

Bill as Introduced

SB 181-FN-A - AS AMENDED BY THE SENATE

01/21/10 0181s

2009 SESSION

09-0853
03/05

SENATE BILL

181-FN-A

AN ACT

repealing the transfer of liquor enforcement to the department of safety and establishing a committee to study the administrative structure and adjudicative process at the liquor commission.

SPONSORS:

Sen. D'Allesandro, Dist 20; Sen. Barnes, Jr., Dist 17; Sen. Downing, Dist 22; Sen. Kelly, Dist 10; Rep. Campbell, Hills 24; Rep. Hunt, Ches 7; Rep. Lerandau, Ches 6; Rep. Ramsey, Hills 8

COMMITTEE:

Ways and Means

AMENDED ANALYSIS

This bill repeals the transfer of liquor enforcement to the department of safety scheduled to take effect July 1, 2010. This bill also establishes a committee to study the administrative structure and adjudicative process at the liquor commission.

Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struckthrough~~].

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 181-FN-A - AS AMENDED BY THE SENATE

01/21/10 0181s

09-0853

03/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nine

AN ACT repealing the transfer of liquor enforcement to the department of safety and establishing a committee to study the administrative structure and adjudicative process at the liquor commission.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Repeal. 2009, 144:163 through 144:175, relative to transferring liquor enforcement to the
2 department of safety, are repealed.

3 2 Committee to Study the Administrative Structure and Adjudicative Process at the Liquor
4 Commission.

5 I. There is established a committee to study the administrative structure and adjudicative
6 process at the liquor commission.

7 II. The members of the committee shall be as follows:

8 (a) Three members of the senate, appointed by the president of the senate.

9 (b) Three members of the house of representatives, appointed by the speaker of the
10 house of representatives.

11 III. Members of the committee shall receive mileage at the legislative rate when attending to
12 the duties of the committee.

13 IV. The committee shall study:

14 (a) Whether the liquor commission should have an executive director rather than a full-
15 time 3-member commission;

16 (b) How best to ensure impartial review of appeals of licensing and enforcement
17 decisions; and

18 (c) How best to ensure that the enforcement division is properly supervised, contains its
19 function to that of a regulatory authority, and guards against overly broad interpretation of its
20 function.

21 V. The members of the study committee shall elect a chairperson from among the members.
22 The first meeting of the committee shall be called by the first-named senate member. The first
23 meeting of the committee shall be held within 45 days of the effective date of this section. Four
24 members of the committee shall constitute a quorum.

25 VI. The committee shall report its findings and any recommendations for proposed
26 legislation to the president of the senate, the speaker of the house of representatives, the senate
27 clerk, the house clerk, the governor, and the state library on or before November 1, 2010.

28 3 Effective Date. This act shall take effect upon its passage.

LBAO
09-0853
Amended 02/08/10

SB 181 FISCAL NOTE

AN ACT repealing the transfer of liquor enforcement to the department of safety and establishing a committee to study the administrative structure and adjudicative process at the liquor commission.

FISCAL IMPACT:

The Liquor Commission and Department of Safety state this bill, as amended by the Senate (Amendment #2010-0181s), will not have a fiscal impact on state, county or local revenues or expenditures in FY 2010 and each fiscal year thereafter.

METHODOLOGY:

The Liquor Commission and Department of Safety state this bill repeals the transfer of liquor enforcement to the Department of Safety scheduled to occur July 1, 2010. The Commission and Department state this repeal will maintain current law with liquor enforcement remaining with the Liquor Commission. The only fiscal impact as a result of this bill will be that the funding transfer from the Liquor Commission to the Department of Safety for liquor enforcement will not occur.

The Commission states without this bill it would have transferred \$3,374,734 of liquor funds for liquor enforcement from its budget to the Department of Safety's budget. Additionally, with the transfer of the liquor enforcement personnel to the Department of Safety, the Commission would not have had personnel to conduct the licensing and liquor education functions. The Commission estimated it would need to hire 1 chief of licensing and education (Labor Grade 35), 11 licensing specialists (Labor Grade 16), and 5 liquor educators (Labor Grade 24). The Commission estimated the new positions would increase liquor expenditures by the following:

	FY 2011	FY 2012	FY 2013	FY 2014
Chief of Licensing and Education at LG 35 salary	\$69,557	\$72,852	\$76,187	\$79,775
Licensing Specialists at LG 16 (11 specialists)	363,561	378,202	393,536	409,090
Liquor Educator at LG 24 (5 educators)	214,210	223,765	233,610	243,850
Benefits	370,075	398,269	428,809	461,870

SB 181-FN-A - AS AMENDED BY THE SENATE

- Page 3 -

Office Space/equipment	18,600	18,600	18,600	18,600
Current expenses	5,100	5,100	5,100	5,100
Travel	13,600	13,600	13,600	13,600
Total	\$1,054,703	\$1,110,388	\$1,169,442	\$1,231,885

SB 181 FISCAL NOTE

AN ACT repealing the transfer of liquor enforcement to the department of safety and establishing a committee to study the administrative structure and adjudicative process at the liquor commission.

FISCAL IMPACT:

The Liquor Commission and Department of Safety state this bill, as amended by the Senate (Amendment #2010-0181s), will not have a fiscal impact on state, county or local revenues or expenditures in FY 2010 and each fiscal year thereafter.

METHODOLOGY:

The Liquor Commission and Department of Safety state this bill repeals the transfer of liquor enforcement to the Department of Safety scheduled to occur July 1, 2010. The Commission and Department state this repeal will maintain current law with liquor enforcement remaining with the Liquor Commission. The only fiscal impact as a result of this bill will be that the funding transfer from the Liquor Commission to the Department of Safety for liquor enforcement will not occur.

The Commission states without this bill it would have transferred \$3,374,734 of liquor funds for liquor enforcement from its budget to the Department of Safety's budget. Additionally, with the transfer of the liquor enforcement personnel to the Department of Safety, the Commission would not have had personnel to conduct the licensing and liquor education functions. The Commission estimated it would need to hire 1 chief of licensing and education (Labor Grade 35), 11 licensing specialists (Labor Grade 16), and 5 liquor educators (Labor Grade 24). The Commission estimated the new positions would increase liquor expenditures by the following:

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Benefits	370,075	398,269	428,809	461,870
Office Space/equipment	18,600	18,600	18,600	18,600

Current expenses	5,100	5,100	5,100	5,100
Travel	13,600	13,600	13,600	13,600
Total	\$1,054,703	\$1,110,388	\$1,169,442	\$1,231,885

CHAPTER 248

SB 181-FN-A – FINAL VERSION

01/21/10 0181s

13May2010... 1863h

06/02/10 2297CofC

2010 SESSION

09-0853

03/05

SENATE BILL *181-FN-A*

AN ACT delaying the transfer of liquor enforcement to the department of safety and establishing a committee to study the administrative structure and adjudicative process at the liquor commission.

SPONSORS: Sen. D'Allesandro, Dist 20; Sen. Barnes, Jr., Dist 17; Sen. Downing, Dist 22; Sen. Kelly, Dist 10; Rep. Campbell, Hills 24; Rep. Hunt, Ches 7; Rep. Lerandean, Ches 6; Rep. Ramsey, Hills 8

COMMITTEE: Ways and Means

AMENDED ANALYSIS

This bill delays the transfer of liquor enforcement to the department of safety from July 1, 2010 until July 1, 2011. This bill transfers liquor licensing and liquor education to the department of safety in the same manner that liquor enforcement was transferred under 2009, 144. This bill also establishes a committee to study the administrative structure and adjudicative process at the liquor commission. The committee shall also identify statutory changes that are required to be made for the transfer of liquor licensing and liquor education.

Explanation: Matter added to current law appears in *bold italics*.

Matter removed from current law appears [~~in brackets and struckthrough.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

01/21/10 0181s

13May2010... 1863h

06/02/10 2297CofC

09-0853

03/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT delaying the transfer of liquor enforcement to the department of safety and establishing a committee to study the administrative structure and adjudicative process at the liquor commission.

Be it Enacted by the Senate and House of Representatives in General Court convened:

248:1 Liquor Enforcement Transfer; Effective Date. Amend 2009, 144:301, VIII to read as follows:

VIII. Sections 163-175 of this act shall take effect July 1, ~~2010~~ 2011.

248:2 Committee to Study the Administrative Structure and Adjudicative Process at the Liquor Commission.

I. There is established a committee to study the administrative structure and adjudicative process at the liquor commission.

II. The members of the committee shall be as follows:

(a) Three members of the senate, appointed by the president of the senate.

(b) Three members of the house of representatives, appointed by the speaker of the house of representatives.

III. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

IV.(a) The committee shall study:

(1) Whether the liquor commission should have an executive director rather than a full-time 3-member commission;

(2) How best to ensure impartial review of appeals of licensing and enforcement decisions;

(3) How best to ensure that the enforcement division is properly supervised, contains its function to that of a regulatory authority, and guards against overly broad interpretation

of its function; and

(4) Whether a liquor commission ombudsman should be appointed and the duties and responsibilities of that office.

(b) The committee shall also identify the appropriate statutory changes required to be made for the transfer pursuant to section 3 of this act and shall include such recommendation in its report.

V. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Four members of the committee shall constitute a quorum.

VI. The committee shall submit a report on or before November 1, 2010 of its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library.

248:3 Liquor Licensing and Education; Transfer. Notwithstanding any provision of law or rule to the contrary, all functions relating to liquor licensing and liquor education shall be transferred to the department of safety in the same manner that the functions relating to enforcement have been transferred pursuant to 2009, 144.

248:4 Effective Date. This act shall take effect upon its passage.

Approved: July 2, 2010

Effective Date: July 2, 2010

Amendments

Rep. Walz, Merr. 13
Rep. Hess, Merr. 9
Sen. Hassan, Dist. 23
Rep. Eaton, Ches. 2
Sen. Gallus, Dist. 1
Rep. Butynski, Ches. 4
March 25, 2010
2010-1182h
03/10

Amendment to SB 181-FN-A

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT delaying the transfer of liquor enforcement to the department of safety and
4 establishing a committee to study the administrative structure and adjudicative
5 process at the liquor commission.
6

7 Amend the bill by replacing section 1 with the following:

8

9 1 Liquor Enforcement Transfer; Effective Date. Amend 2009, 144:301, VIII to read as follows:

10 VIII. Sections 163-175 of this act shall take effect July 1, ~~2010~~ 2012.

11

12 Amend paragraph IV of section 2 of the bill by replacing it with the following:

13

14 IV. The committee shall study:

15 (a) Whether the liquor commission should have an executive director rather than a full-
16 time 3-member commission;

17 (b) How best to ensure impartial review of appeals of licensing and enforcement
18 decisions;

19 (c) How best to ensure that the enforcement division is properly supervised, contains its
20 function to that of a regulatory authority, and guards against overly broad interpretation of its
21 function; and

22 (d) Whether a liquor commission ombudsman should be appointed and the duties and
23 responsibilities of that office.

24

25 Amend paragraph VI of section 2 of the bill by replacing it with the following:

26

27 VI. The committee shall submit an interim report on or before November 1, 2010 and a final
28 report on or before November 1, 2012 of its findings and any recommendations for proposed
29 legislation to the president of the senate, the speaker of the house of representatives, the senate
30 clerk, the house clerk, the governor, and the state library.

2010-1182h

AMENDED ANALYSIS

This bill delays the transfer of liquor enforcement to the department of safety from July 1, 2010 until July 1, 2012. This bill also establishes a committee to study the administrative structure and adjudicative process at the liquor commission.

Amendment to SB 181-FN-A

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT delaying the transfer of liquor enforcement to the department of safety and
4 establishing a committee to study the administrative structure and adjudicative
5 process at the liquor commission.
6

7 Amend the bill by replacing section 1 with the following:

8

9 1 Liquor Enforcement Transfer; Effective Date. Amend 2009, 144:301, VIII to read as follows:

10 VIII. Sections 163-175 of this act shall take effect July 1, [2010] **2011**.

11

12 Amend paragraph IV of section 2 of the bill by replacing it with the following:

13

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15 (a) Whether the liquor commission should have an executive director rather than a full-
16 time 3-member commission;

17 (b) How best to ensure impartial review of appeals of licensing and enforcement
18 decisions;

19 (c) How best to ensure that the enforcement division is properly supervised, contains its
20 function to that of a regulatory authority, and guards against overly broad interpretation of its
21 function; and

22 (d) Whether a liquor commission ombudsman should be appointed and the duties and
23 responsibilities of that office.

24

25 Amend paragraph VI of section 2 of the bill by replacing it with the following:

26

27 VI. The committee shall submit an interim report on or before November 1, 2010 and a final
28 report on or before June 30, 2011 of its findings and any recommendations for proposed legislation to
29 the president of the senate, the speaker of the house of representatives, the senate clerk, the house
30 clerk, the governor, and the state library.

2010-1776h

AMENDED ANALYSIS

This bill delays the transfer of liquor enforcement to the department of safety from July 1, 2010 until July 1, 2011. This bill also establishes a committee to study the administrative structure and adjudicative process at the liquor commission.

Amendment to SB 181-FN-A

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT delaying the transfer of liquor enforcement to the department of safety and
4 establishing a committee to study the administrative structure and adjudicative
5 process at the liquor commission.
6

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9 1 Liquor Enforcement Transfer; Effective Date. Amend 2009, 144:301, VIII to read as follows:

10 VIII. Sections 163-175 of this act shall take effect July 1, ~~2010~~ 2011.

11

12 Amend paragraph IV of section 2 of the bill by replacing it with the following:

13

14 IV. The committee shall study:

15 (a) Whether the liquor commission should have an executive director rather than a full-
16 time 3-member commission;

17 (b) How best to ensure impartial review of appeals of licensing and enforcement
18 decisions;

19 (c) How best to ensure that the enforcement division is properly supervised, contains its
20 function to that of a regulatory authority, and guards against overly broad interpretation of its
21 function; and

22 (d) Whether a liquor commission ombudsman should be appointed and the duties and
23 responsibilities of that office.

24

25 Amend paragraph VI of section 2 of the bill by replacing it with the following:

26

27 VI. The committee shall submit an interim report on or before November 1, 2010 and a final
28 report on or before June 30, 2011 of its findings and any recommendations for proposed legislation to
29 the president of the senate, the speaker of the house of representatives, the senate clerk, the house
30 clerk, the governor, and the state library.

Amendment to SB 181-FN-A

- Page 2 -

2010-1863h

AMENDED ANALYSIS

This bill delays the transfer of liquor enforcement to the department of safety from July 1, 2010 until July 1, 2011. This bill also establishes a committee to study the administrative structure and adjudicative process at the liquor commission.

Committee Minutes

HOUSE COMMITTEE ON FINANCE

WORK SESSION ON SB 181-FN-A

BILL TITLE: (New title) repealing the transfer of liquor enforcement to the department of safety and establishing a committee to study the administrative structure and adjudicative process at the liquor commission.

DATE: April 29, 2010

LOB ROOM: 210-211 **Time Work Session Called to Order:**

Time Adjourned:

(please circle if present)

Committee Members: Reps. M. Smith, Nordgren, Foster, Eaton, Barood, Benn, Leishman, DeJoie, Buco, Foose, Mitchell, Keans, Casey, Jarris, Kurk, D. Scamman, E. Anderson, Emerton, Rodeschin, Wendelboe, L. Ober, Dokmo, Bergin, Belvin and R. Elliott.

Bill Sponsors: Sen. D'Allesandro, Dist 20; Sen. Barnes, Jr., Dist 17; Sen. Downing, Dist 22; Sen. Kelly, Dist 10; Rep. Campbell, Hills 24; Rep. Hunt, Ches 7; Rep. Lerandeanu, Ches 6; Rep. Ramsey, Hills 8

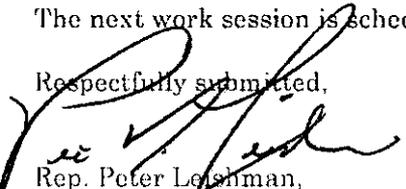
TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

An amendment will be submitted by Rep. D. Scamman, concerning data review.

The next work session is scheduled for Monday, May 03 at 10:00.

Respectfully submitted,


Rep. Peter Leishman,
Acting Clerk

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

HOUSE COMMITTEE ON FINANCE

WORK SESSION ON SB 181-FN-A

BILL TITLE: (New title) repealing the transfer of liquor enforcement to the department of safety and establishing a committee to study the administrative structure and adjudicative process at the liquor commission.

DATE: April 29, 2010

LOB ROOM: 210-211 **Time Work Session Called to Order:**

Time Adjourned:

(please circle if present)

Committee Members: Reps. M. Smith, Nordgren, Foster, Eaton, Barondy, Benn, Leishman, DeJoie, Bucco, Foose, Mitchell, Keans, Casey, Harris, Kurk, D. Scamman, E. Anderson, Emerton, Rodeschin, Wendelboe, L. Ober, Dokmo, Bergin, Belvin and R. Elliott.

Bill Sponsors: Sen. D'Allesandro, Dist 20; Sen. Barnes, Jr., Dist 17; Sen. Downing, Dist 22; Sen. Kelly, Dist 10; Rep. Campbell, Hills 24; Rep. Hunt, Ches 7; Rep. Lorangeau, Ches 6; Rep. Ramsey, Hills 8

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Motions: OTP, OTP/A, I/TL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

Motions: OTP, OTP/A, I/TL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

4/29/10

- SRB 73 No cost - Fiscal note Monday
- SRB 181 Amendment by Scamman -
concerning date review
- SRB 344 Rep Nixon, H. Ziebel spoke
in favor and stated Judicial
Branch had funds necessary

April 29, 2010

The Honorable Marjorie K. Smith, Chair
House Finance Committee
Legislative Office Building, Rooms 210 - 211
Concord, NH 03301

Re: New Futures Support of SB 181 (repealing the transfer of liquor enforcement to the department of safety and establishing a committee to study the administrative structure and adjudicative process at the liquor commission)

Dear Representative Smith and Honorable Members of the Committee,

New Futures, a nonprofit non partisan advocacy organization working to reduce underage alcohol problems and increase access to substance use disorder treatment and recovery services supports SB 181 because it ensures effective and efficient enforcement of liquor statutes by maintaining the enforcement function within the Liquor Commission.

By way of background, in March 2009 HB 2 as passed by the House included a provision that mandated the transfer of Liquor Enforcement responsibilities and staff to the Department of Safety. The Senate version of HB 2 removed the transfer provisions. The Conference Committee version of HB 2 as passed by both bodies and signed by the Governor delayed the transfer until July 1, 2010 and established a study committee to examine a number of issues including the transfer of the enforcement function to the Department of Safety. The study committee, comprised of three Representatives and two Senators, met throughout the summer and fall and heard testimony from numerous individuals and groups, all of whom opposed the transfer. These groups included the New Hampshire Lodging and Restaurant Association, the NH Grocers' Association, the New Hampshire Police Chiefs' Association, New Futures, and community prevention coalitions. The study committee report was approved by a vote of 4 – 1 and called for the introduction of legislation to repeal the transfer of enforcement to the Department of Safety and the creation of a new study committee to examine two issues that the original study committee identified as requiring additional work: the administrative structure of and adjudicative processes at the Liquor Commission. An existing senate bill was utilized to implement the study committee recommendations.

In furtherance of our mission to reduce underage alcohol problems, New Futures works with various community coalitions and directly with the Liquor Commission Division of Enforcement and Licensing ("Division"). Based upon our knowledge of the work of the Division and for the

reasons set forth below, New Futures strongly supports SB 181 and the maintenance of Liquor Enforcement within the Liquor Commission:

- **Enforcement and licensing are core functions of the Liquor Commission.** Pursuant to RSA 176: 3, the second of the “primary duties of the liquor commission” is to “maintain proper controls.” The central responsibilities of the Bureau - education, licensing, and enforcement – are directly linked to the Commission’s core responsibility to maintain proper controls. Proper control is necessary to enable the Commission to maximize profit and ensure public health and safety. Proper control is achieved by the efficient licensing of establishments; the education of licensees regarding their legal responsibilities under the liquor laws; and effective enforcement that both encourages voluntary compliance with licensing and regulatory standards and holds licensees accountable for compliance with these standards.
- **The current organizational structure is efficient and effective.** Assigning the education and licensing of establishments to liquor investigators with enforcement authority ensures both operational efficiency and effective enforcement.
 - Liquor investigators, as sworn officers, are able as part of the licensing process to educate prospective licensees not only about the administrative requirements of their licenses, but also about their critical legal public health and safety responsibilities to refuse service to minors and to intoxicated individuals.
 - A liquor investigator who identifies a possible violation during a licensing visit is able to immediately begin an investigation, ensuring a prompt resolution of the matter – to the benefit both of the licensee and the Commission.
 - Through the consolidation of education, licensing, and enforcement, the current organizational structure has been effective in reducing violations for over service and sales to minors. The most recent annual Bureau statistics indicate that out of 4500 licensees, there were 51 violations for over service and that compliance checks for sales to minors showed an 85% compliance rate.
 - At the National Conference on Enforcing Underage Drinking Law sponsored by the Office of Juvenile Justice and Delinquency Prevention within the United States Department of Justice in both 2007 and 2009 , the Bureau of Enforcement and individual staff received national awards for their achievements.
 - The vast majority of states (72%) utilize organizational structures akin to that currently in effect in New Hampshire – in which the responsibility for alcohol regulatory enforcement is assigned either to the state’s liquor control commission or the state’s department of revenues.

In conclusion, New Futures respectfully requests that the Committee recommend SB 181 Ought to Pass. Please do not hesitate to contact me if I can be of assistance to the Committee.

Sincerely,



Tricia H. Lucas, Esq.
Policy Director



State of New Hampshire

GENERAL COURT

CONCORD

MEMORANDUM

DATE: December 9, 2009

TO: Honorable John H. Lynch, Governor
Honorable Terie Norelli, Speaker of the House
Honorable Sylvia B. Larsen, President of the Senate
Honorable Karen O. Wadsworth, House Clerk
Tammy L. Wright, Senate Clerk
Michael York, State Librarian

FROM: Senator Maggie Wood Hassan, Chair

SUBJECT: Final Report on HB 2, Chapter 144:162, Laws of 2009

Pursuant to Chapter 144:162, Laws of 2009, enclosed please find the Final Report of the Committee to Study the Organizational Structure of the Liquor Commission.

If you have any questions or comments regarding this report, please do not hesitate to contact me.

Enclosure

cc: Committee Members

REPORT OF THE COMMITTEE TO STUDY THE ORGANIZATIONAL STRUCTURE OF THE LIQUOR COMMISSION

This study was mandated by the Legislature as part of the 2009 budget process. In particular, HB 2 , Chapter 144:162, 2009 requires a legislative study committee to consider two issues: (1) whether the decision in HB 2 to transfer the Liquor Commission's enforcement function to the Department of Safety on July 1, 2010, is appropriate; and (2) whether it makes sense to change the administrative structure of the Commission from one in which three full-time commissioners share authority and responsibility for the administration and performance of the Commission to one in which a single Executive Director oversees its operations.¹ In addition to these two charges, the legislature also instructed this Committee to recommend that the transfer of enforcement function not take place if the transfer would require additional appropriations or the creation of new positions; an instruction that is particularly apt in a time when financial and human resources are scarce.²

Committee Process

The Committee includes Rep. William Butynski, Rep. Daniel Eaton, Rep. David Hess, Sen. John Gallus, and Sen. Margaret Hassan. It met six times, and received testimony from numerous stakeholders, including Liquor Commissioners Mark Bodi (Chair) and Richard Simard, Chief of the Liquor Commission's Enforcement Division, members of the Commission's staff, representatives of the NH Restaurant and Lodging Association, representatives of New Futures , a non-profit advocacy group focused on reducing under-age drinking, the NH Grocers Association, the Commissioner and Assistant Commissioner of the Department of Safety, two former liquor commissioners, and a state representative among others. Additionally, the Committee received written communications from various trade groups as well as some former employees of the Commission.³

Background

During the 2009 budget process (to develop the budget for Fiscal Years 2010 and 2011) the House of Representatives included provisions in the budget that transferred the liquor enforcement function from the Commission to the Department of Safety. Meanwhile, the Senate's budget provided that the Liquor Commission could operate as an Enterprise Fund,⁴ allowing the Commission more autonomy in the way it structures and operates its finances and business functions, while still maintaining legislative oversight.

¹ The Act's specific language reads: The committee shall study the organizational structure of the liquor commission, including but not limited to having an executive director and the appropriate placement of liquor licensing and enforcement functions. (Chapter 144:162 , paragraph III). This report addresses the issue of appropriate placement of enforcement and licensing functions first, as the committee spent most of its efforts focusing on this issue given the pending transfer of the enforcement division to the Department of Safety on July 1, 2010 as provided for in Chapter 144; 175, paragraph I.

² Chapter 144:175, paragraph II.

³ Minutes of the Committee's meetings are attached as Appendix A.

⁴ The term Enterprise Fund is an accounting term that describes a government fund that charges a fee to be self supporting and generally is used by governmental entities that are charged with operating in a manner similar to business enterprises with the purpose of creating revenue for the state. Enterprise Funds are also allowed to report long-term assets and liabilities on their balance sheets. New Hampshire's Lottery Commission is already such a fund.

The Senate opposed the transfer of the Commission's enforcement function while the House opposed designation of the Liquor Commission as an Enterprise Fund.

During the Budget Committee of Conference, the House and Senate compromised their respective positions with regard to the transfer of the enforcement function, providing that the transfer of enforcement would be delayed until July 1, 2010 and that, in the interim, this Committee would meet to consider the transfer more closely. This Committee was also charged with considering whether the current commission structure is still an appropriate way of operating the Commission, an issue that was discussed as the Commission's budget was being considered.

Findings and Recommendations

A. Enforcement Transfer

1. The regulated community uniformly opposes the transfer of the Commission's enforcement function to the Department of Safety. The most commonly expressed rationale for this position is that the current system works well and that efforts to improve it by a wholesale transfer to another division of state government would produce new problems or challenges. This position was bolstered by the observation that Chapter 144; 175 authorizes the transfer of only the Commission's enforcement function to the Department of Safety, leaving the licensing and education functions at the Commission.⁵ Currently the Commission integrates enforcement, licensing, and education in one cohesive unit and there is strong support for this unified approach to these duties.
2. Organizations who share the mission of reducing underage drinking and misuse of alcohol also oppose the transfer. They believe the Commission is doing a good job of controlling alcohol misuse and abuse and that part of the reason for the agency's success is that the tasks of licensing, education and enforcement are coordinated by an interdisciplinary team at the Commission. They also note the particular challenge of licensing the sellers and distributors of alcohol while also being charged with maximizing profits for the sale and distribution of alcohol in the state. They believe that the Commission's current structure lends itself well to ensuring that the regulated community is well educated and well supervised without being overburdened with too rigid a bureaucracy. In short, from their perspective, the Commission appears to be balancing its control function well with its mission of increasing revenues.
3. The Committee heard, more informally, through emails and anecdotes, that there were some occasions in which members of the regulated community felt that the Commission's enforcement efforts had been heavy-handed. However, there appeared to be some consensus among those providing public testimony that such incidents were relatively infrequent and

⁵ Chapter 144;175, paragraph I says that "all the functions, positions, powers, duties, responsibilities, and funding of the liquor Commission used for enforcement of alcoholic beverage laws shall be transferred to the department of safety on July 1, 2010." Meanwhile, Chapter 144;165 references a Liquor Commission without an enforcement division but with a licensing division, as do other paragraphs of Chapter 144, making clear that the legislature has authorized only the transfer of the enforcement function to the department of safety.

that the Commission had been responsive to criticisms or concerns raised about these incidents.⁶

4. The Department of Safety is neutral as to the transfer of the Commission's enforcement function, but noted that if only enforcement function were transferred, there would be some cost both in terms of additional positions needed and fees charged to the enforcement function to pay for the Department's indirect costs of administering the enforcement program. The Department also advised the Committee that it believed, as a general rule, that the transfer of an enforcement function was appropriate if and when a regulatory agency started using its enforcement power in such a way as to be indistinguishable from other public safety agencies with broader authority. The Department thus indicated its belief that regulatory agencies such as the Commission should limit their activities to enforcing the particular statutes over which they have specific jurisdiction and should rely on local and state public safety officials for the regulation of other areas.
5. It is not clear that the Commission exercises sufficient oversight over the enforcement personnel to ensure that the regulated community believes that the enforcement division shares a consistent sense of its limited, regulatory mission. The Committee also received informal suggestions that in some instances local police departments welcome the opportunity to supplement limited local forces with Commission enforcement personnel when enforcement of liquor laws overlaps with the need for other types of law enforcement action. The Commission should take steps to ensure that the enforcement division is properly supervised, contains its function to that of a regulatory authority, and guards against overly broad interpretation of its function.
6. As written and passed, Chapter 144 allows only the transfer of the enforcement function to the Department of Safety, while leaving the licensing and education functions with the Commission. The Committee believes that this division would result in a less integrated and effective regulatory system and strongly recommends against dividing these functions. Thus, even if the Committee was convinced that the enforcement function should be transferred to the Department of Safety, it would not recommend doing so without the concurrent transfers of the education and licensing functions.
7. The transfer of the enforcement function would, as currently authorized, appear to require the creation of at least some additional positions at the Commission, as individuals who currently perform enforcement duties, and would be transferred to the Department of Safety, also share licensing and education functions. While the Committee does not believe that the cost of the transfer is as high as the Commission initially projected, at least three of five Committee members believe that the Department of Safety would need an appropriation to pay for the

⁶ At least one member of the Committee believes that instances of possible abuse of authority by enforcement personnel are more frequent than reported and that the lack of public testimony about these instances results from fear among members of the regulated community that the enforcement division will use their authority to punish those who make public statements that are negative about the division or the Commission.

indirect costs of administering liquor enforcement. Thus, in accordance with Chapter 144:175, paragraph III, four of five Committee members recommend against the transfer of enforcement at this time on the grounds that it would appear to require an additional appropriation for the Department of Safety and the creation of additional positions at the Liquor Commission.⁷ The Committee will ensure that legislation to repeal the transfer is filed for the upcoming legislative session.

B. Adjudicatory Process

Although not specifically mentioned in the charge to the Committee, the issue of whether the current adjudicatory process for appeals of enforcement or licensing actions arose as part of the Committee's discussion concerning the Commission's enforcement function. The current adjudicatory process at the Commission provides no opportunity for disinterested review of appeals prior to a review by the New Hampshire Supreme Court. Currently, the Commission serves as both the prosecutor of violations and the appellate board through which the regulated community can seek relief from allegedly unwarranted enforcement actions. While members of the regulated community hesitated to publicly express displeasure with this aspect of the Commission's organization and function, the Committee believes that further exploration of the concept of a mechanism through which a designated neutral or disinterested panel could review the Commission's rulings is warranted.

C. Executive Director

1. The Committee did not have a great deal of time to explore this issue because of the need to deal more immediately with the impending transfer of the enforcement function to the Department of Safety.
2. With that proviso, the Committee thinks that the possibility of changing the Commission's organizational structure deserves further exploration. Few control states share New Hampshire's structure of a three person, full time Commission, where Commissioners with set terms share authority and responsibility. Members of the regulated community were unified in their support for the current structure on the grounds that it appeared to them to be working well. But the testimony against change in this area seemed to be based on satisfaction with the current structure rather than on misgivings about the idea of a structure headed by a single executive director.
3. Under the current structure, there appears to be no single person at the Commission who bears ultimate authority and responsibility for its performance – lines of authority and responsibility

⁷ The Committee's recommendations are based on votes of the majority, but, as noted, one Committee member, Representative Eaton, disagrees with the conclusions of this Committee with regard to the transfer of the enforcement function. Representative Eaton believes that the education, licensing, and enforcement functions should all be transferred to the Department of Safety.

are only informally established and shared by the Commissioners.⁸ And, because they enjoy state commissions, none can be replaced for failure to meet certain performance goals unless such failure is accompanied by truly derelict or criminal behavior. Such a situation – in which there is no single, accountable chief executive who serves according to set performance standards—seems potentially untenable given recent changes to the Commission which are all intended to enable it to run more like a business enterprise and to increase revenues.

D. Continued Study

The Committee recommends that a legislative study committee continue to examine the issues of: (1) whether the Commission should have an executive director rather than a full time three member commission; (2) how best to ensure impartial review of appeals of licensing and enforcement decisions; and (3) how best to ensure that the enforcement division is properly supervised, contains its function to that of a regulatory authority, and guards against overly broad interpretation of its function.

Summary

A majority of the Committee finds that a transfer of enforcement functions from the Commission to the Department of Safety is not needed or appropriate at this time. The legislature's decision to authorize only the transfer of the enforcement function is at odds with an integrated education, licensing and enforcement strategy that is working well. In addition to the inevitable disruption that such a transfer would cause – at a time of change and uncertainty--the transfer would also require an appropriation to the Department of Safety and very likely require at least a few additional positions at the Commission.

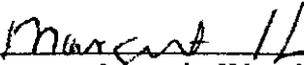
The Committee further finds that there should be an impartial review available to those who appeal licensing or enforcement actions and that the issue of whether the current system meets this need requires further study.

The Committee also finds that the executive and legislative branches should continue to explore the possibility of changing the administrative structure of the Commission so that it would be run by a single executive. This does not necessarily eliminate a role for commissioners, but it would likely make the existence of three member full-time paid commission unnecessary.

Finally, the Committee recommends that in addition to continuing to study the administrative structure of the Commission, the legislature should continue to study the most appropriate way to ensure impartial appeals of enforcement and licensing actions as well as the most appropriate way to ensure that the enforcement division is properly supervised and limited in its function.

⁸ Members of the Committee noted that historically, the Chair of the Commission has been considered to serve as the "chief executive" among commissioners who are otherwise considered equals. However, during his testimony, Chairman Bodi stated that all commissioners were, in his view, equals in terms of authority and accountability and that the only function that was specific to the chair was that of calling meetings and setting agendas for them.

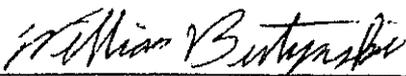
Respectfully submitted,



Senator Maggie Wood Hassan
Chair, District 23



Representative David Hess
Merrimack 9



Representative William Butynski
Cheshire 4



Senator John T. Gallus
District 1

Representative Daniel A. Eaton
Cheshire 2

Published on *New Hampshire Public Radio* (<http://www.nhpr.org>)

Liquor Commission Faces Management Questions

By *Josh Rogers*
Created 03/16/2010 - 18:07

Teaser:

It's been a month since Governor Lynch placed Mark Bodi, the state's top liquor official, on paid leave pending an investigation by the attorney general's office.

Synopsis:

Close to a month ago Governor Lynch placed Mark Bodi, the state's top liquor official, on paid leave pending an investigation by the Attorney General's office. Since then, Lynch has said his goals were to ensure a thorough investigation and to keep the liquor commission running smoothly. Those may yet come to pass, but as NHPR's Josh Rogers reports, they both seem works in progress.

Transcript:

When he made his first public comments on the Attorney General's investigation of the liquor commission, the Governor was firm.

"You know, my goals here are to protect the integrity of the investigation and ensure the ongoing management of the commission."

So far so good on the first point; as for the second, perhaps not so good. First, consider Liquor Enforcement Chief Eddie Edwards' decision to publicly accuse top Democratic lawmaker and longtime liquor commission critic Dan Eaton of meddling in an investigation of a Keene Bar. That matter is part of the AG's review. And Edwards remarks were odd; he is after all a state law enforcement official talking publicly about an ongoing investigation. That move prompted a public rebuke from Attorney General Michael Delaney and plenty of state house head-scratching; the latter may continue after the the commissions' performance before the house regulated revenues committee.

"We are running a fortune 500 business."

That's commissioner Joseph Mollica. He and Commissioner Dick Simard were both bullish *when describing the commissions bottom line. Both were less robust when responding to basic questions about how they are operating in Mark Bodi's absence.*

"Uh, no. Not right now."

That was Simard when he was asked if there were protocols for operating without a chairman. Simard was similarly unsure when lawmakers wanted to know if there had been talk of naming an interim chairman to establish a clear chain of command.

"No, not really. We haven't been told that."

And here was Simard's reply when he was asked to weigh in on Eddie Edwards' comments to the press.

"I don't, I don't know what to say about that."

Commissioner Joseph Mollica, new on the job but tapped to oversee enforcement, also took a few questions. Here's what he said when he was asked to describe how enforcement is supervised.

"The person in charge is Chief Edwards, he is the chief. He is the man that you go to with questions, and he has the answer to those questions. He is the person in charge of that."

There is no timetable for the completion of the Attorney General's review of the liquor commission. But Governor Lynch said earlier this month that allegations that prompted the probe extend beyond what happened at the bar in Keene. In the meantime, the Governor's spokesman says as the Governor expects the two remaining commissioners to work together.

Audio file:

nht031610jr1

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HOUSE COMMITTEE ON FINANCE

WORK SESSION ON SB 181-FN-A

BILL TITLE: (New title) repealing the transfer of liquor enforcement to the department of safety and establishing a committee to study the administrative structure and adjudicative process at the liquor commission.

DATE: May 03, 2010

LOB ROOM: 210-211 **Time Work Session Called to Order:** 10:00

Time Adjourned:

(please circle if present)

Committee Members: Reps. M. Smith, Nordgren, Foster, Eaton, Baroody, Benn, Leishman, DeJole, Budd Foose, Mitchell, Keans, Casey, Harris, Kurk, D. Scamman, E. Anderson, Emerton, Rodeschin, Wendelbœ, L. Ober, Dokmo, Bergin, Belvin and R. Elliott.

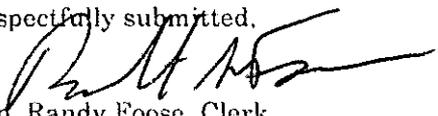
Bill Sponsors: Sen. D'Allesandro, Dist 20; Sen. Barnes, Jr., Dist 17; Sen. Downing, Dist 22; Sen. Kelly, Dist 10; Rep. Campbell, Hills 24; Rep. Hunt, Ches 7; Rep. Lerandeau, Ches 6; Rep. Ramsey, Hills 8

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

* New amendment 2010-1776h submitted by Rep. D. Scamman.

Respectfully submitted,


Rep. Randy Foose, Clerk

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

HOUSE COMMITTEE ON FINANCE

WORK SESSION ON SB 181-FN-A

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DATE: May 03, 2010

LOB ROOM: 210-211 **Time Work Session Called to Order:** 10:00

Time Adjourned:

(please circle if present)

Committee Members: Reps. M. Smith, Nordgren, Foster, Katon, Baroody, Benn, Leishman, DeJolie, Ruco, Roose, Mitchell, Kearns, Casey, Harris, Kurk, D. Scamman, E. Anderson, Emerton, Rodeschin, Wendelboe, L. Ober, Dokmo, Bergin, Belvin and R. Elliott.

Bill Sponsors: Sen. D'Allesandro, Dist 20; Sen. Barnes, Jr., Dist 17; Sen. Downing, Dist 22; Sen. Kelly, Dist 10; Rep. Campbell, Hills 24; Rep. Hunt, Ches 7; Rep. Lerandean, Ches 6; Rep. Ramsey, Hills 8

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

new amendment 1776

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

1000
5/3/10

(6)

SB-73 No fiscal note impact described in fiscal note

SB-181-FIN-A

New Amendment from Scamman 1776

SB-375

new amendment from Kirk 1778
broad discussion about binding future legislatures
scamman requested history of general funding + report
from Anderson
Dick Ober spoke about intent of legislative
Commissioner Bald confirmed that no general funds
have been used but amendment tightens rules
would not support amendment

SB-396

Amendment ~~and handout~~ 1778
memo from LBA
letter from NHPS
LBA ~~Jan~~ (Baird memo) described cost research 5 1/4
positions
Discussion of Policy and whether it is the
problem
Bergin Testimony re increase in work load
Rollins presents handout
HHS concerned about breadth of bill
Wendleboe questions ~~breadth~~ of bill need for legislative
Senators reaction to Rollins presentation
Johy William - Senate Finance exceed on a busy day
w/o discussion
Harris - bill is necessary but solve with technology
and reduce cost

Rep. W.D. Scamman, Rock. 13
April 30, 2010
2010-1776h
03/01

Amendment to SB 181-FN-A

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT delaying the transfer of liquor enforcement to the department of safety and
4 establishing a committee to study the administrative structure and adjudicative
5 process at the liquor commission.
6

7 Amend the bill by replacing section 1 with the following:

8

9 1 Liquor Enforcement Transfer; Effective Date. Amend 2009, 144:301, VIII to read as follows:

10 VIII. Sections 163-175 of this act shall take effect July 1, ~~2010~~ 2011.

11

12 Amend paragraph IV of section 2 of the bill by replacing it with the following:

13

14 IV. The committee shall study:

15 (a) Whether the liquor commission should have an executive director rather than a full-
16 time 3-member commission;

17 (b) How best to ensure impartial review of appeals of licensing and enforcement
18 decisions;

19 (c) How best to ensure that the enforcement division is properly supervised, contains its
20 function to that of a regulatory authority, and guards against overly broad interpretation of its
21 function; and

22 (d) Whether a liquor commission ombudsman should be appointed and the duties and
23 responsibilities of that office.

24

25 Amend paragraph VI of section 2 of the bill by replacing it with the following:

26

27 VI. The committee shall submit an interim report on or before November 1, 2010 and a final
28 report on or before June 30, 2011 of its findings and any recommendations for proposed legislation to
29 the president of the senate, the speaker of the house of representatives, the senate clerk, the house
30 clerk, the governor, and the state library.

2010-1776h

AMENDED ANALYSIS

This bill delays the transfer of liquor enforcement to the department of safety from July 1, 2010 until July 1, 2011. This bill also establishes a committee to study the administrative structure and adjudicative process at the liquor commission.

2010 Study Committee

SB 181, Chapter 248:2, Laws of 2010

Meeting Report

TO: Members of the Committee

FROM: Shannon Whitehead, *Legislative Aide*

RE: Meeting report on **SB 181, Chapter 248:2 Laws of 2010** –*Committee to study the administrative structure and adjudicative process at the Liquor Commission*

MEETING DATE: August 12, 2010: 10am SH 100

Committee members Present: Senator D'Allesandro, Senator Hassan, Rep. Butler, Rep. Kidder, and Rep. Shurtleff.

Committee members Absent: Senator Bradley

Others Present: (from sign in sheet) Amy Pepin (New Futures) Susan Paschell (Dupont Group, Stuart Trachy (NH Grocers) Mike Somers (NH Lodging and Restaurant Association)

Spoke/Testified: Commissioner Earl Sweeney

Organizational Meeting:

Welcome and Introduction of Committee members

Election of Chair person:

Senator Hassan nominated Senator D'Allesandro Chair of the study committee, seconded by Rep. Kidder followed by Rep. Shurteff and Butler. 5-0 vote. Senator D'Allesandro stated that he was the prime sponsor of the original bill (from SB 181) and Senator Hassan had chaired the last entry.

Senator D'Allesandro reviewed the duties of the commission as outlined in the legislation. The Senator also suggested having a possible extension to the study committee for its' findings. If needed be, we would have to write to the House Speaker and Senate President for that extension.

Senator D'Allesandro spoke about the scope of the study committee and the items of concern regarding the SB 181 study.

(a) Whether the liquor commission should have an executive director rather than a full-time 3-member commission;

(b) How best to ensure impartial review of appeals of licensing and enforcement decisions; and

(c) How best to ensure that the enforcement division is properly supervised, contains its function to that of a regulatory authority, and guards against overly broad interpretation of its function.

VI. The committee shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the House of Representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2010.

*Senator D'Allesandro noted that he would like this study committee wrapped up before the legislative session starts.

Also highlighted by Senator D'Allesandro were the following:

1. The scrutiny in the past, impartial review, license functions of regulatory authority.
2. Create appropriate recommendations through the legislative process

Senator Hassan suggested the committee look over the questions and concerns of the Department of Safety. Senator Hassan also suggested the committee to review The Final Report on HB 2, pursuant to Chapter 144:162, Laws of 2009 which was the committee to study the organizational structure of the Liquor Commission. Dated December 9, 2009.

Commissioner Earl Sweeney:

The Liquor Commission has performance has been spectacular.

.5 Billion in revenue. A net of 24% and well over 100 million on to the general fund. There is a grand opening of a new store in Manchester, NH and a new store in Merrimack that is being revised; as well as a store in Lebanon. The Liquor Commission has a certain amount of modernization into these stores. There is a chain of 76 stores. The largest retail stores in NH. The team of classified employees has worked well, but there is a great deal of concern with employee privatization and its' future.

Commissioner Sweeney stated that there will be a survey going to the employees on how they feel about the commission and how it has been running. Commissioner Sweeney continued to say that the task is not to max sales, but to optimize, reduce underage drinking and driving, those rates have been good. There has been long distinguished service in the state, public servant and we appreciate the trust.

Commissioner Sweeney talked about the refurbishing of the liquor commission and profit margin, in NH within the overview and improvements, but there are fears with any foolish moves in the future.

Senator D'Allesandro stated to Commissioner Sweeney that the committee would like to talk more about the process by which you get a license and the enforcement that takes place. (Operator, who operates commission)

In closing:

Rep. Butler suggested to the committee that we should look into having 2 to 3 hour meetings to cover ground, and fairly select a group of people to inform us, such as the Restaurant Association with the Liquor Commission. Rep. Butler also suggested to the committee that Rep. Mary Beth Walz should come and speak.

The committee agreed to hear the structure from Commissioner Sweeney's Office on how licenses given and how the renewal process goes. The committee also would like to look at how the enforcement works. Senator D'Allesandro wanted Eddy Edwards to come in to discuss the guidelines.

Senator Hassan also wanted to discuss in future meetings on revamping the appeal process in sight of impartiality.

Next Meeting date and outline of the next presentation:

1. Restaurant Association with Mark Somers and Alex Ray and their perspective: September 7, 2010
2. Stuart Trachy asked the committee to have the retail perspective to come in (John Dumas). September 7, 2010
3. Liz Sargeant lobbyist for the NH Chiefs of Police to come in and discuss the enforcement perspective. September 7, 2010

Meeting Closed at 10:36 a.m.

Future meeting dates:

September 7, 12-3pm SH Room 100

sgw 8-12-10



Stakeholder's opinion regarding the transferring of Enforcement to Department of Safety

Virtually all major stakeholders oppose transferring NHLIC Enforcement	YES	NO
NH Restaurant and Lodging Association		X
NH Grocers Association		X
NH Associated Grocers		X
NH Chiefs of Police Association		X
Governor's Highway Agency		X
Wine Institute		X
New Futures		X
Wholesale Beer Distributors		X
NH Wine & Spirits Broker Association		X
NH Prevention Coalitions		X
Tobacco-Free NH Coalition <i>American Cancer Society, American Lung Assoc., American Heart Assoc., Breathe NH, March of Dimes and NH Public Health Assoc.</i>		X
MADD (Mother's Against Drunk Driving)		X
State Liquor Commission		X

NH Public Opinion – A University of New Hampshire Survey Center study of NH public opinions regard the New Hampshire Liquor Commission retail stores and enforcement indicated that 75% of NH legal drinking age adults believe that *“the NH Liquor Commission is doing a good job overall enforcing laws and regulations regarding alcoholic beverages”*.





The chart below illustrates single state agency responsible for alcohol enforcement and licensing in comparison to state with dispersed responsibility for enforcement and licensing.

	Single state agency	Multiple agencies
1	Alabama	North Carolina (Dept. of Safety and Alcoholic Beverage Control Commission)
2	Montgomery Co.	Ohio (Dept. of Commerce/Dept. of Safety)
3	Michigan	Pennsylvania (Dept. of Safety/ Liquor Commission)
4	Mississippi	Utah (Dept. of Safety/ Alcoholic Beverage Control)
5	New Hampshire	Iowa (State Police/Liquor Commission)
6	Oregon	Nebraska (State Police/Liquor Commission)
7	Vermont	Wyoming (local/Liquor Commission)
8	Virginia	Nevada (local/Dept. of Taxation)
9	Washington	North Dakota (AG/Tax Commission)
10	West Virginia	Idaho (Dept. of Safety/Liquor Dispensary)
11	Arizona	
12	California	
13	Hawaii	
14	Illinois	
15	Massachusetts	
16	New York	
17	Oklahoma	
18	South Carolina	
19	Tennessee	
20	Texas	
21	District of Columbia	
22	Kentucky	
23	Montana	
24	Arkansas	
25	Colorado	
26	Connecticut	
27	Florida	
28	Georgia	
29	Maine	
30	Louisiana	
31	Maryland	
32	Rhode Island	
33	South Dakota	
34	Wisconsin	
35	Kansas	
36	Puerto Rico	
37	Minnesota	
38	Alaska	
39	Missouri	
40	New Mexico	
41	New Jersey	
42	Indiana	
43	Delaware	
	Total Single State 43	Total Multiple State 10

Lower Revenue
 Higher underage drinking rates



REGULAR CALENDAR

LOCAL AND REGULATED REVENUES

SB181-FN-A, (New title) repealing the transfer of liquor enforcement to the department of safety and establishing a committee to study the administrative structure and adjudicative process at the liquor commission. OUGHT TO PASS.

Rep. Timothy Butterworth for LOCAL AND REGULATED REVENUES. SB 181-FN-A repealing the transfer of liquor enforcement to the department of safety and establishing a committee to study the administrative structure and adjudicative process at the liquor commission. OUGHT TO PASS. Rep. Timothy Butterworth for local and Regulated Revenues: This bill repeals a plan to transfer the enforcement of liquor laws from the Liquor Commission to the Department of Safety. The decision was made during budget negotiations last year and most committee members felt this is not the way to pass a policy bill. In our hearing on SB181 we heard no testimony in favor of the transfer. We did hear evidence that under the current structure we have made a lot of progress with controlling DUI and underage drinking compliance. We are among the top in the nation and recognized by the National Liquor Enforcement Association and the Federal Office of Juvenile Justice and Delinquency Protection.

The committee also received testimony about Maine, where the legislature did transfer enforcement to the Department of Safety where they felt there would be greater structure and control. We heard that since the change the Liquor enforcement Bureau has become the neglected step child of the Department of Safety, and that the Maine Department of Safety has entered into Letters of Understanding with most of the local Police and Sherriff's departments where the local police now handle all sting operations. The transfer has resulted in inconsistent enforcement activity and discrepancies across jurisdictions. We heard of a great deal of angst within the licensed community in Maine. Maine legislators are now working to undo the move by disentangling Liquor Enforcement from the Department of Safety and moving it back to the Bureau of Alcoholic Beverages.

This bill also resurrects last summer's study committee to continue to look at the structural issues relating to the Liquor Commission. Specifically, the committee is charged with examining the possibility of a single executive director, reviewing the appeals of licensing and enforcement decisions and evaluating the supervision of the Enforcement Division. The latter is significant since there are rumors that the Enforcement Division suffers from "mission creep", although there was no testimony about this at the hearing where it could have been rebutted. The majority believes that if the Liquor Commission has a personnel issue they need to address it through the normal human resource means. We owe our employees a fair evaluation based on their merits, not a political process wrapped up in a policy decision. The committee heard testimony that enforcement, training and compliance need to be kept together. All evidence suggests that keeping the enforcement division at the Liquor Commission is the best means for maintaining the quality of enforcement we now enjoy here in New Hampshire. **Vote 18-1.**

Original: House Clerk

Cc: Committee Bill File

Confidentially, I can tell you is that since Liquor Licensing and Enforcement was moved out from under the jurisdiction of our SLC, things have gone to hell. There is virtually no liquor enforcement left in the state of Maine other than sting type operations in which local PDs and Sheriff's departments try to catch licensees selling to underage kids. Maine now has just five state liquor inspectors with responsibility for around 4500 licensees, and these "inspectors" are really just that. They are no longer the type of enforcement agents we once thought of them as being. Most of their time is now spent conducting physical inspections of premises as a part of license renewals and original license issuance. The Bureau of Licensing, which also collects our alcohol excise taxes and supposedly audits excise tax filings is a year behind in their audits. This latter fact was just attested to earlier this week by the chief of the Bureau of Licensing, State Police Lt. David Bowler, in testimony before the Legal & Veterans Affairs Committee on Wednesday. I was present and can verify the testimony.

As a sad example of the enforcement difficulties, I discovered a serious violation in Camden in the fall of 2008. I brought the facts of the matter to the attention of Public Safety, and showed them magazine ads that verified the infraction. I was present when they directed an inspector, by telephone, to investigate the matter first-hand and issue a citation if indeed he found the violation to be continuing. As of November of 2009, the inspector had still not yet followed up on the case!

In short, there is currently movement here in Maine to consider moving the Bureau of Licensing out from under the Dept. of Public Safety and the State Police, and return it to the SLC/Bureau of Alcoholic Beverages & Lottery Operations (BABLO), under the Dept. of Administrative & Financial Services (DAFS). The idea has been promoted by the chairmen of the Legislature's Legal & Veterans Affairs Committee, which has oversight of all alcohol beverage related legislation. In all likelihood, we will see legislation introduced next session to move the Bureau of Licensing back to the SLC/BABLO.

All of this information may be of help to you as you consider whether or not there is wisdom in moving NH SLC's Licensing and Enforcement arm over to the DOS. It probably makes far greater sense for it to stay under the SLC. However, I'm aware of the debacle that has brought all of this to the forefront in Concord, and there are clearly some lessons to be learned from the situation relative to the Keene Licensee investigation and some of the screw-up surrounding it.



PROMOTE. PROTECT EDUCATE.

March 24, 2010
Representative Mary Beth Walz
House Local and Regulated Revenues Committee
Room 303, LOB
Concord, NH 03301

Dear Representative Walz,

In an effort to provide you and your committee with pertinent information as you weigh the pros and cons of moving the Bureau of Liquor Enforcement to the Department of Safety I reached out to some individuals in Maine where this precedent has been set and hoped some historical insight might be helpful. I had a discussion with a gentleman in Maine by the name of Ralph Pears who has represented the Distilled Spirits Council of the United States (DISCUS) for 20+ years in both Maine and New Hampshire. Because of his role and cross border activities he has a unique understanding and perspective of the ramifications of what took place in Maine and how we might expect a similar outcome if we pursue the move. Below are the points that I gleaned from my discussion with Ralph and I would urge you to not only consider my notes but to contact a couple of your counterparts in Maine that are currently working to undo their move by disentangling Liquor Enforcement away from the Department of Safety and move it back into the Bureau of Alcoholic Beverages and Lottery Operations (BABLO). I have provided contact information for Mr. Ralph Pears along with Senator Nancy Sullivan and Representative Pam Trinward who are co-chairs of the Legal and Veterans Affairs Committee that is working on this issue.

- The Maine Liquor Enforcement Bureau was transferred into the Department of Safety some 15+ years ago. Since the move, Liquor Enforcement has gradually and consistently become the 'neglected step-child' of the Department of Safety – presumably because it is not a 'core' function of the Department of Public Safety.
- Liquor Enforcement has literally become 'all or nothing' enforcement – compliance checks are essentially non-existent and generally the only time enforcement action takes place is after an egregious incident that results in public outcry.
- The reason for the move at the time was that legislators felt that there was greater structure and control at the Department of Safety and that all Police functions could be consolidated for cost saving purposes - but that control has eroded and the savings were not realized. It was interesting to note that the Investigators were in favor of the move because the benefit package was better under the Department of Safety.
- About 10 years ago Liquor Enforcement was merged with a number of other administrative Bureaus under the Department of Safety. This new division oversees a hodge-podge of functions (Ralph specifically mentioned fire arm licensing), but Liquor Enforcement has increasingly become an afterthought with the long list of responsibilities handled by this department.
- Ralph also mentioned that the Enforcement and Licensing functions were separated at the time of the move so that BABLO continued to be responsible for licensing and the Department of Public Safety assumed responsibility for Enforcement. The 5 Liquor



PROMOTE. PROTECT. EDUCATE.

Enforcement Inspectors in Maine handle 4500 licensees with almost all of their time spent doing physical inspections for new licenses and license renewal. In testimony heard Wednesday March 3rd the Department of Public Safety admitted that they are a not only a year behind in audits of excise tax collections but also in issuing new licenses.

- In the last year or so the Department of Safety has entered into Letters of Understanding with most of the local Police and Sherriff's Departments in Maine where the local Police now handle all Sting operations. It has resulted in inconsistent enforcement activity and discrepancies across jurisdictions and has lead to a great deal of angst within the licensed community.

Contact Information:

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Thank you for taking the time to consider this information and I am happy to answer questions or concerns – and I would be happy to offer my assistance to the committee to provide information that will help in a decision to keep Liquor Enforcement with the NHLC. With that being said, we are still very much in favor of a disinterested third party to hear appeals. We are also open to the concept of Commission and/or Enforcement oversight.

Sincerely,

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2010 Study Committee

SB 181, Chapter 248:2, Laws of 2010

Meeting Report

TO: Members of the Committee

FROM: Shannon Whitehead, *Legislative Aide*

RE: Meeting report on **SB 181, Chapter 248:2 Laws of 2010** –*Committee to study the administrative structure and adjudicative process at the Liquor Commission*

MEETING DATE: August 23, 2010: Time: 1pm Where: SH 100

Committee members Present: Senator D’Allesandro, Senator Hassan, Rep. Butler, Rep. Kidder, and Rep. Shurtleff.

Committee members Absent: All members were present.

Others Present: (from sign in sheet) Commissioner Earl Sweeney (Liquor Commission) Commissioner Joseph Mollica (Liquor Commission) David Cahill (NH Chiefs of Police)

Spoke: Commissioner Earl Sweeney, Commissioner Joseph Mollica, Chief Eddie Edwards

Handouts:

- NH State Liquor: Overview by Commissioners Earl Sweeney/ Joe Mollica
- NH State Liquor Strategic Plan FY 2011 and onward (DRAFT)
- Pre-view of Liquor store appearance
- Uniform samples

Regular Meeting: Senator D’Allesandro opened the meeting at 1pm.

Commissioner Sweeney: presentation overview

NH is a controlled state. 18 states and one country in the U.S and distribution of alcohol at with regulatory agencies.

- The commission enters its 77th year. The legislature put considerable thought behind the legislation that organized the commission. It achieved the proper balance between profitability and control. It established 3 commissioners.

- Alcohol is a unique commodity. There are evils associated with immoderate use of alcohol. The production and sale of alcohol is a highly competitive industry and can be susceptible to corruption and improper political interference.
- The purpose of a controlled state is to optimize profit from the sale of alcohol while minimizing the ill effects to society. Some states restrict the sale of wine and spirits to state stores. NH and 3 other states allow wine to be sold at both state stores and private retail outlets. Some states control only the sale of spirits and some control at the wholesale of level only

NH as a success story: NH is the envy of the other control states, both in terms of the amount of revenue and it returns to the General Fund and in terms of its system of enforcement and the resultant effect on New Hampshire's quality of living measures, such as the rates of alcoholism, alcohol-involved crimes and traffic crashes, teenage involvement with alcohol, and public health.

- It is not to maximize profits but to optimize profits.
- Some secrets to the success is the controlling the number of outlets and the house of sale to avoid the problems experienced in some other states and in Europe, some Canadian provinces and New Zealand with an over saturation of outlets and availability of spirits on the street at all hours. Emphasizing enforcement of upfront licensing requirements and a strong educational component.

The future holds great potential: The commission is on track to deliver a billion dollars in net profit to the General Fund over the next 8 years.

Fiscal Year 2010- a banner year! Sales topped the half billion dollar mark for the first time, with \$ 511.4 million, a 4.8% increase over 2009, and well ahead of national growth trends.

- Spirits sales were up to 5%, wine
- Wine Sales 4.5%

*which came from a 6% increase in State Liquor and Wine outlet store sales, a 2.6% increase in grocery store wine sales and a 1% increase in restaurant sales.

Profitable picture: Gross profits increased by 10% over the prior year. Revenues from liquor and wine brought in \$2.9 million over plan. Revenues from beer have been relatively flat over the past several years and were \$100,000 over plan, or 1%

Net Profits increased by +10%: This represents a net profit of greater than 20% which would be the envy of any business. This kind of net profit is only achievable in a monopoly state where state stores are the major source for alcohol purchases.

Components of revenues:

- Retail wine and spirits sales at State Outlet Stores-71%
- Wholesale wine sales to grocery and convenience stores-17%
- On-Premise sales to restaurants-11%
- Miscellaneous (license fees, fines etc)-1%

The Broker System: Licensed Liquor Brokers are treated as the statutorily required “primary source” of alcohol and the commission procures its stocks from them. All stated mandate the separation of the production tier from retailing. Reasons for the broker system include efficiency (not having to deal with multiple suppliers) familiarity with federal requirements, product expertise and marketing assistance.

Producers vs. broker: Why the middle man? With Brokers we would deal with hundred of alcohol producers which required a larger staff than we can deal with. We need to maintain price perception.

The Distribution System: Spirits are retailed exclusively by state stores and restaurants are supplied from the two warehouses. Wine is sold at state stores, licensed grocery and drug stores and wine specialty shops who purchase their wines from the SLC. Beer is sold at licensed on and off premise retailers and taxed by the gallon.

State liquor stores: SLC maintains a chain of 76 stores and wine outlets located throughout the state, plus 3 agency stores in remote areas—Errol, Pittsburg and Greenville. 11 of the stores are in state owned buildings, 65 are in leased premises. Most of the states store’s population is situated 10 miles from an outlet and most are located in the communities that are the dominant shopping locations for the given area.

Licensees: On premise (restaurants) 2,799 (there are no bars in NH) about \$52 million annual revenue. Off premise (beer and wine) 1,306 about \$95 million in annual revenue.

Organization of the commission: 3 Commissioners. 3 Division Directors (Administration, Marketing and Enforcement). The law requiring Directors to be unclassified has never been implemented because the Hay Study recommended salary levels that would exceed those of their bosses, the commissioners.

Staffing picture: There are 218 full time and 400 part time employees. Vacancies remaining unfilled due to requirement to increase net profit by \$10 million if the warehouse/store/HQ complex is not sold. Selling complex, 300,000 if leased property. In this economy would we get that kind of money

Oont 93 n and s bond stores. Appraisal of concred property alternative. Ont 95 n and s. DOT too much on the plate expeditiously.
Test waters and see what can bring in.

Developments in employees’ relations: Formation of a joint labor/management committee with the SEA. Development and initiation of an employee questionnaire to determine the state of morale and solicit suggestions for more efficient and effective operational practices.

Where the non retail revenues come from: total about \$ 5.8 million

- Sweepstakes sales (5% of gross)
- Direct Shipping permits (9% of other revenues)
- Warehouse bailment (27% of other revenues)

- Liquor License fees (49% of other revenues)
- Administrative fine (3% of other revenues)
- Miscellaneous (3% of other revenues)

Where the retail sales come from: State stores account for approximately 60% of off premise wine sales. At restaurants wine accounts for about 38% of sales, spirits 62%

Sales by outlet store location: the top 15 stores account for 45% of sales the remaining 61 stores account for 55%. The I-95 Northbound store sells over \$28 million in product. None of the top 15 stores sells less than approximately \$7 million annually.

Where the retail customers come from:

- New Hampshire-50%
- Massachusetts-21%
- Maine-8%
- Connecticut-5%
- Vermont-4%
- New York-4%
- Rhode Island-3%
- Other states and Canada-5%

Successful Strategies:

- Debit and credit cards sales
- Gift cards
- Monthly feature 10% and 15% off sales
- Sales of accessories
- “Branding” of the outlet store concept
- Modernization and updating of stores-Manchester # 33, Merrimack, Lebanon

The image we are promoting:

- Best prices in the region (perceived value)
- Wide Selection
- Never a tax
- a pleasant, safe shopping experience
- For example, in September there is a promo on Italian wine sales.
- Image is to promote, we need a perceived value.
- We are also trying to educate our customers. For example, know your tax.

Enforcement: The legislature has repeatedly changed course on where enforcement should be situated. Rumors abound regarding investigators in SWAT uniforms. The commission has recently promulgated more definitive policies on investigator attire and exercise of enforcement authority.

- The commission is giving “them” an expanded role in loss prevention. We regard enforcement as “individual security for commission operators.
- The primary function of enforcement, education and licensing belong with the commission not with another state agency.

- Changes like this should not be based on the popularity or lack thereof of individuals, but on system considerations.
- Local law enforcement and license support the Division of Enforcement remaining where it is.

To ensure fairness in hearings: Very few hearings are held—most licensees agree to negotiated dispositions. Commission rules control the range of sanctions that the commission may impose. There is no reason the Commission is any less able to conduct fair hearings on its rules than the Insurance Commission, the Department of Safety or other state and federal agencies.

Does the Commission need an Ombudsman?

The 3 Commissioner should be ensuring maintenance of high ethical standards, customer relations and fair hearings. A Deputy Commissioner position would only be needed if a CEO system replaced the 3 Commissioner system.

How to ensure fairness in hearings: There are very few hearings within. Most regulators conduct the rules.

Statutory changes if enforcement transfers to safety 7/1/10: At least 27 current statutory references would have to be deleted, amended or added in order for the transfer to be successfully implemented.

A CAUTION! The state should be extremely careful about falling prey to various siren songs regarding the short-term money to plug temporary General Fund budget gaps by Sale of valuable SLC assets and various privatization schemes. What happened in neighboring Maine should serve as a horrible example and warning sign for New Hampshire.

Overview of the Strategic plan:

- Policy and procedure development
- Legislative initiatives
- Advertising, marketing and merchandising
- Employee relations, selection and training
- Management of liquor and wine outlet stores
- Management of real estate
- Reduction of energy costs
- Loss prevention, safety and security
- Streamlining of procedures for cost reduction
- Data processing improvements

*For further information on the above overview, please refer to the hand-out from Commissioner Sweeney: NH State Liquor Commission Strategic plan FY 2011 and onward DRAFT: Policy and procedure development

Commissioner Malicka: We want to update and revitalize our chain of stores; they are as many as 15-18 years old. There are lots of areas of improvements for additional sales.

What we have in place is working. In a very short period of time the continued profits are there. We take it seriously with education and enforcement. The system works.

Senator D'Allesandro to Commissioner Sweeney: Bailment is a storage fee for the storage of alcohol- they pay to keep product in stock. Simple relief distribution system. It provides in adequate supply and doesn't have stock outs. There is a fee for that is specific, a case charge. Bailment increases the longer that it is on-sold. There is Inventory cost: labeling charges, transportation charge.

Senator Hassan asked how many bailments there were and Commissioner Sweeney answered 2. Storre Street in Concord and Nashua which are on contracts and operating with the extension now.

There is \$5 million out of the Nashua. Senator D'Allesandro stated that this had been an issue that has been discussed; do we do more or less?

Senator D'Allesandro asked about the refurbishing of the stores. There is an upgrade in order to keep products viable. What about square footage cost? We pay less than market rates, the owners of the plazas work with us. We do play more than some locations today. We do get added value.

Senator D'Allesandro is looking at modernization control, to keep the control looking for revenues. There is a committee that is looking into that.

Rep. Butler asked what is relative to the Commissioner's job, besides oversight responsibility. Commissioner Sweeney stated to provide the stores with visiting, oversight enforcement, Commission meetings, issuance licenses, plea bargains. It is generally a lot of work. There is certainly enough work.

Senator D'Allesandro talked about the State of Pennsylvania having 1.3 billion many more outlets. The Senator continued to say that the State of Pennsylvania looks up to us that even although we are a smaller state that we are better off. Marketing in sales, management in and out, IT work and inventory, we have become a long way. This was a cash business until the seventies.

Senator D'Allesandro asked Commissioner Sweeney about enforcement: The Commissioner stated that there are going to be complaints out there no matter what. We do not go out looking for trouble. When resolving issues especially when individuals are leaving the establishments such as: urinating, DUI etc When these situations arise typically we will contact the manager of the establishments and ask them to clean up the operation and provide them with assistance We are looking at the image they project. We have a premise check. With local option-complaints, we try to work with them-we have an obligation.

Rep. Butler Stated he was a license holder in the North Country. There have been complaints have lessened, but some behavior is threatening. How is enforcement perceived? And how is relationship established with restaurant and bars? Commissioner Sweeney stated that it is better, not just the places that are dangerous, but with general local establishments and serving the issue. Commissioner Sweeney continued stated that the commission is aware of the perception and are sensitive to it.

Rep. Shurtleff asked about facing the possibility of a higher fine (\$250 for a violation) and then accumulating a certain number of points. Chief Edwards responded with the typical citation process. Licensing Code 200 is in the RSA 178-179.

Rep. Kidder: Stated that the process with Chief Edwards is professional. The enforcement is educational based. The Communication between licenses and enforcement agency establishment has come a long way.

Rep. Butler asked about the consumer licensee and from their perspective. Response from Commissioner Mollica. The business field, you need to understand the pros and cons of the field. One should be involved in licensing, one in enforcement and one in business/running a large chain of stores. If someone has concerns we respond.

Commissioner Sweeney added that most other state agencies have somebody there that fulfills a role. Not sure we need to spend another 150 grand in salaries and benefits. Rep Butler added the he didn't want departments to be personality driven.

Senator Hassan asked about the backgrounds of appointees: What is the obligation from the commissioners to the commission and if an Ombudsman is based could it be interference? Scared to be retaliated, with out fearing reprisal, a very particular role. The Liquor Commission is small in a small state, the best intended person can be perceived as bias.

In closing:

Rep. Kidder suggested to the committee to see the warehouse.

Senator D'Allesandro would also like to visit the warehouse and the current situation where the activities take place, as well as seeing a new store. Retain in retro fit it. The re is more money retaining it.

Senator D'Allesandro would like to look more into the Licensing and Enforcement of the process, as they are intertwined.

Rep. Butler suggested that the committee needs to sit down, timeline appropriation, or transfers.

Senator D'Allesandro asked what happened with the Executive Director who was appointed from the 1970's and how was that affected to this commission?

This matter came to the Governor and Council. This subject will be talked about in future meeting.

Clark Corson will be added into the list of presenters in the September 7th meeting on how beer is distributed, what takes place and with commission.

Senator D'Allesandro would also like to look at local products how they are placed within state. Statutes that governed and how they are featured in the store.

Senator D'Allesandro talked about the State of Maine and how they moved a semi privatization and try to renegotiate. We are looked upon as a good operation and a good relationship.

Rep. Butler would like Maine to come and talk to us about their experience. Senator D'Allesandro said yes and would contact them to present to the committee.

Hearing closed at 2:45pm

Next Meeting date and outline of the next presentation:

Clark Corson Representative (Beverage Distributors of New Hampshire Inc) Mike Somers (Restaurant/Lodging Association) and Alex Ray, Jon Dumais (NH Grocer's Association) Representative Mary Beth Walz, Chief David Cahill (NH Chiefs of Police) Joe La Rocca (NH Wine and Spirit Broker Association)

Future meeting dates:

September 7, 12-3pm SH Room 100

sgw 8-23-10

**NH State Liquor Commission
Strategic Plan
FY 2011 and Onward**

Goals, Objectives, Means and Measures***Policy and Procedure Development***

To adopt a system and protocols for the adoption and approval of formal written policies by the Commission and its Divisions, and to provide for the availability of those policies online at the Commission's intranet site and hard copies in binders for archival purposes.

To identify areas of the Commission's operations and practices that require additional controls through formal written policies, prepare those policies and check them with the Attorney General's Office and/or the State Ethics Commission, as applicable. This will include policies on the receipt and disposal of alcohol samples from brokers, wine tastings and business meetings with brokers.

To review and update policies of the Enforcement Division to align with national law enforcement accreditation standards, and to review appropriate standards of attire for Liquor Investigators when performing various tasks, and restrictions on involvement of Enforcement personnel in the enforcement of any laws outside Title XIII of the Revised Statutes Annotated.

To adopt a formal written policy regarding the involvement of the Commission in enforcement activities, including ensuring that there are no ex parte communications between Commissioners and Enforcement personnel regarding matters likely to come before the Commissioners for a hearing, and regarding conflict of interest and recusals.

Legislative Initiatives

To introduce legislation requiring that candidates for appointment as Liquor Commissioners pass a formal background investigation.

To introduce legislation requiring applicants to permit the Commission to check criminal history records, and to check driver history records with regard to any alcohol-involved driving offenses, and authorizing the Commission to develop standards for when these records would affect employability, depending on the position applied for and other relevant criteria.

To support legislation that would provide for dedicating a certain percent of net profit each year to the modernization and updating of Outlet Stores.

To determine the legal and labor issues and therefore the feasibility of repealing current statutory provisions that require payment of time and one-half to employees working in

Outlet Stores on Sunday in circumstances where they are not exceeding 40 hours in that week.

To introduce legislation to simplify the licensing process by more utilization of the concept of combination licenses.

To resolve the outstanding issue regarding compensation of the 3 unclassified Directors' positions and ensure a proper spread in salaries between these individuals and their highest paid subordinates and between Commissioners and Directors.

To amend the current statute limiting the delivery of samples to licensees to include similar restrictions regarding submission of samples of new products to the Commission and proper disposal of samples of products when listed and when not listed.

Advertising, Marketing and Merchandising Strategies and Initiatives

To continue to aggressively market our New Hampshire Liquor and Wine Outlet brand in neighboring states with emphasis on value, selection, never a tax, and a pleasant, safe shopping experience.

To ensure that the perception of potential consumers is that New Hampshire state liquor stores are equally as competitive on wine prices vs. out of state stores as they are on spirits prices. To ensure this through collaboration with brokers to obtain the best prices on well known and popular items and to experiment with reducing gross profit requirements in order to increase sales volume and thereby net profit.

To focus on known value items (national brands, high velocity brands, and mid-level products) with pilot programs to ensure a favorable "everyday low price" perception and competitive position vis-à-vis neighboring states and through trial and error determine how much net profit can be increased through greater volume by reducing gross profit requirements on selected items.

To capitalize on price differences with competing states by aggressively promoting a "know your tax" advertising strategy that educates customers that the bottom line advertised price for a given product in their state does not take into consideration the 5% to 6.25% sales tax in that state.

To modify our existing Verifone point of sale cash register systems to facilitate the voluntary acquisition of customer email addresses to supplement the 30,000 that we now have, that enable the Commission to provide coupons, information about current bargains and other incentives to do business with us, and to target our or advertising strategies the most cost-effectively

To modify our email signup to include interest categories (skiing, camping, NASCAR, etc.) so that we can selectively market to these groups at key times.

To develop a rest area advertising presence at all major rest areas and particularly at I-95 in Seabrook.

To broaden our interaction with NH's Lottery Commission, Travel and Tourism, Fish and Game, and NH-made products, to leverage our collective advertising dollars in joint promotions at our high-volume highway locations.

To partner with the major Lakes Region, North Country and Monadnock area attractions during the summer months with the distribution of advertising materials and value coupons.

To refine our advertising strategies by measures such as marketing to tour groups, travel agents, travel website owners and tour bus travelers; inclusion in our advertising efforts of Central Vermont and coastal (Down East high-end second homes) areas as well as Central Maine areas that shop in our Eastern border stores (Conway, Gorham, Rochester, Somersworth, Dover, etc.).

To increase awareness at our State-run campgrounds by offering campers store information and coupons at check-in time or at the time of confirmation of their online reservations.

To expand ski area programs to distribute information on our Outlet Stores and increase awareness.

To expand advertising and participation with high volume tourist attractions including State fairs, the NH Motor Speedway, and unique opportunities such as boat shows, home shows (specifically kitchen-oriented ones) and other events that attract consumers that own high-end products.

To promote the convenience and time-saving (and increase incremental sales) to consumers ordering online for in-store product pickup.

To utilize electronic billboard advertising within Border States to increase awareness of the value and selection offered at our Outlets Stores and their locations.

To develop and execute a one-time use customer discount card to distribute to customers based on the dollar amount of their purchase during non-peak business periods, thus providing a New Hampshire advantage in areas where our out-of-state competition is inactive, and giving us the flexibility to use with specific product categories or our entire assortment.

To conduct a pilot program of renting a temporary location near the Massachusetts border each year for an annual "blow-out" sale to rid the inventory at stores and the warehouses of slow-moving items, providing a quick infusion of cash, reducing the in-store inventory carrying costs and reducing bailment costs to the brokers thereby enabling them to pass

along some of these savings to SLC and ultimately the customers in the form of lower pricing.

Employee Relations, Selection and Training

To distribute an employee opinion survey to all SLC employees, tally the results to determine the state of employee morale, and adopt as part of the Strategic Plan those employee suggestions that are feasible and have merit.

To form a joint Labor Management Committee with the two labor unions with regularly scheduled meetings.

To provide store managers with additional input into the hiring process for new personnel and the promotional process for existing personnel by having managers complete a structured questionnaire regarding the applicant's perceived strengths and weaknesses, and if already an employee, their job performance and initiative to date.

To increase the amount and quality of initial and ongoing training given to Commission employees with particular emphasis on low frequency, high risk areas, through the use of personal presentations and the "Moodle" system of computer-based training. Such training to include but not be limited to ethical issues, sexual harassment policy, cultural diversity, computer skills, safety and injury prevention, customer service and sales techniques.

To increase the knowledge base of store employees in the sale of wines and spirits, product and food pairings and up-selling techniques, through face to face and online training courses.

To provide formal employee succession planning to cope with the possibility of knowledge drain as an aging work force retires.

To finish the continuity of operations plan with the assistance of the Department of Safety's Division of Homeland Security and Emergency Management.

Management of Liquor and Wine Outlet Stores

To identify those stores where operating expenses exceed 8% of sales, and develop action plans to bring those operating expenses into line.

To develop a formal, multi-part inspection sheet for area managers and headquarters store management personnel to use when visiting liquor stores, with one copy to be left with the store manager, one for the area manager, and one for the Commission's files. Special attention should be paid to areas of cleanliness, cluttering and crowding, minimal amount of empty boxes at the front of the store for packing large orders, clutter at checkout counters, tripping hazards from bottles protruding from shelving units, and disorganization and lack of security in back rooms. The immediate prior report to be

referenced when making the next inspection, to determine if areas of concern have been rectified.

To investigate the cost and possibility of changing the delivery schedule of product to the liquor stores, and the feasibility of arranging for off-hours deliveries to some stores and a seven-day delivery schedule at our highest volume stores in the 2012 transportation contract. This will guard against out-of-stock situations and ensure that receipt of deliveries does not adversely impact customer wait time at the registers.

To prepare an RFP for the current warehousing and transportation contract that expires in 2012, constructing the RFP in such a way as to enable bidders to bid separately and in combination on warehousing and transportation, to enable bidding based both on the State continuing to maintain a warehouse and farming out all warehousing operations (to assist in decision making regarding the feasibility of continuing to maintain or expand the State-operated warehouse) and to provide that bidders must submit a continuity of operations plan to minimize the potential effects of the single point of failure that currently exists.

To reduce the currently high number of SKU's in low-volume stores by careful study of customer buying habits and promoting on-line ordering and the concept of exchange of inventory among stores.

To ensure that all stores are adhering to the concept of "value ladder" shelving where the highest priced items are on the top shelf and prices decline systematically toward the bottom shelves.

To expand special ordering capabilities for hard-to-find wines and spirits.

To work with the NH Sweepstakes Commission to reduce and streamline the paperwork involved with sweepstakes sales at liquor stores.

To modernize store shelving in all stores to include more accessible and practical wine racks and spirits shelving that is easier to stock, holds larger quantities and provides more facings.

To study wine selections to ensure that New Hampshire is noted for the widest selection in New England and yet does not carry so many brands that popular brands are crowded out of shelf space.

To enhance SKU optimization through conducting quarterly reviews of individual tock-keeping units' performance, removing from sale or relegating to special order basis those SKU items that do not produce an acceptable amount of gross profit, and adding selectively accessory items such as mixers and wine glasses.

To conduct customer surveys and survey store managers and personnel to determine the optimal opening and closing hours for each store and wherever it is cost-effective to

adjust those hours and with consideration to both sales enhancement and quality of life issues, to make those adjustments.

To program in-store computer systems to capture sales refusals to determine the rates at which customers are being refused for being under-age or intoxicated, as a quality control measure.

To analyze the feasibility of employing one or more full-time "floaters" to reduce costs of coverage for annual and sick leave in selected stores.

Real Estate Management

To proceed expeditiously with plans for maintaining operations while rebuilding or demolishing and building new Outlet Stores on I-93 north and south in Hooksett to coincide with DOT's issuance of ground leases for commercial development at those locations, so as to coincide the two efforts to minimize interruption to the traveling public and hasten the prospect of increased sales through increasing the sales space at those two locations.

To identify any environmental and other issues that might affect the development of the SLC-owned real estate adjacent to the I-95 northbound and southbound stores and if this feasibility study is favorable, to issue an RFP for a ground lease for commercial development at those locations to provide a one-time and ongoing infusion of cash to the General Fund.

To explore the possibility of providing a small "duty-free" type Outlet Store within the terminal at the Manchester/Boston Regional Airport.

To proceed as expeditiously as possible with plans to improve retail stores #2 in Chesterfield, #69 on Coliseum Avenue in Nashua, #21 in Peterborough, and #41 in Seabrook.

To develop and annually update a profile of each liquor store in the system, to include whether leased or owned, amount of lease payments, lease expiration date, number of full and part-time personnel assigned, annual sales, sales by month, operating costs as a percentage of sales, population served, hours of operation, condition of the building, accessibility for deliveries, space needs for the storage of product, leasehold improvements needed, other deficiencies and needs, and opportunities to relocate or consolidate, and make changes accordingly.

To use the above information to produce and annually update a prioritized list of stores in need of modernization and updating, based on the capabilities of in-house maintenance personnel and the availability and affordability of outside contractors, and provide in the biennial budget requests for the appropriation of a fixed percentage of each year's total revenues for the updating and/or relocation of stores based on need, years elapsed since the last update, and strategic location of the stores.

To select one or two stores near the border to develop and promote an image as “Super Stores” and evaluate the impact on sales.

To improve retail store highway signage with the assistance of the NHDOT as outlined in HB-2.

To develop a long-term strategy to address space requirements at headquarters including greater privacy for persons handling confidential matter such as employee relations, and more efficient work flows by grouping like functions together.

To obtain an independent valuation appraisal of the headquarters/warehouse and Store #1 complex in Concord and determine the whether it is economically feasible to sell or lease this property and relocate through the purchase or lease of other properties in the Concord area.

Strategies for Reduction of Energy Costs

To expand our current “green initiative” by acquiring additional energy-efficient lighting (LED interior lighting and exterior signage), eco-friendly paint and low-flow bathroom fixtures at more locations and installing energy-producing measures (photovoltaic, solar and wind driven power generation) at our two coastal I-95 Hampton stores.

To review and update policies on the Commission’s fleet, including types of vehicles purchased, phasing of replacement vehicles, use of synthetic oil and prolonged oil change intervals, training of employees in fuel-saving methods of vehicle operation, use of spare vehicles to avoid payment of mileage, and assignment of vehicles to individuals.

To implement a “receipt-less” option on our point of sale registers for our customers, many of whom refuse the receipt, thus saving paper and time.

Loss Prevention, Safety and Security

To determine the cost of staffing stores in a manner that ensures that a lone employee is never on duty in a liquor store, develop the most cost-effective means of doing this through creative scheduling where possible, and develop a prioritized list for addressing those stores in a phased manner in future budget requests.

To determine the cost and feasibility of providing armored car service to the liquor stores for bank deposits, prioritize those stores where the need is most critical, and address the need in a phased manner in future budget requests.

To develop a phased plan and budget for updating video monitoring equipment in stores where the equipment is missing or obsolete, with emphasis on web-based monitoring systems wherever feasible.

To provide additional training to members of the Enforcement Division in issues of industrial security, establish a departmental Security and Safety Committee, and increase the emphasis and involvement of the Enforcement Division in such issues as detection and investigation of shoplifting, employee fraud, breakage and industrial safety, with the Enforcement Division taking the lead as the Commission's industrial security arm.

To develop and implement a formal shoplifting prevention and detection program, starting with the highest-risk stores.

To analyze the cost to benefit ratio of using RFID bottle tags and door monitors for our high shoplifting border area stores.

To team Internal Audit with Enforcement and analyze the potential for employee theft and fraud, possible systemic weaknesses that would enable employee theft and fraud, and establish integrity testing and targeted surveillance methods to detect and deter theft and fraud.

To review storage space needs at liquor stores and determine means to ensure that product is not stored in such a manner that boxes are likely to tip over and cause injuries or breakage.

To review wine displays in the various stores and develop methods of display and storage of wines that are more attractive to customers and conducive to ease and safety of refilling by employees.

To review the store safety manual and procedures and the work of the Safety Committee in an effort to reduce or eliminate worker's compensation claims.

Procedure Streamlining and Cost Reduction Measures

To obtain the assistance of other State agencies experienced in the process (e.g. Health and Human Services, Safety, etc.) to train a cadre of SLC employees in the LEAN process improvement methodology, and institute at SLC.

To design and implement acceptable electronic versions of mileage statements, vehicle usage statements, fuel logs, and employee appraisals to streamline these processes and save time and materials, including the use of a personal computer screen as a display tool during the annual employee appraisal/discussion meeting.

To develop an agency-wide "customer first" policy where our customers needs (retail customers and wholesale "licensee" customers coming to our stores, offices and warehouse, and our internal customers -our store employees - are given the utmost priority, including solidification and expansion and support of our Customer Service Interaction program, reduced/combined emails to our stores, shipment of rollouts and new items on non-high volume load days, job exchanges which allow store employees to

spend a day as secret shoppers at other store locations, facilitation of more effective meetings and interactions between all departments and store personnel.

Data Processing Strategies

To develop statewide compatible systems to digitize information and increase operational efficiencies while dramatically reducing the number of paper documents and physical space devoted to archival storage requirements.

To replace the existing MAPPER and point-of-sale systems with a more modern and user-friendly system.

To streamline the inventory system through the procurement of additional next-generation Dolphin devices.

To implement an agency-wide Voice over Internet Protocol (VOIP) telephone system with attendant savings of toll call expenses.

To finish development of a new online licensee ordering system and a web-based customer ordering system.

To provide adequate bandwidth and development efforts to facilitate web-based training for Commission employees using the "Moodle" system and to enable streaming video from store security cameras to headquarters.

To deploy a system of electronic shelf labels for products to save time and labor costs in making frequent product price changes because of monthly sales, etc.

To evaluate the cost to benefit of providing laptop computers with remote access for the 10 store Supervisor/Managers to allow immediate entry of the results of their store visits (maintenance needs, store issues, etc.) and facilitate communication from headquarters when they are visiting their assigned stores.

To provide electricity generation capability in case of power outages in our busiest stores, perhaps through acquiring a single, large portable generation that could be quickly deployed to a location where a protracted power outage is in progress.

2010 Study Committee

SB 181, Chapter 248:2, Laws of 2010

Meeting Report

TO: Members of the Committee

FROM: Shannon Whitehead, *Legislative Aide*

RE: Meeting report on **SB 181, Chapter 248:2 Laws of 2010** –*Committee to study the administrative structure and adjudicative process at the Liquor Commission*

MEETING DATE: September 7, 2010 **Time:** 12 Noon **Where:** SH 100

Committee members Present: Senator D’Allesandro, Senator Hassan, Senator Bradley, Rep. Butler, Rep. Kidder, and Rep. Shurtleff.

Committee members Absent: All members were present.

Regular Meeting: Small presentations scheduled

Senator D’Allesandro opened the meeting at 11: 57 am.

Clark Corson: NH Beverage Association

- Beer is assessed in all states in a gallon basis. 31 gallons in a barrel. A barrel today is 15 half gallons.

.36 cents a gallon tax (Maine)

.10 (11) (Massachusetts)

.30 (New Hampshire)
- Cross border sales. It is essential that the State of NH, to never consider tax on beer... especially with the economic ramifications.
- Reverse distribution cost is deadly. We are a tourist state. Sold to non residents.
- 68 % all beer sold in a 10 mile radius and from our bordering states. Beer tax increase in 1976, 18 cents to 33 cents.
- “The Bottle Bill.” 29 attempts to enact a bottle bill. Every chair has been a co-sponsor to the “Bottle bill.”

- Why do we sell so much beer? We have reached a saturation point. 42 gallons of beer are sold to every person over 21. Sales per capita of beer are the highest in the nation. State of Montana the largest 4th in size over 800,000 people. Then Nevada. NH enjoys the distinctions.
- NH is the number one in sales with distilled spirit and 2nd to the District of Columbia and generally a tourist state.
- 1983 bottle bill came effective. Feb 15th increased 18 percent. At 30 cents a gallon and leveled off to 13 percent.
- Commission has 3 Auditors. Premise accounts, coming out of state and coming in. and off premise. Those three audits (monthly basis) 69-90 brewers supply brewers and/or importers. 10 million a year, distributors.
- Beer is a perishable product to be sold in 120 days. (Refer to chapter 180, Territory and Franchise).
- 230,000 work for distributors in NH alone. There are about 700 trucks. Operates quasi independent. We are judges and competent. Beer exercise taxes, limited credit laws, a complex industry. NH can be proud of its laws. With licensing and enforcement. 70 and 90 different suppliers to distribute to this state.
- A net contribution. How important is beer? People come to NH to drink beer. When tobacco is increased, they come here for beer. The State of the State we have created for ourselves.
- Counterpart Ralph Pears fro the State of Maine: Sent Clark Corson an email responding to Maine's experience moving alcohol beverage enforcement and licensing its version of Department of Safety. (Letter from Mr. Pears read by Clark Corson handed in to committee members)
- Rep. Butler asked about the bottle bill, reverse distribution and what the cost is with bottle bill? Clark Corson responded that he didn't know, an opportunity that Delaware receded. That might be something that John Dumais may know.

Mike Somers and Alex Ray: NH Lodging and Restaurant Association

- NHLRA is opposed to the pending transfer of Liquor Enforcement to the Department of Safety and encourages this committee to act on legislation that would repeal the move. We feel that enforcement should remain at the Liquor Commission, but feel there needs to be some checks and balances added to the system.
- The industry is very concerned that should Liquor Enforcement be allowed to move to the Department of Safety a change in mission would take place.

- Currently, the mission of the enforcement division is to keep licensees open for business in a safe and responsible manner through appropriate checks and regular training seminars. The industry worries that within the Department of Safety a less business friendly culture would develop- one where success could be measured by the number of violations.
- There is a different mind set with the Liquor Commission, not just pro business. We want licensing, safety and responsibility, which is what NH, is about. Department of Safety issues most violations (concern of livelihood).
- The Liquor Commission has been responsive. The Association and the board of directors would like to see it with 3 Commissioners. There needs to be a breaking up, there is a lot to handle.
- Historically the Commission always functioned best when there were three commissioners in place that were engaged and active. The issues that have risen seem to stem from a breakdown in the commissioners structure.
- Does it make sense to have criteria for Liquor Commission candidates? This would determine the allocation of responsibilities and strengthen the Commission. The most likely breakdown would be a commissioner with a background in Sales and Marketing, a commissioner with a business background with some experience in the licensed community and a commissioner with experience in regulatory oversight.
- With a 6 year terms staggered by 2 years it allows for an institutional memory that ensures a smooth transition and continuity from one administration to the next. The Liquor Commission is too important of a revenue source for the state to risk turmoil and upheaval that could rise during the transition from one Executive Director to another. A single Executive Director who would hear appeals could well lead to personality conflicts between a licensee and the Director- with only recourse currently being an appeal to the courts; this would be an exorbitantly expensive option for licensees.
- Potentially with Liquor Enforcement, it would be overwhelming to just one individual. The revenue stream is very valuable. Looking at the adjudicatory issue and personality issue, we should look at refreshing the independent appeals process and consider a panel.
- There is clearly a need for an independent third party to hear panels. The industry has long felt that the deck is always stacked against you- with the Commissioners and the Chief of Enforcement being on one of a hearing and the licensees on the other. A third party appeals process would eliminate any perceived conflicts of interest. We support the idea of an ombudsman provided the function of that position is to hear appeals as an impartial third party and appointed by someone outside the Liquor Commission.
- In 2009 the NHLRA worked with the Liquor Commission to adjust the standard uniform for Liquor Enforcement officers to one of a business casual uniform.

- Alex Ray stated that he was proud of the Liquor Commission on purchasing to retail, and enforcement. It is clean and not too commercial. For Economic aide it is 150 million to our state. Mr. Ray added that he was opposed to movement with enforcement to the Department of Safety. What we have in place now is fair and transparent, public, with on-site professionalism, quality and education.
- There is a fear in moving on to the “other side.” ~Mr. Ray stated the he just doesn’t see the kind of culture with Department of Safety. Culturally civil. Its legal forces, with too much of the forces.
- NH way of living may be threatened with its way of living. Maybe looking at a private public sector or maybe to consider another body for an appeal process as Mike Somers stated.
- Rep. Kidder asked Mr. Somers his thoughts over the last 10- 15 years from the enforcement which has gone from an intimidation type to an education part. Mr. Somers said yes, but with cycles up and down. There has been a shift of culture and licensees of education and operating responsibly. Keeping licensed places open.
- Senator D’Allesandro asked about the appeal board suggestions to Mike Somers. How would we operate outside the venue to be responsible in a positive fashion where we wouldn’t get a lot of pressure? The response was that the member would be appointed independently or by Governor.
- Mr. Ray added the example of how the Department of Environmental Science operates. It is not enforcement enforcing enforcement~ it’s a wider breath in the field, it is the knowledgeable and not embedded.
- Senator Hassan stated to Mike Somers, when everyone is in charge no one is in charge. A concern is that with an organization, it’s not clear where the accountability rests. Mike Somers responded that there should be criteria for the three commissioners. A regulatory back ground, sales and marketing, a licensing community. A model to define each commissioner.
- Rep. Butler stated that Mike Somers mentioned “cycles” of a better relationship with the commission on enforcement. Rep. Butlers put out that question of, are there ways that can be less personality driven and better managed so the “cycles” don’t happen as often?
- Alex Ray stated that enforcement has been pretty consistent. The operation has become more of a business relationship. With either party, it has worked well keeping things local.
- Alex Ray and Mike Somers wanted to recognize the hard work for our current commissioners- Mollica and Sweeney, they have done an excellent job of stepping up to the plate and keeping the commission on track this year.

John Dumais: NH Grocers Association.

- The Grocers Association was established in 1933, after probation ended specifically to give grocers a voice on alcoholic beverage issues. We have a proud heritage of working along with the Liquor Commission ever since. Through the years we have worked with the Commission and the Legislature to develop open licensing; the expansion into table wines, fortified and desert wines, During this time, those who have represented the association have always provided frank and accurate information to the Commission and Legislature.
- Careful analysis carefully shows that the area with the greatest level of achievement has been in the Enforcement Division~ particularly under the administration of Chief Edwards, enforcement transparency has been substantially increased. In addition, the lines of communication and understanding have been significantly enhanced. Today the Enforcement Division is not perfect, but than again neither are licensees always 100% correct? Nevertheless with ongoing educational programs, grocers presently have a 93% compliance rate in not selling to underage or intoxicated individuals.
- Today the NHGA greatest concerns remain with the rest of the Liquor Commission and the Legislature. We are frustrated in our attempt to expand the agency stores concept. The Commission has always had the authority and in fact, in the past approved three food stores to sell spirits. However these were only located in very remote areas where the Liquor Commission never wanted to operate. The benefit to the retailer? A mere restricted 8% gross profit on spirit sales while they were averaging 20% on wines and over 25% on beer products. That controlled 8% is very minimal when you understand that their 'breakeven point' is about 18 to 20%.
- When we saw the state was going to be facing short falls in 2009, we offered several reasonable alternatives to increased business and commodity taxes. Because our state is so heavily dependent on cross border and tourism sales we understood the consequences greater taxes can bring-and have.
- As a replacement we offered a system to expand convenience and selection of spirit sales to these transient customers (which make up over 45% of our total sales) Instead the legislature with the collaboration of the Liquor Commission took the 15 highest volume off-premise licensees and increased their wholesale prices on wine 5% more than all other retailers. Why do this? At the time retailers were selling 51% of all wines in the state and state stores accounted for 49%. Today we predicted back then; these larger retailers would loose the incentive to feature more sales. The results as Commissioner Sweeney recently testified was that the state stores now account for 60% of those sales while food stores are only at 40%. Has it resulted in more bottles being sold? not really. All that has happened is that the reputation of all foods stores, large and small, has been tarnished just to make state stores look better.
- The outcome of the 2009 legislature was a bill that modernized the Liquor Commission. Part was to completely change and restrict the Commission's authority to open agency

stores. It restricted the commission to opening only 8 more agency stores in 2 years and then complicated this process to the point where nothing could happen. This past summer our organization has had several meetings with Governor Lynch. He is convinced that allowing the expansion of agency store is necessary for the continued growth of the Liquor Commission revenues. Our follow up meeting with the Commissioners provided to be just the opposite where, we were told they would not consider at all.

- The rhetoric was the same as we have heard before. They want to 'optimize than maximize' revenue. We agree. To maximize means to generate the most revenue possible with out consideration of the consequences. We believe optimization can be achieved by opening a few additional agency stores and monitoring their sales. It would prove that we can sell it responsibly; will not increase non compliance; would assist many smaller, "Mom and Pop" on premise licensees with easier access to inventory and would generate more sales for the state.
- Our association has stood ready for several years to assist the state with its revenue needs. Our membership has the resources of manpower, locations, tie promotional products and hours of operation unmatched by state stores. It never has been our intent to close any state stores, but rather substantially supplement their sales with a continued high level of competence and compliance.
- Mr. Dumais talked about the recourse of the repeal process. That is appropriate. Mr. Dumais stated that he liked the 3 commissioners and each of their own responsibility.

NH House of Representative, Mary Beth Walz

- Rep. Walz stated that for only chairing for one year, somebody came to her about enforcement and there were complaints. People were afraid to come forward at that time.
- On the issue of Enforcement staying at the Liquor Commission. It was being dealt with by Finance at one point. The House Local Regulated Revenue committee looked at this as a policy issue. Enforcement should stay with the Liquor Commission and with that maybe there needs to be some internal changes.
- When this issue came over to the issue- In the "House Blurb" the experience that the State of Maine went through was noted. The State of Maine and their transfer has resulted in inconsistent enforcement activity and discrepancies across jurisdiction. Maine Legislators are now working to undo the move by disentangling Liquor Enforcement from the Department of Safety and moving it back to the Bureau of Alcoholic Beverages.
- Rep. Walz stated that she will provide the committee with the record of correspondence from the State of Maine. Proving the Stakeholder's opinion regarding the transferring of enforcement to Department of Safety.

Chief David Cahill: President of NH Association of Chiefs of police

- The Association believes that the New Hampshire Liquor Commission should obtain authority and supervision of the Enforcement section not the Department of Safety.
- There is no proponent to the transfer in fact the Department of Safety has stayed neutral in the proceedings and there have been representatives who also are in support of the appeal to SB 181.
- Currently there is a director who is in charge of the Enforcement Bureau at NH Liquor. He is a member of the NH Chiefs and attends many of our meeting and conferences. The Director has worked his way from being an investigator to Sergeant, Lieutenant and now Director. He has changed the structure of the organization along with the philosophy of the Enforcement Bureau. The NH Liquor Commission Bureau of Enforcement is the leading education and training organization in the State of NH for Law Enforcement.
- There are approximately 23 underage alcohol task forces in New Hampshire that receive federal money disburse through the Office of the Liquor Commission Bureau of Enforcement and is a partner in almost everyone of those task force.
- I am the Project Director for the Sullivan County Underage Alcohol Task Force which runs out of the Sullivan County Sheriffs Office. Each time we conduct compliance check through out the county (102) at each licensee NH Liquor Enforcement is there working with us in the enforcement capacity More importantly when there is a licensee who presents a problem of public safety NH Liquor Enforcement provides resources for presentation to the employees on site providing education and training through the police agency
- New Hampshire Law Enforcement conducts many sobriety checkpoints across the State each year and the NH Liquor Enforcement is at every one of those supplying its resources from the van to the DRE, intoxilyzers and operators. Through the efforts of the Liquor Enforcement they have provided a wealth of training for these sobriety checkpoints as well as the hands on resources during the event.
- Wanted to point out that the NH Liquor Commissioner Bureau of Enforcement has a positive relationship with Local, State and County agencies across the State that any transfer or separation of this organization many not only slow the process of cooperation as stated above, but also have a negative impact to the quality of life to all citizens of NH.
- Chief Cahill added that the training, point system, repetitiveness that with out Liquor Enforcement we couldn't imagine handling it all. They supply their resources and knowledge.
- Example: There was a licensee (bar) in the Town of Sunapee. There was cocaine/drug abuse, fights, sex in public, etc. Chief Cahill stated that they had to put a detail police officer at the specific license location. Since then there have been no issues with the

efforts within the NH Liquor Commission, training, and security, there has been a 100 degree turnaround in the center.

- Rep. Butler asked a question to the committee of what the training with the enforcement is and what are the qualifications and experience needed? Senator D'Allesandro stated that Chief Edwards could provide information for us.

Joe La Rocca: NH Wine and Spirit Broker Association

- Bob Blaisdell introduced Mr. Joe La Rocca to the committee.
- Mr. La Rocca has 30 years involvement. What we do as a broker are local marketing companies. We sell orders and goods. Services may include programs and consumer interests, Interest with marketing material, spirit products, recruit new customers, retail stores, all scale wine vs. spirit, and stock shelves for some retail accounts and lobbying.
- We are in support of a 3 Commission. We want this to remain intact as is. Self improvement. The three member commission expertise, we want to echo that.
- Mr. La Rocca added that it provides for checks and balances and institutional knowledge and memory. They have passed on knowledge and growth. Responsibility sales and marketing with responsible consumption.
- Responsible movement is very important, the chairman's position. It is has generally carried the direction of the chair to lead the commission.
- Mr, La Rocca added that the enhancement of the stores demonstrates convenience and attraction. "If you price it, if you build it they will come."
- Senator D'Allesandro expressed to the members that there was never intention to move enforcement.

Frank Reinhold; Flag Hill Winery and Distillery

- 18 years of wine making, 'has seen ups and downs with State Liquor Commission and the enforcement. Very satisfied and hopes nothing changes. The industry is healthy.
- Raised the question with how to market the wines better. What is the perception? There are California, European, and Italian wines. We need to motivate New Hampshire wines!
- We need help promoting agriculture products. We need an avenue. If they are not dollar value-We don't have store shelf space. We would like to make room for this new industry. The tourism benefits and agriculture benefits.

- New Hampshire Wine Festival. We need legislation so that we are authorized in the state to have one. We had to turn away thousands because we are not authorized.
- 90 percent is made in NH, but the agriculture of it comes from New York. It is 1300 a ton to grow. We would like to see a wine farm winery bill for giving the incentives for planting.
- Rep. Shurtleff asked if there are issues of getting their wine products into the stores. Mr. Reinhold's response was that, if he doesn't make the sales he gets thrown off the shelf. Mr. Reinhold also mentioned that he would like to see access to the restaurants.

Peter Oldak: NH Winery Association

- The promoting for our local wines is poor. It is the height of harvest. It is the beauty and glory to see these NH wineries/vineyards. They are really a beautiful site to see. The grapes are picked by volunteers. We are keeping NH green. We are providing a valuable product here
- To keeping farm wineries, there is a cost to the land and it is growing. We run into resistance. There three wine trails in the state. We are growing industry.

Per Garp

- Handed information to the committee members referring to Winemakers (NH Winery) in the State of NH)
- Wine products on State Liquor shelves. Factors considered in Selection of products
- Understanding Fair (Business) practice documents for committee members to review
- News articles referring to NH wineries and local products and NH Liquor Stores.

Next meetings and future dates

- Tour the warehouse and a few Liquor Stores
- In process: State of Maine, Tim Poulin to come in to discuss their experience.
- Senator D'Allesandro closed the meeting at 1:50pm

**2010 Study Committee
SB 181, Chapter 248:2, Laws of 2010**

TOUR MEMO

TO: SB 181 Study Committee members
FROM: Shannon Whitehead, Aide to the committee
RE: Fact-finding tour on NH liquor retail stores and City of Concord Warehouse (50 Storr Street, Concord NH)
DATE: Tour: September 27, 2010

Committee members present

- Senator D'Allesandro
 - Senator Hassan
 - Rep. Butler
 - Rep. Shurtleff
-
- ABSENT: Senator Bradley
 - ABSENT: Rep. Kidder

NH Liquor Commission present

- Earl Sweeney, Acting Commissioner
- Joe Mollica, Commissioner
- Andrew Davis, Real Estate and Planning and Project Manager/Coordinator

Manchester #3 (closed) St. Mary's Plaza 122 McGregor Street

- Located in West, Manchester. It is right next to a Rite Aide Pharmacy, tucked in, resulting in weak visibility.
- Generated less than 1 million in sales. Had many break-ins.
- This store's location was 2 to 3 miles from 3 other stores.
- Opened in 1974.
- The NHSLC is working to find this particular store a new location.

Bedford #55, Bedford Grove Plaza, 5 Colby Court

- Created in 2004
- Generates 5.5 to 6 million annual
- The store is constrained for the amount of money it brings in
- Has lower shelves for sale and service and has the back loading shelf.
- Many of the stores that are right next to a Market Basket, or Hannaford; for example, work with one another to not cross products.

- Case drop vs. a pellet drop (saves) (30 cents a case)
- Rep. Butler stated that it is good to see that management in the stores have the background on wine, encourages the sale of the product, supports, and shares knowledge on the wine to the customer.

Merrimack #59, Merrimack Shopping Ctr. Dobson Way

- Was a million and five to upgrade, this is an example of a super outlet store that would like to be seen in all NH stores.
- Designed for vast movement for retail
- It was noted by our committee members and even store employees that for our NH Wine that they sell it is not coming from NH grapes (a concern that was also raised during committee meetings from our NH wineries)
- Labelle (NH wine product) does do a tasting every 2-3 weeks. Promoting the NH wines and other NH signature spirit products. NH vodka, brandy, Limón cello.
- Sales are 59% up to date.
- Has attractive flyers promoting their sales and events

Manchester #10, 333 Lincoln Street

- Huge licensee store. It is not in a great location, but brings in 5 million.
- Huge selection of licensees that comes from this particular store. Great for licensee traffic.
- The store has quite a few break-ins. Cameras are placed and there are police officers on duty that work next door at the grocery store.

Manchester #33, North Side Plaza, 1100 Bicentennial Drive

- Similar to outlet store in Merrimack. Store #59
- Almost double the square footage of the original space-is part of the NHLHC's goal to modernize the facilities state wide.
- A multifunctional space for shopping and in-store events.
- Although the new store isn't far from its former site in the plaza its come along way in terms of design: increased sales space, improved store layout, a new wine room and tasting area, a colorful mix of wood and metal shelving, additional check-out registers, state of the art lighting and signage.
- Has wine tastings and marketing of NH Wines and Spirits. The new wine area is called the "Vineyard Collection" The room features 300 wines (fine wines) around the world, giving a different concept.
- The wine tasting center enhances Friday night from 5-7pm that also enables the Manchester store to partner with local restaurants.
- Increased shelf depth allows employees to keep more products on the shelves, increasing open floor space and creating wider aisles.

Warehouse-Concord, NH(50 Storr Street, Concord NH)

- 50,000 Square foot
- Warehouse bring in highest volume on a Monday of 40%
- About 160,000 cases in the warehouse

- Open space with rail spur in the warehouse has a huge impact on warehouse with space. Approximately 20,000 additional cases can be stored in RR spur area.

Railroad Spur-Fill and Level

- Railroad spur Fill and Level FY 12-13 biennium -198,500
- 2,600 additional square footage
- Approximately 2,600 additional square footage

Racking project

- Started February 12, 2008
- Work completed in less than three weeks, minimal disruption
- Bailment:
 - *FY07-\$1,086,924
 - *FY08-\$1,138,460
 - *FY09- \$1,547,772 (+409,312)
 - *FY10-\$1,758,735
- Racking \$162,980
- Consult Engineer \$36,573
- Stretch Wrap Machine \$14,600
- Total cost of racking project-\$224,000; project paid for itself in about 6.5 months.

Other:

Attraction signs: Merrimack is the pilot site for the (Exit 11) sign (on highway)

ATTRACTIONS		
NH Liquor Store and Wine Outlets	OTHER	OTHER

- Two of the most popular reasons for shopping at New Hampshire Liquor store and wine outlets stores are value and selection.
- Visitors come to NH specifically to purchase their wine and spirits tax free at NH's conveniently located stores.
- Successful strategies-debit and credit card sales, gift card sales, monthly feature 10% and 15% off sales, sales of accessories, "Branding" of the Outlet store concept, and modernization and updating of the stores such as Manchester store #33, Merrimack and Lebanon.

- The image that is being promoted: Best prices in the region, wide selection, never a tax and a pleasant, safe shopping experience.
- There is a lot of education following these stores for the guests/customers. No your tax!
- On the 93 south bound, the store generates 14 million, 93 north bound generates 16 million.
- NH-DOT has bought both 93 north and south bound store locations and will be re-doing/upgrading to new rest areas. Hampton stores north and south brings in 23 million and 25 million.
- Most popular and money driven stores are Portsmouth traffic circle and 95 north and 95 South bound stores.
- 50% of revenue is out of state. NH is 1 of 18 controlled states. 18 states and one country in the U.S have chosen to control the sale and distribution of alcohol at with regulatory agencies. The purpose of a controlled state is to optimize profit from the sales of alcohol while minimizing the ill effects to society.
- NH and 3 other states allow wine to be sold at both State stores and private wine outlets.
- Rep. Butler asked when DOT starts construction on the 93 North and 93 South bound stores, what would happen for the shoppers. Commissioner Sweeney responded that they will work with DOT and make sure there is communication to our shoppers. There was a thought of having a temporary store in the vicinity of the 93 North or South bound stores as the new ones are being built.
- Rep. Shurtleff asked if there would need to be additional warehouse space, where would that process start. Commissioner Earl Sweeney responded that it would have to be within the Capital Budget legislative process.
- NH Hampshire Liquor Commissions visions for the future website...go to: LiquorandWineOutlets.com



New Hampshire Liquor Commission

50 Storrs Street, P.O. Box 503
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Mark M. Bodi
Chairman

Joseph W. Mollica
Commissioner

Earl M. Sweeney
Acting Commissioner

BAILMENT:

A legal relationship created when a person gives property to someone else for safekeeping. To create a bailment, the other party must knowingly have exclusive control over the property. The receiver must use reasonable care to protect the property.

This word is derived from the French, *bailer*, to deliver. It is a compendious expression, to signify a contract resulting from delivery. It has been defined to be a delivery of goods on a condition, express or implied, that they shall be restored by the bailee to the bailor, or according to his directions, as soon as the purposes for which they are bailed shall be answered. Or it is a delivery of goods in trust, on a contract either expressed or implied, that the trust shall be duly executed, and the goods redelivered, as soon as the time or use for which they are bailed shall have elapsed or be performed.

Part Liq 401 DEFINITIONS

Liq 401.01 Definition of Terms. For this chapter only, the following terms shall be construed as set forth below:

- (a) "Bailment" means a system providing for delivery of vendor owned liquor and wine by the vendor's agent at a NHSLC owned or licensed liquor and wine warehouse for transfer to state owned liquor stores or retail licensees.
- (b) "Bailment warehouse" means the holder of a NH liquor and wine warehouse license under contract to the NHSLC to provide bailment services, or the NHSLC or contracted agent providing such services at NHSLC owned warehouse facilities.
- (c) "Acceptable payment" means payment by cash, approved credit card, approved debit card, or pre-approved check.
- (d) "Approved credit" means a sale on terms pursuant to Liq 900.

Liq 401.02 Bailment Warehouse Fees.

- (a) Bailment warehouse fees shall be paid by vendors unless exempted by statute or rule. Vendor fees for bailment warehouse services shall be specified by contract between the NHSLC and the bailment warehouse(s).
- (b) Contracted fees shall be charged to all vendors equally by the bailment warehouse(s).
- (c) The NHSLC shall charge the same fees as contracted in (b) above at NHSLC owned warehouses except that no fee shall be charged on liquor and wine products manufactured in NH by any vendor who:
 - (1) Is licensed as a liquor manufacturer pursuant to RSA 178:6, a rectifier pursuant to RSA 178:7, or a wine manufacturer pursuant to RSA 178:8;
 - (2) Maintains a federally bonded liquor warehouse in the state; and
 - (3) Maintains an inventory equal to 30 days average sales for each brand code registered with the commission.
- (d) The NHSLC shall make available to vendors the contracted fees charged by bailment warehouse(s).

Liq 401.03 Vendor Inventory.

- (a) **Liquor and wine vendors shall maintain at a bailment site designated by the commission inventory equal to 30 days average sales for each brand code registered with the commission.**
- (b) **The NHSLC shall issue administrative notices of violation to vendors when inventory shortages cause out of stock situations.**

Liq 401.04 Inactive Brand Codes. Vendors shall remove all products which do not have an active NHSLC brand code from bailment within 60 days.

Liq 401.05 Damaged Products. Vendors shall remove or have destroyed all products that are damaged from bailment within 60 days.

Liq 401.06 Commission Control of Bailment Product. Products with active NHSLC brand codes shall not be removed from bailment except to be delivered to NHSLC control or for shipment out of state with written permission from the NHSLC, which shall be granted for stock in excess of NHSLC requirements.

**Observations Concerning
The
NH State Liquor Commission**

SB 181 ch 248,
2010

**By: Earl M. Sweeney
Acting Commissioner
November 3, 2010**

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NH State Liquor Commission

50 Storrs Street

Concord, NH 03301

November 3, 2010

Senator Lou D'Allesandro, Chair, and members

SB 181 Study Committee

Rm. 100, State House

Concord, NH 03301

Dear Senator D'Allesandro and members:

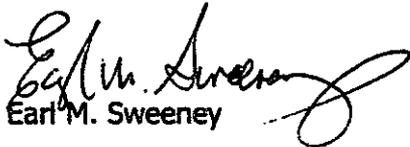
Thank you for inviting me to submit this white paper to supplement my testimony before you that took place on August 23.

Although my appointment as Acting Commissioner was a temporary one, I approached the task with the intention to give it my full attention for as long as I would be there, and to learn as much as I could about the Commission and its operations so as to serve the Commission and the State as best I could. The following thoughts and observations are mine and do not necessarily reflect those of anyone else, although I believe from my conversations with the other two Commissioners that you will find that they agree with most of my conclusions. I hope you will find them of some value as you finalize the task that you are fulfilling under the legislative mandate for your Committee, as outlined by the Legislature in Chapter 248, laws of 2010 (SB 181-FN-A).

I also hope by means of this document to make you aware of the efforts of the many hardworking and dedicated employees of the Commission, who kept the operation effective and profitable despite the months of uncertainty and turmoil at the top.

I hope that these observations in some small way will be making a contribution to the State and to the organization, and that this report will be of some value to you and the other decision makers, in whose hands the fate of the State Liquor Commission lies.

Respectfully submitted,


Earl M. Sweeney

Acting Commissioner

Executive Summary of Recommendations and Conclusions

1. The statute should be much more specific than it is regarding the duties of a Liquor Commissioner and the types and amount of experience that will qualify someone for the appointment.
2. The Commission should cultivate an amicable but arms-length and very transparent business relationship with the brokers.
3. When an individual is under serious consideration for the post of Liquor Commissioner, taking a page from the gaming legislation that has been proposed, the Attorney General should be tasked with conducting a thorough background investigation on him or her. The investigation could be farmed out to a reputable licensed private investigative agency or to the State Police. It should not be conducted by the Commission's Division of Enforcement because they may ultimately be working for this individual.
4. The duties of the Liquor Commission Chair should be spelled out in detail. In general terms the Chair, like the Chief Justice of the Court System, should be a "first among equals", conducting the Commission meetings and acting as spokesperson.
5. The recommendations of the Hay Study Group should be implemented to comply with current law that requires that the Directors of the Divisions of Marketing, Administration, and Enforcement be appointed and paid as unclassified employees. The salaries of the 3 Liquor Commissioners should be adjusted so that they do not make less than their unclassified subordinates.
6. Legislation should be passed requiring criminal history record checks for other State Liquor Commission employees in positions where they handle money or product.
7. The law regarding providing samples of product to licensees should be amended to include the manner in which samples are provided to the Commission and its buying staff.
8. The CEO, his or her Deputy and each of the part-time Commissioners, if a CEO system is adopted, should undergo stringent, statutorily-mandated background checks prior to being appointed.
9. There is no significant volume of contested hearings such as would warrant having a full-time Hearings Officer or transferring this responsibility to an outside agency.
10. The State should not farm out the Enforcement Division, one of its most important responsibilities, to another State agency. Instead, the Commission should ensure the proper balance between education and enforcement through formal written policies.

11. The only way the State should consider creating the position of Ombudsman should be if one were appointed to serve all State agencies. Current thinking is that an Ombudsman should serve more than one agency. Having an ombudsman solely for the Liquor Commission would be an unjustified expense during the current economic time.
12. Instead of an Ombudsman, the Commission could designate the Director of Administration as the individual to whom public complaints will be directed and assign him or her responsibility of investigating and mediating complaints in cases where there is the possibility of an enforcement hearing and thus ex parte communications with the Commission are inappropriate or impractical. Legislation should be introduced providing for an appeal from the Commission's licensing decisions to the Superior Court instead of having the sole avenue of appeal as the Supreme Court, which is the current situation.
13. If the current legislation authorizing Agency Stores is not allowed to lapse but is re-enacted it should contain substantially the same provisions including not opening such a store within 10 miles of an existing State store, requiring public hearings and local community approval, and leaving the decision of whether to open additional Agency Stores up to the Commission.
14. The Commission should not sell the Storrs Street facility, given the current real estate market unless it can be conclusively proven that it would be in the best long term interest of the State. (The State owns the property, pays no taxes on it, and makes a net profit after operating expenses of about \$600,000 a year from bailment paid by producers for storing spirits at their warehouse. If the unused railroad siding was removed, this would open up storage space for additional inventory and result in more profit from bailment).
15. If they sold the Concord property the Commission would have to relocate their headquarters and Store #1 to another location in Concord by either buying an existing office building, constructing a new one, or leasing one. At current rates in downtown Concord they could expect to incur \$600,000 a year in leasing costs, plus moving and relocation expenses and possible lost sales volume during the transition.
16. Over the years the State Liquor Stores as the sole purveyor of hard liquor within the State have been the "goose that lays the golden egg" year after year. Without the revenues produced by this business enterprise, the General Fund would be unable to support many of the vital services provided by the State to its citizens, particularly services to the disadvantaged, the elderly and the infirm, without some form of new taxation.
17. The State has been so successful in producing these revenues largely because it has exercised monopolistic control over the sale of the product. Currently the State does not have to share these revenues with anyone – the profits all go to the State coffers. Once

the door is opened for additional "agency stores" or the sale of spirits at grocery, convenience and drugs stores, the entire profit would no longer accrue to the State – it would be shared with the private outlets, whose focus would naturally be on increasing their bottom line at the expense of the State.

18. It is much easier for the Commission to control the actions of its own employees at its chain of stores than it is to control the thousands of employees that would be selling spirits at more than 1,400 licensed private outlets. The expansion that would be necessary to the Commission's Enforcement Division alone would eat into whatever added profits might accrue from having these additional outlets.
19. Allowing the private sale of spirits would eventually lead to the closure of all 76 Outlet Stores. After factoring in the savings from laying off personnel and store closures, if there was no increase in sales the net profit to the State from the sale of spirits would fall to \$134,006,681, based on current figures, a loss of \$121,000,000 to the General Fund plus another \$48,400,000 for a total loss of \$169,000,000. To make this amount up with the 20% discount the Grocers' Association estimates they would have to receive on product in order to make an acceptable profit, the combined sales of spirits and wine would have to grow by about 500%, or 5 times the current sales, an unreachable amount – and this is without increasing the State's revenues in any way.
20. The best way to evaluate proposals to allow the sale of spirits in grocery, drugs, and convenience stores is to look at New Hampshire in relation to other states. Our liquor business is the envy of everyone else including especially states that allow the sale of hard liquor at private outlets. If the proposed system worked so well, one would expect that Maine and Vermont, both of whom like New Hampshire attract large numbers of tourists, would make nearly the same from the sale of alcohol as New Hampshire, but this is not the case.
21. The State must ask itself – do we want hard liquor to be available on all major street corners, which is where you find the convenience stores, grocery stores and combination gas station/convenience stores? The easy availability of hard liquor can lead to increased incidents of teenage drinking, and an increase in drunk driving and alcoholism because of the unlimited access and availability of the product from 6:30 a.m. until nearly midnight and in some cases, later.
22. Likewise, selling off or leasing the State's liquor operation to a private consortium of investors makes no fiscal sense for the State, as attractive as a one-time infusion of cash to fill a hole in the State budget might seem. The state of Maine was the most recent victim to succumb to that idea, and by all accounts it has been a disaster in terms of not living up to the promise of greatly increased revenues. The private entity that took over the business is doing well; not so the State. Once the dog was let out of the

yard and Maine realized the mistake they had made, it was too late. It is unlikely that any proposal to privatize New Hampshire's liquor stores would fare any better.

23. The so-called "free market incentives" for privatization of the liquor business are just that – incentives to increase the sale of alcohol, with concerns for the control of alcohol left out of the equation. A comprehensive review and analysis by the U.S. Task Force on Preventive Medicine found that privatization leads to higher alcohol outlet density, greater physical availability of alcohol, and more deaths from drunk driving.
24. Long term financial return and public safety are the key benefits of New Hampshire's system. As tempting as it may be to look for a short-term solution to the State's fiscal woes, it is not worth the bigger social and financial woes that would occur over the long haul by auctioning this invaluable State asset to the highest bidder.
25. Instead of throwing a monkey wrench into a well-oiled system which is poised to return over a billion dollars in revenues to the State's General Fund over the next 8 years, the Commission should be allowed to continue to go forward with its strategic plan to modernize its retailing model without sharing the profits with private corporations.
26. Rather than rolling the dice and taking a chance on destroying a system that has been successful both in terms of maximizing profits from and controlling the abuse of alcohol, the Legislature should shy away from experimentation and allow the Commission to continue to modernize and update its stores, adjust its hours to the needs of the responsible buying public, and focus on closing underperforming stores and opening stores in new and potentially more profitable market areas. It makes no sense to consider changes to a system that works well and raises revenue that would otherwise come only from increased taxation.

Part One

History of the Commission, Current Status and Demographics

Background – Alcohol's Good and Bad Sides

Alcohol as a libation has been around since pre-Biblical days, and wine is mentioned prominently in both the Old and New Testaments. Alcoholic beverages fulfill a social role in our society. Weddings, anniversaries and other important family events are often happy occasions where alcohol is served. Many people enjoy drinks in moderation at these outside events, and also when entertaining guests at their homes, or at home with dinner or as a nightcap. Reputable medical authorities have reported health benefits from a moderate use of certain forms of beverage alcohol.

Alcohol also has its dark side. Alcoholism is a terrible disease that once contracted leaves the victim vulnerable for the remainder of his or her life and if not conquered, makes them increasingly prone to other health problems and shortens their lifespan. Alcohol-impaired drivers account for more than 30% of the fatal traffic crashes in this nation every year, claiming more than 12,000 lives and leaving many more seriously injured or even disabled for life. Medical costs to individuals, health insurance carriers and the Medicare and Medicaid systems for treatment of such diseases as cirrhosis of the liver and other physical and mental ailments attributed to alcoholism are enormous, along with lost productivity.

As police officers will attest a substantial number of the homicides, suicides, domestic assaults, fatal traffic crashes, fights, child sexual assaults and disturbances they respond to involve one or more persons who is intoxicated or who has been using both alcohol and illegal or prescription drugs, with each substance having a synergistic effect and multiplying the effects of the other on the central nervous system.

Every year alarming numbers of high school and college students across the nation die due to acute alcohol poisoning as a result of overdosing on alcoholic drinks. Social scientists report there is a recent trend for this age group to binge drink for the sole purpose of becoming intoxicated. Research data has made it clear that when the legal drinking age was increased nationwide to 21, this had an immediate positive effect on reducing the involvement of minors in serious and fatal traffic crashes.

Truly, beverage alcohol is a commodity unlike any other openly sold in our society. It is a recreational drug whose overuse leads to intoxication and to the entire dangers attendant to impaired judgment. Addiction to alcohol can cause job loss, family loss,

and an early death. On the other hand, alcohol is also a catalyst to conviviality and a stress reliever, and may even have some health benefits when used in moderation. By controlling the manufacture, distribution, sale and consumption of alcoholic beverages, the State imbeds in the social consciousness a reality of alcohol's hazards as well as its good points.

History of Alcohol in the United States from Prohibition to the Present Day

The advent of the period known as the "Roaring Twenties" ushered in a devil-may-care attitude in society but also saw the culmination of a strong "temperance movement" in the United States and Canada which vowed to close all drinking establishments and outlaw the sale of alcohol. Congress proposed the 18th amendment to the U.S. Constitution known as "The Noble Experiment" in 1917 and it was ratified by a majority of the states in 1919 and took effect the next year, banning the sale of alcohol. Congress then passed the Volstead Act, named for its sponsor, Congressman Andrew Volstead of Minnesota, to enforce prohibition by providing criminal penalties, including fines, jail terms, and the forfeiture of motor vehicles used in the commission of the crimes of manufacture, sale and distribution of beverage alcohol.

Washington granted the states concurrent jurisdiction with federal revenue agents to enforce an equivalent State law that could be more, but not less stringent than the federal law. The 1,500 officer Prohibition Bureau in the Internal Revenue Service was at the time the largest federal law enforcement agency ever created. Any beverage containing more than 0.5% alcohol was prohibited under the Act. President Woodrow Wilson vetoed the Volstead Act, but Congress promptly overturned his veto and the Act went into effect. Only Maryland among the states refused to empower their state and local officers to enforce Prohibition.

The Noble Experiment was a failure, however. Resistance to it grew, especially in urban areas where immigrants and middle and upper-class citizens were unwilling to give up their alcohol. Within less than a decade, more than a half-million arrests were made and jails and prisons had overflowed to capacity. In 1929 Congress increased the penalties hoping this would deter the drinkers, but it did not. By 1925 in New York City alone, there were as many as 100,000 "speakeasy" clubs illegally dispensing alcohol.

Bootlegging had become a staple of the economy in some Southern states and in fact the current sport of NASCAR in its early days consisted largely of drivers who had made their living outrunning revenue agents in souped-up cars.

Organized crime recognized the profits to be made from the illegal sale of alcohol, giving rise to crime kingpins such as Al Capone, who made a fortune selling bootleg liquor and who corrupted government by bribing politicians and police and murdering his rivals. The resulting notoriety saw the advent of lawmen like Elliot Ness who brought Capone to justice on tax evasion charges. Then, the nation entered the Great Depression with the stock market crash, and what little support Prohibition had diminished.

In 1932 the Democratic Party platform endorsed the repeal of Prohibition. After a sweeping victory at the polls, a bipartisan majority in Congress endorsed a new Constitutional Amendment repealing the 18th Amendment. This was approved by a majority of the states in 1933 and became the 21st Amendment. Meanwhile, Congress had already passed and President Franklin D. Roosevelt signed, the Cullen-Harrison Act that allowed the manufacture and sale of beer at 3.2% alcohol. The Canadian provinces also repealed their prohibition legislation, with Quebec repealing theirs shortly after its enactment.

What the Noble Experiment proved was that although alcohol was, and is unless used in moderation, a definite threat to the public health and welfare, it can be controlled to a degree but not eliminated. When the 21st Amendment passed in 1933 Congress left it up to the states to regulate alcoholic beverages. Some states decided to license private businesses to sell alcohol, but 18 states, including New Hampshire, voted to control the sale of alcohol by placing it under State monopoly control. The goal was to provide a legal way for people to obtain alcohol, but also to encourage sensible consumption by reducing the economic incentives for maximum sale that would exist if it was left in the hands of private businesses, whose sole motivation would be the profit motive. The New Hampshire State Liquor Commission observed its 75th Anniversary two years ago.

Other states that currently control alcohol in this manner are Alabama, Idaho, Iowa, Maine, Michigan, Mississippi, Montana, North Carolina, Ohio, Oregon, Pennsylvania, Utah, Vermont, Virginia, Wyoming, and Montgomery County, Maryland which has a monopoly over the sale of beer, wine, and hard liquor (spirits) and is the only jurisdiction that completely controls all three.

The structure that the Legislature set up to control and oversee the manufacture, distribution and sale of alcohol in New Hampshire was to have the Liquor Commission overseen by three Commissioners, one of whom would act as Chairman and nominal head of the Commission. Commissioners were appointed by the Governor with consent of the Executive Council for 6-year terms. At least one Commissioner had to hail from

the minority political party. The Liquor Commission was to be an agency in the executive branch of State Government, not unlike the Department of Transportation, the Department of Revenue, and other State agencies. These were all checks and balances initiated because the Legislature at the time recognized the immense opportunities for corruption that can attend this business.

For many years the Liquor Stores around New Hampshire were popularly known as the "Green Fronts" because the outsides were painted green. Customers came into the store, looked around and decided what they wished to purchase, then filled out a slip with the product number and handed it to a clerk, who retrieved the product from the shelf, bagged it and rang up the sale. Customers were not allowed to handle the product until it was paid for and left the store.

Today, shopping at a State Liquor and Wine Outlet is not much different than shopping at your favorite local supermarket or department store. Customers have shopping carts and baskets for their use, are allowed to browse, fill the basket with whatever products they desire, and the codes are scanned at a point of sale terminal and the sale is completed. Employees at our Outlet stores have received extensive training in spotting fake ID's, detecting underage purchasers and detecting intoxicated persons. Because their salaries contain no incentives based on how much they sell, the goal of optimizing sales while minimizing the adverse effects of alcohol is preserved.

Current Organization and Scope of Operations

The operation of the State Liquor Commission is regulated by Title XIII of the Revised States Annotated and the administrative rules of the Commission contained in the NH Code of Administrative Rules. Liquor revenues are deposited in an Enterprise Fund and after expenses are paid, the profits go to the General Fund of the State, providing approximately 17% of all General Fund revenues. Extensive oversight is provided by the Governor's Budget Office, the Department of Administrative Services, the Legislative Budget Assistant, and the House and Senate Finance and Ways and Means Committees, the Public Works Committee, the Capital Budget Oversight Committee, the Local and Regulated Revenues Committee, the Commerce, Labor and Consumer Affairs Committee, and the Joint Legislative Committee on Administrative Rules. Certainly nobody can say that the Liquor Commission "flies under the radar."

The Commission operates under the executive direction of three Commissioners, one of whom is the Chairman. They are appointed by the Governor and Council for 6-year terms. At least one member must be from the minority party. There are 3 Divisions, each with an unclassified Director – Marketing, Enforcement, and Administration. The

law requiring Directors to be unclassified has never been implemented because the Hay study recommended salary levels for two of them that would exceed those of the Commissioners, their bosses. The Department of Administrative Services then asked the Hay group to recommend a revised salary schedule for the Directors that would not exceed that of the Commissioners, and they came back with a recommendation of GG for two of them, which is exactly that of a Commissioner. This would create the untenable situation of Commissioners being paid the same salary as their subordinates. It also placed the Director of Administration at one salary grade less than the Directors of Marketing and Enforcement. We believe the three Directors have equal responsibilities and one should not be paid less than the other two.

Recommendation: The Legislature should increase the pay of the Commissioners to grade II and the Chairman to grade JJ on the unclassified scale; similar to the salary grades of most other unclassified agency heads with the exception of the largest agencies, and set the salaries of the three Directors at grade GG.¹

Sales and Profit Picture

Fiscal 2010 was a banner year for the Commission. Sales topped the half-billion dollar mark for the first time (\$511.4 million), a 4.8% increase over 2009, and well ahead of national growth trends. Spirits sales were up 5%, wine sales 4.5%. This came from a 6% increase in State Liquor and Wine Outlet Store sales, a 2.6% increase in grocery store wine sales, and a 1% increase in restaurant sales.

Gross profits increased by 10% over the prior year. Revenues from liquor and wine brought in \$2.9 million over plan. Beer is taxed by the gallon and sold by off-premise licensees. Beer revenues have been flat for several years and last year they were only \$100,000 or 1% over plan.

Net profits, the "bottom line" increased by more than 10%, a level of profit to the State only achievable in a monopoly state where State stores are the main source of alcohol purchases.

¹ A copy of suggested legislation is located in the Appendix to this report.

Retail wines and spirits sales at our State Outlet Stores accounted for 71% of our revenues; wholesale wine sales to grocery, drug and convenience stores 17%; on-premise sales to restaurants 11%; and miscellaneous items such as administrative fines and license fees, 1%. Of the 1% in miscellaneous income, 9% of that figure is derived from the 5% of gross Sweepstakes sales at State stores; 9% from direct shipper permits for shipment of wines into the state; 27% from warehouse bailment; 49% from liquor license fees; 3% from administrative fines; and 3% from a variety of other small sources.

The highest volume store, I-93 Northbound, has gross annual sales of more than \$28 million. 50% of customers at State stores come from New Hampshire, 21% from Massachusetts, 8% from Maine, 5% from Connecticut, 4% each from Vermont and New York 3% from Rhode Island, and 5% from other states and Canada. The Commission spends about \$2 million a year in advertising. The image they promote is "the best prices in the region, wide selection, never a tax, and a pleasant, safe shopping experience."

The Commission has plans to modernize and update all of the State stores over a period of time. Recent updates to Manchester, Merrimack, Plaistow and Lebanon are expected to result in double-digit increases in monthly sales revenues at those locations. The Peterborough store is scheduled for a new location later this year.

The State has a chain of 76 State Liquor and Wine Outlet Stores situated throughout the state, plus 3 Agency Stores located in Errol, Pittsburg, and Greenville. Eleven of the stores are in State-owned buildings; the remainder are in leased premises.

There are 2,799 on-premise licensees (restaurants and clubs) and they bring in about \$52 million in annual revenue. There are 1,306 off-premise licensees (beer and wine) who bring in \$95 million. There are multiple types of licenses.

The Commission has 218 full-time and 400+ part-time employees. Full-time employees are represented by one of two labor unions – the NEBPA represents Investigators and the SEA represents the other employees.

The Bailment Process

"Bailment" is a process by which liquor and wine suppliers pay a fee to have their product stored in a warehouse. This allows the suppliers to avoid the cost of maintaining local warehouses, simplifies the supply and delivery chain, and ensures

against stock-outs at the Stores. It also saves the Commission from having to bear considerable inventory costs.

The longer a pallet or case remains at the warehouse, the more the monthly bailment fee increases. The warehouse is also compensated for applying shipping labels and other services. The ownership of the product remains with the supplier while it is in the warehouse and only transfers to the State when it arrives at a State store. This means the only inventory cost the State has is for product on the shelves and in the stockrooms at the State stores, and for returned products for restocking. The State maintains a small warehouse in Concord on which it makes an annual profit of about \$600,000 from bailment. The Commission has a contract with the Law Company in Nashua to provide warehouse services for the State in Law's large warehouse. Bailment there is estimated to bring in about \$5,000,000 a year to Law.

Law also has the transportation contract to deliver product to the stores. They are on the final 5 years of a 15-year contract, which expires in 2012.

If the State built a new warehouse large enough to accommodate the entire product it holds, the return on investment would occur in about 6 years. The question is whether it is a core function for the Commission to be in the warehouse business. Some control states such as Utah do maintain their own warehouses exclusively.

Wine sales account for about 46% of the sales dollars (but 57% of the bottle count) and spirits 54% of dollar sales and approximately the same ratio of gross profit. State stores sell about 60% of the off-premise wine sales, grocery stores 40%. At restaurants and clubs, wine accounts for about 38% of sales, spirits 62%.

Questions the Legislature is mandated by Chapter 248, laws of 2010, to address:

1. *Should the Liquor Commission have an Executive Director rather than a full-time 3-member Commission?*

Considerable debate by persons with great forethought in the Legislature many decades ago went into the structure of the Liquor Commission. It is not difficult to decipher their reasoning.

They established 3 co-equal Commissioners, with one to serve as Chair and preside over Commission meetings. At least one was to be from the minority political party.

They established staggered terms of 6 years, unusually long for an unclassified position. This was because they recognized that with the exception of the regulation of gaming, there is no position in State government as potentially susceptible to corruption as that of Liquor Commissioner.

By having 3 Commissioners and at least one from the minority political party, the Legislature hoped to minimize the impact of partisan politics as much as possible, and created a built-in brake on corruption and erratic decision making. The intent was that the 3 Commissioners would serve as a check and balance on each other and provide more transparency, and it would be more difficult to corrupt three than one. The six-year staggered terms would prevent constant political interference, make it easier to develop and carry out the long-range planning that is necessary in such a business, and give the appointees time to thoroughly learn the business and develop expertise and continuity of management.

In an ideal world this may be still the best structure for this organization, as unique within the State government as it is. The system works well when Commissioners are carefully chosen. They must be knowledgeable of retail business, State government, law enforcement, or all three. No one business or profession should come to dominate the Commission membership. They must be the type of persons who do not have large egos and can therefore work together in a collaborative atmosphere, arriving at decisions by give and take and consensus. They must be incorruptible.

Once appointed, the Commissioners must be capable of dividing up the many duties involved with running such a large organization. It is not necessary that each choose an area he or she feels comfortable with – in fact, it might be best for them to rotate these duties among themselves periodically so that each becomes familiar with the entire operation rather than only facets of it.

Although there are Division Directors and other supervisory and management personnel within the structure, in an organization this size and handling the revenues that it does, there is more than enough for three top administrators to handle if they divide up the duties. One should be primarily concerned with oversight of the retail outlets and real estate, one with financial management, licensees and customer relations, and one with enforcement, labor relations, legislative liaison, administrative rules and oversight of the strategic plan.

Here is an example of the diverse area that the Commissioners are responsible for overseeing:

- Legal matters
- Executive and Legislative relations
- Real estate strategy
- Facilities and Equipment
- Labor relations
- Training and Human Resources
- Marketing, Advertising and Sales
- Products and pricing strategy
- Budget and Finance
- Broker relations
- Store operations (can be divided by area of the state)
- Data Processing
- On and off-premise licensees
- Hospitality and tourism industry relations

Much of the time there has been 3 Commissioners who have divided up their duties amongst themselves in a similar manner – historically this has been the rule rather than the exception and the Commission as an agency has prospered as a result.

The tripartite Commissioner system has also hit rough patches from time to time, and may again in the future. This can occur if none of the appointees has any experience in retailing. It can also occur if Commissioners lack prior knowledge of how government works. Such Commissioners may have little patience for the fact that when running a public agency it is the public's funds that are placed at risk and therefore there are multiple levels of accountability and transparency. They may not grasp the concept that things take longer to accomplish than with a sole proprietorship, partnership or corporation, with only its own funds or that of its creditors at risk from their decisions.

There is also potential for problems to occur if an appointee arrives with predisposed notions or a fixed agenda, such as the expressed intention of privatizing the sale of alcohol, without even knowing how the Commission operates.

Problems can also occur if one Commissioner becomes jealous of another because he or she covets the position of Chairman, or if the Chair is an erratic decision maker, changing course so often that they leave the staff and/or the Legislature wallowing in their wake, or attempts to dominate the other two. A runaway Chair, or if a CEO structure is adopted, a runaway CEO, could destroy half-billion dollar a year business in a relatively short period of time.

Most problematic is if two Commissioners form an alliance against the remaining one; leaving that Commissioner as the "odd person out." Human nature being what it is; members of the management team would take advantage of the situation, playing one Commissioner off against the other, much as children sometimes try and play one parent off against the other.

If incidents like these should occur, they could perpetuate an inaccurate public stereotype of a Liquor Commissioner as someone appointed to a cushy job because of political connections. This would be unfortunate because most Commissioners historically and presently have devoted their full time and attention to the business and worked hard to manage it properly.

Recommendation: The statute should be much more specific than it is regarding the duties of a Liquor Commissioner and the types and amount of experience that will qualify someone for the appointment.²

The Proper Role and Relationship of Brokers to the Commission

The State Liquor Commission acquires the product that it sells through a system of licensed Liquor Brokers, each of whom represents one or more distilleries or vineyards. State law requires that the Commission acquire its alcohol through a "primary source" and the Commission uses these brokers as its primary source.

There are numerous advantages to the broker system. These individuals are solely engaged in the liquor business and as such, they have considerable knowledge and expertise regarding trends in the industry, various federal laws affecting commerce

² See Appendix for a draft of such legislation.

in alcohol, merchandising and advertising strategies from other localities and their success or failure, and an in-depth knowledge of the products they represent. The alternative would require the Commission to deal individually with hundreds and hundreds of distilleries, wineries and other producers and require an enormous administrative overhead. Brokers share with the Commission the need to make money from the sale of alcohol, however unlike the Commission the brokers aim to maximize rather than optimize profits from the sale of alcohol. They can be, and are, valuable stakeholders of the Commission, as long as the Commissioners and the Brokers each know and respect their place in the system.

Recommendation: The Commission should cultivate an amicable but arms-length and very transparent business relationship with the brokers.

Today, the nature of the broker business itself has changed. Brokers and the manufacturers they represent are much more aware of federal anti-trade and anti-competiveness laws and regulations, and State ethics laws. The Commission can and must maintain an open door policy as each group has knowledge and experience that the other needs. There will always be opportunities for corruption and it is important that issues regarding the receipt and disposal of sample bottles, advertising promotional items and attendance at broker-sponsored business meetings be carefully controlled. It is also critical that the listing and delisting of products for sale in the State stores be discussed and voted upon in regularly scheduled and noticed meetings, with full transparency.

Recommendation: The statute controlling the provision of samples of product to licensees should be amended to address the provision of product samples to Commissioners and the Commission's buying staff.

If the tripartite (three-Commissioner) system is continued, there are statutory changes that should be made in order to alleviate some of the problems that we have discussed above.

Recommendation: When an individual is under serious consideration for the post of Liquor Commissioner, taking a page from the gaming legislation that has been proposed, the Attorney General should be tasked with ordering a thorough background investigation on the applicant. The investigation could be farmed out to a reputable licensed private investigative agency or to the State Police. The investigation should not solely concern itself with the applicant's criminal and motor vehicle history or lack thereof, but should also inquire into his or her financial

stability and general reputation in their present and former employment, in the community, and in the neighborhood where he or she resides including any known problems with the abuse of alcohol. It should not be conducted by the Commission's Division of Enforcement because they may ultimately be working for this individual.³

The background investigation should include a thorough financial credit check, criminal and motor vehicle history checks, and a check with business and personal associates, family members and neighbors, not just the references listed by the person under consideration. It is important to try and determine that the individual is stable financially, has no criminal or serious motor vehicle record, no major physical or mental health problems that would affect job performance, is not him or herself a problem drinker, has a stable family background free from domestic violence, and a good reputation in the community.

Candidates should be required to sign a waiver to provide the Attorney General or designee with employment, credit, criminal and motor vehicle records. These checks should be made quietly before the individual is publicly reported to be under consideration, so as not to embarrass the individual if he or she is not selected. For an FBI record check to be performed there must be an underlying State statute requiring it.

Recommendation: The duties of the Liquor Commission Chair should be spelled out in detail. In general terms the Chair, like the Chief Justice of the Court System, should be a "first among equals", conducting the Commission meetings and acting as spokesperson.⁴

Consideration might be given to rotating the Chairmanship every two years so that each Commissioner serves as Chair once during their 6-year term, unless he or she declines to do so, in which case the most senior in terms of years of service could fill that role.

Given the nature of the product and the amount of cash that some State Liquor Commission employees handle, the State should also consider requiring a criminal

³ See Appendix for a draft of such legislation.

⁴ See Appendix for a draft of such legislation.

history record check for some its other employees. FBI checks cannot be conducted unless there is an underlying State statute requiring them.

Recommendation: Legislation should be passed requiring criminal history record checks for other State Liquor Commission employees.⁵

The CEO and Part-Time Board of Directors Model

Another possible form of organization is to have a single Executive Director serving as CEO, with a part-time Board of Directors. In the private sector, in large publicly-held corporations there is customarily a President who is the Chief Executive Officer, a Chief Financial Officer, and a Chairman of the Board and a collection of paid, part-time Directors who are typically successful individuals in business or in the community.

If such a model was adopted for the Liquor Commission, the Governor and Council would appoint the members of the Board, and the Board would recommend, for Governor and Council approval, the appointment of the Executive Director or single Commissioner. With the size of the Liquor Commission in comparison with other State agencies this would likely require the appointment of a Deputy or Assistant Commissioner as well. The part-time Board would hold hearings on licenses, approve listing and delisting of products, and provide general oversight.

The advantage to this system would be holding one person accountable and giving him or her, the requisite authority to run the day-to-day business operations, and possibly some savings in salary and benefit costs, although with a Deputy or Assistant Commissioner the savings might be minimal.

This system obviates the possibility of personality clashes among 3 Commissioners and leaves no question as to who is in charge of the organization and the employees need only worry about loyalty to that one person.

There are disadvantages to this system as well. If the Board and the Governor and Council choose a CEO who is erratic, corrupt or otherwise not properly qualified for the job, this individual could literally, within a very few years, wreck a half-billion dollar a year business and a major source of State revenues.

⁵ See Appendix for a draft of such legislation.

A part-time Commission, if it met once a month or less, might not be as effective a check and balance on the person at the top as having three co-equal Commissioners. A part-time Commission could never acquire the depth of knowledge of a full-time person. There is also the same danger as with some other part-time Boards (Selectmen in some contentious towns being an example), that someone assumes that office with an ulterior motive or an axe to grind and becomes a micro-manager and an impediment to the full-time professionals running the operation. Also, there is the chance that part-time Commissioners might be more susceptible to undue influences from brokers, politicians and licensees.

Recommendation: The CEO, his or her Deputy and each of the part-time Commissioners, if a CEO system is adopted, should undergo stringent, statutorily-mandated background checks prior to being appointed.

Nearly three decades ago, New Hampshire had a brief dalliance with the idea of an Executive Director for the Liquor Commission. They appointed an Executive Director but retained the full-time three Commissioners. The Executive Director was appointed by the late Governor Hugh Gallen and hailed from Woodstock, VT to head a new management team for the SLC, which at that time was grossing \$137 million a year. His tenure ended abruptly in November of 1981 when the Concord Police Department arrested him at the now-defunct NH Highway Hotel for criminal trespass and resisting arrest. He was asked by the Hotel management to leave the bar after they refused to serve him any more drinks and he allegedly threatened to pull the Hotel's liquor license if they continued to serve him liquor. When the police arrived he refused to submit to arrest and had to be forcibly removed to the police station.

The Executive Director was quoted in the *Manchester Union Leader* as blaming his behavior on the frustrations of his job at the Commission. He said he had "three or four" martinis and a beer at another place before arriving at the Highway Hotel, and was in "a frustrated state of mind because of things going on then in the Liquor Commission." He accused the Commission Chair of using her influence to keep lounges open beyond legal closing hours when she had been out drinking with her friends. He admitted that he had been drinking with that Commissioner earlier in the evening. She denied his allegations. A few days later the Executive Director was suspended with pay and the Manager of Accounts resigned his post. The Executive Director was quoted as saying he was happy to be "relieved of my duties in the combat zone." He said his 21 months with the Commission was the "most demeaning professional experience of my entire career" and that he and his

management team had been "intimidated, harassed and discriminated against since its inception by the Commission and outside influence."

On balance, the risks may be less if the current Commissioner system is retained but additional statutory checks and balances are enacted to ensure the appointment of the most qualified persons and to spell out their respective duties and responsibilities and the parameters of the Chairman's authority.

Because of the NH Supreme Court decision in the *Alfred Rubega* case, once a person is appointed to an unclassified position in State Government, this has the effect of a non-voidable contract between that individual and the State for their term of office, unless there is some reason for the Governor and Council to discharge them for malfeasance or misfeasance in office. If at some future point the Legislature eliminates the position of Liquor Commissioner and goes to a different system such as a single CEO, or reduces the length of the Commissioners' terms, anyone serving in a term at that time is entitled to stay in office for the remaining portion of their term, or to be compensated for the remaining compensation package they would have been entitled to had they remained for their full term.

2. How can the State ensure impartial review of appeals of licensing and enforcement decisions?

Some people espouse the theory that since the Enforcement Division ultimately works for the Commissioners, there is an inherent conflict of interest in the Commissioners holding hearings where one of their Liquor Investigators has recommended taking a license. Recently enacted legislation, unless it is reversed by the 2011 Legislature, transfers the Enforcement Division to the Department of Safety, effective on July 1, 2011. There, the theory goes, they would be divorced from the supervision of the Commission and less likely to influence the Commission's decisions and vice-versa.

Some persons have also suggested that if the Division of Enforcement is transferred to the Department of Safety, that Department's Bureau of Hearings, which consists of licensed attorneys, should conduct the licensing hearings rather than the Liquor Commissioners, who generally would not have legal training.

A portion of the Liquor Modernization Act that was proposed in 2009 would have created an unclassified Deputy Commissioner/Ombudsman position, who would have served in the (possibly incompatible) positions of ethics watchdog, consumer

advocate and hearings examiner. That provision did not survive the legislative process and was removed from the bill.

It is not an everyday occurrence for the Liquor Commission to hold hearings and suspend or revoke licenses. During the past 6 months prior to this report, for example, the Commission has not held even one licensing hearing. Most of the violations that are discovered result in pre-hearing discussions between the Chief of Enforcement and the licensee, and most result in a negotiated settlement, never getting to the hearing stage. This is much like most criminal court cases, where the Administrative Office of the Courts reports that at the District Court level, 95% of the cases plead guilty and a plea bargain settles many cases without the need for a trial.

The main reason that so many cases are settled without a hearing is that the Commission's administrative rules include "sentencing guidelines" for the various offenses. With these rules, the Commission has constrained itself within certain parameters as to how long a license will be suspended for each particular violation, the number of demerit points that will be assessed, the maximum amount of the administrative fine, etc. These parameters depend on such things as the perceived seriousness of the violation, the prior disciplinary record of the licensee, the level of cooperation and acceptance of responsibility by the licensee and the willingness to make operational changes to prevent a reoccurrence of the violation, and any mitigating or aggravating circumstances.

A typical negotiated disposition for a first offense of selling to a minor or serving an intoxicated person results in a 3-day license suspension held in abeyance pending good behavior for the period of a year, a \$300 fine, and agreeing to send the bartender, server or manager to one of the Commission's training schools to learn how to detect underage or intoxicated patrons, how to spot altered or fake identification documents, etc. Most legitimate establishments want to operate within the legal framework and are more than willing to submit to this penalty, so they do not request a hearing. The negotiated settlements are brought before the Commission at its next weekly meeting and unless the Commission refuses to accept the settlement, no hearing is held.

To justify changing the present system would require the Legislature to believe that 3 Liquor Commissioners, if properly selected, would be less fair in holding hearings than the Labor Commissioner, the Insurance Commissioner, the Safety Commissioner or other State officials are in holding hearings or supervising and

ratifying the decisions of Hearings Examiners hearing violations brought forward by their respective regulatory or enforcement personnel. The Legislature would also have to believe that at the federal level agencies such as the Federal Aeronautics Commission, the Federal Communications Commission, the Nuclear Regulatory Commission, etc. are incapable of holding fair hearings and taking the enforcement actions that they do for violations of their regulations. Only if there was credible evidence that Commissioners allowed outside political influence to creep into their hearings decisions would this become a legitimate concern.

The Commission in its review of its internal policies now takes steps to ensure that there are no *ex parte* communications between the Commissioners and Investigators, or with the subjects of impending hearings prior to a hearing, so that they will not approach a hearing with any preconceived notion about the culpability of a licensee.

Recommendation: There is no significant volume of contested hearings such as would warrant having a full-time Hearings Officer or transferring this responsibility to an outside agency.

If the Commission does hold a hearing and decides against a licensee, there is an appeal process to the Supreme Court under RSA 541. This is an area where there is room for improvement. It is expensive for a litigant to appeal to the Supreme Court. A better process might be to provide, as with Motor Vehicle Hearings, for an appeal to the Superior Court. It would be less expensive for licensees and would result in a live hearing rather than merely a review on the record.

Recommendation: Amend the statute to provide for an appeal of Liquor Commission hearings decisions to the Superior Court.⁶

3. How can the State best ensure that the Enforcement Division is properly supervised, contains its function to that of a regulatory authority, and guards against overly broad interpretation of its function?

There have been numerous changes in the role of Liquor Enforcement over the years. For decades, Liquor Investigators have had the "powers of a Deputy Sheriff in any county, with reference to the enforcement of all laws." However their

⁶ See Appendix for an example.

"primary responsibility shall be the proper prosecution of" the liquor laws in Title XIII, RSA. (RSA 179:59). Liquor Investigators belong to the Group II police retirement system and are required by the Police Standards and Training Council to be certified full-time police officers or attend the NH Police Academy and become certified within 6 months of hiring. Approximately 20 years ago they were first issued firearms. They must pass background investigations, psychological evaluations and physical fitness tests prior to hiring, the same as all other full-time police officers.

Although the primary function of Liquor Investigators is clearly regulatory in nature there are occasions when they are required to make arrests and take criminal enforcement actions. Some of the establishments they are required to check do become over a period of time hangouts for undesirable groups and individuals and it is not uncommon for an Investigator checking a licensed establishment at night to encounter a fight or brawl in progress or someone being assaulted, and be the only law enforcement officer present and thus obliged to step in and halt a crime in progress.

There are other instances where Investigators observe intoxicated patrons leaving an establishment and attempting to drive a vehicle under the influence, or someone purchasing alcohol and delivering it to a minor.

An Investigator may be driving through a community and witness a citizen calling for help and be the only law enforcement officer available to render that assistance. These Investigators are clearly more than mere civilian regulators, and must be to effectively do their jobs.

The Legislature passed a law in the 2009 session with little or no hearing process that transferred the Enforcement Division to the Department of Safety. A legislative commission was set up to study the issue during the 2010 session and the Liquor Commission opposed this legislation, as did all of the licensed community that appeared at the hearings, as well as the NH Police Chiefs Association. The commission did not recommend transferring Enforcement to the Department of Safety and a Senate bill was passed, reversing the transfer. During the waning hours of the session the Legislature once more reversed course and passed a bill that as of July 1, 2011, transfers the Division of Enforcement, including its education and licensing components, to the Department of Safety. This will happen unless legislation is introduced in the 2011 session to once again change course.

There are 25 sworn and 13 civilian positions at the Liquor Commission that will be affected if this transfer takes place, along with a budget of approximately \$2.1 million plus a number of federal grants and 37 motor vehicles. These positions currently receive human resources, payroll and other administrative support from the Liquor Commission's central office. If these functions are transferred to the Department of Safety, that agency will have to impose an internal indirect cost against the Commission for these support services, which will be a charge against the Liquor Enterprise Fund.

The arguments in favor of transferring this operation to the Department of Safety are that this would be a continuation of the centralization of all State law enforcement operations under one agency; and that the Liquor Commissioners, since they are not required to have law enforcement backgrounds, may not be ideally qualified to oversee a law enforcement unit. Concerns have also been expressed that the Division of Enforcement has taken a too expansive view of its duties and responsibilities and branched out into other unrelated areas of law enforcement.

The Liquor Commission is opposed to this transfer because it believes that it would lose ownership of one of the core functions of its operation.

People frequently mistake the prime function of the Liquor Commission as to maximize profits from the sale of alcohol. In a control state such as New Hampshire, the Liquor Commission's mission is to optimize, not maximize, the sale of alcohol. To optimize is "to make as effective, perfect or useful as possible," whereas to maximize is "to increase to the greatest possible amount or degree." Given the dangers associated with problem drinking and alcoholism, drunk driving and access of minors to alcohol, although the State actively advertises and promotes the sale of alcohol, it does so in conjunction with responsible drinking.

Although the State is sometimes criticized for having Liquor and Wine Outlet stores situated along two of our interstate highways, there is no indication that this sales method contributes to drunken driving. Unlike beer, which is sold at grocery stores and is delivered to the customer in a chilled condition and ready for drinking, the typical spirits or wine sale at these interstate stores is a large quantity purchase taking advantage of competitive pricing and the customer is unlikely to consume it directly from the bottle before reaching his or her home. Moreover, employees at the State stores have extensive training in detecting and refusing sales to an

intoxicated person and the pay of the employees is in no way related to the amount of product that they sell.

The locations and times when alcohol can be sold or served and the manner in which this happens must continue to be carefully regulated and controlled. This control takes place by means of State statutes, the administrative rules of the Liquor Commission, and the efforts of its Enforcement Division, which also includes the education and licensing components, in cooperation with local authorities.

The past decade has seen positive changes in Liquor Enforcement. The Legislature has required Liquor Investigators to meet all the physical and educational standards of other law enforcement officers and to be certified full-time police officers.

More recently, placing the educational and licensing components of the Commission under the Enforcement Division has proved to be a very effective strategy. Placing the proper controls over an establishment at the time of licensing can avoid many problems later on. Joining education and enforcement has sent a message to the licensed establishments and the Liquor Investigators alike that encouraging voluntary compliance with the liquor laws and regulations is the first step toward proper regulation.

Liquor law enforcement is a highly specialized task. Title XIII of the Revised Statutes Annotated and the web of administrative rules that accompany it, are each complex. In addition, there are various federal statutes and regulations that affect the sale of alcohol. Beer, wine and liquor warehouse operations and direct shippers submit monthly reports that must be scrutinized by Enforcement for compliance.

There are dozens of different types of licenses, all with differing requirements. Direct shipments of alcohol from other states to consumers must be carefully policed to ensure that alcohol is not shipped to or received by minors, and that the State receives its share of revenues from these shipments. The transportation of beverages and wines is highly regulated, as is the alcohol content of various beverages.

Persons engaged in liquor enforcement must have a sound knowledge of the history and philosophy of control states and work hand in hand with the Liquor Commission's other Divisions – Administration, and Marketing and Merchandising. The Commission feels this can best be accomplished if the Enforcement Division is part and parcel of the Commission's operations.

There has been a perception in the recent past that the Liquor Investigators have been going beyond their appropriate mission to approximate that of a local police department. They have been accused of dressing in SWAT-style uniforms and presenting an appearance that is inconsistent with that of a regulatory agency. A few licensees have complained of being targeted for undue enforcement efforts. Some of this perception has been fostered by licensees against whom the Division had to take regulatory action. The Commission is aware of this perception and has been addressing it, because they do not want their Investigators to be viewed by the public or their licensees in a negative light.

The Need for an Internal Security Focus for Enforcement

The State Liquor Commission is one of the largest retailers in the state, with a chain of 76 stores situated from Coos to the sea. Most any retail business of that size will have an Internal Security Unit dealing with shoplifting, fraud, employee theft, and workplace safety issues. The Commission recently sent the Chief and Deputy Chief of Enforcement to retail security training with the American Society for Industrial Security and is enacting a new standard operating procedure that charges the Enforcement Division with the responsibility for coordinating internal security for the Commission. The Commission sees this as a positive move that once again reinforces the regulatory aspect of the job. If properly carried out the Investigators will not have time to be emulating conventional police work even if they had the inclination to do so.

The Commission has also examined the current practices regarding the clothing that Enforcement Officers wear to do their job. Their intention was to ensure that the image they present is similar to that of detectives in police departments and the regulatory inspectors in other State agencies. During normal daytime business hours, early evening inspections, and inspections of establishments where the clientele and management is such that there is seldom any disorder or the presence of intoxicated patrons, the policy is that the Investigators will dress in business suits.

There are two types of attire, however, that the policy allows Investigators to wear when engaged in specific assignments. One is a regular police style uniform consisting of a uniform shirt, uniform dress trousers and a police campaign hat, with shoulder patches and hat and breast badges. This is authorized to be worn at ceremonial events such as Police Academy graduations, wakes and funerals of police officers or Commission employees, and when assisting local and State police at DWI enforcement checks where they might be required to direct traffic, check driver

licenses or conduct field sobriety checks. It will also be worn when working high profile anti-shoplifting and security assignments at Liquor Stores, where it is important that they be readily recognizable as law enforcement officers. Recently the Investigators were called upon to maintain order at a demonstration conducted outside one of the Liquor Outlet Stores by a group protesting open container laws. The Investigators dressed in their police uniforms to facilitate crowd control and traffic direction and control at this event.

The second type of attire consists of tan wash and wear "511" utility pants, dark blue golf shirts with embroidered badges on the left chest, the investigator's name embroidered on the right chest, and "POLICE -STATE LIQUOR ENFORCEMENT" lettered across the back. A civilian jacket is worn over the golf shirt when the weather is cool enough to permit it, and with the jacket on, the Investigator is indistinguishable from any civilian that might be visiting the establishment. If there is a need for the Investigator to be readily identified as a police officer, the jacket is to be removed before entering the establishment. This uniform is worn on checks of the higher risk establishments, generally from 10:00 at night onward, for the safety of the officers and ready identification by the employees and patrons of those establishments and other law enforcement officers.⁷

As with any business there are some problem on-premise licensees in this state. These are locations where assaults and other disorderly incidents take place with some regularity and where intoxicated patrons cause concern in the neighborhood or drunken driving vehicle crashes have occurred and the drivers had their last drink at one of these establishments. Some are hangouts for members of known outlaw gangs who have intimidated customers and even local police in the past. It is appropriate for Liquor Investigators to be readily identifiable and have a higher profile when checking these establishments. Even then, the golf shirts and firearms are normally covered by civilian attire and only displayed when a problem is anticipated.

The Commission has recently reviewed and revised the standard operating procedures that regulate the attire to be worn by the Enforcement Officers and the occasions when it is to be worn, to ensure closer control of this aspect of its operations. The Division is in the process of rewriting all of its policies and

⁷ This is now specified in the Investigators' policy and procedure manual

procedures in connection with efforts to achieve national accreditation. The Commission must continue to be sensitive to public perception in this regard.

I note, however, the overwhelming support that has been shown to the Enforcement Division by the regulated community and the local police and that the complaints that regarding the persona of our Investigators usually have come with regard to problem establishments that have been the subject of enforcement action.

Our Investigators are often requested by local police to assist them in enforcing laws relating to access to alcohol by minors, at events such as college homecomings and in the height of the summer at Hampton Beach. For these events, the Division generally deploys the DWI enforcement van that was procured with federal funds from the New Hampshire Highway Safety Agency.

When the Highway Safety Agency decided to award a grant so that New Hampshire could have such a van, which is commonplace in many other states, they approached both the Department of Safety and the New Hampshire Sheriff's Association but neither wished to have the responsibility of the van. Due to concerns expressed that no one specific local police department should be given the task of maintaining and staffing it, the Division of Liquor Enforcement was asked to assume this responsibility. The Commissioners at the time agreed.

Differences of opinion arose during the procurement process about the amount of specialized equipment on this van and the change orders to the contractor that provided this equipment. These differences of opinion unfortunately could have been handled more diplomatically and they spilled over into public discourse. In the end, the expenses were covered by a federal grant, with no State funds involved. The van was delivered, the Division of Enforcement is responsible for its storage and upkeep, and the challenge now is to look ahead and not backward, and ensure the best use is made of this equipment in the interest of the State and its citizens.

In conjunction with State and local police the van is deployed to those locations in the state and the times when there is the highest number of DWI-related traffic crashes. Liquor Investigators officers are trained as drug recognition experts and certified to operate the Intoxilyzer instrument and give field sobriety tests, and to drive the van to and from, and participate in, these DWI road checks. When a drunk driver is apprehended, the Liquor Enforcement Officers attempt to determine where that person had his or her last drink and whether or not a licensed establishment sold or served to an intoxicated person or to a minor. Because of the communications equipment and other capabilities in the van, from time to time local

law enforcement agencies request to have it brought to the scene of tactical operations, leading to rumors that the Enforcement Division had somehow developed a SWAT team. More recently, the Division of Homeland Security and Emergency Management has listed the van as an asset that potentially can be used in times of catastrophic events as a field headquarters. Since it is a State asset, it makes sense to share it.

The attention of the Enforcement Division is usually drawn to a licensee by local police complaints of assaults, disorderly premises and customers being over-served and becoming involved in DWI related crashes including fatal crashes; complaints of neighbors of the establishments of noise, disorder, public urination, minors being served, and similar problems. Liquor Investigators do not suddenly decide to pick on certain licensees for the sport of it; there has generally been a history of complaints and a lack of success of educational efforts before a license is in jeopardy.

We have also heard concerns expressed regarding a large turnover in enforcement personnel in the recent past. The present Commission does not know all the reasons why employees may have left, but incidents were duly reported in the media where Liquor Investigators left the Commission's employ after having been found drinking with other off-duty law enforcement officers at licensed establishments after legal closing hours, and the drunk driving arrest of high-ranking Investigator while operating his official State vehicle. No law enforcement officer can expect to engage in such behavior and keep his or her job and it is a testament to an agency when it acts swiftly and decisively in dealing with such issues.

Due in part to the synergistic effect of the Commission's merger of enforcement, education and licensing within a single Division, New Hampshire last year enjoyed a 91% compliance rate on "sting" operations designed to catch licensees selling to or serving minors, and a 98% compliance rate on investigations into sales of alcohol to intoxicated persons, one of the highest rates in the nation. Between 2006 and 2009, the number of violations of service to a minor dropped from 54% of all violations to 34%, a drop of 20 percentage points, and incidents of service to intoxicated persons dropped from 13% to 4%.

The Division of Enforcement was recognized by the National Liquor Law Enforcement Association as liquor law enforcement agency of the year in 2007 for its approach to preventing underage access to alcohol, reducing impaired driving, hazardous drinking, investigation of fictitious ID's, and specialized training provided to servers and sellers of alcohol and the managers of licensed establishments, and

its partnership with local law enforcement in statewide compliance checks. Last year they were recognized by the federal Office of Juvenile Justice and Delinquency Prevention's Underage Drinking Enforcement Training Center for outstanding contribution to the enforcement and prevention of youth access to alcohol and underage drinking.

Recommendation: The Commission continues to believe that it should not farm out one of its most important responsibilities and have to seek these services that are now part and parcel of its operations and an important component of its mission, from another State agency.⁸

4. Should a "Liquor Commission Ombudsman" be appointed and what would be the duties and responsibilities of that office?

The concept of an Ombudsman originated in Sweden in 1909, having been borrowed from a somewhat similar concept in Turkey that had existed since the 1800s. Ombudsmen soon appeared in Finland, Norway and Denmark as well.

The word means "proxy" or "representative." An ombudsman is an independent government official who receives, investigates and attempts to mediate complaints from the public about the performance of government agencies. In the United States, several states have Ombudsmen that have responsibility for receiving complaints about correctional facilities, Medicaid claims, etc. Some hospitals and universities have ombudsmen to handle complaints from patients and claimants.

The American Bar Association standards for ombudsmen recommend that an ombudsman not represent a particular agency, but represent instead more than one agency.

Ombudsmen are generally given the authority to access agency files and to take statements from persons under oath. They are granted free access to agency facilities at all reasonable hours to pursue their inquiries.

A more powerful office is that of an Inspector General. An I.G. investigates complaints from inside and outside an agency, has the power to issue subpoenas, seek criminal indictments, and seek injunctions against an agency and in some cases to institute removal proceedings against public officials. The notion that the Liquor

⁸ See Appendix for a draft of legislation that would reverse the transfer of Investigators to the Department of Safety.

Commission should have an Ombudsman is based on the premise that licensees need protection from the Commission and that they might be hesitant to come forward and make complaints against Liquor Investigators or challenge Commission policies or actions for fear that they would be retaliated against or spark a "witch hunt" against their establishments.

The Commission believes such fears are unfounded. My experience, now having worked in three State agencies (Police Standards and Training, Safety, and Liquor) is that people are generally quite willing to make complaints against State agencies and officials and they have many avenues for doing so.

The Governor's Citizen Services Office receives complaints by phone and off their website every day regarding a range of issues from conditions at correctional institutions and nursing homes to misuse of State owned vehicles. Most State agency heads are appointed by the Governor and Council and have an inherent incentive to respond to public complaints if they wish to be reappointed when their terms end. The five Executive Councilors frequently receive complaints from the public and contact State agencies on behalf of their constituents. The Attorney General's Office of Public Integrity exists to investigate complaints of wrongdoing by public officials.

There are more than 400 State Legislators, all of whom participate in constituent service and often contact agency heads to discuss constituent complaints. Citizens write letters to newspapers and newspaper reporters often take up the cause of someone who feels they were wronged by a public agency. Most of these agencies and officials will act on anonymous complaints. Indeed, any citizen or visitor has multiple outlets if he or she wishes to complain about a State agency, official or employee.

Given past history regarding the number of complaints against the Liquor Commission we believe an ombudsman would have little to do. We believe it would be more practical and cost-effective if the State had a single Ombudsman or Inspector General that handled complaints against multiple agencies. Given the \$150,000 or more that such a program would cost, the Commission has much more pressing needs that it should be funding. If the Commissioners are doing their jobs properly they will be open and receptive to meeting with the public and hearing and acting on their complaints. New Hampshire is fairly unique in that our agency heads are generally far more accessible than those of most other states – it's part of the New Hampshire culture.

There is one situation where a licensee might be unable to receive the instant results they are looking for when making a complaint. That is in a case where the licensee has a pending enforcement action against them that they wish to discuss. If the action is likely to result in a hearing before the Commission, a Commissioner cannot have an *ex parte* communication about the case, either with the Division of Enforcement or with the complainant or a Legislator, because we cannot take a chance that it would cause us to pre-judge the issue rather than considering all the evidence in a formal hearing with all parties present. We must tell the party that we cannot discuss the matter until after any hearing has been concluded.

As a possible solution, one of our three Division Directors, the Director of Administration, oversees fiscal matters, liaison to the Governor and Council, Human Resources and Data Processing. He has no authority over Enforcement or licensees. The Commission could assign this individual (currently Craig Bulkley, who is a former Town Manager in Derry and well suited to such an assignment) the additional duties of External Relations and all citizen complaints that the Commissioners could not handle due to the *ex parte* rule could be routed to him. He would have access to the individuals and information needed and the authority to access the services of the Attorney General's Office if needed. Together with the recommendation presented elsewhere that legislation provides for appeal of Commission licensing actions to the Superior Court, this should obviate the need for an Ombudsman.

Recommendation: The Commission could designate the Director of Administration as the individual to whom public complaints involving *ex parte* communications prior to a hearing would be directed and assign him the responsibility of communicating with the complainants and making any necessary references to other resources.

5. What appropriate statutory changes would be required to be made if the Enforcement Division is transferred to the Department of Safety on July 1, 2011, as provided in Chapter 144, laws of 2009?

The Commission has identified 27 separate statutes or portions of statutes that will have to be amended or deleted or new provisions enacted on or before July 1, 2011 in order for Liquor Enforcement to function effectively within the Department of

Safety. That department may in fact have identified additional changes that will be needed if the transfer takes place.⁹

Additional Issues that have been discussed in the context of the Liquor Commission

Sale or "Monetization" of State Assets

A wide range of proposals has been floated from time to time, ranging from selling or leasing the entire Liquor Commission business to a private concern (which turned out to be a disaster when the State of Maine did it), to selling off the Storrs Street headquarters, Outlet Store #1 and the State warehouse. It was originally estimated that the State would realize \$5 million from the sale of the Storrs Street complex and this amount was assumed in balancing the State budget for FY 11. With the upheaval in the Commission in recent months, no steps were taken to facilitate this sale, and the Commission is attempting to make up the \$5 million by a combination of \$4 million in reductions to its various budgeted appropriations, and putting in place initiatives that we hope will increase its net profit for the year by \$1 million over plan.

I have serious doubts about the financial wisdom of selling the Storrs Street facility. In the first place, an independent appraisal of the property indicated that the value was much less than \$5 million- nearer \$3 million. The State owns the property and pays no taxes on it. It makes a net profit after operating expenses of about \$600,000 a year from bailment paid by producers for storing spirits at the warehouse. If they removed the unused railroad siding that takes up space in the warehouse they could store even more inventory and make more profit from bailment.

If the Commission sold the property they would have to relocate their headquarters to another location in Concord by either buying an existing office building, constructing a new one, or leasing one. At current rates in downtown Concord they could expect to incur \$300,000 a year in leasing costs. The Liquor Outlet Store would likewise have to be relocated, by either buying a building, constructing a new one or leasing a commercial location. Leasing a location would cost another \$300,000 a year, where the present location costs are minimized because the State owns it. There would also be moving and relocation expenses, possible lost sales volume during the transition, and any purchase agreement would have to allow the Commission to remain at the location until a move could be made. The State would also lose its warehouse, and all bailment

⁹ A list of these changes can be provided to the Committee upon request.

monies would go to the private concern that owns and operates the other warehouse, which is located in Nashua.

Not wishing to totally reject out of hand the prospect of selling the Storrs Street property, the Commission is obtaining a second independent estimate of what the real estate is worth, looking at various vacant properties in the Concord area and possible sites for a new Concord store and warehouse and if it appears that this idea is more economically feasible than believed, they will reconsider.

Recommendation: In the present real estate downturn it does not appear that the sale of the Storrs Street headquarters, outlet store and warehouse property would be in the long term best interest of the State.

Sale of Spirits in Grocery Stores

This is another form of privatization of the sale of alcohol. We believe this perennial proposal is not in the best interest of the citizens of New Hampshire. Almost since the day the State approved the sale of wine in grocery stores there have been proposals to allow the sale of spirits (hard liquor) there as well. It is only through constant efforts to differentiate itself from the supermarkets that New Hampshire's liquor stores have continued to make the sale of wine profitable, albeit less profitable than the sale of spirits.

Currently 40% of the off-premise wine sold in the state is sold at grocery; drug and convenience stores yet only 17% of the Commission's revenues are derived from those sales, compared with 100% of the revenues from sales at State Liquor and Wine Outlet Stores. Simple common sense arithmetic clearly indicates that if grocery stores were allowed to serve spirits it could be profitable for these stores but at the expense of the State stores and their ability to provide these revenues for the General Fund.

The argument in favor of spirits sales at grocery stores goes like this: Liquor stores are open during certain business hours. Some are not open on Sundays and holidays. Grocery chains and drug stores are open as early as 6:00 a.m. and many remain open until midnight or later, including Sundays and holidays, thus making it more convenient for the public to purchase their spirits. There are more than 1,400 potential grocery stores whereas the State only operates 74 liquor stores. There would be increased sales of spirits because of the increased opportunities to purchase. Female customers who might be reluctant to enter a Liquor Store to purchase spirits might feel more comfortable shopping in supermarkets, convenience stores and drug stores. Liquor

should be presented as an accompaniment to food rather than being focused solely on the sale of the alcohol itself, a "natural extension to responsible consumption."

Here are the reasons I believe this is a bad idea: Over the years the State Liquor Outlet Stores as the sole purveyor of hard liquor within the State have been the "goose that lays the golden egg" year after year. Our liquor business has been and is the envy of the rest of the nation. Without the revenues produced by this business enterprise, the General Fund would be unable to support many of the vital services provided by the State to its citizens, particularly services to the disadvantaged, the elderly and the infirm, without some form of new taxation.

We believe the State has been so successful in producing these revenues largely because it has exercised monopolistic control over the sale of the product. Currently the State does not have to share these revenues with anyone – the profits all go to the State coffers.

Secondly, we have been successful because New Hampshire State Liquor Commission has earned a reputation with the public throughout the Northeast as the place to purchase liquor at the lowest prices of any surrounding state, tax-free, and with a wide selection to choose from.

One must ask the question, why are the grocery and drugs stores so eager to sell spirits? The answer is obvious – because they see a huge profit in doing so. Once the door is opened for these so-called "agency stores" the entire profit will no longer accrue to the State – it will have to be shared with the private outlets, whose focus will naturally be on increasing their bottom line at the expense of the State. States that monopolize the sale of spirits (rather than wine and beer) receive nearly \$38 more revenue per gallon sold than states that license private off-premise sales (*The Effects of Privatization of Alcohol Control Systems*, National Alcohol Beverage Control Association).

I believe it would only be a matter of time before the State's chain of liquor stores, arguably one of the largest and successful retail chains in the area, and a chain that is operated for the sole benefit of the public, would close one by one as the grocers made it their next focus to eliminate competition, leaving perhaps only the four Interstate stores standing. Business would be bled away from the State stores as people purchased their spirits along with their groceries. As with what has happened to Main Street America, the big box stores and huge retailers with their purchasing power would soon dominate the market.

There is a finite market for liquor and I am unconvinced that there is an untapped market out there large enough to greatly enhance State revenues through added sales to be shared with the operators of the agency stores, given the 15-20% wholesale discount on purchases that the grocers say they need in order to be profitable.

The third and perhaps most important reason I believe this proposal is not in the best interest of the State goes to the very heart of why New Hampshire chose more than 75 years ago to become a "control" state – the Commission's mandate to minimize the abuse of alcohol by controlling its sale. There are reasons why New Hampshire is consistently rated as having the lowest crime rate and as being one of the best places in the nation to live. One of those reasons is that access to alcoholic beverages is limited.

Our State stores are run by a trained staff that has the highest compliance rates in the nation for making sure they don't sell alcohol to minors or sell to intoxicated persons. Our clerks are not compensated on the amount of alcohol they sell – when they are recognized for outstanding effort it is for refusing sales to minors or intoxicated persons, reducing breakage, maintaining a clean and neat store, or good customer service. This has resulted in better public safety by keeping more alcohol out of the hands of those who should not have it.

Hard liquor is a much different commodity than beer or wine – its alcohol content is much higher and it is a much more dangerous substance if not consumed responsibly. Selling spirits is different than selling beer or wine; just as selling dynamite is different than selling sparklers.

History has shown that states that have deregulated the sale of hard liquor typically allow profit to be the dominant factor in their alcohol policy. Under State controlled systems such as ours, public health and public safety and not just profit, are the driving forces. We seek to minimize public drinking, not make it easier for anyone to obtain hard liquor at any time. Someone who needs to purchase a bottle of hard liquor at 6:00 a.m. or midnight is quite likely someone who should not be purchasing alcohol at that time. With a source of hard liquor virtually on every street corner in our cities and towns it will be much easier for alcohol abusers to make repetitive daily purchases of what, while a pleasant libation for some is literally a death sentence for others – either the slow way through a ruined life, or the fast way in a highway crash.

It is much easier for the Commission to control the actions of its own employees at its chain of stores than it is to control the thousands of employees that would be selling spirits at more than 1,400 outlets. The expansion that would be necessary to the

Commission's Enforcement Division alone would eat into whatever added profits might accrue from having these additional outlets.

It is easy to say that spirits in grocery stores would be sold as "an accompaniment to food" but there is no question that many customers would enter for the sole purpose of purchasing liquor, unless the State enacted a regulation that said, for instance (similar to the regulation that requires bars to maintain food service) that alcohol could only be sold at a grocery store if accompanied with a minimum purchase of, say, \$35 in grocery products, and prohibited the sale of pints and nips which make it too convenient for problem drinkers to feed their habits multiple times in a day.

An outlet on every street corner would also lead to increased instances of "shoulder-tapping", the practice of underage persons loitering outside stores that sell spirits and attempting to persuade persons of legal drinking age to make purchases for them.

Currently, State Liquor and Wine Outlet Stores are strategically located up, down and across the State. The Commission is constantly looking at new locations. As they renovate our stores they focus on making them attractive, safe, pleasant shopping experiences for customers as well as enhancing security and minimizing the possibility of prohibited sales. The Commission recently undertook a study of the hours at its various stores to ensure that the stores are open during reasonable hours to accommodate the responsible consumer of alcohol without making them attractive targets for the over-imbiber.

Another proposal that has been presented to the Commission was to do an experimental "pilot project" in which 11 grocery stores of varying sizes and in varying locations was licensed to sell spirits, or in which all grocery stores would be allowed to sell a small variety of high-end spirits for a period of several months as a "test market." In my opinion this would simply result in the camel getting its proverbial head under the tent and a start down the slippery slope toward privatization of the liquor business, at the expense of the citizens of the State and to the sole benefit of the grocery and drug businesses. There are so many variables there is no practical way to design an experiment that could not be manipulated and that would tell us what we need to know before embarking on what could be a disastrous course.

The New Hampshire Retail Grocers' Association has estimated that the State would gain \$290,000 from the issuance of 1,000 licenses to stores to sell spirits and a one-time \$3,700,000 boost from the initial stocking of a liquor inventory at these stores. They anticipate \$1,000,000 to be realized from added volume of warehouse fees, however they fail to note that not all of these fees would go to the state, since not all spirits are

stored in the State warehouse – some are at the private Law warehouse. They estimate the State would receive \$11,310,000 a year from increased annual sales.

For this type of profit the grocery, drug and convenience stores would have to sell \$70,625,000 in product, an increase of about 26% above current spirits sales in the state, a figure that I do not feel is reachable while still promoting responsible drinking habits on the one hand or “bleeding” sales from the State Liquor and Wine Outlets on the other. To the extent that sales were bled from State stores, which they would be, the \$11,310,000 profit would soon begin to evaporate.

I predict the end result of allowing spirits sales in private outlets, best case scenario, would result in the eventual elimination of all but 11 State Liquor and Wine Outlet Stores. Those still standing would be the four Turnpike stores and six of the busiest Outlets located in border communities and along major State highways. Those stores would lose an estimated 20% of their sales volume to the grocery stores as people changed their shopping habits. Even after factoring in the savings in personnel costs, leases and other expenses that the Commission would save by closing 65 stores, if there was no change in the present sales volume the State’s General Fund would suffer \$25,881,707 a year in lost revenues. In order to just break even, the private outlets would have to increase spirits sales by \$132.8 million dollars a year, or 26%. To produce a significant increase in revenues to the General Fund, spirits sales would have to increase by an astronomical amount.

This is a very conservative figure because it does not take into account the fact that with the closure of 65 State outlets, the sale of wine would shift dramatically to the grocery stores, bleeding away even more of the State’s net profit.

If allowing the private sale of spirits led to the closure of all 76 Outlet Stores, after factoring in the savings from laying off personnel and store closures, with no increase in sales the net profit to the State from the sale of spirits would fall to \$134,006,681, based on current figures, a loss of \$121,000,000 to the General Fund plus another \$48,400,000 for a total loss of \$169,000,000. To make this amount up with the 20% discount the Grocers’ Association estimates they would have to receive on product in order to make an acceptable profit, the combined sales of sprits and wine would have to grow by about 500%, or 5 times the current sales, an unreachable amount – and this is merely to break even, without increasing the State’s revenues in any way.

The best way to evaluate this proposal is to look at New Hampshire in relation to other states. Our liquor business is the envy of everyone else including especially states that allow the sale of hard liquor at private outlets. If the proposed system worked so well,

one would expect that Maine and Vermont, both of whom like New Hampshire attract large numbers of tourists, and both of which, unlike New Hampshire, have privatized the sale of spirits, would make nearly the same net profit from the sale of alcohol as New Hampshire, but this is not the case.

The current State Store structure lends itself, with a few tweaks, to making even more profit for the State than it does now, without compromising the control of alcohol. Just as the State does not need slot machines and video poker machines in every Seven-Eleven and gas station in the State because of its deleterious effects on society, it also does not need to make hard liquor available on every street corner at every hour of day and night, if we are truly interested in controlling the abuse of the product.

The State must ask itself – do we want hard liquor to be available on all major street corners, which is where you find the convenience stores, grocery stores and combination gas station/convenience stores? The easy availability of hard liquor will lead to increased incidents of teenage drinking, and an increase in drunk driving and alcoholism because of the unlimited access and availability of the product from 6:30 a.m. until nearly midnight and in some cases, later.

The experience of foreign nations with the sale of alcohol has been similar. Great Britain is currently coping with increases in alcohol-influenced crime and disorder. According to the *London Daily Telegraph* of July 21, 2010, the Home Secretary is looking to clamp down on shops selling alcohol at below cost prices as “loss leaders” to attract persons to their shops and increase bulk sales. The government proposes to increase the license fees for selling alcohol beyond a certain hour, to deter late-night crime and disorder. The Department of Culture, Media and Sport has been stripped of its authority to control alcohol; and full responsibility for licensing and enforcement has been given to the Home Office.

The United Kingdom’s Association of Chief Police Officers claims that disorder related to alcohol there is one of the biggest challenges facing police forces, with almost 1 million violent crimes committed each year and alcohol linked to half. Within a year of allowing 24-hour sales of alcohol, drink-related assaults increased by 64,000 to a record total of 1.087 million and deaths caused by drivers over the alcohol limit rose to the highest level in 30 years (*Daily Mail Online*, July 23, 2010).

In Scotland, health officials report that adults drink 25% more alcohol than the United Kingdom average and the gap is widening, citing cheap drinks offers by supermarkets and off-premise licensees as the main reason for excess consumption (*NHS Scotland*

Today, July 21, 2010). Now Germany too is experiencing increased public disorder, crime and drunk driving attributed to an increase in the availability of liquor at all hours.

The reinstatement of a beer sales monopoly in Sweden saw the rates of alcohol psychosis, alcoholism and intoxication decreased by more than 20% among people 10-19 years old and by more than 5% among people older than 40. Motor vehicle crashes decreased by 14% across age categories, and suicides decreased by more than 11% among people ages 10-19 and older than 40-1/2 (*In the Red: Alcohol Revenue and State Budgets in Crisis*, Marin Institute study, May 2010). Where spirits have much higher proof levels than beer, one can only imagine the results if New Hampshire did away with the State monopoly on spirits.

States such as New Hampshire with retail monopolies over spirits have a lower prevalence of drinking and binge drinking among people ages 12 to 25 years. States that monopolize the sale of both spirits and wine report 14.5% fewer high school students reporting drinking alcohol with the past 30 days, 16.7% fewer reporting binge drinking within the past 30 days, and a death rate for people under age 21 killed by alcohol-impaired driving that is 9.3% lower (Marin Institute study, *ibid.*).

Maintaining state monopolies over alcohol sales helps lower alcohol outlet density, overall consumption, underage drinking, and deaths from drunk driving. Any state considering changing its monopoly system must seriously consider the increased consumption and alcohol-related harm that will likely follow.

Eventually, I predict that with the addition of 1,400 more sources of spirits New Hampshire's competitive price advantage vs. other states will also disappear. If the lesson from other states holds true here, the State, then sharing its profits with 1,400 other outlets, would sooner or later be forced to place a tax on the sale of liquor to make up for lost General Fund revenues, and that will negatively impact the retail price of the product and cost the responsible drinker more to enjoy the product.

Recommendation: Rather than rolling the dice and taking a chance on destroying a system that has been successful both in terms of maximizing profits from and controlling the abuse of alcohol, the Legislature should shy away from experimentation with the sale of spirits in grocery, drug and convenience stores and allow the Commission to continue to modernize and update its stores, adjust its hours to the needs of the responsible buying public, and focus on closing underperforming stores and opening stores in new and potentially more profitable market areas. It makes no sense to

consider changes to a system that works well and raises revenue that would otherwise come only from increased taxation.

Instead of throwing a monkey wrench into a well oiled system which is poised to return over a billion dollars in revenues to the State's General Fund over the next 8 years, the State Liquor Commission should be allowed to continue to go forward with its strategic plan to modernize its retailing model without siphoning off the profits to private corporations.¹⁰¹¹

Privatization of the Liquor Business

Another idea that has been floated around for some time is that the State should sell off its liquor business to some private concern, pocket a large, one-time windfall and get out of the business. A variation on this is to issue a long-term lease to some private corporation, who would manage the liquor business for 30 years, then return the business to the State, supposedly much stronger and more profitable than ever because of the great expertise of this private firm in running it and the lessons that we could learn from them.

The facts belie this argument. New Hampshire and the 17 other state liquor monopolies generate far more cash than is produced in the 32 states in which the private sector sells alcoholic beverages. In fact, control states generate on average nearly twice the revenue as license jurisdictions, an average of \$53.07 per gallon vs. \$15.47 (Study by William Kerr of the Alcohol Research Group, a noted think tank on alcohol). That money comes in every year forever into the future.

The employees at New Hampshire's State Liquor Commission are mostly old hands at the business and have every bit as much knowledge and ability about buying, marketing and selling wine and spirits as those who would come from a private concern.

The state of Maine was the most recent victim to succumb to the privatization idea, and by all accounts it has been a disaster in terms of not living up to the promise of greatly increased revenues. The private entity that took over the business is doing well; not so the State. Once the dog was let out of the yard and the State realized the mistake they

¹⁰ Photos of the tasteful interior design of these new stores are available upon request.

¹¹ A map of current store locations is available from the Commission.

had made, it was too late. It is unlikely that any proposal to privatize New Hampshire's liquor stores would fare any better.

A year after privatization in Maine, the *Portland Herald* reported that the dollar loss to the State was between \$175 and \$275 million after obtaining a quick \$125 million to fill a \$1 billion-plus hole in the State budget. "The worst mistake we ever made", is the way one Maine official described it to the NH Liquor Commission. The idea of the sale came from a super-lobbyist who promptly began angling to purchase the business for a Wall Street client.

Even after a \$125 million up-front payment, Maine was forgoing \$26 million a year in General Fund revenue. Even after subtracting the up-front money and the \$40 million a year the State expected to get from the management agreement under a formula for the sharing of revenues, the net loss after 10 years would be at least \$100 million, a figure that proved to underestimate the actual losses to the State.

Meantime, the private company running the stores has increased sales but pocketed the lion's share of the profits, enjoying the benefits of both capitalism and socialism, with the State required to set the price of liquor and guarantee the contractor a gross profit of 36.8% of sales. Two-thirds of ownership rests in an affiliate of the Wall Street investment firm the lobbyist represented. The other one-third is owned a liquor brokerage firm.

I believe that in time, if New Hampshire privatized its liquor stores, the Granite State would come to resemble Maryland and Washington DC, with a liquor store on every street corner.

The so-called "free market incentives" for privatization of the liquor business are just that – incentives to increase the sale of alcohol, with concerns for the control of alcohol left out of the equation. A comprehensive review and analysis by the U.S. Task Force on Preventive Medicine found that privatization leads to higher alcohol outlet density, greater physical availability of alcohol, and more deaths from drunk driving.

Recommendation: Long term financial return and public safety are the key benefits of New Hampshire's system. As tempting as it may be to look for a short-term solution to the State's fiscal woes, it is not worth the bigger social and financial woes that would occur over the long haul by auctioning this invaluable State asset to the highest bidder.

Authorization of Additional "Agency Stores"

I fail to see any compelling current need to increase the number of Agency Stores. There are currently three Agency Stores in the state – Greenville, Errol and Pittsburg, and together they account for less than .003% of the Liquor Commission's annual sales volume.

Our 76 State Liquor and Wine Outlet Stores provide very good coverage of all areas of New Hampshire. There are few communities in the state that are further than 10 miles from a State store and most of the State stores are located in towns and cities that are the central shopping locations for those areas. In addition, as part of the Commission's our Strategic Plan they intend to look at relocating certain stores when current leases expire, to be more central to their respective market areas; as well as opening new stores whenever and wherever it appears there is a considerable under-served market.

As with privatization and sale of spirits in grocery and drug stores, opening additional Agency Stores will only cause the State to diminish profits on the sale of alcohol by having to split it with the Agency Stores, and increase the density of hard liquor outlets, complicating enforcement and making the product overly susceptible to alcohol abuse.

Recommendation: If the current legislation authorizing Agency Stores is not allowed to lapse but is re-enacted it should contain substantially the same provisions including not opening such a store within 10 miles of an existing State store, requiring public hearings and local community approval, and leaving the decision of whether to open additional Agency Stores up to the Liquor Commission.

Appendix

List of Recommendations
Drafts of Recommended Legislation
Legislative Proposals

Adjusting Liquor Commission Salaries

The purpose of this legislation is to implement salaries for the three Directors at the Liquor Commission to coincide with the Liquor Modernization Act of 2009 which made them unclassified positions; to recognize the recommendations of the Hay Study and to adjust the salaries of the Liquor Commissioners so that there is a clear delineation of responsibilities within the organization.

1. Amend RSA 94: 1-a as follows:

Delete in grade GG Liquor Commission Commissioner.

Insert in grade II Liquor Commission Commissioner.

Delete in grade HH Liquor Commission Chairman.

Insert in grade JJ Liquor Commission Chairman.

Insert in grade GG Director of Marketing, Merchandising and Warehousing, Liquor Commission.

Insert in grade GG Director of Administration, Liquor Commission.

Insert in grade GG Director of Enforcement, Liquor Commission.

2. Effective date: This act shall take effect on July 1, 2011.

Qualifications and Appointment of Liquor Commissioners

The purpose of this legislation is to ensure that Liquor Commissioners have the requisite background and experience for the job, and to require that they pass a background investigation to further ensure their fitness.

1. Amend RSA 176:1 to read as follows:

176:1 Commission.

- I. There shall be a state liquor commission consisting of 3 members appointed by the governor with the consent of the council. Not more than 2 members

shall belong to the same political party. Each member shall hold office for a term of 6 years. If a vacancy shall occur in the commission, it shall be filled for the remainder of the term. Any or all of the commissioners may be removed by the governor and council for cause.

- II. One of the commissioners shall have had prior experience in marketing or retailing, one shall have had prior experience in financial management, public administration or as a liquor licensee, and one shall have had prior experience in law enforcement or the legal field. The commissioners shall be of equal authority and shall operate by consensus and shall determine their respective roles and primary areas of concern by consensus unless a consensus cannot be reached, in which case the chairman shall determine the respective roles and areas of concern of the other members.
- III. Before an individual is appointed as a liquor commissioner, he or she shall undergo a background investigation at the direction of the attorney general. The investigation shall include a criminal and motor vehicle record check, a credit check, and an investigation of the individual's character and reputation in the community and among associates, present and former employers. The report of the background investigation shall not be a confidential personnel record and the governor shall review the report prior to presenting the nomination to the executive council.
- IV. The annual salary of each member of the commission shall be as specified in RSA 94:1-a.

2. Amend RSA 176:2 to read as follows:

176:2 Chairman; Compensation; Duties.

- I. The chairman of the commission shall be designated as such by the governor with the consent of the council, and his or her term shall be coterminous with each term of the governor unless the chairman's successor shall have been sooner appointed. The expiration of a chairman's term of office as chairman of the commission shall in no way affect the length of his or her term as a commission member as established under RSA 176:1
- II. The chairman of the commission shall preside at all commission meetings and hearings and shall serve as the state's representative to the National Alcoholic Beverage Control Association. In the event the chairman is incapacitated or otherwise unable to perform these duties they shall be performed by the next senior commissioner in terms of length of service.

3. Effective date: This act shall take effect upon its passage.

Reversal of the transfer of the Division of Enforcement, Licensing and Education of the State Liquor Commission to the Department of Safety.

The purpose of this legislation is to reverse the pending transfer of the Enforcement, Licensing and Education operations of the State Liquor Commission to the Department of Safety and to ensure that they remain with the Liquor Commission.

Be it enacted as follows:

1. Chapter 144:301, VIII, laws of 2009, section 163-175 are hereby repealed. Section 1 of SB 181-FN-A is also repealed.
2. Effective date: This act shall take effect upon its passage.

Providing for Criminal History Checks of Liquor Commission Employees

The purpose of this legislation is to allow the State Liquor Commission to require criminal record checks on employees that handle confidential information or cash, and all employees of the Division of Enforcement.

1. Amend RSA 176:8 by inserting after said section the following new section:

176: 8-a Criminal Record Checks of Liquor Commission Employees. The liquor commission shall conduct pre-employment FBI criminal history checks through the state police criminal records unit of any and all employees who will be responsible for the handling of confidential information or cash and all employees of its division of enforcement. The commission may establish an application fee sufficient to cover the cost of the checks.

2. Effective date: This act shall take effect on July 1, 2011.

Establishing Further Controls on the Dispensation of Liquor Product Samples

The purpose of this legislation is to limit the number of samples of liquor and wine products provided to members and employees of the State Liquor Commission for evaluation purposes.

1. Amend RSA 179:31 by inserting after RSA 179:31, II the following new paragraph II-a:

II-a: Notwithstanding other provisions of law to the contrary, manufacturers, wholesale distributors or wine and liquor vendors or their salespersons may distribute samples of new products or packaging being proposed for listing at state liquor stores to members of the state liquor commission and not more than 4 employees of the division of merchandising, marketing and warehousing charged with making liquor and wine purchases for purposes of tasting and evaluation of the product and its packaging and labeling. The following restrictions shall apply:

- (a) Samples shall not exceed one 1.75 ml. of each product per individual.

- (b) Beer or wine samples shall not exceed one 6-pack or the product's normal retail marketing unit.
- (c) Samples shall be for personal use. If the product is subsequently listed for sale in state liquor stores unused samples not retained for display purposes at the commission's offices shall be placed on sale in a state liquor store or if not listed for sale in state liquor stores or if the packages are marked as samples not to be sold, shall be destroyed.

2. Effective date: This act shall take effect on July 1, 2011.

Providing an Appeal to Superior Court from Liquor Commission Licensing Decisions.

The purpose of this legislation is to provide an appeal from licensing decisions of the State Liquor Commission to the Superior Court.

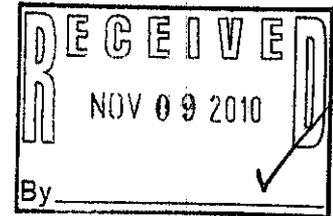
1. Amend RSA 179:56 by inserting after paragraph III the following new paragraph:

- IV. Decisions of the commission relative to the suspension or revocation of license and the imposition of administrative fines shall be appealable to the superior court of Merrimack County. The filing of an appeal shall not stay the action unless the court specifically grants a stay.

2. Effective date: This act shall take effect on July 1, 2011.



THE GENERAL COURT
OF
NEW HAMPSHIRE
CONCORD 03301



SYLVIA B. LARSEN
PRESIDENT OF THE SENATE

TERIE NORELLI
SPEAKER OF THE HOUSE

November 1, 2010

The Honorable John Lynch
Governor of New Hampshire
State House, Room 208
Concord, NH 03301

The Honorable Sylvia Larsen
President of the Senate
State House, Room 302
Concord, NH 03301

The Honorable Terie Norelli
Speaker of the House
State House, Room 308
Concord, NH 03301

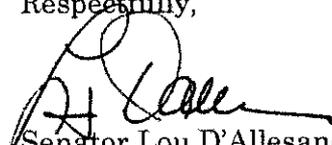
Dear Governor Lynch, Senate President Larsen and Speaker Norelli,

Re: ***SB 181, Chapter 248:2, Laws of 2010, committee to study the administrative and adjudicative process at the Liquor commission.***

Pursuant to SB 181, Chapter 248:2, Laws of 2010, enclosed please find the Final Report of the study committee.

Should you have any questions or comments regarding the report please do not hesitate to contact me.

Respectfully,


Senator Lou D'Allesandro
Chair

cc: Tammy L. Wright, Senate Clerk
Karen O. Wadsworth, Clerk of the House
Michael York, State Librarian
Members of the Committee

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SB 181

SB 181, Chapter 248:2, Laws of 2010

Committee to study the administrative structure and adjudicative process at the Liquor Commission

Final Report

DUE DATE: November 1, 2010

The above named study committee selected to study the following issues (1) Whether the liquor commission should have an executive director rather than a full-time 3-member commission (2) How best to ensure impartial review of appeals of licensing and enforcement decisions (3) How best to ensure that the enforcement division is properly supervised, contains its function to that of a regulatory authority, and guards against overly broad interpretation of its function (4) Whether a liquor commission ombudsman should be appointed and the duties and responsibilities of that office. (5) The committee shall also identify the appropriate statutory changes required to be made for the transfer, having duly met the committee offers the following final report.

FINDINGS and RECOMMENDATIONS

Whether the liquor commission should have an executive director rather than a full-time 3-member commission

- Members of the Committee have heard some concerns regarding the expansive activity of liquor enforcement personnel. The Committee believes that the Liquor Commission should instruct the Director of the Division of Enforcement and Licensing to focus all activities and resources to licensing, education and enforcement of the liquor and tobacco laws; and to refrain from venturing into other areas of state and local law enforcement.
- The committee felt that the New Hampshire legislature put considerable thought behind their legislation to organize the Commission. It sought to achieve the proper balance between profitability and control. Historically, the Commission always functioned best when there were three commissioners in place that were engaged and active. The issues that have risen seem to stem from a breakdown in the commissioner's structure.
- Does it make sense to have criteria for the Liquor Commission? There needs to be specific assignments of duties due to the nature of the business through out the Liquor Commission. The Chairman, (Director of Operations) along with the

other two Commissioners should have specific assignments for each by dividing specific duties and responsibilities amongst one another. Each of the commissioners should have actual authority to make final decisions in their assigned area of responsibility- A concern was that when everyone is in charge, no one is in charge. This would determine the assignment of responsibilities and strengthen the Commission. The likely breakdown would be a commissioner with a background in sales and marketing, a commissioner with a business background with some experience in the licensed community and a commissioner with experience in regulatory oversight. In addition with a 6 year terms staggered by 2 years it allows for an institutional memory that ensures a smooth transition and continuity from one administration to the next.

How best to ensure impartial review of appeals of licensing and enforcement decisions

- Potentially, with Enforcement, it would be overwhelming to just one individual. The revenue stream is too valuable. The committee felt that looking at the adjudicatory issue and personality issue; we should look at refreshing the independent appeals process and consider a panel.
- New Hampshire is the envy of the other control states, both in terms of the amount of revenue it returns to the General Fund and in terms of its system of enforcement and the resultant effect on New Hampshire's quality of living measures, such as the rates of alcoholism, alcohol –involved crimes and traffic crashes, teenage involvement with alcohol and public health. Some secrets to this success are emphasizing enforcement of upfront licensing requirements and a strong educational component.
- The Liquor Commission is too important of a revenue source for the state to risk turmoil and upheaval that could rise during the transition from the current 3 Commissioners to an Executive Director. A single Executive Director who would hear appeals could lead to personality conflicts between a licensee and the Director- with the only recourse currently being an appeal to the courts; this would be cumbersome and timely process.

How best to ensure that the enforcement division is properly supervised, contains its function to that of a regulatory authority, and guards against overly broad interpretation of its function.

- Virtually all major stakeholders oppose transferring NHSLC Enforcement to safety a (Please refer to attachments).

- The industry is very concerned that should Liquor Enforcement be allowed to move to the Department of Safety a change in mission would take place.
- There is a different mind set with the Liquor Commission, not just pro business. We want licensing, safety and responsibility, which is what NH, is all about.
- No enforcement transfer: There is opposition to the pending transfer of Liquor Enforcement to the Department of Safety. We encourage this committee to act on legislation that would repeal the move. We feel that enforcement should remain at the Liquor Commission, but feel there needs to be some checks and balances added to the system. What we have in place now is fair, transparent and public, with on-site professionalism, quality and education.
- How to ensure enforcement remains focused on their primary mission. The legislature has repeatedly changed course on where enforcement should be situated. Rumors abound regarding investigators in SWAT uniforms, etc. The commission has recently promulgated more definitive policies on Investigator attire and exercise of enforcement authority.
- A new emphasis for Enforcement. The primary functions of enforcement education and licensing belong with the commission and not with another State agency. Changes like this should not be based on the popularity of lack thereof individuals, but on system considerations. Local law enforcement and licensees support the Division of enforcement remaining where it is.

Whether a liquor commission ombudsman should be appointed and the duties and responsibilities of that office.

- There is clearly a need for an independent third party to hear panels. The industry has long felt that the deck is always stacked against you- with the Commissioners and the Chief of Enforcement being on one side of a hearing and the licensees on the other. A third party appeals process would eliminate any perceived conflicts of interest.
- The idea of an ombudsman: who are independent people within an organization who bring concerns from outside and within an organization to those who have the power to change rules/operations/decisions. Ombudsmen generally act with confidentiality and do not have any authority or position within an organization. If a third party appeals process is warranted then we as a committee or the Commission should establish it and appeals officers should have a certain degree of tenure, so that they can act independently for the Commissioners.

- The 3 commissioners should be ensuring maintenance of high ethical standards, customer relations and fair hearings. A Deputy Commissioner position would only be needed if a CEO system replaced the 3 Commission system.

The committee shall also identify the appropriate statutory changes required to be made for the transfer

- Statutory changes of Enforcement transfers to Safety on July 1, 2011. At least 27 current statutory references would have to be deleted, amended or added in order for the transfer to be successfully implemented.
- It was expressed through the NHSLC that the state should be extremely careful of various alarms regarding the short term, one time money, to plug temporary General Fund Budget gaps by Sales of valuable NHSLC assets and various privatization proposals.
- The committee did discuss looking further into the neighboring State of Maine and their experience of moving the alcohol beverage enforcement and licensing its version to the Department of Safety.
- The future holds great potential. The New Hampshire State Liquor Commission is on track to deliver a billion dollars in net profit to the General Fund over the next 8 years.

Recommended Legislation

- The committee's overall recommendation will be to file legislation to reverse the pending transfer of the Division of Enforcement, licensing and education of the State Liquor Commission to the Department of Safety for the sole purpose to ensure they remain with the Liquor Commission

Overview of the strategic NHSLC plan

- Policy and procedure development
- Legislative initiatives
- Advertising, marketing and merchandising
- Employee relations, selection and training
- Management of liquor and wine outlet stores
- Management of real estate

- Reduction of energy costs
- Loss of prevention, safety and security
- Streamlining of procedures for cost reduction
- Data processing improvements

Upgrading NH Liquor Store and Wine Outlets in the State of NH
For more information please refer to the "Tour Memo"

- Two of the most popular reasons for shopping at New Hampshire Liquor store and wine outlets stores are value and selection.
- The NHSLC maintains a chain of 76 State liquor and wine outlets located through the state, plus 3 Agency Stores in remote areas-Errol, Pittsburg and Greenville. 11 of the stores are in state owned buildings, 65 are in leased premises.
- Visitors come to NH specifically to purchase their wine and spirits tax free at NH's conveniently located stores.
- Most popular and most production stores are at the Portsmouth traffic circle and at the Hampton 95 north and 95 south bound stores.
- NH Hampshire Liquor Commissions visions for the future website. Go to: liquorandwineoutlets.com
- A multifunctional space for shopping and in-store events. In terms of new design: increased sales space, improved store layout, a new wine room and tasting area, a colorful mix of wood and metal shelving, additional check-out registers, state of the art lighting and signage. Increased shelf depth allows employees to keep more products on the shelves, increasing open floor space and creating wider aisles.
- Have wine tastings and marketing of NH Wines and Spirits. The new wine area is called the "Vineyard Collection" The room features 300 wines (fine wines) around the world, giving a different concept. The wine tasting center enhances Friday night from 5-7pm that also enables the Manchester store to partner with local restaurants.

Please also review attached documents:

1. Observations concerning the N/H State Liquor Commission~ submitted by Acting Commissioner Earl M. Sweeney, November 3, 2010
2. All meeting minutes
3. Stake holder's opinion regarding the transferring of Enforcement to Department of Safety.
4. State liquor Strategic Plan FY 2011 and onward

5. Committee fact-finding tour on NH Liquor retail stores and City of Concord Warehouse.
6. New Hampshire Liquor Commission on Bailment.

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1. SB 181 study committee Final Report
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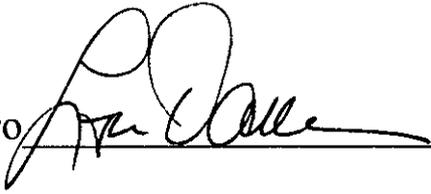
Submitted by Committee member: Representative Edward Butler

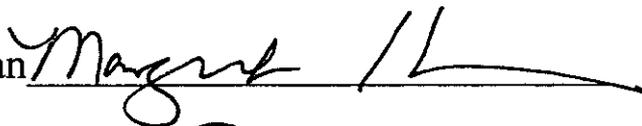
- SB 181 Study committee to study the administrative structure and adjudicative process at the Liquor Commissioner
- Subject: 3 commissioners versus one addendum

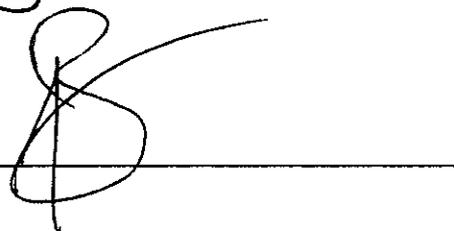
Two recent bills to change the Commissioner structure to one executive have been proposed. In 2008 HB 1552 was submitted, sent to Interim Study and was not supported. In 2009 HB 248 was proposed and was supported unanimously, with amendment, by the Executive Departments and Administration Committee. It subsequently died on the table.

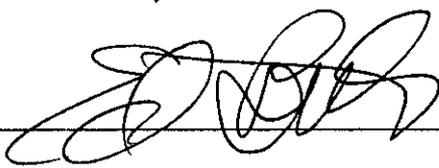
One of the advocates of HB 248 was Commissioner Mark Bodi. I believe that more discussion of this issue may have brought more detail to the arguments in support of changing the Commissioner structure and the SB181 Commission would have been better able to make a supportable recommendation.

Respectfully submitted,

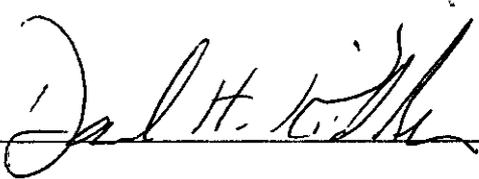
Senator D'Allesandro 

Senator Hassan 

Senator Bradley 

Rep. Butler 

Rep. Shurtleff 

Rep. Kidder 

Speakers

Hearing Minutes

HOUSE COMMITTEE ON LOCAL AND REGULATED REVENUES

PUBLIC HEARING ON SB 181-FN-A

BILL TITLE: (New title) repealing the transfer of liquor enforcement to the department of safety and establishing a committee to study the administrative structure and adjudicative process at the liquor commission.

DATE: March 16, 2010

LOB ROOM: LOB 303 **Time Public Hearing Called to Order:** 1:05 pm

Time Adjourned: 2:45 pm

(please circle if present)

Committee Members: Reps. ~~Waltz~~, ~~Taylor~~, ~~Hamm~~, Theberge, Mulholland, ~~Butterworth~~, D. Howard, Lyons, ~~Merry~~, ~~Stetson~~, ~~C. Webber~~, ~~Stohl~~, ~~Kidder~~, ~~Hess~~, P. ~~Katsakiores~~, ~~Vaillancourt~~, A. Peterson, M. Allen and ~~Hinkle~~, ~~Blankenbekey~~

Bill Sponsors: Sen. D'Allesandro, Dist 20; Sen. Barnes, Jr., Dist 17; Sen. Downing, Dist 22; Sen. Kelly, Dist 10; Rep. Campbell, Hills 24; Rep. Hunt, Ches 7; Rep. Lerandean, Ches 6; Rep. Ramsey, Hills 8

TESTIMONY

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Rep. Hinkle – Is there a prospect for something better if it goes to police? A – Obviously there were problems. We need an institutionalized system, so not about the people.

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Sen. D'Allesandro. Chief sponsor – We passed Liquor Control Modernization fund. Now an enterprise fund. Our Commission is the most profitable of the 17 control states. It was working well, so to make it more productive we needed to modernize. I think it should stay where it is.

Enforcement is important and integral. Would every trooper be liquor inspector? Don't know. \$500M to bottom line.

Chairman Waltz – Instead of 3 senators and 3 reps, can we go 3 and 4?

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Rep. Vaillancourt: Why was the department moved to the Dept of Safety? A – It hasn't been transferred. Can't give you the reason for moving? A – part of the budget bill. 2009 budget bill.

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Rep. Hamm: How do other states do it? A-Many ways.

Rep. Merry: If they took away the enforcement, would that leave a better corporate structure for promotion? A – Licensing and enforcement should go together. Population is relatively pleased.

Rep. Butynski passes. In support.

Rep. David Hess: Partially supports. Study commission is the most important: The former debate looked at enforcement not 3 member commission. There is a difference between the liquor sales, and enforcement. Revenue first. Co9mmissioners are businessmen, not police. Mission creep. DWI enforcement? 1/4M\$ portable jail and lab. Commission makes the rules, hires the police, judge the cases. No separation. Need impartial review of appeals. Enforcement, training and education should reside in one location. Study commission is the most important part. We should consider an ombudsman. Extend life of commission until 2012. Cost – fiscal not in low 5 figures. W/o amendments, will not vote for it.

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Mike Summers: We support SB 181, repeal. Copy of study committee findings. There is a different mind set between business and law enforcement. Licensing and enforcement should stay together. Appeal goes from Police to Liquor commission. Education is important part. Ombudsman is a good idea.

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Rep. Butterworth: Is supervision more important in victimless crimes? A – can't say.

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Our system is strong and works well. This is more about personality than systemic problems.

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November comes after July. A -If this bill doesn't pass,

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Walz: When the enforcement officer held a press conference, was approved by you?

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Com. Molikai: I've been a restaurateur, and I think it would be a disservice to the public, and the businesses.

Hinkle: How are you appointed. A - By governor & council. Walz confirms.

Commissioners: We are a regulatory agency.

Vaillancourt: Are you in favor of and Ombudsman? A - Yes.

Commissioners: Now that we are w/o Chairman Bodie, we speak together, and it is unusual. We are influx.

Chairman Walz: I understand, and appreciate your testimony.

Edwards volunteers: RSA 176 outlines in statute. Policy and procedures are under study, and we will ask for them to be accepted by the US.

Respectfully submitted,



Rep. Timothy Butterworth
Clerk

HOUSE COMMITTEE ON LOCAL AND REGULATED REVENUES

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SB 181-FN-A – AS AMENDED BY THE SENATE

01/21/10 0181s

2009 SESSION

09-0853

03/05

SENATE BILL 181-FN-A

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COMMITTEE: Ways and Means

AMENDED ANALYSIS

This bill repeals the transfer of liquor enforcement to the department of safety scheduled to take effect July 1, 2010. This bill also establishes a committee to study the administrative structure and adjudicative process at the liquor commission.

Open 1:05

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Closed 2:45

Sub-Committee Minutes

HOUSE COMMITTEE ON LOCAL AND REGULATED REVENUES

SUBCOMMITTEE WORK SESSION ON SB 181-FN-A

BILL TITLE: (New title) repealing the transfer of liquor enforcement to the department of safety and establishing a committee to study the administrative structure and adjudicative process at the liquor commission.

DATE: April 7, 2010

Subcommittee Members: Reps. Vaillancourt, Katsakiores, Howear, Stetson, Allen, Hinkle, Merry, Taylor, Stohl, Waltz, Butterworth, Webber, Kidder, Lyons, Peterson.

Comments and Recommendations: See attached notes.

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Tim Butterworth
Subcommittee Chairman/Clerk

APRIL 7, 2010
LOCAL AND REGULATED REVENUE
WORK SESSION
Rm 303 LOB

SB 181-FN-A, repealing the liquor enforcement to the department of safety

Open: 10:15

Stohl: Asks for amendments:

Vaillaincourt: 2 Issues from before – Date, ombudsman.

Howard: Numbers of committee members.

Butterworth: Nobody testified as opposed in the hearing.

Hinkle: Fiscal note – jobs would have been transferred over to department of safety.

Vaillaincourt – Hess – said he would not support unless extended for another year.

Blankenbecker - asked re extending committee

Stetson – No complaints.

Vaillaincourt – Ombudsman already included.

Howard says a review board already exists.

Hinkle: One thing in the report says may be a problem having 3 commissioners, should move to one head.

Vaillaincourt – already specified in bill. I don't think we should amend at all. The commission can make all these

Waltz – (Enters) I do have an amendment. Postpones the transfer until 2012. Gives 18 months.

Vaillaincourt: Original bill is simpler. The transfer should not be up to the commission.

Waltz – There seem to be wider issues. My original idea about the amendment was just to include the ombudsman.

Taylor – Are we studying where the enforcement division should be?

Waltz – No – we had a study committee last year. But if we have a single commissioner, we should have training authority.

Hinkle: I have a problem with leaving the commission in this kind of limbo. We should continue vigorous enforcement. I would leave the bill as is.

Howard: Amedment – Sponsors all the committee from last summer, not the original sponsors.

Kidder: I agree w/ Vaillaincourt. Repeal now, the department needs to know where they are. But, te Liquor Commission might need more study, expand for a broader look at the commission

Waltz: One of the things that I am concerned with is that there has been mission creep into law enforcement area. Delay for a year – is it regulatory work, or law enforcement work.

Vaillaincourt: All these arguments could be made in front of this committee.

Hinkle: Fish and Game also has regulatory/law enforcement combined. They need a complete range of powers.

Kidder: If we repeal it now, if at end of 18 month study, thenwe could bring it up and make a new bill.

Waltz; People want to do the appeal now. Make repeal now, but continue the study until 2011. DO people agree?

Merry. I still have a problem of 2011. WE have been working on this. Keep until 2010, do in shorter time.

Waltz: Committee wants to have in 2010.

Howard:

Vaillaincourt: Add a 4th member from house.

Taylor: Why do we need to study this every year.

Waltz: All we studied was moving the commission.

Merry: Can we consider an earlier date besides November? Waltz: Date relate to filing bills.

Hinkle: October 1st, 2011 -final report.

Waltz: Consensus – Immediate repeal, Committee works until October 1st, 2011.

Testimony

HB 1504

Amendment to SB 181-FN-A

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT repealing the transfer of liquor enforcement to the department of safety and
4 establishing a committee to study the administrative structure and adjudicative
5 process at the liquor commission.
6

7 Amend the bill by replacing all after the enacting clause with the following:

8

9 1 Repeal. 2009, 144:163 through 144:175, relative to transferring liquor enforcement to the
10 department of safety, are repealed.

11 2 Committee to Study the Administrative Structure and Adjudicative Process at the Liquor
12 Commission.

13 I. There is established a committee to study the administrative structure and adjudicative
14 process at the liquor commission.

15 II. The members of the committee shall be as follows:

16 (a) Three members of the senate, appointed by the president of the senate.

17 (b) Three members of the house of representatives, appointed by the speaker of the
18 house of representatives.

19 III. Members of the committee shall receive mileage at the legislative rate when attending to
20 the duties of the committee.

21 IV. The committee shall study:

22 (a) Whether the liquor commission should have an executive director rather than a full-
23 time 3-member commission;

24 (b) How best to ensure impartial review of appeals of licensing and enforcement
25 decisions; and

26 (c) How best to ensure that the enforcement division is properly supervised, contains its
27 function to that of a regulatory authority, and guards against overly broad interpretation of its
28 function.

29 V. The members of the study committee shall elect a chairperson from among the members.
30 The first meeting of the committee shall be called by the first-named senate member. The first
31 meeting of the committee shall be held within 45 days of the effective date of this section. Four
32 members of the committee shall constitute a quorum.

33 VI. The committee shall report its findings and any recommendations for proposed

Amendment to SB 181-FN-A

- Page 2 -

- 1 legislation to the president of the senate, the speaker of the house of representatives, the senate
- 2 clerk, the house clerk, the governor, and the state library on or before November 1, 2010.
- 3 3 Effective Date. This act shall take effect upon its passage.

2010-0181s

AMENDED ANALYSIS

This bill repeals the transfer of liquor enforcement to the department of safety scheduled to take effect July 1, 2010. This bill also establishes a committee to study the administrative structure and adjudicative process at the liquor commission.



1. NHLRA supports SB 181 that repeals the transfer of Liquor Enforcement to the Department of Safety.
2. We encourage this Committee to consider the report put out last fall by the Study Committee that looked at the Organizational Structure of the Liquor Commission. They spent a great deal of time hearing testimony from all the stakeholders in this discussion and their conclusions were balanced and appropriate.
3. Our members are very concerned about a change in mindset. Currently the the enforcement division operates with the goal of educating licensees to act responsibly and keeping their businesses open. NHLRA members worry that moving enforcement to the Department of Safety could change the mindset to one in which handing out violations is the measure of success.
4. Hearings and appeals would still be heard by the Liquor Commission. Splitting enforcement like this seems problematic our members.
5. NHLRA feels it is very important to keep licensing and enforcement together for consistent interpretation and application of statute and rule.
6. NHLRA can't stress enough the importance of the education component in helping operators train their staff's correctly and we fear that it would become less of a priority under the Department of Safety.
7. NHLRA would welcome an independent ombudsman or an independent appeals panel.

1 house clerk, the governor, and the state library on or before December 1, 2009.

2 144:163 Divisions and Directors. Amend RSA 176:8 to read as follows:

3 176:8 Divisions and Directors. The commission shall have 3 divisions under the direction of
4 unclassified division directors. The directors shall be appointed by the commission and serve at the
5 pleasure of the commission based on good behavior and competence. There shall be a division of
6 marketing, merchandising, and warehousing, a division of administration, and a division of
7 ~~[enforcement and]~~ licensing.

8 144:164 References Changed. Amend RSA 178:11, V to read as follows:

9 V. Liquor/wine/beverage warehouseurs shall submit a monthly report both to the liquor
10 commission ~~[enforcement and]~~ licensing division and the marketing, merchandising, and
11 warehousing division of the commission by the tenth day of the following month indicating the
12 quantity, type, size, and brands of all product received, stored, or shipped on their premises.

13 144:165 Closing of State Stores. Amend RSA 177:2, II to read as follows:

14 II. In order to properly reflect the operating expenses of each state store, the commission
15 shall prepare annually an indirect cost allocation plan for all indirect operating expenses of the
16 commission. All such expenses of the commission, with the exception of the ~~[enforcement and]~~
17 licensing division operating expenses, shall be included in the plan and allocated to all state stores
18 on a consistent, rational basis. The indirect cost allocation plan for each fiscal year shall be
19 submitted to the fiscal committee and the governor and council for approval, no later than 3 months
20 before the start of each fiscal year.

21 144:166 Reference Changed. Amend RSA 178:22, V(h)(12) to read as follows:

22 (12) Violations of subparagraph (11) of this subparagraph shall be investigated by
23 the ~~[enforcement division of the liquor commission]~~ **department of safety** and directed to the
24 department of justice for examination of issues unrelated to this title.

25 144:167 Reference Deleted. Amend RSA 178:22, V(l)(4) to read as follows:

26 (4) No license shall be issued under subparagraph (l)(1) for premises holding other
27 licenses issued by the commission except rental facilities on licensed club premises approved by the
28 commission. Notwithstanding any other provision of law, the commission ~~[or its investigators]~~ may
29 suspend without warning any license issued under subparagraph (l)(1) if, in their opinion, such sale
30 of liquor and beverages is contrary to the public interest.

31 144:168 Reference Deleted. Amend RSA 178:30, IX to read as follows:

32 IX. Notwithstanding any other provision of law, the commission ~~[or its investigators]~~ may
33 suspend, without warning, any license issued under paragraph I, if in their opinion, such continued
34 sale or service of alcoholic beverages is contrary to the public interest.

35 144:169 Limited Credits. Amend RSA 179:13, V to read as follows:

36 V. Each wholesale distributor, brew pub licensee, or beverage manufacturer shall notify any

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1 retailer reported to the commission pursuant to RSA 179:13, I who is delinquent in making payment
2 of accounts. Notification shall be delivered in writing to the licensee by a representative of the
3 wholesaler, brew pub licensee, or beverage manufacturer. Proof of notification shall be forwarded to
4 the commission, [~~whose enforcement division~~] *who* shall issue an administrative notice for a
5 violation of the provisions of RSA 179:13, I [~~and shall forward a report of violation for administrative~~
6 ~~action~~]. Any license issued to any business violating the provisions of RSA 179:13, I may be
7 suspended by the commission for nonpayment of accounts which are delinquent more than 15 days
8 from the date of the wholesale distributor's, brew pub licensee's, or beverage manufacturer's
9 notification, providing the requirements of this section have been met.

10 144:170 Reference Changed. Amend RSA 179:15 to read as follows:

11 179:15 Transportation of Beverages and Wine. A person may transport or deliver beverages and
12 wines in this state without a license, provided such beverages and wines were obtained as authorized
13 by this title and provided such beverages and wines are for consumption only and not for resale
14 purposes. Licensees may transport and deliver to their place of business beverages and wines
15 purchased as authorized under this title, and, except on-premises licensees, may transport and
16 deliver anywhere in the state such beverages and wines ordered from and sold by them in vehicles
17 operated under the control of themselves or of their employees or agents, provided that the owner of
18 such vehicles shall carry a copy of the license issued by the commission in the vehicle driven on
19 behalf of the licensee for whom they are transporting such beverages and wines. Every person
20 operating such a vehicle, when engaged in such transportation or delivery, shall carry a copy of the
21 license in the vehicle so operated, and shall carry such evidence as the commission by rule may
22 prescribe showing the origin and destination of the beverages and wines being transported or
23 delivered. Upon demand of any law enforcement officer, investigator, or employee of the
24 [~~commission~~] *department of safety*, the person operating such vehicle shall produce for inspection a
25 copy of the license and the evidence required by this section. Failure to produce such license or
26 evidence shall constitute prima facie evidence of unlawful transportation. Except as otherwise
27 provided, beverages and wines may be transported within the state only by a railroad or steamboat
28 corporation or by a person regularly and lawfully conducting a general express or trucking business,
29 and in each case holding a valid carrier's license issued by the commission. Nothing in this section
30 shall prohibit individual retail licensees from arranging for the delivery of wine products to a
31 location central for the parties involved.

32 144:171 Reference Deleted. Amend RSA 179:35 to read as follows:

33 179:35 Retention of Invoices and Sale and Delivery Slips. All invoices, sales slips, and delivery
34 slips, current and covering a period of 60 days prior to the current date pertaining to purchases of
35 beverages and liquor shall be retained by the licensee on the premises or be readily available for
36 examination by the [~~commission or its liquor investigators~~] *department of safety*.

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1 144:172 References Deleted. Amend the section heading of RSA 179:56 and RSA 179:56, I to
2 read as follows:

3 179:56 Hearings; ~~[Investigations;]~~ False Statement; Enforcement Policy.

4 I. The commission shall adopt and publish rules pursuant to RSA 541-A, to govern its
5 proceedings and to regulate the mode and manner of all ~~[investigations and]~~ hearings before it. All
6 hearings before the commission shall be in accordance with RSA 541-A:31-36. In any such
7 ~~[investigation or]~~ hearing the commission shall not be bound by the technical rules of evidence. The
8 commission, or any member, may subpoena witnesses and administer oaths in any proceeding or
9 examination instituted before or conducted by it, and may compel, by subpoena, the production of
10 any accounts, books, contracts, records, documents, memoranda, and papers of any kind whatever.
11 Witnesses summoned before the superior court, and such summons issued by any justice of the peace
12 shall have the same effect as though issued for appearance before such court.

13 144:173 Prosecutions. Amend RSA 179:59 to read as follows:

14 179:59 Prosecutions. ~~[The commission shall appoint liquor investigators whose primary~~
15 ~~function shall be the proper prosecution of this title. The liquor investigators shall have all the~~
16 ~~powers of the sheriff in any county, with reference to enforcement of all laws either in cooperation~~
17 ~~with, or independently of, the officers of any county or town.]~~ The ~~[commission]~~ *department of*
18 *safety* shall have the primary responsibility for the enforcement of all liquor and beverage laws upon
19 premises where liquor and beverages are lawfully sold, stored, distributed, or manufactured. Any
20 person violating the provisions of any law may be prosecuted by the ~~[commission or any of its~~
21 ~~investigators as provided in this section]~~ *department of safety*, or by county or city attorneys, or by
22 sheriffs or their deputies, or by police officials of towns.

23 144:174 Repeal. The following are repealed:

24 I. RSA 176:9, relative to liquor investigators.

25 II. RSA 179:60, relative to interference with liquor investigators.

26 144:175 Transfer of Functions, Positions, Equipment, Records, and Accounts; Rules Continued.

27 I. Notwithstanding any provision of law to the contrary, all of the functions, positions,
28 powers, duties, responsibilities, and funding of the liquor commission used for enforcement of
29 alcoholic beverage laws shall be transferred to the department of safety on July 1, 2010. The
30 transfer provided in this section shall include all of the equipment, books, papers, and records of the
31 liquor commission related to enforcement functions.

32 II. All existing rules, statutory responsibilities, regulations, and procedures relating to
33 enforcement in effect, in operation, or adopted in or by the liquor commission are transferred to the
34 department of safety, and are declared in effect and shall continue in effect until rescinded, revised,
35 or amended in accordance with applicable law.

36 III. If the committee to study the organizational structure of the liquor commission

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1 established under section 162 of this act determines that the transfer of liquor enforcement functions
2 to the department of safety from the liquor commission requires the creation of any additional
3 enforcement or licensing positions or results in the need for any new appropriations in excess of the
4 amounts appropriated for fiscal year 2011, then the committee shall recommend that legislation be
5 introduced to transfer the liquor enforcement functions back to the liquor commission.

6 144:176 New Paragraphs; Certification of Reduced Ignition Propensity Cigarettes. Amend RSA
7 339-F:6 by inserting after paragraph III the following new paragraphs:

8 IV. If a manufacturer has certified a cigarette pursuant to paragraph II, and thereafter
9 makes any change to the cigarette that is likely to alter its compliance with the reduced cigarette
10 ignition propensity standard under RSA 339-F:3, such cigarette shall not be sold or offered for sale in
11 this state until the manufacturer retests the cigarette in accordance with the testing standards in
12 RSA 339-F:3 and maintains records of the retesting as required by RSA 339-F:5. Any altered
13 cigarette that does not meet the performance standard in RSA 339-F:4 shall not be sold in this state.

14 V. For each cigarette listed for certification a manufacturer shall pay a fee of \$250 to the
15 department of safety for deposit in the fire standards and training and emergency medical services
16 fund established in RSA 21-P:12-d for the purpose of providing fire safety education pursuant to
17 RSA 153:10-c.

18 VI. For each cigarette re-certified under this chapter a manufacturer shall pay a fee of \$250
19 to the department of safety for deposit in the fire standards and training and emergency medical
20 services fund established in RSA 21-P:12-d for the purpose of providing fire safety education
21 pursuant to RSA 153:10-c.

22 144:177 Tobacco Tax; Definition of Tobacco Products. Amend RSA 78:1, XIV to read as follows:

23 XIV. "Tobacco products" means cigarettes, loose tobacco, ~~and~~ smokeless tobacco, *snuff, and*
24 *cigars, but shall not include premium cigars.*

25 144:178 New Paragraph; Definition of Premium Cigars. Amend RSA 78:1 by inserting after
26 paragraph XX the following new paragraph:

27 XXI. "Premium cigars" means cigars which are made entirely by hand of all natural tobacco
28 leaf, hand constructed and hand wrapped, wholesaling for \$2 or more, and weighing more than
29 3 pounds per 1000 cigars. These cigars shall be kept in a humidor at the proper humidity.

30 144:179 Tobacco Tax Imposed on Tobacco Products Other Than Cigarettes. Amend RSA 78:7-c
31 to read as follows:

32 78:7-c Tax Imposed on Tobacco Products Other Than Cigarettes. A tax upon the retail consumer
33 is hereby imposed on tobacco products other than cigarettes at a rate of ~~[19]~~ *48.59* percent of the
34 wholesale sales price. The tax under this section may be rounded to the nearest cent if the
35 commissioner determines that the amount of tax would not thereby be made materially
36 disproportionate. No such tax is imposed on any transactions, the taxation of which by this state is

March 16, 2010

The Honorable Mary Beth Walz, Chair
House Local and Regulated Revenues Committee
Room 303
Legislative Office Building
Concord, NH 03301

Re: New Futures Support of SB 181 (repealing the transfer of liquor enforcement to the department of safety and establishing a committee to study the administrative structure and adjudicative process at the liquor commission)

Dear Representative Walz and Honorable Members of the Committee,

New Futures, a nonprofit non partisan advocacy organization working to reduce underage alcohol problems and increase access to substance use disorder treatment and recovery services supports SB 181 because it ensures effective and efficient enforcement of liquor statutes by maintaining the enforcement function within the Liquor Commission.

By way of background, in March 2009 HB 2 as passed by the House included a provision that mandated the transfer of Liquor Enforcement responsibilities and staff to the Department of Safety. The Senate version of HB 2 removed the transfer provisions. The Conference Committee version of HB 2 as passed by both bodies and signed by the Governor delayed the transfer until July 1, 2010 and established a study committee to examine a number of issues including the transfer of the enforcement function to the Department of Safety. The study committee, comprised of three Representatives and two Senators, met throughout the summer and fall and heard testimony from a number of groups opposed to the transfer, including the New Hampshire Lodging and Restaurant Association, the NH Grocers' Association, the New Hampshire Police Chiefs' Association, New Futures, and community prevention coalitions. The study committee report was approved by a vote of 4 – 1 and called for the introduction of legislation to repeal the transfer of enforcement to the Department of Safety and the creation of a new study committee to examine two issues that the original study committee identified as requiring additional work: the administrative structure of and adjudicative processes at the Liquor Commission. An existing senate bill was utilized to implement the study committee recommendations.

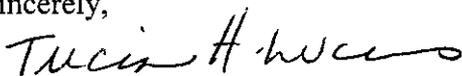
In furtherance of our mission to reduce underage alcohol problems, New Futures works with various community coalitions and directly with the Liquor Commission Division of Enforcement and Licensing ("Division"). Based upon our knowledge of the work of the Division and for the

reasons set forth below, New Futures strongly support SB 181 and the maintenance of Liquor Enforcement within the Liquor Commission:

- **Enforcement and licensing are core functions of the Liquor Commission.** Pursuant to RSA 176: 3, the second of the “primary duties of the liquor commission” is to “maintain proper controls.” The central responsibilities of the Bureau - education, licensing, and enforcement – are directly linked to the Commission’s core responsibility to maintain proper controls. Proper control is necessary to enable the Commission to maximize profit and ensure public health and safety. Proper control is achieved by the efficient licensing of establishments; the education of licensees regarding their legal responsibilities under the liquor laws; and effective enforcement that both encourages voluntary compliance with licensing and regulatory standards and holds licensees accountable for compliance with these standards.
- **The current organizational structure is efficient and effective.** Assigning the education and licensing of establishments to liquor investigators with enforcement authority ensures both operational efficiency and effective enforcement.
 - Liquor investigators, as sworn officers, are able as part of the licensing process to educate prospective licensees not only about the administrative requirements of their licenses, but also about their critical legal public health and safety responsibilities to refuse service to minors and to intoxicated individuals.
 - A liquor investigator who identifies a possible violation during a licensing visit is able to immediately begin an investigation, ensuring a prompt resolution of the matter – to the benefit both of the licensee and the Commission.
 - Through the consolidation of education, licensing, and enforcement, the current organizational structure has been effective in reducing violations for over service and sales to minors. The most recent annual Bureau statistics indicate that out of 4500 licensees, there were 51 violations for over service and that compliance checks for sales to minors showed an 85% compliance rate.
 - At the 2007 National Conference on Enforcing Underage Drinking Law sponsored by the Office of Juvenile Justice and Delinquency Prevention within the United States Department of Justice, the Bureau of Enforcement was recognized as the enforcement entity of the year. At the 2009 conference, Bureau Investigator Brandon Neudecker received the National Liquor Law Enforcement Association’s Liquor Law Enforcement Agent of the Year Award for his work in shutting down three fake ID operations.
 - The vast majority of states (72%) utilize organizational structures akin to that currently in effect in New Hampshire – in which the responsibility for alcohol regulatory enforcement is assigned either to the state’s liquor control commission or the state’s department of revenues.

In conclusion, New Futures respectfully requests that the Committee recommend SB 181 Ought to Pass. Please do not hesitate to contact me if I can be of assistance to the Committee.

Sincerely,



Tricia H. Lucas, Esq.
Policy Director

Confidentially, I can tell you is that since Liquor Licensing and Enforcement was moved out from under the jurisdiction of our SLC, things have gone to hell. There is virtually no liquor enforcement left in the state of Maine other than sting type operations in which local PDs and Sheriff's departments try to catch licensees selling to underage kids. Maine now has just five state liquor inspectors with responsibility for around 4500 licensees, and these "inspectors" are really just that. They are no longer the type of enforcement agents we once thought of them as being. Most of their time is now spent conducting physical inspections of premises as a part of license renewals and original license issuance. The Bureau of Licensing, which also collects our alcohol excise taxes and supposedly audits excise tax filings is a year behind in their audits. This latter fact was just attested to earlier this week by the chief of the Bureau of Licensing, State Police Lt. David Bowler, in testimony before the Legal & Veterans Affairs Committee on Wednesday. I was present and can verify the testimony.

As a sad example of the enforcement difficulties, I discovered a serious violation in Camden in the fall of 2008. I brought the facts of the matter to the attention of Public Safety, and showed them magazine ads that verified the infraction. I was present when they directed an inspector, by telephone, to investigate the matter first-hand and issue a citation if indeed he found the violation to be continuing. As of November of 2009, the inspector had still not yet followed up on the case!

In short, there is currently movement here in Maine to consider moving the Bureau of Licensing out from under the Dept. of Public Safety and the State Police, and return it to the SLC/Bureau of Alcoholic Beverages & Lottery Operations (BABLO), under the Dept. of Administrative & Financial Services (DAFS). The idea has been promoted by the chairmen of the Legislature's Legal & Veterans Affairs Committee, which has oversight of all alcohol beverage related legislation. In all likelihood, we will see legislation introduced next session to move the Bureau of Licensing back to the SLC/BABLO.

All of this information may be of help to you as you consider whether or not there is wisdom in moving NH SLC's Licensing and Enforcement arm over to the DOS. It probably makes far greater sense for it to stay under the SLC. However, I'm aware of the debacle that has brought all of this to the forefront in Concord, and there are clearly some lessons to be learned from the situation relative to the Keene Licensee investigation and some of the screw-up surrounding it.



**Stakeholder's opinion regarding the transferring of
Enforcement to Department of Safety**

Virtually all major stakeholders oppose transferring NHLC Enforcement	YES	NO
NH Restaurant and Lodging Association		X
NH Grocers Association		X
NH Associated Grocers		X
NH Chiefs of Police Association		X
Governor's Highway Agency		X
Wine Institute		X
New Futures		X
Wholesale Beer Distributors		X
NH Wine & Spirits Broker Association		X
NH Prevention Coalitions		X
Tobacco-Free NH Coalition <i>American Cancer Society, American Lung Assoc., American Heart Assoc., Breathe NH, March of Dimes and NH Public Health Assoc.</i>		X
MADD (Mother's Against Drunk Driving)		X
State Liquor Commission		X

NH Public Opinion – A University of New Hampshire Survey Center study of NH public opinions regard the New Hampshire Liquor Commission retail stores and enforcement indicated that 75% of NH legal drinking age adults believe that *“the NH Liquor Commission is doing a good job overall enforcing laws and regulations regarding alcoholic beverages”*.





The chart below illustrates single state agency responsible for alcohol enforcement and licensing in comparison to state with dispersed responsibility for enforcement and licensing.

	Single state agency	Multiple agencies
1	Alabama	North Carolina (Dept. of Safety and Alcoholic Beverage Control Commission)
2	Montgomery Co.	Ohio (Dept. of Commerce/Dept. of Safety)
3	Michigan	Pennsylvania (Dept. of Safety/ Liquor Commission)
4	Mississippi	Utah (Dept. of Safety/ Alcoholic Beverage Control)
5	New Hampshire	Iowa (State Police/Liquor Commission)
6	Oregon	Nebraska (State Police/Liquor Commission)
7	Vermont	Wyoming (local/Liquor Commission)
8	Virginia	Nevada (local/Dept. of Taxation)
9	Washington	North Dakota (AG/Tax Commission)
10	West Virginia	Idaho (Dept. of Safety/Liquor Dispensary)
11	Arizona	
12	California	
13	Hawaii	
14	Illinois	
15	Massachusetts	
16	New York	
17	Oklahoma	
18	South Carolina	
19	Tennessee	
20	Texas	
21	District of Columbia	
22	Kentucky	
23	Montana	
24	Arkansas	
25	Colorado	
26	Connecticut	
27	Florida	
28	Georgia	
29	Maine	
30	Louisiana	
31	Maryland	
32	Rhode Island	
33	South Dakota	
34	Wisconsin	
35	Kansas	
36	Puerto Rico	
37	Minnesota	
38	Alaska	
39	Missouri	
40	New Mexico	
41	New Jersey	
42	Indiana	
43	Delaware	
	Total Single State 43	Total Multiple State 10

Lower Revenue
 Higher underage drinking rates





WINE INSTITUTE

CAROL A. MARTEL
NORTHEASTERN COUNSEL

March 16, 2010

**Remarks of Carol A. Martel, Northeastern Counsel, Wine Institute in
support of Senate Bill 181**

Representative Walz, Members of the House Local and Regulated Revenues
Committee:

Wine Institute is here today in support of SB 181 as amended. Since the first suggestion that Liquor Enforcement be moved to the Department of Safety, we have steadfastly opposed the change. We firmly believe that if SB 181 fails to be enacted and such a move occurs as scheduled, it would be detrimental to the liquor enforcement capabilities of this state.

Unless SB 181 is enacted, the upcoming move will have a detrimental effect on both New Hampshire consumers and businesses. The experience of other states, including Maine, has shown that such a move undermines the state's ability to enforce laws and regulations that impact licensees at the supplier and distribution levels. It will also have a negative impact on the way the state oversees the dealings of alcoholic beverage companies doing business in New Hampshire.

Such a move fails to recognize the vital role that liquor enforcement plays in monitoring the actions of all licensees. Enforcement of alcoholic beverage laws that pertain to suppliers, brokers, direct shippers and others is not only essential to the best interests of the state and its citizens, but it is a duty that must be given a top priority. We believe that moving liquor enforcement to the Department of Safety will undermine this priority.

Additionally, we believe that the state's liquor licensing and enforcement functions are intertwined and must remain together. Any plan to separate the two functions will certainly undermine the states ability to monitor all of its licensees.

Wine Institute also supports the establishment of a Legislative Committee to study the structure of the Commission and its adjudicative review process.

On behalf of Wine Institute, I respectfully urge the Committee to support SB 181 as amended and to recommend that the enforcement of our states liquor laws remain with the Liquor Commission.

Thank you for your thoughtful consideration.

A handwritten signature in black ink, appearing to read "Carol", followed by a long horizontal line extending to the right.

Carol A. Martel
Northeastern Counsel
Wine Institute

Wine Institute is a public policy advocacy association representing over 1100 California wineries and affiliated businesses



State of New Hampshire

GENERAL COURT

CONCORD

MEMORANDUM

DATE: December 9, 2009

TO: Honorable John H. Lynch, Governor
Honorable Terie Norelli, Speaker of the House
Honorable Sylvia B. Larsen, President of the Senate
Honorable Karen O. Wadsworth, House Clerk
Tammy L. Wright, Senate Clerk
Michael York, State Librarian

FROM: Senator Maggie Wood Hassan, Chair

SUBJECT: Final Report on HB 2, Chapter 144:162, Laws of 2009

Pursuant to Chapter 144:162, Laws of 2009, enclosed please find the Final Report of the Committee to Study the Organizational Structure of the Liquor Commission.

If you have any questions or comments regarding this report, please do not hesitate to contact me.

Enclosure

cc: Committee Members

REPORT OF THE COMMITTEE TO STUDY THE ORGANIZATIONAL STRUCTURE OF THE LIQUOR COMMISSION

This study was mandated by the Legislature as part of the 2009 budget process. In particular, HB 2 , Chapter 144:162, 2009 requires a legislative study committee to consider two issues: (1) whether the decision in HB 2 to transfer the Liquor Commission's enforcement function to the Department of Safety on July 1, 2010, is appropriate; and (2) whether it makes sense to change the administrative structure of the Commission from one in which three full-time commissioners share authority and responsibility for the administration and performance of the Commission to one in which a single Executive Director oversees its operations. ¹ In addition to these two charges, the legislature also instructed this Committee to recommend that the transfer of enforcement function not take place if the transfer would require additional appropriations or the creation of new positions; an instruction that is particularly apt in a time when financial and human resources are scarce.²

Committee Process

The Committee includes Rep. William Butynski, Rep. Daniel Eaton, Rep. David Hess, Sen. John Gallus, and Sen. Margaret Hassan. It met six times, and received testimony from numerous stakeholders, including Liquor Commissioners Mark Bodi (Chair) and Richard Simard, Chief of the Liquor Commission's Enforcement Division, members of the Commission's staff, representatives of the NH Restaurant and Lodging Association, representatives of New Futures , a non-profit advocacy group focused on reducing under-age drinking, the NH Grocers Association, the Commissioner and Assistant Commissioner of the Department of Safety, two former liquor commissioners, and a state representative among others. Additionally, the Committee received written communications from various trade groups as well as some former employees of the Commission.³

Background

During the 2009 budget process (to develop the budget for Fiscal Years 2010 and 2011) the House of Representatives included provisions in the budget that transferred the liquor enforcement function from the Commission to the Department of Safety. Meanwhile, the Senate's budget provided that the Liquor Commission could operate as an Enterprise Fund,⁴ allowing the Commission more autonomy in the way it structures and operates its finances and business functions, while still maintaining legislative oversight.

¹ The Act's specific language reads: The committee shall study the organizational structure of the liquor commission, including but not limited to having an executive director and the appropriate placement of liquor licensing and enforcement functions. (Chapter 144:162 , paragraph III). This report addresses the issue of appropriate placement of enforcement and licensing functions first, as the committee spent most of its efforts focusing on this issue given the pending transfer of the enforcement division to the Department of Safety on July 1, 2010 as provided for in Chapter 144; 175, paragraph I.

² Chapter 144;175, paragraph II.

³ Minutes of the Committee's meetings are attached as Appendix A.

⁴ The term Enterprise Fund is an accounting term that describes a government fund that charges a fee to be self supporting and generally is used by governmental entities that are charged with operating in a manner similar to business enterprises with the purpose of creating revenue for the state. Enterprise Funds are also allowed to report long-term assets and liabilities on their balance sheets. New Hampshire's Lottery Commission is already such a fund.

The Senate opposed the transfer of the Commission's enforcement function while the House opposed designation of the Liquor Commission as an Enterprise Fund.

During the Budget Committee of Conference, the House and Senate compromised their respective positions with regard to the transfer of the enforcement function, providing that the transfer of enforcement would be delayed until July 1, 2010 and that, in the interim, this Committee would meet to consider the transfer more closely. This Committee was also charged with considering whether the current commission structure is still an appropriate way of operating the Commission, an issue that was discussed as the Commission's budget was being considered.

Findings and Recommendations

A. Enforcement Transfer

1. The regulated community uniformly opposes the transfer of the Commission's enforcement function to the Department of Safety. The most commonly expressed rationale for this position is that the current system works well and that efforts to improve it by a wholesale transfer to another division of state government would produce new problems or challenges. This position was bolstered by the observation that Chapter 144; 175 authorizes the transfer of only the Commission's enforcement function to the Department of Safety, leaving the licensing and education functions at the Commission.⁵ Currently the Commission integrates enforcement, licensing, and education in one cohesive unit and there is strong support for this unified approach to these duties.
2. Organizations who share the mission of reducing underage drinking and misuse of alcohol also oppose the transfer. They believe the Commission is doing a good job of controlling alcohol misuse and abuse and that part of the reason for the agency's success is that the tasks of licensing, education and enforcement are coordinated by an interdisciplinary team at the Commission. They also note the particular challenge of licensing the sellers and distributors of alcohol while also being charged with maximizing profits for the sale and distribution of alcohol in the state. They believe that the Commission's current structure lends itself well to ensuring that the regulated community is well educated and well supervised without being overburdened with too rigid a bureaucracy. In short, from their perspective, the Commission appears to be balancing its control function well with its mission of increasing revenues.
3. The Committee heard, more informally, through emails and anecdotes, that there were some occasions in which members of the regulated community felt that the Commission's enforcement efforts had been heavy-handed. However, there appeared to be some consensus among those providing public testimony that such incidents were relatively infrequent and

⁵ Chapter 144;175, paragraph 1 says that "all the functions, positions, powers, duties, responsibilities, and funding of the liquor Commission used for enforcement of alcoholic beverage laws shall be transferred to the department of safety on July 1, 2010." Meanwhile, Chapter 144;165 references a Liquor Commission without an enforcement division but with a licensing division, as do other paragraphs of Chapter 144, making clear that the legislature has authorized only the transfer of the enforcement function to the department of safety.

that the Commission had been responsive to criticisms or concerns raised about these incidents.⁶

4. The Department of Safety is neutral as to the transfer of the Commission's enforcement function, but noted that if only enforcement function were transferred, there would be some cost both in terms of additional positions needed and fees charged to the enforcement function to pay for the Department's indirect costs of administering the enforcement program. The Department also advised the Committee that it believed, as a general rule, that the transfer of an enforcement function was appropriate if and when a regulatory agency started using its enforcement power in such a way as to be indistinguishable from other public safety agencies with broader authority. The Department thus indicated its belief that regulatory agencies such as the Commission should limit their activities to enforcing the particular statutes over which they have specific jurisdiction and should rely on local and state public safety officials for the regulation of other areas.
5. It is not clear that the Commission exercises sufficient oversight over the enforcement personnel to ensure that the regulated community believes that the enforcement division shares a consistent sense of its limited, regulatory mission. The Committee also received informal suggestions that in some instances local police departments welcome the opportunity to supplement limited local forces with Commission enforcement personnel when enforcement of liquor laws overlaps with the need for other types of law enforcement action. The Commission should take steps to ensure that the enforcement division is properly supervised, contains its function to that of a regulatory authority, and guards against overly broad interpretation of its function.
6. As written and passed, Chapter 144 allows only the transfer of the enforcement function to the Department of Safety, while leaving the licensing and education functions with the Commission. The Committee believes that this division would result in a less integrated and effective regulatory system and strongly recommends against dividing these functions. Thus, even if the Committee was convinced that the enforcement function should be transferred to the Department of Safety, it would not recommend doing so without the concurrent transfers of the education and licensing functions.
7. The transfer of the enforcement function would, as currently authorized, appear to require the creation of at least some additional positions at the Commission, as individuals who currently perform enforcement duties, and would be transferred to the Department of Safety, also share licensing and education functions. While the Committee does not believe that the cost of the transfer is as high as the Commission initially projected, at least three of five Committee members believe that the Department of Safety would need an appropriation to pay for the

⁶ At least one member of the Committee believes that instances of possible abuse of authority by enforcement personnel are more frequent than reported and that the lack of public testimony about these instances results from fear among members of the regulated community that the enforcement division will use their authority to punish those who make public statements that are negative about the division or the Commission.

indirect costs of administering liquor enforcement. Thus, in accordance with Chapter 144:175, paragraph III, four of five Committee members recommend against the transfer of enforcement at this time on the grounds that it would appear to require an additional appropriation for the Department of Safety and the creation of additional positions at the Liquor Commission.⁷ The Committee will ensure that legislation to repeal the transfer is filed for the upcoming legislative session.

B. Adjudicatory Process

Although not specifically mentioned in the charge to the Committee, the issue of whether the current adjudicatory process for appeals of enforcement or licensing actions arose as part of the Committee's discussion concerning the Commission's enforcement function. The current adjudicatory process at the Commission provides no opportunity for disinterested review of appeals prior to a review by the New Hampshire Supreme Court. Currently, the Commission serves as both the prosecutor of violations and the appellate board through which the regulated community can seek relief from allegedly unwarranted enforcement actions. While members of the regulated community hesitated to publicly express displeasure with this aspect of the Commission's organization and function, the Committee believes that further exploration of the concept of a mechanism through which a designated neutral or disinterested panel could review the Commission's rulings is warranted.

C. Executive Director

1. The Committee did not have a great deal of time to explore this issue because of the need to deal more immediately with the impending transfer of the enforcement function to the Department of Safety.
2. With that proviso, the Committee thinks that the possibility of changing the Commission's organizational structure deserves further exploration. Few control states share New Hampshire's structure of a three person, full time Commission, where Commissioners with set terms share authority and responsibility. Members of the regulated community were unified in their support for the current structure on the grounds that it appeared to them to be working well. But the testimony against change in this area seemed to be based on satisfaction with the current structure rather than on misgivings about the idea of a structure headed by a single executive director.
3. Under the current structure, there appears to be no single person at the Commission who bears ultimate authority and responsibility for its performance – lines of authority and responsibility

⁷ The Committee's recommendations are based on votes of the majority, but, as noted, one Committee member, Representative Eaton, disagrees with the conclusions of this Committee with regard to the transfer of the enforcement function. Representative Eaton believes that the education, licensing, and enforcement functions should all be transferred to the Department of Safety.

are only informally established and shared by the Commissioners.⁸ And, because they enjoy state commissions, none can be replaced for failure to meet certain performance goals unless such failure is accompanied by truly derelict or criminal behavior. Such a situation – in which there is no single, accountable chief executive who serves according to set performance standards—seems potentially untenable given recent changes to the Commission which are all intended to enable it to run more like a business enterprise and to increase revenues.

D. Continued Study

The Committee recommends that a legislative study committee continue to examine the issues of: (1) whether the Commission should have an executive director rather than a full time three member commission; (2) how best to ensure impartial review of appeals of licensing and enforcement decisions; and (3) how best to ensure that the enforcement division is properly supervised, contains its function to that of a regulatory authority, and guards against overly broad interpretation of its function.

Summary

A majority of the Committee finds that a transfer of enforcement functions from the Commission to the Department of Safety is not needed or appropriate at this time. The legislature's decision to authorize only the transfer of the enforcement function is at odds with an integrated education, licensing and enforcement strategy that is working well. In addition to the inevitable disruption that such a transfer would cause – at a time of change and uncertainty--the transfer would also require an appropriation to the Department of Safety and very likely require at least a few additional positions at the Commission.

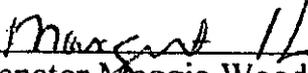
The Committee further finds that there should be an impartial review available to those who appeal licensing or enforcement actions and that the issue of whether the current system meets this need requires further study.

The Committee also finds that the executive and legislative branches should continue to explore the possibility of changing the administrative structure of the Commission so that it would be run by a single executive. This does not necessarily eliminate a role for commissioners, but it would likely make the existence of three member full-time paid commission unnecessary.

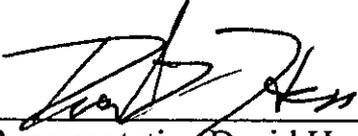
Finally, the Committee recommends that in addition to continuing to study the administrative structure of the Commission, the legislature should continue to study the most appropriate way to ensure impartial appeals of enforcement and licensing actions as well as the most appropriate way to ensure that the enforcement division is properly supervised and limited in its function.

⁸ Members of the Committee noted that historically, the Chair of the Commission has been considered to serve as the "chief executive" among commissioners who are otherwise considered equals. However, during his testimony, Chairman Bodi stated that all commissioners were, in his view, equals in terms of authority and accountability and that the only function that was specific to the chair was that of calling meetings and setting agendas for them.

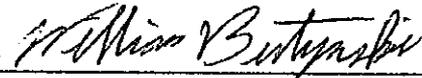
Respectfully submitted,



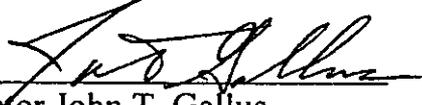
Senator Maggie Wood Hassan
Chair, District 23



Representative David Hess
Merrimack 9



Representative William Butynski
Cheshire 4



Senator John T. Gallus
District 1

Representative Daniel A. Eaton
Cheshire 2

Voting Sheets

HOUSE COMMITTEE ON LOCAL AND REGULATED REVENUES

EXECUTIVE SESSION on SB 181-FN-A

BILL TITLE: (New title) repealing the transfer of liquor enforcement to the department of safety and establishing a committee to study the administrative structure and adjudicative process at the liquor commission.

DATE: April 13, 2010

LOB ROOM: LOB 303

Amendments:

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Taylor

Seconded by Rep. Howard

Vote: 18-1 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: NO

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Timothy Butterworth, Clerk

HOUSE COMMITTEE ON LOCAL AND REGULATED REVENUES

EXECUTIVE SESSION on SB 181-FN-A

BILL TITLE: (New title) repealing the transfer of liquor enforcement to the department of safety and establishing a committee to study the administrative structure and adjudicative process at the liquor commission.

DATE: 4/13/10

LOB ROOM: LOB 303

Amendments:

Sponsor: Rep. OLS Document #:
Sponsor: Rep. OLS Document #:
Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Taylor

Seconded by Rep. Howard

Vote: 18-1 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,
Rep. Timothy Butterworth, Clerk



LOCAL AND REGULATED REVENUES

Bill #: SB181 Title: Repealing the transfer of liquor enforcement

PH Date: 3 / 7 / 2010

Exec Session Date: 4 / 13 / 2010

Motion: OTP

Amendment #: _____

MEMBER	YEAS	NAYS
Walz, Mary Beth, Chairman	✓	
Taylor, Kathleen N, V Chairman	✓	
Hamm, Christine C	✓	
Theberge, Robert L	✓	
Mulholland, Catherine	✓	
Butterworth, Timothy, Clerk	✓	
Howard, Doreen	✓	
Lyons, Melissa L.B.	✓	
Merry, Liz H	✓	
Stetson, William A	✓	
Webber, Carolyn B	✓	
Stohl, Eric G <i>Keurk</i>		✓
Kidder, David H	✓	
Hess, David W <i>Packer ab</i>	✓	
Katsakiores, Phyllis M	✓	
Vaillancourt, Steve	✓	
Peterson, Andrew R <i>ab</i>		
Allen, Mary M	✓	
Hinkle, Peyton B	✓	
Blankenbeker, Lynne Ferrari	✓	
	18	1

TOTAL VOTE:

Printed: 12/18/2009

HOUSE COMMITTEE ON FINANCE

EXECUTIVE SESSION on SB 181-FN-A

BILL TITLE: (New title) repealing the transfer of liquor enforcement to the department of safety and establishing a committee to study the administrative structure and adjudicative process at the liquor commission.

DATE: May 04, 2010

LOB ROOM: 210-211

Amendments:

Sponsor: Rep. D. Scamman OLS Document #: 2010 1776h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

PLEASE NOTE: The Scamman amendment that passed will become a Finance amendment in the Committee Report and will have new number assigned to it to reflect that change. That is the sole change to amendment #2010-1776h.

Motions: OTP OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. D. Scamman

Seconded by Rep. Eaton

Vote: Unanimous hands. (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. D. Scamman

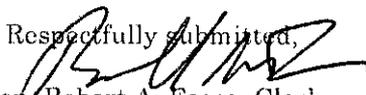
Seconded by Rep. Eaton

Vote: 22-0 (Please attach record of roll call vote.)

REGULAR or CONSENT CALENDAR VOTE: (Please circle one)

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Robert A. Foose, Clerk

HOUSE COMMITTEE ON FINANCE

EXECUTIVE SESSION on SB 181-FN-A

BILL TITLE: (New title) repealing the transfer of liquor enforcement to the department of safety and establishing a committee to study the administrative structure and adjudicative process at the liquor commission.

DATE: ~~April 29, 2010~~ May 4 2010

LOB ROOM: 210-211

Amendments:

Sponsor: Rep. Scammaw OLS Document #: 1776h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

UNANIMOUS

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Scammaw

Seconded by Rep. Enton

Vote: 22-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

REGULAR or CONSENT CALENDAR VOTE: (Please circle one)

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Robert A. Foosc, Clerk

FINANCE

(New title) repealing the transfer of liquor enforcement to the department of safety and establishing a committee to study the administrative structure and adjudicative process at the liquor commission.

Bill #: 181-FN-A

Title:

PH Date: / /

Exec Session Date: 05/04/2010

Motion: OTP/A

Amendment #:

MEMBER	YEAS	NAYS
Smith, Marjorie K, Chairman	22	
Nordgren, Sharon, V Chairman	1	
Foster, Linda T	2	
Eaton, Daniel A	3	
Baroody, Benjamin C	4	
Benn, Bernard L	5	
Leishman, Peter R		
DeJoie, John	6	
Buco, Thomas L	7	
Foose, Robert A, Clerk	8	
Mitchell, Bonnie	9	
Keans, Sandra B	10	
Casey, Kimberley S	11	
Harris, Sandra C	12	
Kurk, Neal M		
Scamman, W. Douglas	13	
Anderson, Eric	14	
Emerton, Larry A	15	
Rodeschin, Beverly T		
Wendelboe, Fran	16	
Ober, Lynne M	17	
Dokmo, Cynthia J	18	
Bergin, Peter F	19	
Belvin, William S	20	
Elliott, Robert J	21	
TOTAL VOTE:	22	0

Committee Report

REGULAR CALENDAR

April 14, 2010

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on LOCAL AND REGULATED

REVENUES to which was referred SB181-FN-A,

AN ACT (New title) repealing the transfer of liquor

enforcement to the department of safety and

establishing a committee to study the administrative

structure and adjudicative process at the liquor

commission. Having considered the same, report the

same with the recommendation that the bill OUGHT TO

PASS.

Rep. Timothy Butterworth

FOR THE COMMITTEE

Original: House Clerk

Cc: Committee Bill File

COMMITTEE REPORT

Committee:	LOCAL AND REGULATED REVENUES
Bill Number:	SB181-FN-A
Title:	(New title) repealing the transfer of liquor enforcement to the department of safety and establishing a committee to study the administrative structure and adjudicative process at the liquor commission.
Date:	April 14, 2010
Consent Calendar:	NO
Recommendation:	OUGHT TO PASS

STATEMENT OF INTENT

SB 181-FN-A repealing the transfer of liquor enforcement to the department of safety and establishing a committee to study the administrative structure and adjudicative process at the liquor commission. OUGHT TO PASS. Rep. Timothy Butterworth for local and Regulated Revenues: This bill repeals a plan to transfer the enforcement of liquor laws from the Liquor Commission to the Department of Safety. The decision was made during budget negotiations last year and most committee members felt this is not the way to pass a policy bill. In our hearing on SB181 we heard no testimony in favor of the transfer. We did hear evidence that under the current structure we have made a lot of progress with controlling DUI and underage drinking compliance. We are among the top in the nation and recognized by the National Liquor Enforcement Association and the Federal Office of Juvenile Justice and Delinquency Protection.

The committee also received testimony about Maine, where the legislature did transfer enforcement to the Department of Safety where they felt there would be greater structure and control. We heard that since the change the Liquor enforcement Bureau has become the neglected step child of the Department of Safety, and that the Maine Department of Safety has entered into Letters of Understanding with most of the local Police and Sherriff's departments where the local police now handle all sting operations. The transfer has resulted in inconsistent enforcement activity and discrepancies across jurisdictions. We heard of a great deal of angst within the licensed community in Maine. Maine legislators are now working to undo the move by disentangling Liquor Enforcement from the Department of Safety and moving it back to the Bureau of Alcoholic Beverages.

This bill also resurrects last summer's study committee to continue to look at the structural issues relating to the Liquor Commission. Specifically, the committee is charged with examining the possibility of a single executive director, reviewing

Original: House Clerk

Cc: Committee Bill File

the appeals of licensing and enforcement decisions and evaluating the supervision of the Enforcement Division. The latter is significant since there are rumors that the Enforcement Division suffers from "mission creep", although there was no testimony about this at the hearing where it could have been rebutted. The majority believes that if the Liquor Commission has a personnel issue they need to address it through the normal human resource means. We owe our employees a fair evaluation based on their merits, not a political process wrapped up in a policy decision. The committee heard testimony that enforcement, training and compliance need to be kept together. All evidence suggests that keeping the enforcement division at the Liquor Commission is the best means for maintaining the quality of enforcement we now enjoy here in New Hampshire.

Vote 18-1.

Rep. Timothy Butterworth
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

LOCAL AND REGULATED REVENUES

SB181-FN-A, (New title) repealing the transfer of liquor enforcement to the department of safety and establishing a committee to study the administrative structure and adjudicative process at the liquor commission. **OUGHT TO PASS.**

Rep. Timothy Butterworth for LOCAL AND REGULATED REVENUES. SB 181-FN-A repealing the transfer of liquor enforcement to the department of safety and establishing a committee to study the administrative structure and adjudicative process at the liquor commission. **OUGHT TO PASS.** Rep. Timothy Butterworth for local and Regulated Revenues: This bill repeals a plan to transfer the enforcement of liquor laws from the Liquor Commission to the Department of Safety. The decision was made during budget negotiations last year and most committee members felt this is not the way to pass a policy bill. In our hearing on SB181 we heard no testimony in favor of the transfer. We did hear evidence that under the current structure we have made a lot of progress with controlling DUI and underage drinking compliance. We are among the top in the nation and recognized by the National Liquor Enforcement Association and the Federal Office of Juvenile Justice and Delinquency Protection.

The committee also received testimony about Maine, where the legislature did transfer enforcement to the Department of Safety where they felt there would be greater structure and control. We heard that since the change the Liquor enforcement Bureau has become the neglected step child of the Department of Safety, and that the Maine Department of Safety has entered into Letters of Understanding with most of the local Police and Sherriff's departments where the local police now handle all sting operations. The transfer has resulted in inconsistent enforcement activity and discrepancies across jurisdictions. We heard of a great deal of angst within the licensed community in Maine. Maine legislators are now working to undo the move by disentangling Liquor Enforcement from the Department of Safety and moving it back to the Bureau of Alcoholic Beverages.

This bill also resurrects last summer's study committee to continue to look at the structural issues relating to the Liquor Commission. Specifically, the committee is charged with examining the possibility of a single executive director, reviewing the appeals of licensing and enforcement decisions and evaluating the supervision of the Enforcement Division. The latter is significant since there are rumors that the Enforcement Division suffers from "mission creep", although there was no testimony about this at the hearing where it could have been rebutted. The majority believes that if the Liquor Commission has a personnel issue they need to address it through the normal human resource means. We owe our employees a fair evaluation based on their merits, not a political process wrapped up in a policy decision. The committee heard testimony that enforcement, training and compliance need to be kept together. All evidence suggests that keeping the enforcement division at the Liquor Commission is the best means for maintaining the quality of enforcement we now enjoy here in New Hampshire. **Vote 18-1.**

Original: House Clerk
Cc: Committee Bill File

COMMITTEE REPORT

COMMITTEE: Local & Regulated Revenue

BILL NUMBER: SB181

TITLE: Transfer of liquor enforcement repeal

DATE: 4/13/2010 CONSENT CALENDAR: YES NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.

STATEMENT OF INTENT:

This bill repeals a plan to transfer the enforcement of liquor ~~commission regulations~~ ^{laws} from the liquor commission to the state police. The decision was made during budget negotiations last year, and most committee members felt this was not the way to pass a policy bill. In ~~this~~ our hearings on SB181 we heard no testimony in favor of ~~that~~ ^{the} transferring ~~the~~ ^{enforcement}. We did hear evidence that under the current structure we have made ~~good~~ a lot of progress in the last 5 years, with DUI and underage drinking compliance among the top in the nation, and recognized by the National Liquor Enforcement Association and the federal Office of Juvenile Justice and Delinquency Prevention.

COMMITTEE VOTE: 18-1

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep. Walter Butterworth
For the Committee

Rafeal, Linda

From: Mary Beth Walz [mbwalz@hotmail.com]

Sent: Tuesday, April 13, 2010 10:35 PM

To: Rafeal, Linda

Subject: FW: SB 181 blurb

SB 181-FN-A repealing the transfer of liquor enforcement to the department of safety and establishing a committee to study the administrative structure and adjudicative process at the liquor commission. OUGHT TO PASS. Rep. Timothy Butterworth for local and Regulated Revenues: This bill repeals a plan to transfer the enforcement of liquor laws from the Liquor Commission to the Department of Safety. The decision was made during budget negotiations last year and most committee members felt this is not the way to pass a policy bill. In our hearing on SB181 we heard no testimony in favor of the transfer. We did hear evidence that under the current structure we have made a lot of progress with controlling DUI and underage drinking compliance. We are among the top in the nation and recognized by the National Liquor Enforcement Association and the Federal Office of Juvenile Justice and Delinquency Protection.

The committee also received testimony about Maine, where the legislature did transfer enforcement to the Department of Safety where they felt there would be greater structure and control. We heard that since the change the Liquor enforcement Bureau has become the neglected step child of the Department of Safety, and that the Maine Department of Safety has entered into Letters of Understanding with most of the local Police and Sherriff's departments where the local police now handle all sting operations. The transfer has resulted in inconsistent enforcement activity and discrepancies across jurisdictions. We heard of a great deal of angst within the licensed community in Maine. Maine legislators are now working to undo the move by disentangling Liquor Enforcement from the Department of Safety and moveing it back to the Bureau of Alcoholic Beverages.

This bill also resurrects last summer's study committee to continue to look at the structural issues relating to the Liquor Commission. Specifically, the committee is charged with examining the possibility of a single executive director, reviewing the appeals of licensing and enforcement decisions and evaluating the supervision of the Enforcement Division. The latter is significant since there are rumors that the Enforcement Division suffers from "mission creep", although there was no testimony about this at the hearing where it could have been rebutted. The majority believes that if the Liquor Commission has a personnel issue they need to address it through the normal human resource means. We owe our employees a fair evaluation based on their merits, not a political process wrapped up in a policy decision.

The committee heard testimony that enforcement, training and compliance need to be kept together. All evidence suggests that keeping the enforcement division at the Liquor Commission is the best means for maintaining the quality of enforcement we now enjoy here in New Hampshire.

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REGULAR CALENDAR

May 5, 2010

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on FINANCE to which was referred

SB181-FN-A,

AN ACT (New title) repealing the transfer of liquor enforcement to the department of safety and establishing a committee to study the administrative structure and adjudicative process at the liquor commission. Having considered the same, report the same with the following amendment, and the recommendation that the bill OUGHT TO PASS WITH AMENDMENT.

Rep. W. Douglas Scamman

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	FINANCE
Bill Number:	SB181-FN-A
Title:	(New title) repealing the transfer of liquor enforcement to the department of safety and establishing a committee to study the administrative structure and adjudicative process at the liquor commission.
Date:	May 5, 2010
Consent Calendar:	NO
Recommendation:	OUGHT TO PASS WITH AMENDMENT

STATEMENT OF INTENT

The committee felt that the transfer of liquor enforcement to the department of safety should be delayed until the next biennium. The study in SB 181 has an interim report due in November 2010. The report will give the next legislature ample time to review the report and the effects of this proposed move. They can then determine if this change should go forward or not go forward in the next biennium.

Vote 22-0.

Rep. W. Douglas Scamman
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

FINANCE

SB181-FN-A, (New title) repealing the transfer of liquor enforcement to the department of safety and establishing a committee to study the administrative structure and adjudicative process at the liquor commission. **OUGHT TO PASS WITH AMENDMENT.**

Rep. W. Douglas Scamman for FINANCE. The committee felt that the transfer of liquor enforcement to the department of safety should be delayed until the next biennium. The study in SB 181 has an interim report due in November 2010. The report will give the next legislature ample time to review the report and the effects of this proposed move. They can then determine if this change should go forward or not go forward in the next biennium. **Vote 22-0.**

Original: House Clerk
Cc: Committee Bill File

Vote 22-0

SB ~~181~~ OTPIA

181

Consent
#18631

The committee felt that the transfer of liquor enforcement to the department of Safety should be delayed until the next biennium. The study in ~~the bill~~ SB-181 has an interim report due in Nov. 2010. which will address ~~this delayed~~ ^{the effects of the proposed} movement. Their report will give the next legislature ample time to review ^{the report and} the effects of this proposed move. ~~They can then~~ determine if this change should ~~to~~ go forward or not go forward in the next biennium.

OK
MK

Ray Hammer

New Hampshire General Court - Bill Status System

Docket of SB181

Docket Abbreviations

Bill Title: (2nd New Title) delaying the transfer of liquor enforcement to the department of safety and establishing a committee to study the administrative structure and adjudicative process at the liquor commission.

Official Docket of SB181:

Date	Body	Description
02/04/2009	S	Introduced and Referred to Ways & Means
02/11/2009	S	Hearing; === RECESSED === February 17, 2009, Room 100, State House, 11:15 a.m.; SC11
02/17/2009	S	Hearing; === CANCELLED === RECONVENE === March 3, 2009, Room 100, State House, 10:40 a.m.; SC12
02/26/2009	S	Hearing; === TIME CHANGE === RECONVENE === March 3, 2009, Room 100, State House, 10:30 a.m.; SC13
03/05/2009	S	Committee Report; Rereferred To Committee [03/11/09]; SC14
03/11/2009	S	Rereferred to Committee, MF, VV; SJ7, Pg.114
03/11/2009	S	Sen. Odell Moved Recommit to Ways & Means, MA, VV; SJ7, Pg.114
03/12/2009	S	Hearing; March 17, 2009, Room 100, State House, 10:45 a.m.; SC15
03/31/2009	S	Committee Report; Rereferred to Committee [04/08/09]; SC18
04/08/2009	S	Without Objection, Chair moved to Special Order to front of calendar; SJ11 , Pg.178
04/08/2009	S	Rereferred to Committee, MA, VV; SJ 11 , Pg.179
01/19/2010	S	Committee Report; Ought to Pass with Amendment 0181s, NT, 1/21/10; SC3A , Pg.3
01/21/2010	S	Committee Amendment 0181s, NT, AA, VV
01/21/2010	S	Ought to Pass with Amendment 0181s, NT, MA, VV; OT3rdg, SJ 3 , Pg.43
01/21/2010	S	Passed By Third Reading Resolution, SJ 3 , Pg.44
02/17/2010	H	Introduced and Referred to Local and Regulated Revenue; HJ 18 , PG.1017
03/02/2010	H	Public Hearing: 3/16/2010 1:00 PM LOB 303
03/31/2010	H	Full Committee Work Session: 4/7/2010 10:00 AM LOB 303
03/31/2010	H	Executive Session: 4/13/2010 10:00 AM LOB 303
04/14/2010	H	Committee Report: Ought to Pass for April 21 (Vote 18-1; RC); HC 31 , PG.1533
04/21/2010	H	Ought to Pass: MA VV; HJ 35 , PG.1667
04/21/2010	H	Referred to Finance; HJ 35 , PG.1667
04/21/2010	H	Full Committee Work Session: 4/29/2010 10:00 AM LOB 210-211
04/22/2010	H	Full Committee Work Session: 5/3/2010 10:00 AM LOB 210-211
04/22/2010	H	Executive Session: 5/4/2010 10:00 AM LOB 210-211
05/05/2010	H	Committee Report: Ought to Pass with AM #1863h(NT) for May 12 (Vote 22-0; RC); HJ 37 , PG.1741
05/05/2010	H	Proposed Committee Amendment #1863h (New Title); HJ 37 , PG.1759-

		1760
05/12/2010	H	Special Order to End of Regular Calendar (Rep Taylor): MA VV; HJ 41 , PG.1960-1961
05/13/2010	H	Lay on the Table (Rep Osborne): MF DIV 37-224 Lacking Required Two-Thirds; HJ 42 , PG.2146-2147
05/13/2010	H	Amendment #1863h (New Title) Adopted, DIV 143-124; HJ 42 , PG.2146-2147
05/13/2010	H	Ought to Pass with AM #1863h (NT): MA VV; HJ 42 , PG.2146-2147
05/19/2010	S	Sen. Odell Moved Nonconcur with House Amendment 1863h; NT, Requests C of C, MA, VV; SJ 20 , Pg.644
05/19/2010	S	President Appoints: Senators D'Allesandro, Gilmour and Downing; SJ 20 , Pg.644
05/19/2010	H	House Accedes to Request for Comm of Conf (Rep Hess): MA VV; HJ 46 , PG.2240
05/19/2010	H	Speaker Appoints: Reps Foster, Pantelakos, Kurk & Foose; HJ 46 , PG.2240
05/21/2010	S	Committee of Conference Meeting: 5/26/2010 3:00 p.m., Room 100, State House
05/26/2010	S	C of C Meeting: == RECESSED === May 26, 2010, Room 100, State House, 3:00 p.m.
05/26/2010	S	C of C Meeting: == RECONVENE === May 26, 2010, Room 202, LOB, 5:30 p.m.
05/27/2010	S	Conferee Change; Senator Odell Replaces Senator Downing
05/27/2010	H	Conference Committee Report #2297, House Amendment + New Amendment, Filed; HC 43A , PG.1
06/02/2010	H	Conference Committee Report #2297 Adopted, VV
06/02/2010	S	Conference Committee Report 2297; Adopted, VV
06/02/2010	H	Enrolled
06/02/2010	S	Enrolled
07/02/2010	S	Signed by the Governor on 07/02/2010; Effective 07/02/2010; Chapter 0248

NH House

NH Senate

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