

Report Highlights

Why DLA Performed This Audit

The purpose of the audit was to determine if there is a need for the board's continued existence and whether its termination date should be extended. The board is set to sunset June 30, 2018, and will have one year from that date to conclude its administrative operations.

What DLA Recommends

1. The authority to renew licenses should be limited to the board.
2. The board should issue recreational site licenses in accordance with statutory requirements.
3. The board should issue beverage dispensary licenses in accordance with statutory requirements.
4. The board, AMCO director, and enforcement supervisor should work together to formally establish an enforcement plan to direct AMCO's limited enforcement resources.
5. The board and AMCO director should implement a process to monitor and track complaints to ensure they are assessed for follow up action and investigated in a timely manner.

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A Sunset Review of the Department of Commerce, Community, and Economic Development, Alcoholic Beverage Control Board (board)

November 17, 2017

Audit Control Number 08-20099-17

REPORT CONCLUSIONS

In all areas except licensing, the audit found the board was operating in the public's interest. Meetings were conducted effectively, investigations were processed timely, and the board developed and adopted regulations necessary to implement statutes.

The audit concluded the board should improve its procedures for issuing renewals, recreational site licenses, and beverage dispensary licenses that encourage tourism. Testing found these licenses were not consistently issued in accordance with statutes. Additionally, operational improvements are needed in enforcing laws, monitoring board-related local law enforcement activity, and processing refunds to municipalities.

In accordance with AS 44.66.010(a)(1), the board is scheduled to terminate on June 30, 2018. We recommend the legislature extend the board's termination date to June 30, 2022.

Report Highlights (Continued)

6. The board and AMCO director should develop written procedures for updating the statewide database with restricted purchasers.
7. The board and AMCO director should improve procedures to ensure municipalities report violations of alcoholic beverage laws.
8. The AMCO director should develop and implement procedures to ensure refunds to municipalities are appropriately reviewed.

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

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December 2, 2017

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Alcoholic Beverage Control Board (board), and the attached report is submitted for your review.

DEPARTMENT OF COMMERCE, COMMUNITY,
AND ECONOMIC DEVELOPMENT
ALCOHOLIC BEVERAGE CONTROL BOARD
SUNSET REVIEW

November 17, 2017

Audit Control Number
08-20099-17

The audit was conducted as required by AS 44.66.050(a). Per AS 44.66.010(a)(1), the board is scheduled to terminate on June 30, 2018. We recommend that the legislature extend the board's termination date to June 30, 2022.

The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Fieldwork procedures utilized in the course of developing the findings and recommendations presented in this report are discussed in the Objectives, Scope, and Methodology.

A handwritten signature in black ink, appearing to read "Kris Curtis".

Kris Curtis, CPA, CISA
Legislative Auditor

ABBREVIATIONS

| | |
|-------|--|
| AAC | Alaska Administrative Code |
| ACN | Audit Control Number |
| AMCO | Alcohol and Marijuana Control Office |
| AS | Alaska Statute |
| board | Alcoholic Beverage Control Board |
| CISA | Certified Information Systems Auditor |
| CPA | Certified Public Accountant |
| DCCED | Department of Commerce, Community, and Economic Development |
| DLA | Division of Legislative Audit |
| FY | Fiscal Year |

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ORGANIZATION AND FUNCTION

Alcoholic Beverage Control Board

The Alcoholic Beverage Control Board (board) is a regulatory and quasi-judicial board consisting of five members appointed by the governor, created for the purpose of controlling the manufacture, barter, possession, and sale of alcoholic beverages in the state. The board consists of one member actively engaged in the public safety sector, one from the general public, one who has resided in a rural area within the last five years, and two actively engaged in the alcoholic beverage industry¹ (see Exhibit 1). The non-industry board members, and the members' immediate family, may not have a financial interest in the alcoholic beverage industry. Board members serve overlapping three-year terms. Statutes do not limit the number of consecutive terms a member may serve.

Three members of the board constitute a quorum for conducting business. A majority of the board membership must approve applications for new licenses, renewals, transfers, suspensions, and revocations of existing licenses.

Alaska Statute 04.06.090 establishes the powers and duties of the board, including the power to propose and adopt regulations and hear appeals from actions of the director, officers, and employees charged with enforcing alcoholic beverage control laws and board regulations. Statutes state the board shall:

- Review all license applications and may order the director to issue, renew, revoke, transfer, or suspend licenses and permits authorized under AS 04.06;

¹Alcoholic beverage industry board members may not be wholesalers.

Exhibit 1

Alcoholic Beverage Control Board Members as of April 30, 2017

Robert Klein, Chair
Industry

Robert Evans
Rural

Ellen Ganley
General Public

Rex Leath
Public Safety

Thomas Manning
Industry

Source: Office of the Governor, Boards and Commissions website.

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- Promptly notify all licensees and municipalities of major changes to statutes and regulations;
 - Maintain a statewide database that contains a monthly record of the alcohol purchased by, and shipped to, a person who resides in a municipality or established village that has restricted the sale of alcoholic beverages; and
 - Adopt regulations necessary to carry out the purpose of AS 04.06 in a manner that will protect public health, safety, and welfare.

**Department of Commerce,
Community, and
Economic Development
(DCCED), Alcohol and
Marijuana Control Office
(AMCO or control office)**

AMCO provides assistance to the board in administering, licensing, and enforcing alcoholic beverage control statutes and regulations. AMCO staff provide similar support to the Marijuana Control Board. AMCO is led by a director appointed by the governor who also serves as the board's executive officer.

AMCO staff receive and process licensing applications, collect fees, maintain licensing records and files, publish notices of board meetings, prepare board member meeting packets, and draft board meeting minutes. AMCO staff also perform other administrative duties such as tracking revenues and expenditures and assisting with board regulatory projects.

AMCO investigators conduct inspections of licensed premises; investigate complaints; and issue notices of violation to establishments in violation of alcoholic beverage control statutes, regulations, or conditions or restrictions imposed by the board. The board may review a notice of violation in considering whether to suspend, revoke, or renew a license, but a notice of violation alone does not constitute grounds for suspension, revocation, or refusal to renew.

BACKGROUND INFORMATION

Statewide Database of Written Orders

Alaska Statute 04.06.095 requires the board to create and maintain a statewide database that contains a monthly record of the alcohol purchased by, and shipped to, a person who resides in a restricted area.² The law requires package store licensees to consult the database before selling and shipping alcoholic beverages to purchasers in restricted areas and immediately record every sale made therein. Persons residing in the restricted area who have alcoholic beverages shipped to them do so by submitting written orders to package stores.

Furthermore, regulation 3 AAC 304.645 requires the board to maintain a list of persons convicted of a violation of AS 04.11.010³ and provide the listing of these restricted purchasers to package store licensees, which the board accomplishes through the statewide database.

Package store licensees are prohibited from selling alcoholic beverages to a person who is identified as a restricted purchaser in the statewide database, and may not ship an amount of alcoholic beverages to a purchaser in a restricted area that, when added to the amount already shipped, exceeds the monthly amounts authorized in statute.⁴

²A *restricted area* is a municipality or an established village that has adopted a local option under AS 04.11.491 through an election process to control and impose certain limits on the availability of alcoholic beverages in the community.

³Alaska Statute 04.11.010 prohibits persons from manufacturing, selling, offering for sale, possessing for sale or barter, trafficking in, or bartering alcoholic beverages unless licensed by the board.

⁴A package store licensee may not ship to a purchaser more than 10 and one-half liters of distilled spirits or 24 liters or more of wine, or either a half-keg of malt beverages or 12 gallons or more of malt beverages in individual containers in a calendar month, or a lower amount of distilled spirits, wine, or malt beverages if the municipality or established village has adopted the lower amount by local option.

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REPORT CONCLUSIONS

In developing our conclusions regarding whether the board's termination date should be extended, its operations were evaluated using the 11 factors set out in AS 44.66.050(c), which are included as Appendix A of this report. Under the State's "sunset" law, these factors are to be considered in assessing whether an entity has demonstrated a public policy need for continuing operations.

In all areas except licensing, the audit found the board was operating in the public's interest. Meetings were conducted effectively, investigations were processed timely, and the board developed and adopted regulations necessary to implement statutes.

The audit concluded the board should improve its procedures for issuing renewals, recreational site licenses, and beverage dispensary licenses that encourage tourism. Testing found these licenses were not consistently issued in accordance with statutes. Additionally, operational improvements are needed in enforcing laws, monitoring board-related local law enforcement activity, and processing refunds to municipalities.

In accordance with AS 44.66.010(a)(1), the board is scheduled to terminate on June 30, 2018. We recommend the legislature extend the board's termination date to June 30, 2022.

Detailed report conclusions are as follows.

The board operated in the public interest and does not duplicate the efforts of other entities.

Board operations were conducted in an effective matter. The audit found that from July 2014 through April 2017, the board held 20 meetings and met in each judicial district of the state during calendar years 2015 and 2016 as required by statute. Board meetings were public noticed, each meeting allowed time for public comment, and a quorum was consistently met. The audit also determined that the board is the only entity in the state that issues licenses for selling alcohol, and as such does not duplicate the efforts of another governmental or private sector agency.

The board was active in adopting, amending, and supporting regulatory changes. The board amended:

- Regulation 3 AAC 304.715 to add outdoor recreational lodge and destination resort licenses to the list of license types allowed to apply for designation as a bona fide restaurant, hotel, or eating place. According to the board chair, this change adds certain license types to the existing list and was adopted in the public interest.
- Regulation 3 AAC 304.225 to expand the license types for which the board may approve a portion of licensed premises to alternate as licensed or unlicensed premises. According to the board chair, the changes allows six additional license type holders⁵ to apply for board approval to have alternating licensed premises, which promotes consistency between license types in order to operate in the public interest.
- Regulation 3 AAC 304.375 to implement statutes regarding distillery licenses. This change clarifies what activities constitute operating a distillery for purposes of obtaining a distillery license in Alaska.
- Regulation 3 AAC 304.980 to add requirements related to management agreements and clarify rules regarding prohibited financial interests as related to management agreements. According to the board chair, this addition clarifies regulations and helps ensure licensees continue to operate in the public interest.

Regulatory changes during the audit period were public noticed according to the Administrative Procedures Act.

⁵The six license types include golf course license, common carrier dispensary license, recreational site license, outdoor recreation lodge license, destination resort license, and beverage dispensary licenses issued to encourage the tourist trade.

Except for renewals, recreational site licenses, and beverage dispensary licenses to encourage tourism, the board licensed establishments according to statutes and regulations.

As shown in Exhibit 2, there were a total of 1,885 licenses as of April 30, 2017.

A random sample of 40 active licenses⁶ during the audit period was tested, and the audit found all were issued in accordance with statutes and regulations, except that 36 were renewed by control office staff when statutes require renewal by the board. (Recommendation 1)

Exhibit 2

| Alcoholic Beverage Control Board License Count by Type as of April 30, 2017 | |
|--|-------|
| Beverage Dispensary | 665 |
| Bottling Works | 1 |
| Brewery | 27 |
| Brewpub | 14 |
| Club | 79 |
| Common Carrier | 172 |
| Conditional Contractors | 1 |
| Destination Resort | 2 |
| Distillery | 11 |
| Golf Course | 9 |
| Package Store | 391 |
| Outdoor Recreational Lodge | 36 |
| Pub | 1 |
| Recreational Site | 29 |
| Restaurant/Eating Place | 413 |
| Wholesale | 26 |
| Winery | 8 |
| Total Licenses | 1,885 |

Source: Compiled from AMCO's licensing database.

⁶The random sample was pulled from the universe of licenses after excluding 29 recreational site licenses and 126 beverage dispensary licenses issued to encourage tourism which were tested separately.

Enforcement efforts have declined and operational improvements are needed.

Testing of a judgmental sample of 10 recreational site licenses showed all 10 licenses did not meet the statutory definition of a recreational site license. (Recommendation 2) Moreover, testing of a sample of 16 beverage dispensary licenses issued to encourage tourism under AS 04.11.400(d) revealed five were transferred and six were renewed despite not meeting statutory requirements.⁷ (Recommendation 3)

Based on the data provided, the board issued 2,720 catering permits from FY 15 to April 30, 2017. Testing of a random sample of 40 showed permits were issued according to statutes.

AMCO investigators have stopped conducting compliance checks as of April 2015. The board, through AMCO investigators, has historically conducted compliance checks where investigators employ underage individuals who attempt to purchase alcoholic beverages. Licensees who fail a compliance check receive criminal summons or citations. According to management, the federal grant funding for this program was terminated at the end of 2012, and the board received supplemental funds to keep the program going through June 2014. AMCO's enforcement section continued to conduct compliance checks funded by program receipts until April 2015. Although there is no statutory or regulatory requirement to conduct compliance checks, AMCO management reported it is an integral part of the enforcement of alcoholic beverage laws and is evaluating alternative means for providing the enforcement through shared services with other agencies.

The audit noted the board and AMCO management have not established a written enforcement plan to direct its limited enforcement resources. (Recommendation 4) For example, the board has not formally established how often licensed premises should be inspected. Furthermore, the control office does not monitor and track all complaints to ensure complaints are

⁷Of 665 beverage dispensary licenses active as of April 30, 2017, 180 were issued to encourage tourism under AS 04.11.400(d). Of this number, sampling was isolated to 126 licenses which exclude duplicate and seasonal licenses.

assessed for follow up action and investigated in a timely manner. (Recommendation 5)

As part of its enforcement efforts, AMCO investigators issue notices of violations to establishments that violate alcoholic beverage laws and board regulations. Based on the data provided, AMCO's enforcement section issued 53 notices of violations during the audit period. The audit tested a sample of seven notices of violations and found all were addressed by investigators in accordance with regulations.

As discussed in the Background Information, for communities designated as a restricted area for controlling the availability of alcoholic beverages, the board enforces limits on alcoholic beverages purchased from package stores. However, the audit found the board and control office staff have not maintained the list of restricted purchasers within the statewide database of written orders in accordance with regulation, potentially allowing persons convicted of illegally selling alcoholic beverages to continue purchasing alcohol via written order. (Recommendation 6)

To help fund the enforcement of alcoholic beverage laws by local law enforcement agencies, statutes require the board refund biennial licensing fees to the municipalities in which licensees operate on a semi-annual basis.⁸ The refund is conditioned on whether local law enforcement actively enforce the laws relating to manufacture and sale of alcoholic beverages and report violations to the board. The audit found neither the board nor AMCO staff were ensuring municipalities receiving refunds reported violations of alcoholic beverage laws as required by statute. (Recommendation 7) Additionally, the refund amount calculated by AMCO staff was not separately reviewed for accuracy. (Recommendation 8)

⁸This requirement excludes wholesale license fees.

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FINDINGS AND RECOMMENDATIONS

The prior 2014 sunset audit made five recommendations:

- The Alcoholic Beverage Control Board's (board) director should ensure that all board meetings are properly published on the State's Online Public Notice System.
- The board should notify local governing bodies of applications for new and transfer licenses within 10 days of receipt.
- The board should issue catering permits in accordance with statutory requirements.
- The board should issue recreational site licenses in accordance with statutory requirements.
- The board should implement a process to monitor and track all complaints to ensure they are resolved in a timely manner.

The prior audit recommendations regarding board meetings, notification of local governing bodies, and catering permits were resolved. Testing found board meetings were public noticed, local governing bodies were notified of new and transfer applications, and catering permits were issued according to statutes.

The prior audit recommendation regarding recreational site licenses was not resolved. License testing found the board continued to issue recreational site licenses that did not meet statutory requirements. The prior recommendation is reiterated as Recommendation 2 of this audit.

The prior audit recommendation to implement a process to monitor and track all complaints was not resolved. According to Alcohol and Marijuana Control Office (AMCO) staff, a process to log all complaints was implemented but halted due to new responsibilities associated with marijuana regulation. The prior recommendation is reiterated as Recommendation 5 of this audit.

In addition to reiterating two prior recommendations, the audit makes six new recommendations.

Recommendation 1:

The authority to renew licenses should be limited to the board.

Of 40 license applications tested, four were new or transfer applications approved by the board. The remaining 36 were renewal applications issued by AMCO license examiners without board approval.

Per AS 04.11.070, only the board may issue, renew, transfer, relocate, suspend, or revoke a license under AS 04. Alaska Statute 04.06.080 states that notwithstanding AS 04.11.070, the board may delegate authority to the director to *temporarily* grant or deny the issuance, renewal, or transfer of licenses and permits. In a past board meeting, the board voted to delegate its authority to renew licenses to the director under the incorrect understanding that such delegation was legal. The AMCO director, in turn, assigned the function to license examiners. According to management, the delegation helps in processing the high volume of renewal applications.

Delegating the renewal authority resulted in licenses being renewed without board oversight.

We recommend the authority to renew licenses be limited to the board to comply with statutes.

Recommendation 2:

The board should issue recreational site licenses in accordance with statutory requirements.

Ten of 29 recreational site licenses active during the audit period were judgmentally selected for testing. All 10 did not meet the statutory definition of a recreational site. Six of the 10 licensees were informed by the board that their license would not be renewed during the next renewal period since the business did not meet the statutory definition of a recreational site. This same finding was reported in the prior 2014 sunset audit.

According to AS 04.11.210(a), the holder of a recreational site license may sell beer and wine at a recreational site during and one hour before and after a recreational event that is not a school event. Alaska Statute 04.11.210(c) defines recreational sites as locations where baseball games, car races, hockey games, dog sled racing events, or curling matches are regularly held during a season. The 10 noncompliant licensees noted above included travel tour companies, bowling alleys, an art council, a pool hall, a

movie theater, and a spa.

Review of board meeting minutes revealed that board members understood these businesses did not meet the definition of a recreational site license, yet believed it to be in the public interest to issue them. Furthermore, board members anticipated the criteria for recreational site licenses would be addressed in a future rewrite of AS 04.06. The issuance of these licenses expanded the number of establishments licensed to sell alcohol over the number allowed by statute.

We again recommend that the board issue recreational site licenses in accordance with statutory requirements.

Recommendation 3:
The board should issue beverage dispensary licenses in accordance with statutory requirements.

In a sample of 16⁹ of 126 beverage dispensary licenses issued to encourage tourism, the audit found five licenses were transferred and six were renewed despite not meeting statutory requirements.

Alaska Statute 04.11.400(d) states the board may approve the issuance or transfer of ownership of a beverage dispensary license without regard to statutory population limits if it appears that the issuance or transfer will encourage tourism. Statutes provide for the minimum number of rental rooms that must be met by a business in order to encourage the tourist trade. Alaska Statute 04.11.330(a)(4) states the renewal of a license shall be denied if the board finds the issuance of an existing license under AS 04.11.400(d) has not encouraged the tourist trade.

The board believed it was appropriate to approve the licenses, as the original licenses were issued before June 1985;¹⁰ however, there was no statutory provision to “grandfather” the licenses. The issuance of the licenses expanded the number of establishments licensed to sell alcohol over the number allowed by statute.

We recommend the board issue beverage dispensary licenses in accordance with statutory requirements.

⁹Random sample of 13 and judgmental sample of three.

¹⁰Chapter 93, SLA 1985, Section 13 enacted AS 04.11.400(d).

Recommendation 4:

The board, AMCO director, and enforcement supervisor should work together to formally establish an enforcement plan to direct AMCO's limited enforcement resources.

The audit identified that AMCO's enforcement section is operating without a formally established enforcement plan. Neither the board nor AMCO director had considered the need for or importance of establishing enforcement goals or plans to ensure the effective allocation of enforcement resources.

Per AS 04.06.090, the board is vested with the powers necessary to enforce laws related to alcoholic beverages, and may employ enforcement agents and staff it considers necessary to carry out its duties. The board has tasked the enforcement section with the responsibility of detecting violations and enforcing alcoholic beverage laws. By not formally establishing an enforcement plan, the enforcement section has no guidance for prioritizing its limited resources and runs the risk of not adequately protecting the public.

We recommend the board, AMCO director, and enforcement supervisor work together to formally establish an enforcement plan to direct AMCO's limited enforcement resources.

Recommendation 5:

The board and AMCO director should implement a process to monitor and track complaints to ensure they are assessed for follow up action and investigated in a timely manner.

The board and AMCO management have not maintained a process to monitor and track all complaints to ensure they are resolved in a timely manner. The board does have a process to receive complaints from licensees, law enforcement agencies, and the general public through their website, telephone, or emails; however, complaints are only tracked if the complaints result in an inspection or investigation. Furthermore, the basis for a decision not to investigate is not documented and maintained.

According to AMCO staff, a process to log all complaints previously existed; however, when the Marijuana Control Board was created, staff responsibilities were realigned, and the maintenance of the complaint log took a lower priority compared to new responsibilities associated with marijuana regulation.

The efficiency with which complaints are investigated is one of the sunset evaluation criteria used in the legislative oversight process. Alaska Statute 44.66.050(c)(6) specifies the sunset

review must evaluate:

The efficiency with which public inquiries or complaints regarding the activities of the board or commission filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the office of the ombudsman have been processed and resolved.

By not tracking complaints, there is an increased risk that AMCO staff may not investigate complaints and/or not investigate complaints in a timely manner. Such instances could reduce the board's ability to effectively enforce alcoholic beverage laws. Additionally, complaints received directly by AMCO staff via telephone or email may never be resolved in the event of staff turnover.

We recommend the board and AMCO director implement a process to monitor and track complaints to ensure they are assessed for follow up action and investigated in a timely manner.

Recommendation 6:

The board and AMCO director should develop written procedures for updating the statewide database with restricted purchasers.

The board failed to maintain the statewide database of written orders according to statutes and regulations. Twenty-two of 25 individuals (88 percent) convicted of violations of AS 04.11.010 during the audit period were not entered in the statewide database, or were entered but not marked as restricted purchasers.

3 AAC 304.645(l) states that:

The board will, in its discretion, maintain a list of persons who, under AS 04.16.200, are convicted after 10/24/87 of a violation of AS 04.11.010, and will, in its discretion, provide this list to package store licensees. A licensee who receives the list may not sell alcoholic beverages by written order to a person whose name appears on it until the board gives written notice to the licensee that such sales are no longer prohibited.

The board has no written procedures for updating the list of restricted purchasers in the statewide database of written orders. Additionally, control office staff was not aware the statewide database should be updated timely. AMCO staff stated that reports of convictions of AS 04.11.010 violations were not being consistently provided by the court system. By not updating the statewide database with restricted purchasers, the board is potentially allowing those who have been convicted of illegally selling alcoholic beverages to continue purchasing alcoholic beverages via written order, putting the public's health and safety at risk.

We recommend the board and AMCO director develop written procedures for updating the statewide database with restricted purchasers. Procedures should include working with the court system to receive reports of violations in a timely manner.

Recommendation 7:

The board and AMCO director should improve procedures to ensure municipalities report violations of alcoholic beverage laws.

The audit found that neither the board nor AMCO staff were ensuring municipalities report violations of alcoholic beverage ordinances, laws, and regulations as required by statute.¹¹ Per review of AMCO's website, only four of 40 locations submitted reports in FY 17 regarding enforcement efforts by municipalities.

3 AAC 304.610(a)-(b) states that:

For the purposes of AS 04.11.610 a municipality's failure to actively enforce local ordinances, laws of the United States and the state, and the provisions of this chapter relating to the manufacture and sale of alcoholic beverages in the state includes the failure of the municipality's peace officers to comply with AS 04.21.070. The director shall recommend that the commissioner of commerce, community, and economic development deny the refund of biennial license fees under AS 04.11.610 if the director determines that the municipality's peace officers have not provided the director with quarterly reports of violations of AS 04 occurring on licensed premises within the municipality.

¹¹Per AS 04.21.070, peace officers shall investigate and report to the board violations of this title.

AMCO management reported that turnover in key personnel as well as limited staff resources contributed to the lack of monitoring.

By not ensuring municipalities report violations, AMCO staff could not determine whether municipalities actively enforced alcoholic beverage laws and may have inappropriately refunded license fees.

We recommend the board and AMCO director improve procedures to ensure municipalities report violations of alcoholic beverage laws.

Recommendation 8:

The AMCO director should develop and implement procedures to ensure refunds to municipalities are appropriately reviewed.

The audit found one employee in the control office was responsible for calculating the amounts to be refunded to municipalities, and the calculation was not reviewed prior to processing the refund. AMCO management did not consider the need for a separate review. During FY 17, \$865,400 in fees were refunded to municipalities.

Alaska Statute 04.11.610(a) requires the board to refund biennial license fees, excluding wholesale fees, collected within a municipality, to the municipality, on a semi-annual basis. AMCO management is responsible for ensuring refunds are accurate and complete. By not having procedures that require a separate review, the risk that refunds are inaccurate is increased.

We recommend the AMCO director develop and implement procedures to ensure refunds to municipalities are appropriately reviewed.

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and 44 of the Alaska Statutes, we have reviewed the activities of the Alcoholic Beverage Control Board (board) to determine if there is a demonstrated public need for its continued existence.

As required by AS 44.66.050(a), this report shall be considered by the committee of reference during the legislative oversight process in determining whether the board should be reestablished. Currently, under AS 44.66.010(a)(1), the board will terminate on June 30, 2018, and will have one year from that date to conclude its administrative operations.

Objectives

The three central, interrelated objectives of the report are:

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.
3. To determine the status of recommendations made in the prior sunset audit.

Scope

The assessment of operations and performance of the board was based on criteria set out in AS 44.66.050(c). Criteria set out in this statute relates to the determination of a demonstrated public need for the board. We reviewed the board's activities from July 2014 through April 2017.

Methodology

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

- The prior sunset audit report (ACN 08-20088-14) to identify issues affecting the board and to identify prior sunset audit recommendations.

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- Applicable statutes and regulations to identify board functions and responsibilities, determine whether statutory or regulatory changes enhanced or impeded board activities, and help ascertain if the board operated in the public interest.
 - The State's online public notice system to verify the board meetings were adequately public noticed.
 - Board meeting minutes to gain an understanding of board proceedings and activities, goals and objectives, the nature and extent of public input, and whether a quorum was maintained.
 - Various State and news related websites to identify complaints against the board or other board related concerns.
 - Public comments presented at board meetings to gain an understanding of concerns and evaluate the board consideration of the comments and complaints received.
 - Internal controls over the licensing database and enforcement records management system to determine if controls were properly designed and implemented.

To identify and evaluate board activities, we conducted interviews with Alcohol and Marijuana Control Office staff and board members. Specific issues of inquiry included board operations, regulations, duplication of effort, and complaints against the board.

During the course of the audit, the following samples were selected:

- Random and judgmental samples of new, transfer, and/or renewal licenses were selected from 1,885 licenses active as of April 2017 and assessed for statutory and regulatory compliance. Sample sizes were selected based on low control risk, low/moderate inherent risk, and low/moderate audit risk. Testing results for the random samples were projected to the population. The samples included the following:

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- A random sample of 40 of 1,730 licenses other than recreational site licenses and beverage dispensary licenses issued to encourage the tourist trade;
 - A judgmental sample of 10 of 29 recreational site licenses; and
 - A random sample of 13 and a judgmental sample of three of 126 beverage dispensary licenses issued to encourage the tourist trade.
- A random sample of 40 of 2,720 catering permits issued between July 2014 and April 2017 and assessed for statutory compliance. The sample size was selected based on low control risk, low/moderate inherent risk, and low/moderate audit risk. Testing results of the random sample were projected to the population.
 - A random sample of six and a judgmental sample of one were selected from 53 notices of violations issued between July 2014 through April 2017 and assessed for regulatory compliance. The sample size was selected based on low control risk, low/moderate inherent risk, and low/moderate audit risk. Testing results were projected to the population.

Reports of AS 04.11.010 convictions were obtained from the Alaska Court System and compared to the list of purchasers in the statewide database of written orders to determine regulatory compliance.

Inquiries regarding board-related complaints were made of the following organizations:

- Office of the Ombudsman;
- United States Equal Employment Opportunity Commission;
- Department of Administration's Division of Personnel and Labor Relations; and
- Governor's Office of Boards and Commissions.

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APPENDIX SUMMARY

In developing our conclusion regarding whether the board's termination date should be extended, its operations were evaluated using the 11 factors set out in AS 44.66.050(c), which are included as Appendix A of this report. Under the State's "sunset" law, these factors are to be considered in assessing whether an entity has demonstrated a public policy need for continuing operations.

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APPENDIX A

Analysis Of Public Need Criteria (AS 44.66.050(c))

A determination as to whether a board or commission has demonstrated a public need for its continued existence must take into consideration the following factors:

- (1) the extent to which the board or commission has operated in the public interest;
- (2) the extent to which the operation of the board or commission 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;
- (3) the extent to which the board or commission has recommended statutory changes that are generally of benefit to the public interest;
- (4) the extent to which the board or commission 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;
- (5) the extent to which the board or commission has encouraged public participation in the making of its regulations and decisions;
- (6) the efficiency with which public inquiries or complaints regarding the activities of the board or commission filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the office of the ombudsman have been processed and resolved;
- (7) the extent to which a board or commission that regulates entry into an occupation or profession has presented qualified applicants to serve the public;

-
-
- (8) the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board or commission to its own activities and the area of activity or interest;
 - (9) the extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection;
 - (10) the extent to which the board or commission has effectively attained its objectives and purposes and the efficiency with which the board or commission has operated; and
 - (11) the extent to which the board or commission duplicates the activities of another governmental agency or the private sector.

Agency Response from the Office of the Governor

STATE CAPITOL
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Juneau, AK 99811-0001
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December 20, 2017

Governor Bill Walker
STATE OF ALASKA

Kris Curtis
Legislative Budget and Audit Committee
Alaska State Legislature
P.O. Box 113300
Juneau, AK 99811-3300

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DEC 22 2017
LEGISLATIVE AUDIT

Dear Ms. Curtis:

Thank you for the opportunity to respond to the Legislative Budget and Audit Committee regarding the preliminary audit reports for the Alcohol Beverage Control Board under the Department of Commerce, Community and Economic Development.

Your findings and recommendations did not directly address Boards and Commissions, but I would like to provide some information regarding current board training and recruitment.

The ABC board has had basic board training with Robert's Rules to encourage proper parliamentary procedure and public engagement. The training also included a discussion regarding the importance of a full analysis of an option and taking the legal opinion of staff under thoughtful consideration before making a final regulatory decision.

While recruiting and vetting for open seats on the ABC, we will continue to look for applicants with past board and management experience in order to make timely decisions that follow statute to the best of their ability.

As for the other findings of the Committee, we agree that the Board is functioning in the best interest of the public and that the board's termination date should be extended.

Sincerely,

A handwritten signature in black ink, appearing to read "Shirley Marquardt".

Shirley Marquardt
Director
Boards and Commissions

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Agency Response from the Department of Commerce, Community, and Economic Development



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Commerce, Community,
and Economic Development

OFFICE OF THE COMMISSIONER

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JAN 05 2018

LEGISLATIVE AUDIT

January 5, 2018

Kris Curtis, CPA, CISA
Legislative Auditor
Division of Legislative Audit
PO Box 113300
Juneau, AK 99811-3300

RE: Confidential Preliminary Report, Department of Commerce, Community, and Economic Development, Alcoholic Beverage Control Board Sunset Audit

Dear Ms. Curtis:

In the matter of the confidential draft audit conclusions regarding the Alcoholic Beverage Control Board Sunset Audit, I concur with seven of the eight recommendations presented in your letter. The Alcohol and Marijuana Control Office will adjust its procedures to comply with the eighth recommendation (Recommendation 1), but we note that the statutes are contradictory on that issue as explained below.

Recommendation 1: The authority to renew licenses should be limited to the board.

AMCO will adjust its procedures so that all license renewals are brought before the board.

The statutes provide conflicting direction on this issue and alternative interpretations are reasonable. While AS 04.11.070 states, "Only the board may issue, renew, transfer, relocate, suspend, or revoke a license under this title," AS 04.06.080 states that the board "may delegate to the director any duty imposed by this title except its power to propose and adopt regulations." Research into the legislative intent of these sections may or may not provide clarity on which statement overrules the other. The board has previously interpreted statute to mean that it can delegate its authority to renew licenses to the director, and it did so over two decades ago. Going forward, all renewals will be brought to the board.

Recommendation 2: The board should issue recreational site licenses in accordance with statutory requirements.

We concur that the board should implement the statute. Staff can assist the board in this by ensuring that all recreational site licenses are brought to the board for renewal, and by analyzing the application and making a recommendation to the board.

Ms. Curtis, Division of Legislative Audit
January 5, 2018
Page 2

Recommendation 3: The board should issue beverage dispensary licenses in accordance with statutory requirements.

We agree that the board should issue licenses according to statutory requirements. As with the previous recommendation, the staff can assist the board by bringing all beverage dispensary – tourism licenses to the board for renewal, and by providing more comprehensive background information to the board with applications for transfer or renewal. The board is responsible for resolving this issue, or seeking legislative changes to resolve it, and the staff will provide the necessary support to the board in order to meet that requirement.

Recommendation 4: The board, AMCO director, and enforcement supervisor should work together to formally establish an enforcement plan to direct AMCO's limited enforcement resources.

We agree with this recommendation. With only eight investigators to administer the marijuana and alcohol laws across the entire state and with over 2,000 licensees, it is vital that priorities are established for the workload. To date, the enforcement staff have prioritized the initial inspection of newly approved licensed facilities and investigations of alleged violations, in order to protect the health and safety of the public. The director and enforcement supervisor are working to re-establish the compliance check program using existing funding and partnerships with other agencies. These priorities and efforts have been emphasized to the board by the enforcement supervisor, who reports on the section's work and focus at each board meeting, and the board sometimes directs the enforcement section's attention to certain issues. However, there has been no formal written statement of enforcement priorities. A formal enforcement plan to set the priorities of AMCO's enforcement section will not only provide clear guidance to the staff, but will also inform the public and licensees of the enforcement section's focus. It is our intent to present a draft enforcement matrix to the board by the summer of 2018.

Recommendation 5: The board and AMCO director should implement a process to monitor and track complaints to ensure they are assessed for follow up action and investigated in a timely manner.

Steps are already being taken to implement this suggestion. Because of the limited number of staff and the increased workload with the onset of marijuana control, enforcement staff have recently documented clearly only those complaints which have been investigated by the staff. Although the number of emails and phone calls are logged to document workload, the staff has not been recording the resolution of a complaint that they have not been able to verify. AMCO recently was approved to hire a Criminal Justice Technician I to provide administrative support to the enforcement section. The addition of this support, along with a modification of procedures, will enable the enforcement section to document ALL complaints received along with their resolution, even for those complaints that do not result in an inspection or investigation. Currently the ARMS program (Alaska Records Management System) is used to document investigations. This program will likely be used to document all complaints received.

Ms. Curtis, Division of Legislative Audit
January 5, 2018
Page 3

Recommendation 6: The board and AMCO director should develop written procedures for updating the statewide database with restricted purchasers.

We agree that this is an area where processes can be improved. The database of restricted purchasers has not been kept up for two reasons: staff resources/turnover and lack of reporting from the court system. As noted above, a Criminal Justice Technician I position in the enforcement section will take charge of the administrative tasks related to enforcement of the statutes and regulations, including maintaining the restricted purchasers database. By developing written procedures, AMCO will be able to maintain continuity in this task even as staff changes occur.

Ms. Lumba, auditor-in-charge, provided the AMCO director with the appropriate contacts in the court system so that AMCO can maintain better communications with the courts to ensure the information required to be maintained in our database is provided to us.

Recommendation 7: The board and AMCO director should improve procedures to ensure municipalities report violations of alcoholic beverage laws.

A reduction in resources at all levels of government have contributed to a lack of enforcement of 3 AAC 304.610 which requires quarterly reports from local law enforcement of Title 4 violations. The director will reach out to municipalities to remind them of this requirement, will offer assistance in developing a reporting format, and will establish procedures for informing me of non-compliance with this requirement.

Recommendation 8: The AMCO director should develop and implement procedures to ensure refunds to municipalities are appropriately reviewed.

This is an area where improvements can be made. As was stated in the audit findings, with a single person calculating fees to municipalities, the potential for error is definitely a concern. As AMCO reorganizes its internal staff structure, the director will work with the Administrative Services Division of the Department of Commerce, Community, and Economic Development to develop procedures to review the calculations for refunds to municipalities, so that the risk of errors is reduced.

Please feel free to contact me if you have any questions regarding this audit response.

Sincerely,



Mike Navarre
Commissioner

Cc: Erika McConnell, Director, AMCO
Catherine Reardon, Director, DCCED Administrative Services Division
Micaela Fowler, DCCED Legislative Liaison

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Agency Response from the Alcoholic Beverage Control Board

Robert Klein, Chair
Alcoholic Beverage Control Board
6560 Lakeway Drive
Anchorage AK 99502

January 3, 2017

Kris Curtis, CPA, CISA
Legislative Auditor
Alaska State Legislature
Legislative Budget and Audit Committee
Division of Legislative Audit
PO Box 113300
Juneau, AK 99811-3300

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JAN 03 2018
LEGISLATIVE AUDIT

Dear Mr Curtis,

I have reviewed your recommendations contained in the November 17, 2017 Audit of our Board, and below are my comments on each:

Recommendation 1

I agree with the recommendation and will work with staff to implement the improved renewal process.

Recommendation 2

I agree. Following the 2014 sunset audit, the Board no longer issued new recreational site licenses that did not strictly adhere to the statute. With respect to licenses already issued, the Board is aware that a bill revising Title 4 will be before the current Legislature. Included in that current version of the bill is a method of rescinding licenses that do not strictly adhere to the definition. It includes a period of time to phase out the license. We have decided to wait to see if the Legislature passes this or some similar method, before taking action as the Board.

Recommendation 3

I disagree with your reading of the statute, and our Board feels that allowing for grandfathering in the case of tourism licensed issued before June 1985 is appropriate.

Recommendation 4

I agree and staff will be working to establish the plan.

Recommendation 5

I agree. There is a logging system, and staff is working to improve its use to insure both timeliness and completeness.

Recommendation 6

I agree, and staff will be taking steps to implement the suggestions.

Recommendation 7

I agree, and staff will be taking steps to implement the suggestions.

Recommendation 8

I agree. I believe the review suggested has already been put in place.

Thank you for the opportunity to respond.

Yours truly,

A handwritten signature in black ink, appearing to read 'R. Klein', with a long horizontal flourish extending to the right.

Robert Klein

Legislative Auditor's Additional Comments

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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Juneau, AK 99811-3300
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January 8, 2018

Members of the Legislative Budget
and Audit Committee:

I reviewed the Alcoholic Beverage Control Board's (board) response to the audit report. Nothing contained in the response causes me to revise or reconsider the report conclusions and recommendations. However, there is a section of the board's response that warrants further comments.

In response to Recommendation 3, the board chair disagrees with the auditor's interpretation of statute, and states that the board feels that allowing for grandfathering in the case of tourism licenses issued prior to the law taking effect in 1985 is appropriate. However, the board chair provides no legal basis for this comment. Statutes do not address grandfathering licenses or the transfer or sale of licenses in existence prior to the law passing in 1985.

In summary, I reaffirm our report conclusions and recommendations.

Sincerely,

A handwritten signature in blue ink, appearing to read "K. Curtis".

Kris Curtis, CPA, CISA
Legislative Auditor

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