

# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE



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SUMMARY OF: A Special Report on the Department of Revenue, Alcoholic Beverage Control Board, Sunset Review, November 29, 2002.

### PURPOSE OF THE REPORT

In accordance with Titles 24 and 44 of the Alaska Statutes, we have reviewed the activities of the Alcoholic Beverage Control Board (ABC Board or the board). As required by AS 44.33.050(a), the committee of reference is to consider this report during the legislative oversight process to determine whether the board should be reestablished. Currently, under AS 44.66.010(a)(1), the board will terminate on June 30, 2003 and will have one year from that date to conclude its administrative operations.

Accordingly, our report had two central, interrelated objectives:

1. To determine if the termination date of the board should be extended.
2. To determine if the board is operating in the public interest. The assessment of the operations and performance of the board was based on AS 44.66.050(c). This statute sets out criteria that are to be used in determining a demonstrated public need for the board.

### REPORT CONCLUSIONS

In our opinion, the Alcoholic Beverage Control Board should continue to regulate the manufacture, sale, barter, and possession of alcoholic beverages in Alaska in order to protect the public's health, safety, and welfare. The board has provided protection to the general public through the issuance, renewal, and temporary suspension of liquor licenses. Protection has also been provided through investigations 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 the report, the ABC Board has met the various statutory criteria. With the exceptions noted in the Findings and Recommendations section, the board is effectively and efficiently meeting its statutory responsibilities and is operating in the public interest. The ABC Board is organized under statute as a regulatory and quasi-judicial agency; however, it appears to be spending a disproportionate amount of time and resources on police efforts rather than on the regulatory function.

We recommend that Alaska Statute 44.66.010(a)(1) be amended to extend the life of the Alcoholic Beverage Control Board to June 30, 2006. This three-year extension will give the board ample time to correct the deficiencies noted in this report and it will trigger a timely follow-up audit to determine if these deficiencies have been fully addressed.

## FINDINGS AND RECOMMENDATIONS

1. The legislature should consider having the Department of Public Safety conduct criminal investigations, rather than the ABC Board.

Title IV was revised in 1999 to have ABC Board staff investigate violations of gambling and prostitution on licensed premises. The Department of Public Safety is better equipped to handle these types of investigations. There would be significant inefficiencies in attempting to turn ABC into a four-officer, statewide police force.

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

Currently the ABC Board does not have the power to summarily suspend a liquor license prior to revocation. Since revocation does not take effect until all due process rights have been exhausted, licensees whose liquor licenses have been revoked may be able to operate for two or more years after the revocation was imposed. Summarily suspending a license involves the immediate cessation of alcohol sales by a licensee while the board pursues revocation of the license. This process provides greater protection to the public while still providing due process rights to the licensee. This power would be similar to that held by other occupational licensing boards and would be used when continued operation by a licensee would pose a clear and immediate danger to the public.

3. The ABC Board should conduct routine background checks on all licensees as they renew their licenses or should track licensees through the public safety information system.
4. The director should ensure that all fines are collected and deposited into the General Fund.
5. The ABC Board and its director should provide goals for the enforcement staff.
6. The director should upgrade the ABC Board licensing database.
7. The director should require staff to prepare and maintain procedural manuals.
8. The ABC Board members should urge the governor's office to fill board vacancies within the 30-day timeline required by statutes.

December 4, 2002

Members of the Legislative Budget  
and Audit Committee:

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

DEPARTMENT OF REVENUE  
ALCOHOLIC BEVERAGE CONTROL BOARD  
SUNSET REVIEW

November 29, 2002

Audit Control Number

04-20019-03

This review examines the activities of the Alcoholic Beverage Control Board (ABC Board) to determine if there is a demonstrated public need for its continued existence and if it has been operating in an efficient and effective manner. Alaska Statute 44.66.010 specifies that the ABC Board will terminate on June 30, 2003 and will have one year from that date to conclude its administrative operations. We recommend that the legislature extend the ABC Board's termination date until June 30, 2006.

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

Pat Davidson, CPA  
Legislative Auditor

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## OBJECTIVES, SCOPE, AND METHODOLOGY

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

As required by legislative intent, this report shall be considered during the legislative oversight process in determining whether the ABC Board should be reestablished. Currently, under AS 44.66.010(a)(1), the board will terminate on June 30, 2003 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, our primary objective in this audit was to determine whether there is a public need for the board and if it should continue to exist.

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

### Scope

Alaska Statute 44.66.050 requires the factors outlined in the Analysis of Public Need section of this report to be evaluated as part of this audit in order to determine the need for the ABC Board's continued existence. We reviewed ABC Board activity that occurred from FY 98 through FY 02. We also reviewed the Board's proceedings to determine whether it complied with Alaska Statutes and regulations.

### Methodology

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

- Title IV and other applicable Alaska Statutes.
- Proposed and passed legislation concerning alcohol and the ABC Board since the previous sunset audit.
- Title 15, Chapter 104 of the Alaska Administrative Code.
- *Final Report of the Criminal Justice Assessment Committee, May 2000* and follow-up status reports.
- ABC Board licensing files.
- ABC Board meeting minutes.
- ABC Board operating budgets and financial records.

- Newspaper articles pertaining to liquor licensing in Alaska.
- Responses to the questionnaires we sent out to governing bodies, law enforcement agencies, community councils, and a sample of active licensees.

In addition, we attended two board meetings, one in person and one via teleconference. We interviewed ABC Board staff, the chairman of the ABC Board, and local community council questionnaire respondents. We also contacted the Alaska Ombudsman, the Attorney General's office, the Division of Equal Employment Opportunity, the Human Rights Commission, the Department of Revenue, and the Office of the Governor.

## ORGANIZATION AND FUNCTION

The Alcoholic Beverage Control Board (ABC Board or the board) was established in 1959 by Title IV<sup>1</sup> of the Alaska Statutes as a regulatory and quasi-judicial agency. For administrative purposes, the ABC Board is assigned to the Department of Revenue. The purpose of the board is to regulate the manufacture, barter, possession, and sale of alcoholic beverages in the State. Control is exercised through board review and consideration of liquor license applications for original issuance, renewal, and transfer, and also through revocation and suspension of licenses. In addition, the board has the power to propose and adopt regulations and to hear appeals concerning actions of ABC Board personnel.

The board is composed of five members appointed by the governor and confirmed by the legislature. Traditionally, appointed members represent all geographic areas of the State. Two of the members are required by statute to be representatives of the alcoholic beverage industry, while the other three are public members. Board members are appointed for overlapping three-year terms. A director, appointed by the governor, serves as the executive officer and is responsible for enforcing Title 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 over 1,800 licensees comply with Title IV. Employees provide three functions including administration, licensing, and enforcement. These services are briefly described below.

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.

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.

Alcoholic Beverage Control Board Members
Bob Klein, Chairman Anchorage, Industry Member Term expires January 31, 2003
Jan Wrentmore Skagway, Industry Member Term expires March 1, 2005
Toni Lee Jackson Copper Center, Public Member Term expires January 31, 2003
Ellen Ganley Fairbanks, Public Member Term expires March 1, 2005
Duane Udland Anchorage, Public Member Term expires March 1, 2004

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<sup>1</sup> Title IV, Alcoholic Beverages, AS 04.06.010 – 04.21.080.

Enforcement: The four-member enforcement staff currently consists of two Anchorage-based investigators, one Fairbanks-based investigator and one Juneau-based investigator. Investigators perform various duties including inspecting licensed premises, investigating complaints of suspected licensing violations, overseeing a federal underage drinking grant, 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.

The ABC Board office is located in Anchorage. In FY 03, the board has an operating budget of \$711,200 for its nine staff positions and activities.

## 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 in Alaska in order to protect the public's health, safety, and welfare. The board has provided protection to the general public through the issuance, renewal, and temporary suspension of liquor licenses. Protection has also been provided through investigations of suspected licensing violations and enforcement of the State's alcoholic beverage control laws and regulations.

As indicated in the Analysis of Public Need section of this report, in our opinion the ABC Board has met the various statutory sunset criteria. With the exceptions noted in the Findings and Recommendations section of this report, we believe that the board is effectively and efficiently meeting its statutory responsibilities, and is operating in the public interest. The ABC Board is organized under statute as a regulatory and quasi-judicial agency; however, it appears to be spending a disproportionate amount of time and resources on police efforts rather than on the regulatory function.

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, 2006. This three-year extension will give the board ample time to correct the deficiencies noted in this report and it will trigger a timely follow-up audit to determine if these deficiencies have been fully addressed.

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## FINDINGS AND RECOMMENDATIONS

### Status of Prior Audit Recommendations

Our prior sunset audit<sup>2</sup> contained three recommendations. The first advised the Alcohol Beverage Control Board (ABC Board or the board) to take steps to ensure that objections from affected neighborhoods were considered prior to the issuance, transfer, or renewal of a license. The board has increased the awareness of local governing bodies regarding the value of public input. The board has also attached conditions to licenses in response to neighborhood objections. However, according to some questionnaire responses and interviews with community council representatives, there still is not enough consideration of public input in how licenses are issued or renewed. In addition, the community councils would like to receive training on the liquor licensing process so they better understand what options are available to them when an application for a license is received for issuance, transfer, or renewal. (See Appendix E.)

The second recommendation was that the board review the liquor license fee-sharing program to ensure the funds were properly spent by the participating governing bodies. The board has implemented an additional regulation to ensure that the municipalities who participate in the revenue sharing program are in compliance.

The third recommendation advised the board to ensure the amounts, of license fees refunded to the local governing bodies as part of the revenue share program, were correct. This is still of concern and is included in current Recommendations No. 6 and 7.

### Recommendation No. 1

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

Major changes were made to the ABC Board's statutes and regulations during the past five years. Effective July 1999, AS 04.06.110 was amended, as follows, to add ABC staff investigation of gambling and prostitution offenses.

*The director and the persons employed for the administration and enforcement of this title may, with the concurrence of the commissioner of public safety, exercise the powers of peace officers when those powers are specifically granted by the board. Powers granted by the board under this section may be exercised only when necessary for the enforcement of the criminally punishable provisions of this title, regulations of the board, and other criminally punishable laws and regulations, **including investigation of violations of laws against prostitution and promoting prostitution described in AS 11.66.100 – 11.66.130 and laws against gambling, promoting gambling, and related offences described in AS 11.66.200 – 11.66.280***

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<sup>2</sup> Department of Revenue, Alcoholic Beverage Control Board, September 8, 1997. (Audit Control No. 04-1452-97.)

*[GOVERNING THE MANUFACTURE, BARTER, SALE, CONSUMPTION, AND POSSESSION OF ALCOHOLIC BEVERAGES IN THE STATE].<sup>3</sup>*

The stated mission of the ABC Board, according to AS 04.06.090(a), is to “*control the manufacture, barter, possession, and sale of alcoholic beverages in the state.*” Adding gambling and prostitution to this list significantly expanded the mission of the board as to the types of investigations conducted. Whereas prior to the amendment violations of Title IV and its regulations were subject to conviction for class A misdemeanors,<sup>4</sup> the new language imposed conviction for class B and C felonies on some violations.

Although the DPS commissioner has historically authorized limited police powers to the investigative staff of the board, these powers were usually restricted to issuing subpoenas and serving search warrants. These limited police powers allowed the board’s staff to better perform its job. This was much different than the 1999 expansion of the board’s mission mentioned above and is an aspect that should be continued.

A major change to the regulations<sup>5</sup> took effect in March 1999, shortly before the statute change. The new regulation allowed ABC staff to carry firearms, if authorized by the board and with the DPS commissioner’s concurrence. The ABC Board authorized the use of firearms by the enforcement staff at its April 1999 board meeting. However, this authorization was rescinded in June 1999 when the DPS commissioner revoked the limited police powers he had previously approved.

The question of allowing ABC Board staff to carry firearms in the performance of its duties has been decided for now. The Attorney General’s office and DPS have determined that ABC staff should not need to use deadly force to complete its assigned duties. We agree with that determination.

As pointed out by the Alaska Criminal Justice Assessment Committee,<sup>6</sup>

*The purpose of the Department of Revenue is to raise revenue, not to assist law enforcement. To ensure quality enforcement of Title 4, [the criminal investigation] function should be moved to a law enforcement department. Licensing functions would remain with the Alcoholic Beverage Control Board.*

The statute change and the firearm situation has already caused administrative inefficiencies and morale problems within ABC. We believe there would be significant inefficiencies in attempting

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<sup>3</sup> The new language is bolded; the language it replaced is capitalized and in brackets.

<sup>4</sup> AS 04.16.180. Penalties for violation.

<sup>5</sup> 15 AAC 104.505(b) states, “*Consistent with federal, state, and local law, the board’s investigative personnel may carry firearms in the performance of their duties, if authorized by the board.*”

<sup>6</sup> The Alaska Criminal Justice Assessment Committee was created in 1997 to participate in a federally-funded Criminal Justice System Project. Governor Tony Knowles, Chief Justice Warren Matthews, Senate President Mike Miller, and House Speaker Gail Phillips appointed a “blue-ribbon” committee with members representing all three branches of government, other community groups, and individuals interested in criminal justice. The Commission issued its final report in May 2000 and followed up with a status report on its recommendations in January 2002. The January 2003 draft update also carries this recommendation.

to turn ABC into a four-officer, statewide police force. DPS has already set up the administrative and operational controls unique to this type of service. To prevent the wasting of resources and their diversion away from the licensing function, we offer the following alternatives to the present approach:

- Alternative A – No statutory change, but require the ABC Board to contract with DPS to provide criminal investigation services. The board would retain some control over that function by recommending targets while DPS personnel performed the investigations.

Alaska Statute 04.06.090(d) allows the board to contract “. . . *with other departments and agencies of the state . . . [as] necessary to carry out the purposes of this title.*” A contract with DPS would allow the board to purchase state trooper time when and where it is needed to enforce the provisions of Title IV. For example, the board could contract for a one-half full-time equivalent (.5 FTE) trooper position. These services would be on an as-needed and as-available basis for gambling, prostitution, and alcohol investigations as designated by the board. This approach would take advantage of the many locations served by DPS.

- Alternative B – Remove the criminal investigation function from the ABC Board.

These criminal investigations would be handled by DPS, which already has jurisdiction. Although these are perhaps less serious crimes than many investigated by DPS, they need not be slighted. DPS could even set up a dedicated alcohol, gambling, and prostitution team if the legislature believed it to be necessary. Through the budgetary process, the legislature could ensure that the appropriate emphasis continues.

Either of the above alternatives would allow the ABC Board and its staff to retain focus on their mission as a regulatory and licensing agency.

Regardless of how this function is eventually structured, we encourage the board to share information with DPS and local police forces that would assist them in making the most of their limited resources.

## Recommendation No. 2

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

The process for revoking a license can take several years if the license holder chooses to pursue all avenues of due process accorded by law. The due process rights granted liquor licensees range from informal hearings before the board to an appeal before the Supreme Court. Since the revocation does not take effect until all due process rights have been exhausted, licensees whose liquor licenses have been revoked may be able to operate for two or more years after the revocation is imposed.

As a result, the ABC Board has resorted to either denying a license renewal or allowing a licensee a set period of time to sell the liquor license in question rather than revoking the license.

Relative to revocation, these procedures reduce the length of time a licensee actually operates after the sanction has been imposed.

However, the board's revocation and nonrenewal practices still allow these licensees to remain open for some time. The practice of allowing some of these licensees to continue to operate is not in the public interest. It sends the wrong message to other licensees. The current practice's value as a deterrent is greatly reduced.

Summarily suspending<sup>7</sup> a license takes effect immediately and is used when the licensee is a danger to the public. After a license is summarily suspended, revocation is the next step. However, the licensee will not be operating the business while exercising his due process rights. This approach is used by the occupational licensing boards in Alaska and would seem to be appropriate for the ABC Board also.

Currently the ABC Board does not have the power to summarily suspend a liquor license. The board should seek an amendment to its statute to give it this authorization.

### 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.

Alaska Statute<sup>8</sup> allows the board to conduct background checks during the license renewal process. However, the board does not currently require routine background checks for renewals. Although licensees are asked on the renewal application whether they have been convicted of a felony or Title IV violation during the prior license period, they are not asked about driving while intoxicated convictions or other offenses that may be relevant. In addition, the board does not appear to verify the information provided on the renewal applications. False statements on an application are a class B felony.<sup>9</sup> Arrests and convictions will show up on a background check.

An alternative to a complete background check on licensees at renewal time is to request the Department of Public Safety to provide information from the Alaska Public Safety Information Network (APSIN) system. Similar to the APSIN information provided to the Division of Family and Youth Services (DFYS) on an on-going basis, the ABC Board could be electronically notified whenever the previously identified individuals are arrested or convicted. This "real time" reporting of arrests and convictions would provide both helpful and timely information to the ABC Board.

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<sup>7</sup> Guidance for summarily suspending licenses comes from Business and Professions, Centralized Licensing, AS 08.01.075(c) which states, "A board may summarily suspend a licensee from the practice of the profession before a final hearing is held or during an appeal if the board finds that the licensee poses a clear and immediate danger to the public health and safety."

<sup>8</sup> AS 04.11.295 provides that "The board may require an applicant for renewal of a license under this title to submit fingerprints to the Department of Public Safety. . . ."

<sup>9</sup> AS 04.11.210 states, "If a false statement is made in an application . . . the applicant is guilty of perjury . . . ."

The ABC Board should institute background checks as part of the renewal process or request DPS to provide information from APSIN to track its licensees.

#### Recommendation No. 4

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

Alaska Statute<sup>10</sup> requires all fines imposed by the board be deposited into the General Fund.

The board has instituted a new procedure used in settlement agreements with licensees which does not follow the requirements of this statute. The new procedure evolved when the board imposed a \$1,000 fine on a licensee in a settlement agreement. To avoid having the fine paid into the General Fund, which the board sees as lost money,<sup>11</sup> and in an effort to provide restitution, the board instructed the director to refer to the fine as a “donation” and to have the licensee pay it to a local police department.

Current statutes provide the board with only three penalties it can impose on licensees who have violated Title IV: civil fines,<sup>12</sup> and/or temporary suspension or revocation.<sup>13</sup> The statutes do not give the board authority to require a licensee to pay “restitution” or make a “donation” to a third party. (The process of imposing penalties should be clearly spelled out in the agency’s procedural manuals. See Recommendation No. 7.)

As a result, the ABC Board has diverted money that should have been deposited into the General Fund and been available for appropriation by the legislature into the control of a third party. Diversion of monies from the General Fund to another entity may violate the state constitution. It erodes the legislature’s most significant power, that of appropriation. Executive or judicial branch agencies appropriating general funds may violate the most basic separation of powers doctrine. While in this instance the \$1,000 involved is not material to either the ABC Board or the State, court decisions have maintained that all appropriations must be made by the legislature.

The board should follow the direction provided by statute and the constitution and deposit all fines into the General Fund. The board should also seek the return of any such “donations” made in the past.

#### Recommendation No. 5

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

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<sup>10</sup> AS 04.11.590 (a) directs that fines “. . . shall be transferred by the board to the Department of Revenue and deposited in the General Fund.”

<sup>11</sup> The board sees these revenues as lost because the money goes into the General Fund, rather than being designated for the board’s own use.

<sup>12</sup> AS 04.11.575(a). Civil fine.

<sup>13</sup> AS 04.11.370. Suspension and revocation of licenses and permits.

The enforcement staff lacks focus in its activities. Of primary concern is the backlog of unissued notices of violation (NOVs) stemming from police reports and compliance checks conducted under a federal underage drinking grant.<sup>14</sup> NOVs are issued to licensees when staff becomes aware that violations of Title IV have taken place at a licensed premise. Throughout FY 02, the staff was at least six months behind<sup>15</sup> in the issuance of NOVs for premises in Anchorage. The backlog limits the ability of the board to monitor the liquor industry.

The enforcement staff is spending the majority of its time managing an underage drinking grant and is allowing other enforcement work to go unfinished. As a result, the licensees, who are cited by law enforcement for selling to a minor during a compliance check, are not issued NOVs in a timely manner.

The public welfare is not adequately protected when licensees who have violated Title IV and have been cited by the police do not receive the associated NOV for six months or more. The board and local governing bodies cannot adequately review the licensee during the renewal period without complete information.

Another concern is that between FY 94 and FY 02 the number of premise inspections conducted has dropped by 62%. Spending an inordinate amount of time on the underage drinking grant and replacing the premise inspection with a walk-through procedure are two of the reasons for the decline in premise inspections. Staff stated that the walk-through consists of an investigator walking into a licensed premise, looking around briefly for drunk or underage customers, and walking out. This substitution frees up more time for the investigator.

However, investigators are not tracking which licensees have been given a walk-through, what the results were, or whether the licensee even knew it had taken place. Walk-throughs are not effective without planning, consistency, and notification of enforcement presence. With the current process, the effectiveness of a walk-through cannot be evaluated by the director or the board.

The staff is directed by the board to enforce Title IV and given a variety of ways to enforce it. However, without board-directed goals, the enforcement staff cannot seem to prioritize its workload. Staff currently appears to be more interested in performing police-type activities than regulatory activities. As a result, it appears that enforcement activities are unorganized and inefficient.

The board and the director should establish specific goals for the enforcement staff so it can perform more efficiently and effectively.

### Recommendation No. 6

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<sup>14</sup> This federal grant program aids states in reducing underage drinking. The grant amount began in FY 00 and has grown to approximately \$100,000. The grant funds are primarily passed through to the Alaska State Troopers and local law enforcement agencies who then conduct compliance checks ("stings") on local liquor stores.

<sup>15</sup> This backlog was cleared up by the ABC Board staff in late October 2002.

The director should upgrade the ABC Board licensing database.

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

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

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

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

Recommendation No. 7

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

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

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

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

## Recommendation No. 8

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

Current statutes<sup>16</sup> require the governor to appoint a replacement to the board within 30 days of a vacancy occurring. There were two instances where board seats were vacant for seven months, and one instance of a thirteen-month vacancy. Effectively, only three board members were active during the audit period.

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

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

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

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

## ANALYSIS OF PUBLIC NEED

### Limited Analysis

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<b>Exhibit 2</b>			
<b>Premise Inspections</b>			
<b>FY 98 to FY 02</b>			
<u>Geographical Area</u>	<u>Number of Premises Inspected</u>	<u>Total Licensed Premises</u> <sup>18</sup>	<u>Percent of Premises Inspected</u>
Municipality of Anchorage	164	445	37%
Fairbanks	27	179	15%
City & Borough of Juneau	60	92	65%
All Other Areas <sup>19</sup>	<u>523</u>	<u>857</u>	<u>61%</u>
Total	<u>774</u>	<u>1,573</u>	<u>49%</u>

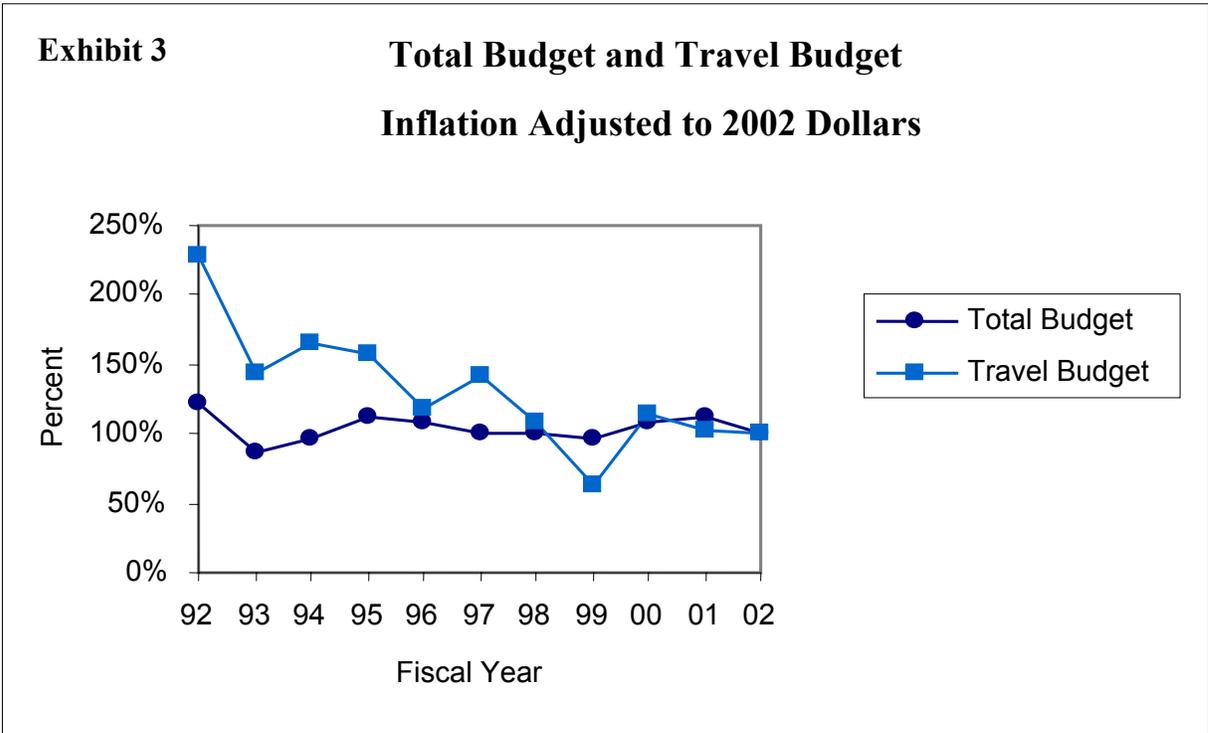
Respondents from all four groups commented that the enforcement staff is either too small or too busy to respond when an entity asks for assistance or tries to file a complaint about a licensed premise. It appears that the enforcement staff routinely refers complaints to the local law enforcement agency.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

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

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

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

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



The board is currently trying to update the website to make it easier to navigate and to provide additional public interest items, such as information on individual licensees, notices of violation<sup>20</sup> (NOV) issued, and complaint forms. Part of improving the webpage will entail improving the licensing database.

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

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

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

Local Governing Bodies Allowed to Place Conditions on a Licensee

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

The legislature strengthened the control local governing bodies have over licensed premises in their area by allowing them to place conditions<sup>21</sup> on an individual licensee. The local governing bodies can also enforce these conditions at the local level after the board has approved them. Failure by a licensee to abide by the imposed conditions can mean fines, temporary suspensions, or license revocation by the board.

### Elimination of Possible Loophole for Bartenders Who Over Serve

The legislature has strengthened both the enforcement of Title IV and the court's ability to convict licensees or their employees if they serve an intoxicated customer. This was done by eliminating the defense<sup>22</sup> that the customer voluntarily drank to the point of public inebriation.

### Civil Liability Added to List of Penalties

The penalty<sup>23</sup> for selling alcohol without a license now also carries the additional penalty of strict liability for civil damages, including the cost of prosecution.

### ABC Board to Investigate Gambling and Prostitution Offenses

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

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

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

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<sup>21</sup> AS 04.11.480(c) gives a local governing body the option to “. . . recommend that a license be issued, renewed, relocated, or transferred with conditions.”

<sup>22</sup> AS 04.21.020(c) states, “It is not a defense that the person drank voluntarily or was voluntarily under the influence of the alcoholic beverage.”

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

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

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

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

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

The board is required by statute<sup>25</sup> to hold an annual meeting in each of the four judicial districts of the State. The board holds at least one meeting in Anchorage, Fairbanks, Juneau, and Nome. One board member is physically present at each of the board meetings except Nome. Because of the travel costs, the current procedure is to have the director represent the board in Nome while the board members themselves participate via teleconference.

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

As required by statute,<sup>26</sup> when new regulations are being adopted, notices are mailed to all known interested parties. Public hearings are held in a further effort to receive public input. As noted above, board meetings are open to the public and public comment is encouraged. The eight regulation changes, proposed from FY 98 through FY 02, were noticed in the newspapers.

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

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

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

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

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

***profession has presented qualified applicants to serve the public.***

The board reviews liquor license applications to determine if the applicants meet certain statutory qualifications. If a license is available and if the applicant meets the requirements, the board issues the license. Some of the requirements include showing proof that the applicant advertised the location and type of license in a local newspaper, showing proof the applicant posted the license application on the building where the premise will be located, showing proof of title or lease for the premises, and submitting fingerprint cards so a background check can be completed. Our review of applicants' files disclosed no violations of these requirements.

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

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

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

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

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

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

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

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

***enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.***

Please refer to the Findings and Recommendations section of this report.

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

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

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

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

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

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

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

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

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

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## **APPENDICES**

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

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

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

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

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

<sup>31</sup> In accordance with AS 04.11.610, refunds of annual license fees, excluding annual wholesale license fees, collected within a municipality are to be given to the municipality semiannually. The total of these refunds is the "Transfers to Municipalities" amount.

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

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

Note: This fee schedule has not changed since 1980.

Source of Information: Alcoholic Beverage Control Board.

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

Questionnaires sent: 245  
 Responses received: 105<sup>32</sup> (43%)

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

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

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

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

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

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

4. Which classification is your license?

- 86 Full year
- 17 Seasonal
- 3 Both

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

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

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

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

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

14 Yes  
 87 No

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

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

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

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

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

71 Yes  
 11 Somewhat  
 4 No  
 17 No opinion

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

12. Do you feel the ABC Board staff enforce the laws and regulations on all licensees equally?

69 Yes  
11 No  
7 Sometimes  
11 Don't know

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

22 Yes<sup>33</sup>  
35 No  
33 No opinion

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

19 Excellent  
46 Very good  
25 Good  
6 Fair  
1 Poor

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<sup>33</sup> See discussion in Analysis of Public Need section on page 16.

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

Questionnaires sent: 66  
Responses received: 36<sup>34</sup> (55%)

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

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

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

8 Yes  
24 No  
2 Unsure

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

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

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

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

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

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

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

18 Yes  
19 No

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

2 Yes  
18 No  
2 Unsure

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

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

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

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

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

6. Has the ABC Board or its staff provided your local government with guidelines about what is or is not considered arbitrary, unreasonable or capricious?

- 11 Yes
- 14 No, and we would like some guidelines
- 2 No, and we are not interested in receiving guidelines
- 6 Unsure

7. Which of the following reasons do you feel the ABC Board would accept as valid to impose conditions or protest a license pending issuance, renewal, transfer or relocation? (*Check all that apply.*)

- 19 Delinquent property taxes
- 25 Public complaints
- 25 Number of police reports
- 27 History of criminal activity on premises
- 20 Delinquent sales taxes
- 26 Violations of local ordinances
- 25 Health and/or safety violations
- 30 History of alcohol sales to minors or inebriates
- 1 Other

8. Does your local government solicit community input on liquor license activity?

- 19 Yes
- 9 No
- 1 Unsure
- 1 Not usually

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

- 1 Yes
- 11 No
- 10 Unsure
- 11 No opinion

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

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

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

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

- 7 Excellent
- 14 Very good
- 8 Good
- 3 Fair
- 0 Poor

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

Questionnaires sent: 50  
Responses received: 23<sup>35</sup> (46%)

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

22 Yes  
1 No

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

8 Yes  
9 No  
5 Sometimes  
0 Unsure

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

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

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

10 Yes  
11 No  
1 Unsure

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

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

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

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

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

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

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

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

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

9 Yes  
8 No  
3 Sometimes

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

Questionnaires sent: 44  
 Responses received: 27<sup>36</sup> (61%)

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

25 Yes  
 0 No

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

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

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

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

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

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

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

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

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

- 24 Yes
- 0 No
- 3 Sometimes

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

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

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

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

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

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

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

- 5 Yes
- 22 No

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

10. How effective is the enforcement staff of the ABC Board at enforcing the laws controlling the sale of alcoholic beverages in your area?
- 6 Very effective
  - 6 Somewhat effective
  - 11 Not effective<sup>37</sup>
  - 3 Not applicable. We are a damp/dry community

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<sup>37</sup> Enforcement agencies which responded “Not effective” included five from areas off the road system, four from the Southcentral area, and two from the Northern area.

(Intentionally left blank)

**STATE OF ALASKA**  
**DEPARTMENT OF REVENUE**  
**Alcoholic Beverage Control Board**

FRANK MURKOWSKI, GOVERNOR

550 W. 7TH AVENUE, SUITE 540

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Phone: 907-269-0350

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March 7, 2003

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

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

Dear LB & A Members:

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

Recommendation No. 1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### Recommendation No. 2

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

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

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

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

### Recommendation No. 3

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

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

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

### Recommendation No. 4

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

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

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

#### Recommendation No. 5

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

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

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

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

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

#### Recommendation No.6

The director should upgrade the ABC Board licensing database.

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

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

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

#### Recommendation No. 7

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

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

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

#### Recommendation No. 8

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

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

This concludes my response to your recommendations.

#### Analysis of Public Need

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

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

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

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

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

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

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

Thank you for the opportunity to respond.

Sincerely,

Douglas B. Griffin  
Director

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

March 19, 2003

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

Dear Ms. Davidson:

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

Recommendation No. 1

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

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

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

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

Ms. Pat Davidson

March 19, 2003

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will further encourage the flow of information related to criminal activities on licensed premises from ABC employees to the State Troopers.

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

#### Recommendation No. 2

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

The Department of Public Safety concurs with this recommendation.

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

#### Recommendation No. 3

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

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

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

#### Recommendation No. 4

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

The Department of Public Safety concurs with this recommendation.

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

Recommendation No. 5

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

The Department of Public Safety concurs with this recommendation.

Recommendation No. 6

The director should upgrade the ABC Board licensing database.

The Department of Public Safety concurs with this recommendation.

Recommendation No. 7

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

The Department of Public Safety concurs with this recommendation.

Recommendation No. 8

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

The Department of Public Safety concurs with this recommendation.

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

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

Sincerely,

William Tandeske  
Commissioner

March 21, 2003

Members of the Legislative Budget  
and Audit Committee

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

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

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

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

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

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

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

Although this is the same suspension procedure used by occupational licensing boards<sup>1</sup> in the State, the ABC Board takes exception to it and states that

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

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

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

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

Pat Davidson  
Legislative Auditor

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<sup>1</sup> See AS 08.01.075(c).