Sunset Audit on the agenda for the next ABC Board meeting scheduled for November 29, 2006 in Anchorage.

I appreciate the thorough review you and your team did this summer in reviewing the activities and systems of the ABC Board and its staff in its effort to carry out its statutory duties. I will respond as specifically and precisely as I can to the finding and recommendations in your Management Letter.

Status of Prior Audit Recommendations

I am pleased to see that the ABC Board has either partially implemented or fully resolved the recommendations of the Division of Legislative Audit from the last audit conducted. The ABC Board has historically been under funded and this was a major barrier in addressing some of the improvements recommended in the earlier audit. It was only with the assistance of the Department of Public Safety that projects like completion of the first phase of the licensing database became possible.

Current Recommendations

Recommendation No. 1

The ABC board and director should strengthen the control environment over alcohol regulatory functions.

1. Licensing – The Licensing staff of the ABC Board does have policies, procedures, desk manuals, checklists, a licensing database and regular training discussions in an attempt to provide consistency

Alcoholic Beverage Control Board
550 West 7th Avenue - Anchorage, AK 99501 - Voice (907) 269-0350 - Fax (907) 272-9412

and efficiency in processing liquor license renewals, transfers, and applications for new licenses. As licensing staff received information from Legislative Audit staff regarding gaps in files, it adopted additional procedures to address these concerns. For example, concerns regarding "right, title, and interest" are being addressed by a new procedure to prominently note dates of expiration of a lease or acceptance of a recorded deed at the bottom of the status check sheet. Licensing staff has been instructed to be more careful and diligent in reviewing applications to insure that they are complete.

2. Database Security – The development and completion of the database is a work in progress and the comments of Legislative Audit regarding security concerns will be provided to the contractor working on completion of the database. Commissioner Tandeske has further addressed this issue with his explanation of the how the "migration of the database to a modern system that is housed at a secure location off premises" from the ABC Board offices will be completed in the second phase of the database upgrade. The ABC Board Director will draft policies concerning user security of the database system and present those to the ABC Board at its November 29, 2006 meeting. The Director will be charged with enforcing these security policies.
3. Permitting – Segregation of duties for the issuance of permits in Juneau and Fairbanks is problematic since both of these locations have only a single ABC Investigator. These offices provide permits for the convenience of the residents and licensees of the state served by these locations. This is again a function of the ABC Board's small size. The only solution to address this finding is to only issue permits out of our Anchorage office (where there is adequate staff to segregate duties) or increase the ABC Board budget to pay for staffing in Juneau and Fairbanks to adequately segregate the tasks associated with the issuance of permits. The first alternative will greatly reduce service to the public and the second will increase the ABC Board budget.

There is a log kept for permits issued to the public and ABC Board staff are looking for a cost effective way to address the permit control issues (permits are not pre-numbered) and reconciliation of permits issued to permit revenue received. This effort will result in a monthly or quarterly report accounting for permit funds. Redirecting staff resources into issuing prenumbered permits and reconciliation instead of tracking down used permits may be the best way to address this finding.

I concur with arguments made by Commissioner Tandeske regarding the usefulness of having ABC Investigators involved in issuing permits.

4. Municipal Refunds – The procedure outlined in AS 04.11.610 will be followed in the future. I have directed the Director to prepare written policies and procedures and provide a copy of them to the ABC Board at its next meeting scheduled for November 29, 2006. This statute gives the Commissioner of the Department of Public Safety a key role in determining whether enforcement of alcohol laws by municipal law enforcement agencies is active enough to warrant a refund of retail liquor license fees to local governments. The statute gives the ABC Board the role of determining when enforcement of liquor laws is sufficient to warrant resumption of a municipal refund. These provisions demand a level of collaboration between the Commissioner and the ABC Board. The Commissioner, in his response to the Management Letter No. 1, has determined that a report of a municipality's law enforcement activities be required in order to grant a refund. This is the Commissioner's responsibility, but I concur with his reading of the intent of the law. I have directed the ABC Board Director to meet with Commissioner Tandeske, or his designee, to revise the license fee sharing process in a manner that meets the intent of the law and report back to the ABC Board at its November 29, 2006 meeting.
5. License Fee Collection Activities – The ABC Board staff believed it was following procedures set out by the DPS' Administrative Services. ABC Board staff has developed further reconciliation reports that will account for all money received by the ABC Board and show it has been properly deposited. I have directed the ABC Board Director to share these reports with the Department of Public Safety and the ABC Board on at least a quarterly basis. The staff of the ABC Board will welcome any comments or suggestions on these reports to make sure they address the reconciliation, compliance, and oversight issues raised by this Finding. Once these reports prove satisfactory, a written policy will be drafted and implemented.

6. Wholesale Fee – I have directed the Director to develop, implement, and enforce written policies and procedures to improve communication between ABC staff involved in the receiving of wholesale affidavits and fees. A copy of these policies and procedures will be presented to the ABC Board when it meets on November 29, 2006.

Recommendation No. 2

The ABC Board and director should develop and implement an overall plan for enforcement activities to ensure the effective allocation of their resources.

The ABC Board enforcement staff will develop and implement an overall plan for premise inspections and compliance checks and share this with appropriate personnel in the Department of Public Safety. This will allow for improved coordination with state troopers who assist the ABC Board with its inspections. An overall plan for compliance checks will be developed and implemented beginning January 1, 2007. Other aspects of the ABC Board's enforcement efforts are in response to licensee violations, requests for assistance from law enforcement agencies, and requests from the public and, therefore, do not lend themselves to a predetermined plan.

Recommendation No. 3

The ABC Board director should ensure compliance with public notice requirements and establish procedures to ensure board meeting records are complete and accurate.

1. Board Meetings -- The ABC Board director will develop and implement written policies and procedures for the noticing of ABC Board meetings to ensure that they meet statutory and regulatory requirements.
2. Statute and Regulation Change Notification -- The ABC Board will expand its statute and regulation notification process to address this recommendation. The notification requirements of notifying every liquor licensee are expensive and time consuming and, therefore, have only been used when a significant change has occurred. Based on this finding, the ABC Board will take extra care to define what constitutes a "significant" change to statutes and regulations and notify the appropriate licensees when these changes occur.
3. Board Minutes -- The ABC Board Director will spend more time to insure that minutes of the ABC Board's meetings do a better job of capturing members in attendance, vote tallies, meeting locations, and the testimony of persons appearing before the Board. Minutes posted on the ABC Board's website will be consistent with minutes in the official record. Written policies and procedures for taking and posting minutes of the ABC Board Meetings will be drafted and presented to the ABC Board at its next meeting.

Recommendation No. 4

The legislature should seek an amendment to Title IV to remove the voting ability of the board's director.

I believe that this recommendation should be discussed and considered by the ABC Board at its next meeting. The full board may decide to not grant its consent for the Director to act as a tie-breaking vote. I have, therefore, directed the Director to place this on the agenda for the ABC Board meeting of November 29, 2006. The arguments made by Legislative Audit to support this recommendation have merit and deserve consideration. The idea of a 30-minute recess as a tool to see if a tie vote can be resolved is also an interesting idea that the ABC Board may consider. The effect of the finding would be to require three votes from the ABC Board to pass matters before it. This would make attendance and concerns regarding conflicts of interest when members may not vote more critical. This may also have the effect of

delaying action on a license application and reducing the timeliness of decisions required under AS 04.11 510(a).

While I understand the concerns of the Commissioner with regard to the independence of the ABC Board and its staff, I do not agree that major change would improve its effectiveness. As the Commissioner points out in his letter, the ABC Board does possess considerable authority and power. Those that drafted and enacted the majority of Title 4 in 1979- 80, believed that the unique job of regulating alcoholic beverages would best be executed by an independent board that included representatives of the alcoholic beverage industry, but had a majority of strong public members. This configuration may create a degree of tension, but it is also a check and balance that provides for the public safety and welfare while guaranteeing a fair hearing for businesses engaged in the sale and manufacture of alcoholic beverages. I fear that tampering with this independence and autonomy, including removing staff from the ABC Board and placing them in a line agency, would upset the balance that presently exists.

The ABC Board has historically been under funded and many of the problems noted in this sunset audit can be attributed to lack of money to travel and develop the data controls necessary to set and regulate the alcoholic beverage industry and respond to requests from the public. The Department of Public Safety recognized this problem and has been generous in providing direct contributions to the ABC Budget for development of a workable database and securing budget increases for the ABC Board.

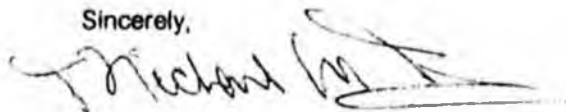
Most of the findings and recommendations of the Division of Legislative Audit are easily correctable now that the resources are available to address them. The thorough audit conducted this summer gives the ABC Board a clear road map to improve its internal controls and processes and, as you can see from my response, we are taking steps to do so. I believe the ABC Board can provide the oversight and direction described by Commissioner Tandeske, and I am having frequent communication with the ABC Board Director to address areas of concern. Additionally, the ABC Board Director will be consulting more closely with the ABC Board on legislation, internal policies and procedures, and public relation matters in the future.

AUDITORS COMMENTS

I believe that the response to questionnaires sent to police departments, licensees, local governments, and community councils was fair and reflects the work done by ABC Board staff to work with these various stakeholders involved in the regulation of alcoholic beverages. I view suggestions regarding increasing license fees to be matter for legislative consideration. If fees are raised and additional program receipts are generated, I would hope that additional funding could be directed to the ABC Board for increased enforcement, education, and improved internal controls.

Thank you again for the extension of time in which to comment on Management Letter No. 1.

Sincerely,



Mike Gordon
Chairman
ABC Board

cc: William Tandeske, Commissioner, DPS
Ted Bachman, Deputy Commissioner, DPS
Doug Griffin, Director, ABC Board

(Intentionally left blank)

HB

162

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 19, 2007

SUBJECT: CSHB 162(L&C) relating to mortgage lending
(Work Order No. 25-LS0070\V)

TO: Representative Kurt Olson
Chair of the House Labor and Commerce Committee
Attn: Eleanor Wolfe

FROM: *TB*
Theresa Bannister
Legislative Counsel

This memo accompanies the bill described above. Please be aware of the following two issues in the bill.

1. Preemption. In sec. 06.50.370(c), the misdemeanor penalty applies to a person who is exempt under sec. 06.60.015. This raises a preemption issue for federal lending entities otherwise exempt under sec. 06.60.015.
2. Exemptions. Limiting the exemptions in sec. 06.60.015 to persons who operate as mortgage lenders and mortgage brokers may raise a federal preemption issue to the extent that the regulation of originators impinges on the activities of national banks and other federally organized financial institutions (e.g., forced removal of an originator).

If I may be of further assistance, please advise.

TLB:med
07-256.med

Enclosure

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB162-COM-BS-04-16-07
 Bill Version: HB 162
 () Publish Date: _____

Revision Date/Time (Note if correction): 4/16/2007 Dept. Affected: Commerce
 Title Mortgage Lending RDU Banking & Securities (536)
 Component Banking & Securities
 Sponsor Lynn
 Requester House Labor & Commerce Component No. 2808

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	241.5	241.5	333.5	333.5	333.5	333.5
Travel	50.0	50.0	50.0	50.0	50.0	50.0
Contractual	65.0	94.0	92.0	92.0	92.0	92.0
Supplies	6.0	6.0	8.0	8.0	8.0	8.0
Equipment	15.0	0.0	5.0	0.0	0.0	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	377.5	391.5	488.5	483.5	483.5	483.5

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

CHANGE IN REVENUES (1156)	455.0	455.0	510.0	520.0	539.0	549.0
------------------------------------	--------------	--------------	--------------	--------------	--------------	--------------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1156 Receipt Supported Services	377.5	391.5	488.5	483.5	483.5	483.5
TOTAL	377.5	391.5	488.5	483.5	483.5	483.5

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time	3	3	4	4	4	4
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation would require the licensing and regulation of people originating, lending or brokering mortgage loans. The division estimates there are about 22,000 mortgage documents filed each year in Alaska. The division estimates needing three additional staff (2 Financial Institution Examiners and 1 Business Registration Officer) in the first two years to implement the provisions of this legislation. One new Financial Institution Examiner would be added in the third year to implement the provision requiring all licensees to be examined every three years. Travel funds cover the cost of examining both in-state and out-of-state licensees. Contractual expenses include funds for the Department of Law to draft legal documents, represent the division at administrative hearings resulting from licensing revocations/disciplinary actions, and enforce orders resulting from investigations; and for staff training.

Prepared by: Mark Davis, Director Phone 907.269.8144
 Division Banking and Securities Date/Time 4/16/07 5:52 PM
 Approved by: Emil Notti, Commissioner Date 4/16/2007
 Agency Commerce, Community, and Economic Development

ANALYSIS CONTINUATION

Revenue: The division estimates this legislation would generate \$455.0 in each of the first two years year due to the initial licensing of an estimated 200 mortgage licensees and 500 originator licensees (\$175.0 resulting from \$250 per originator and mortgage licenses, and the collection of \$220.0 in document filing fees (22,000 documents at \$10 per document assessment fee)), plus 100 examinations at an average cost of \$6.00 for a total of \$60.0.

In the third year, the division anticipates generating \$510.0 from licensing 250 mortgage licensees and 550 originator licensees for a total revenue amount of \$200.0, plus \$220.0 in document assessment fees, and \$90.0 from 150 examinations at the average of \$6.00 per examination.

In year 4 the division anticipates generating \$520.0 (\$90.0 results from the examination of 150 establishments at a cost of \$6.00 per examination; \$230.0 document assessment fees (23,000 documents at \$10 per document assessment fee)); and \$200.0 mortgage and originator licensing fees.

In year 5, the division anticipates generating \$539.0 (\$90.0 from examination fees, \$230.0 from document assessment fees, and \$219.0 from 275 mortgage licenses and 600 originator licenses.)

In year 6, the division anticipates generating \$549.0 (\$90.0 from examinations fees, \$240.0 in document assessment fees (24,000 documents at \$10 per document assessment fee)), and \$219.0 mortgage and originator licensing fees.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB162-DOA-OAH-4-16-07
Bill Version: HB 162
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title An act relating to mortgage lenders RDU Centralized Administrative Services
Component Office of Administrative Hearings
Sponsor Representative Lynn
Requester House Labor & Commerce Component No. 2771

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	0.0	35.0	35.0	35.0	35.0	35.0
Travel	0.0	2.0	2.0	2.0	2.0	2.0
Contractual	0.0	4.0	4.0	4.0	4.0	4.0
Supplies	0.0	1.0	1.0	1.0	1.0	1.0
Equipment	0.0	2.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	44.0	42.0	42.0	42.0	42.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Interagency receipts)	0.0	44.0	42.0	42.0	42.0	42.0
TOTAL	0.0	44.0	42.0	42.0	42.0	42.0

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time	0	1	1	1	1	1
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill provides for licensing of persons who would be entitled to a hearing if licensure is denied or if disciplinary action is taken against them. Under AS 44.64.030(a)(5), the Office of Administrative Hearings (OAH) would conduct the hearings in these matters for the Department of Commerce, Community and Economic Development (DCCED). This bill also provides for OAH to hear originator surety fund claims. Based on DCCED's updated projection of probable caseload, OAH likely could not handle all of these cases without adding personnel unless OAH experiences a downturn in other parts of its caseload. OAH estimates needing a one-quarter time administrative law judge position in FY09, which the bill would take effect, and recovering the cost from DCCED through interagency receipts under OAH's cost allocation plan.

Prepared by: Terry L. Thurbon, Chief Administrative Law Judge
Division: Office of Administrative Hearings
Approved by: Kevin Brooks
Agency: Department of Administration

Phone 465-1886
Date/Time 04/16/2007 4:42 p.m.
Date 4/16/2007

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB162-LAW-CFB-3-15-0
 Bill Version: HB 162
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title An Act relating to mortgage lending RDU Civil
 Component Commercial & Fair Business
 Sponsor REPRESENTATIVE(s) LYNN
 Requester House Labor & Commerce Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The bill would establish new statute to further regulate mortgage lending. Under the bill people who act as mortgage brokers, lenders and originators will be required to obtain a license issued through the Department of Commerce, Community and Economic Development ("DCCED"). The bill also imposes certain conduct requirements on the licensees, includes a prohibited practices section, and authorizes DCCED to impose disciplinary sanctions on licensees for violations of the requirements of the new law. Enactment of the bill will not fiscally impact the Department of Law.

Prepared by: Robert Meiners, Acting Director
 Division: Administrative Services Division
 Approved by: Robert Meiners for Talis Colberg, Attorney General
 Agency: Department of Law

Phone 465-5427
 Date/Time 3/15/07 4:12 PM
 Date 3/15/2007

Memorandum: HB 162 Mortgage Licensing: Major Changes Between Version K and Version O Prepared: April 18, 2007 by the Division of Banking and Securities

- Exemption for companies already licensed under Alaska's Small Loan Act at page 1, line 4, of the Introduction.
- Modification of exemption language for federally regulated financial institutions is made at two places:
 - Amend (a)(2) to read include in the exemption listing: bank holding company, savings and loan association, and trust company with banking powers.
 - Amend (a) (3) at page 2 Line 31 Section 06.60.015 to read as follows:
“(3) a subsidiary or an operating subsidiary of a person who is identified by (1) of this subsection, or of a bank holding company or savings and loan holding company, if the subsidiary or operating subsidiary certifies to the department on a form provided by the department that the subsidiary or operating subsidiary is exempt from this chapter because of applicable federal statute or regulation.
- The bill was amended so that it would not cover require change of control notifications for large publicly traded corporations by making a change at page 4, Line 2 Section 06.60.020
- Similar changes were made changes in control of an LLC.
- Sec. 06.60.065 (3)(E) originally allowed denial of an originator license only if a person violated a provision of the chapter. Language was added clarifying that a violation of a regulation adopted under the chapter, or an order of the department under the chapter, are also a basis for denial of a license.
- Section 06.60.145 (page 14 lines 18-31) was changed to clarify situations where a disqualified person may not be associated with or employed by a mortgage licensee.
- Sections 60.60.157 and 159 were added at page 15 by Law to ensure that all licensees perform origination services through an originator and to state that a mortgage licensee may be held liable for the conduct of an originator.
- Section 06.60.340 (at page 21, line 2) was amended with language to state that a licensee may not represent that they have a professional certification that do not actually have or engage in deceptive advertising.
- Sec. 06.60.370 (b) – (d) are changed to clarify that the crimes described are class A misdemeanors and eliminates references to imposition of fines or imprisonment. Class A misdemeanors are already defined in the criminal code to carry certain fines and imprisonment, so the references in the statute are not necessary.
- Sec. 06.60.990 (5) (D) definition of “escrow account” was changed to clarify that money disbursed from an escrow account must be in accordance with a written agreement.

HB 162 Mortgage Lending

Comparison between Version K and Version O

Prepared: April 16, 2007

Page 1 Line 4 Introduction language

ADD the following:

“...making certain violations unfair trade practices; relating to persons who are licensed under the Alaska Small Loan Act;...”

Page 2 Line 14 Section 06.60.010

Delete (a)(2) and (a)(2)(A) and (B) :

Page 2 Line 17 Section 06.60.010

Amend (c) to read as follows:

(c) A license may cover more than one location of ~~the~~ **a mortgage licensee.**

Page 2 Line 25 Section 06.60.015

Amend (a)(2) to read.

“...as a bank, **bank holding company,** savings institution, **savings and loan association,** **trust company with banking powers,** or credit union...”

Page 2 Line 30 after the word “company” INSERT **or savings and loan holding company,**

Page 2 Line 31 Section 06.60.015

Amend (a)(3) to read as follows:

“(3) a subsidiary or **an operating subsidiary** of a person who is covered ~~covered~~ **identified** by ~~(2)~~ **(1)** of this subsection, **or of a bank holding company or savings and loan holding company, if the subsidiary or operating subsidiary certifies to the department on a form provided by the department that the subsidiary or operating subsidiary is exempt from this chapter because of applicable federal statute or regulation, and who is subject to the general supervision, regulation, and examination of a regulatory body or agency of the United States, a state or territory of the United States, or the District of Columbia;**