

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1717*
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Short Title: Modernization of the State ABC System.

(Public)

Sponsors:

Referred to:

May 17, 2010

1 A BILL TO BE ENTITLED
2 AN ACT TO MODERNIZE THE NORTH CAROLINA ALCOHOLIC BEVERAGE
3 CONTROL SYSTEM, TO ENSURE THE INTEGRITY OF THE THREE-TIER SYSTEM,
4 TO REQUIRE MINIMUM AGE STANDARDS FOR LAW ENFORCEMENT, AND TO
5 REQUIRE THAT THE CITY OF KANNAPOLIS, THE CITY OF SALISBURY, AND
6 ROWAN COUNTY HAVE EQUAL REPRESENTATION ON THE
7 ROWAN/KANNAPOLIS ABC BOARD.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. G.S. 18B-101 reads as rewritten:

10 "§ 18B-101. Definitions.

11 As used in this Chapter, unless the context requires otherwise:

12 ...

13 (6a) "Finance officer" means the local board employee, other than a general
14 manager, who is responsible for keeping the accounts of the local board,
15 receiving and depositing receipts, disbursing funds, and any other duties
16 assigned by the local board or Commission.

17 (7) "Fortified wine" means any wine, of more than sixteen percent (16%) and no
18 more than twenty-four percent (24%) alcohol by volume, made by
19 fermentation from grapes, fruits, berries, rice, or honey; or by the addition of
20 pure cane, beet, or dextrose sugar; or by the addition of pure brandy from the
21 same type of grape, fruit, berry, rice, or honey that is contained in the base
22 wine and produced in accordance with the regulations of the United States.

23 (7a) "General manager" means the local board employee who is responsible for
24 the oversight of daily operations of the ABC system and any other duties
25 assigned by the local board or Commission. The board may designate only
26 one employee to be the general manager.

27 ~~(7a)~~(7b) "Historic ABC establishment" means a restaurant or hotel that meets all
28 of the following requirements:

29 a. Is on the national register of historic places or located within a State
30 historic district.



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- 1 b. Is a property designed to attract local, State, national, and
2 international tourists located on a State Route (SR) and with a
3 property line located within 1.5 miles of the intersection of a
4 designated North Carolina scenic byway as defined in
5 G.S. 136-18(31).
6 c. Is located within 15 miles of a national scenic highway.
7 d. Is located in a county in which the on-premises sale of malt
8 beverages or unfortified wine is authorized in two or more cities in
9 the county.

10 (7b)(7c) "Keg" means a portable container designed to hold and dispense 7.75
11 gallons or more of malt beverage.

12 "

13 **SECTION 2.** G.S. 18B-201 reads as rewritten:

14 "**§ 18B-201. Conflict of ~~interest~~interest; gifts.**

15 (a) Financial Interests Restricted. – No person shall be appointed to or employed by the
16 Commission, a local board, or the ALE Division if that person or a member of that person's
17 family related to that person by blood or marriage to the first degree has or controls, directly or
18 indirectly, a financial interest in any commercial alcoholic beverage enterprise, including any
19 business required to have an ABC permit. The Commission may exempt from this provision
20 any person, other than a Commission member, when the financial interest in question is so
21 insignificant or remote that it is unlikely to affect the person's official actions in any way.
22 Exemptions may be granted only to individuals, not to groups or classes of people, and each
23 exemption shall be in writing, be available for public inspection, and contain a statement of the
24 financial interest in question.

25 (b) Self-dealing. – The provisions of G.S. 14-234 shall apply to the Commission and
26 local boards.

27 (c) Dealing for Family Members. – Neither the Commission nor any local board shall
28 contract or otherwise deal in any business matter so that a member, member's spouse or any
29 person related to ~~him~~the member by blood to a degree of first cousin or closer in any way
30 financially benefits, directly or indirectly, from the transaction unless:

- 31 (1) The member who financially benefits from the transaction or whose spouse
32 or relative financially benefits from the transaction abstains from
33 participating in any way, including voting, in the decision;
34 (2) The minutes of the meeting at which the final decision is reached
35 specifically note the member who is financially benefited or whose spouse
36 or relative is financially benefited and the amount involved in each
37 transaction;
38 (3) The next annual audit of the Commission or local board specifically notes
39 the member and the amount involved in each transaction occurring during
40 the year covered by the audit; and
41 (4) If the transaction is by a local board, the Commission is notified at least two
42 weeks before final board approval of the transaction.

43 (d) Gifts Generally. – The provisions of G.S. 133-32 shall apply to the Commission and
44 local boards.

45 (e) Conflicts of Interest for the Commission. – The provisions of Article 4 of Chapter
46 138A of the General Statutes shall apply to the Commission.

47 (f) Conflicts of Interest for Local Boards. – Except as permitted under subsection (h) of
48 this section, a local ABC board member shall not knowingly use the local ABC board member's
49 position on the board in any way that will result in financial benefit to the local ABC board
50 member, the local ABC board member's spouse, any person related to the local ABC board

1 member by blood to a degree of first cousin or closer, or any business with which the local
2 ABC board member is associated.

3 (g) For purposes of subsection (f) of this section, 'business with which associated' shall
4 have the same meaning as in G.S. 138A-3(3). For purposes of this section, 'financial benefit'
5 shall mean a direct pecuniary gain or loss, or a direct pecuniary loss to a business competitor.

6 (h) Notwithstanding subsection (f) of this section, a local ABC board member may
7 participate in an action of the local ABC board under any of the following circumstances
8 except as specifically limited:

9 (1) The financial benefit that accrues to the local ABC board member, the local
10 ABC board member's spouse or any person related to the local ABC board
11 member by blood to a degree of first cousin or closer, or a business with
12 which the local ABC board member is associated is one that is accrued as a
13 member of a profession, occupation, or general class and is no greater than
14 that which could reasonably be foreseen to accrue to all members of that
15 profession, occupation, or general class.

16 (2) The financial benefit derived by a local ABC board member, the local ABC
17 board member's spouse or any person related to the local ABC board
18 member by blood to a degree of first cousin or closer, or a business with
19 which the local ABC board member is associated is one that would be
20 enjoyed to an extent no greater than that which other citizens of the State
21 would or could enjoy.

22 (3) The financial benefit derived by a local ABC board member, the local ABC
23 board member's spouse or any person related to the local ABC board
24 member by blood to a degree of first cousin or closer, or a business with
25 which the local ABC board member is so remote, tenuous, insignificant, or
26 speculative that a reasonable person would conclude under the
27 circumstances that the local ABC board member's ability to protect the
28 public interest and perform the local ABC board member's duties would not
29 be compromised.

30 (4) When an action affects or would affect the local ABC board member's
31 compensation as a local ABC board member.

32 (5) Before the local ABC board member participated in the action, the board
33 member requested and received from the ABC Commission a written
34 advisory opinion that authorized the participation. In authorizing the
35 participation under this subdivision, the ABC Commission shall consider the
36 need for the local ABC board member's particular contribution, such as
37 special knowledge of the subject matter and the effective functioning of the
38 local ABC board.

39 (6) When action is ministerial only and does not require the exercise of
40 discretion.

41 (7) When the local ABC board records in its minutes that it cannot obtain a
42 quorum in order to take the action because the local ABC board member is
43 disqualified from acting, the local ABC board member may be counted for
44 purposes of a quorum but shall otherwise abstain from taking any further
45 action.

46 (i) Nothing in this section shall allow participation in an action prohibited by
47 G.S. 14-234 or G.S. 133-32.

48 (j) A local board member shall not improperly use or improperly disclose any
49 confidential information.

50 (k) A local board member shall have an affirmative duty to promptly disclose in writing
51 to the local board any conflict of interest or potential conflict of interest."

1 **SECTION 3.** G.S. 18B-202 reads as rewritten:

2 "**§ 18B-202. Discharge upon conviction.**

3 In addition to imposing any other penalty authorized by law, a judge may remove from
4 office or discharge from employment any Commission or local board member or employee, or
5 any ALE agent, who is convicted of a violation of any provision of this Chapter or of any
6 felony and may declare that person ineligible for membership or employment with the
7 Commission, any local board, or the ALE Division, for a period of not longer than three years.
8 Conviction of a crime under this Chapter or of any felony shall also be grounds for the
9 Commission to remove from office or discharge from employment any local board member or
10 employee. In addition to imposing any other penalty authorized by law, a judge may prohibit an
11 individual convicted of a violation of this Chapter, or of any felony, from participating in any
12 contract to enforce the ABC laws for a local board if that individual is a designated officer of
13 an agency which holds a contract to enforce the ABC laws for a local board. A judge may also
14 prohibit an individual convicted of a violation of this Chapter, or of any felony, from being
15 designated as an officer that enforces the ABC law under a contract with any local board for a
16 period of not longer than three years."

17 **SECTION 4.** G.S. 18B-203(a) is amended by adding new subdivisions to read:

18 "**§ 18B-203. Powers and duties of the Commission.**

19 (a) Powers. – The Commission shall have authority to:

20 ...

21 (20) Promulgate rules to establish performance standards for local boards.
22 Performance standards established pursuant to this subdivision shall include,
23 but not be limited to, standards that address enforcement of ABC laws, store
24 appearance, operating efficiency, solvency, and customer service.

25 (21) Promulgate rules to establish mandatory training requirements for local
26 board members, finance officers, and general managers. If personal
27 attendance is required, the Commission shall not require more than four
28 hours of training and shall provide up to two hours of training at convenient
29 locations around the State in conjunction with ethics training.

30 (22) Provide for the purchase of spirituous liquor from another ABC board by
31 mixed beverage permittees when an ABC system becomes insolvent, closes,
32 or is closed by the Commission and the county or municipality in which the
33 system is located has approved the sale of mixed beverages."

34 **SECTION 5.** G.S. 18B-501(f) reads as rewritten:

35 "(f) Contracts with Other Agencies. – Instead of hiring local ABC officers, a local board
36 may contract to pay its enforcement funds to a sheriff's department, city police department, or
37 other local law-enforcement agency for enforcement of the ABC laws within the
38 law-enforcement agency's territorial jurisdiction. Enforcement agreements may be made with
39 more than one agency at the same time. When such a contract for enforcement exists, the
40 designated officers of the contracting law-enforcement agency shall have the same authority to
41 inspect under G.S. 18B-502 that an ABC officer employed by that local board would have. An
42 agency contracted to provide ABC law enforcement shall designate no more than five officers
43 to conduct inspections pursuant to this section and G.S. 18B-502. If a city located in two or
44 more counties approves the sale of some type of alcoholic beverage pursuant to the provisions
45 of G.S. 18B-600(e4), and there are no local ABC boards established in the city and one of the
46 counties in which the city is located, the local ABC board of any county in which the city is
47 located may enter into an enforcement agreement with the city's police department for
48 enforcement of the ABC laws within the entire city, including that portion of the city located in
49 the county of the ABC board entering into the enforcement agreement."

50 **SECTION 6.** G.S. 18B-501 is amended by adding a new subsection to read:

1 "(f1) Accountability; Enforcement Reports. – To ensure accountability to the appointing
2 authority and the Commission, every local board's ABC officers and those law enforcement
3 agencies subject to an enforcement agreement entered into pursuant to subsection (f) of this
4 section shall report to the local board, by the fifth business day of each month, on a form
5 developed by the Commission, the following:

6 (1) The number of arrests made for ABC law, Controlled Substance Act, or
7 other violations, by category, at ABC permitted outlets.

8 (2) The number of arrests made for ABC law, Controlled Substance Act, or
9 other violations, by category, at other locations.

10 (3) The number of agencies assisted with ABC law or controlled substance
11 related matters.

12 (4) The number of alcohol education and responsible server programs presented.

13 The local board shall submit a copy of the enforcement report to the appointing authority
14 and the Commission not later than five business days after receipt of the enforcement report by
15 the local board. The Commission shall publish this information, by local board and
16 enforcement agency, on a public Internet Web site maintained by the Commission."

17 **SECTION 7.(a)** G.S. 18B-501(g) reads as rewritten:

18 "(g) Discharge. – Local ABC officers and the designated officers of agencies which
19 contract with local boards for enforcement of the ABC laws are subject to the discharge and
20 ineligibility provisions of G.S. 18B-202."

21 **SECTION 7.(b)** G.S. 18B-600(d) reads as rewritten:

22 "(d) City ABC Store Elections. – A city may hold an ABC store election only if:

23 (1) The city has at least ~~500~~1,000 registered voters; and

24 (2) The county in which the city is located does not operate ABC stores."

25 **SECTION 8.** G.S. 18B-600(e) reads as rewritten:

26 "(e) City Mixed Beverage Elections. – A city may hold a mixed beverage election ~~only~~
27 if: if the city has at least 500 registered voters. Provided, that if a city that qualifies for an
28 election under this subsection approves the sale of mixed beverages, mixed beverages
29 permittees in the city may purchase liquor from the ABC store designated by the local ABC
30 board that has been approved by the Commission for this purpose.

31 (1) ~~The city has at least 500 registered voters; and~~

32 (2) ~~Either:~~

33 a. ~~The city already operates a city ABC store; or~~

34 b. ~~A city ABC store election is to be held at the same time as the mixed~~
35 ~~beverage election; or~~

36 e. ~~The city does not operate a city ABC store but:~~

37 1. ~~The county operates an ABC store;~~

38 2. ~~The county has already held a mixed beverage election; and~~

39 3. ~~The vote in the last county election was against the sale of~~
40 ~~mixed beverages."~~

41 **SECTION 9.** G.S. 18B-700(a) reads as rewritten:

42 "(a) Membership. – A local ABC board shall consist of three or five members appointed
43 for three-year terms, unless a different membership or term is provided by a local act enacted
44 before the effective date of this Chapter, or terms unless the board is a board for a merged ABC
45 system under G.S. 18B-703 and a different size membership has been provided for as part of
46 the negotiated merger. ~~One~~ If the board is a three-member board, one member of the initial
47 board of a newly created ABC system shall be appointed for a three-year term, one member for
48 a two-year term, and one member for a one-year term. If the board is a five-member board, one
49 member of the initial board of a newly created ABC system shall be appointed for a three-year
50 term, two members for two-year terms, and two members for one-year terms. As the terms of
51 initial board members expire, their successors shall each be appointed for three-year terms. If a

1 board is initially a three-member board and the appointing authority determines a five-member
2 board is preferable, the terms of the two new members shall be for three years. If a local board
3 has five members and the appointing authority determines a three-member board is preferable,
4 the appointing authority shall not reduce the size of the board except upon the expiration of a
5 member's term and only with the approval of the Commission. The appointing authority shall
6 designate one member of the local board as chairman."

7 **SECTION 10.** G.S. 18B-700 is amended by adding a new subsection to read:

8 "(a1) Mission. – The mission of local ABC boards and their employees shall be to serve
9 their localities responsibly by controlling the sale of spirituous liquor and promoting
10 customer-friendly, modern, and efficient stores."

11 **SECTION 11.** G.S. 18B-700(g) reads as rewritten:

12 "(g) ~~Salary.~~ Compensation of Board Members. – A local board member ~~may be~~
13 ~~compensated as determined by the appointing authority.~~ shall receive compensation in an
14 amount not to exceed one hundred fifty dollars (\$150.00) per board meeting unless a different
15 level of monetary compensation is approved by the appointing authority. If a different level is
16 approved by the appointing authority, the appointing authority shall notify the Commission of
17 the approved level of compensation in writing. Any change in compensation approved by the
18 appointing authority shall be reported to the Commission in writing within 30 days of the
19 effective date of the change. No local board member shall receive any nonmonetary
20 compensation or benefits unless specifically authorized by this section."

21 **SECTION 12.** G.S. 18B-700 is amended by adding a new subsection to read:

22 "(g1) Compensation of General Managers of Local Boards. – The salary authorized for
23 the general manager, as defined in G.S. 18B-101, of a local board shall not exceed the salary
24 authorized by the General Assembly for the clerk of superior court of the county in which the
25 appointing authority was originally incorporated unless such compensation is otherwise
26 approved by the appointing authority. The local board shall provide the appointing authority's
27 written confirmation of such approval to the Commission. Any change in compensation
28 approved by the appointing authority shall be reported to the Commission in writing within 30
29 days of the effective date of the change. The general manager of a local board may receive any
30 other benefits to which all employees of the local board are entitled. The salary authorized for
31 other employees of a local board may not exceed that of the general manager."

32 **SECTION 13.** G.S. 18B-700 is amended by adding a new subsection to read:

33 "(g2) Travel Allowance and Per Diem Rates. – Approved travel on official business by
34 the members and employees of local boards shall be reimbursed pursuant to G.S. 138-6 unless
35 the local board adopts a travel policy that conforms to the travel policy of the appointing
36 authority and such policy is approved by the appointing authority. The local board shall
37 annually provide the appointing authority's written confirmation of such approval to the
38 Commission and a copy of the travel policy authorized by the appointing authority. Any excess
39 expenses not covered by the local board's travel policy shall only be paid with the written
40 authorization of the appointing authority's finance officer. A copy of the written authorization
41 for excess expenses shall be submitted to the Commission by the local board within 30 days of
42 approval."

43 **SECTION 14.** G.S. 18B-700(i) reads as rewritten:

44 "(i) Bond. – Each local board member and the employees designated as the general
45 manager and finance officer of the local board shall be bonded in an amount not less than ~~five~~
46 ~~thousand dollars (\$5,000),~~ fifty thousand dollars (\$50,000) secured by a corporate surety, for the
47 faithful performance of his duties. A public employees' blanket position bond in the required
48 amount satisfies the requirements of this subsection. The bond shall be payable to the local
49 board and shall be approved by the appointing authority for the local board. The appointing
50 authority may ~~exempt from this bond requirement any board member who does not handle~~

1 ~~board funds, and it may also increase the amount of the bond required for any member or~~
2 ~~employee who does handle~~handles board funds."

3 **SECTION 15.** G.S. 18B-700 is amended by adding a new subsection to read:

4 "(k) Nepotism. – Members of an immediate family shall not be employed within the
5 local board if such employment will result in one member of the immediate family supervising
6 another member of the immediate family, or if one member of the immediate family will
7 occupy a position which has influence over another member's employment, promotion, salary
8 administration, or other related management or personnel considerations. This subsection
9 applies to local board members and employees.

10 For the purpose of this subsection, the term 'immediate family' includes wife, husband,
11 mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson, and
12 granddaughter. Also included are the step-, half-, and in-law relationships. It also includes other
13 people living in the same household, who share a relationship comparable to immediate family
14 members, if either occupies a position which requires influence over the other's employment,
15 promotion, salary administration, or other related management or personnel considerations."

16 **SECTION 16.** G.S. 18B-700 is amended by adding a new subsection to read:

17 "(l) Local Acts. – Notwithstanding the provisions of any local act, this section applies to
18 all local boards."

19 **SECTION 17.** G.S. 18B-701 reads as rewritten:

20 "**§ 18B-701. Powers and duties of local ABC boards.**

21 (a) Powers. – A local board shall have authority to:

- 22 (1) Buy, sell, transport, and possess alcoholic beverages as necessary for the
23 operation of its ABC stores;
- 24 (2) Adopt rules for its ABC system, subject to the approval of the Commission;
- 25 (3) Hire and fire employees for the ABC system;
- 26 (4) Designate one employee as manager of the ABC system and determine his
27 responsibilities;
- 28 (5) Require bonds of employees as provided in the rules of the Commission;
- 29 (6) Operate ABC stores as provided in Article 8;
- 30 (7) Issue purchase-transportation permits as provided in Article 4;
- 31 (8) Employ local ABC officers or make other provision for enforcement of ABC
32 laws as provided in Article 5;
- 33 (9) Borrow money as provided in G.S. 18B-702;
- 34 (10) Buy and lease real and personal property, and receive property bequeathed
35 or given, as necessary for the operation of the ABC system;
- 36 (11) Invest surplus funds as provided in G.S. 18B-702;
- 37 (12) Dispose of property in the same manner as a city council may under Article
38 12 of Chapter 160A of the General Statutes; and
- 39 (13) Perform any other activity authorized or required by the ABC law.

40 (b) Duties. – A local board shall have the duty to comply with all rules adopted by the
41 Commission pursuant to this Chapter and meet all standards for performance and training
42 established by the Commission pursuant to G.S. 18B-203(a)(20) and (21). Failure to comply
43 with Commission rules shall be cause for removal."

44 **SECTION 18.** G.S. 18B-702 reads as rewritten:

45 "**§ 18B-702. Financial operations of local boards.**

46 (a) Generally. – A local board may transact business as a corporate body, except as
47 limited by this section. A local board shall not be considered a public authority under
48 G.S. 159-7(b)(10).

49 (b) Budget Officer. – The general manager of the local board shall be the budget officer
50 for the local board. In the absence of a general manager, a local board may impose the duties of

1 budget officer on the chairman or any member of the local board or any other employee of the
2 board.

3 (c) Annual Balanced Budget. – Each local board shall operate under an annual balanced
4 budget administered in accordance with this section. A budget is balanced when the sum of
5 estimated gross revenues and both restricted and unrestricted funds are equal to appropriations.
6 Expenditures shall not exceed the amount of funds received or in reserve for the purpose to
7 which the funds are appropriated. It is the intent of this section that all monies received and
8 expended by a local board should be included in the budget. Therefore, notwithstanding any
9 other provision of law, no local board may expend any monies, regardless of their source,
10 except in accordance with a budget adopted under this section. The budget of a local board
11 shall cover a fiscal year beginning July 1 and ending June 30.

12 (d) Preparation and Submission of Budget and Budget Message. – Upon receipt of the
13 budget requests and revenue estimates and the financial information supplied by the finance
14 officer, the budget officer shall prepare a budget for consideration by the local board in such
15 form and detail as may have been prescribed by the budget officer or the local board. The
16 budget, together with a budget message, shall be submitted to the local board, the appointing
17 authority, and the Commission not later than June 1. The budget and budget message should,
18 but need not, be submitted at a formal meeting of the board. The budget message should
19 contain a concise explanation of the goals fixed by the budget for the budget year, explain
20 important features of the activities anticipated in the budget, set forth the reasons for stated
21 changes from the previous year in appropriation levels, and explain any major changes in fiscal
22 policy.

23 (e) Filing and Publication of the Budget. – On the same day the budget officer submits
24 the budget to the local board, the budget officer shall make a copy for public inspection, and it
25 shall remain available for public inspection until the budget is adopted. The budget officer shall
26 make a copy of the budget available to all news media in the county. The budget officer shall
27 also publish a statement that the budget has been submitted to the local board and is available
28 for public inspection in the office of the general manager of the local board. The statement shall
29 also give notice of the time and place of the budget hearing required by subsection (f) of this
30 section.

31 (f) Budget Hearings. – Before adopting the budget, the board shall hold a public
32 hearing at which time any persons who wish to be heard on the budget may appear.

33 (g) Adoption of Budget. – Not earlier than 10 days after the day the budget is presented
34 to the board and not later than July 1, the local board shall adopt a budget making
35 appropriations for the budget year in such sums as the board may consider sufficient and
36 proper, whether greater or less than the sums recommended in the budget. The budget shall
37 authorize all financial transactions of the local board. The budget may be in any form that the
38 board considers most efficient in enabling it to make the fiscal policy decisions embodied
39 therein, but it shall make appropriations by department, function, or project and show revenues
40 by major source. The following directions and limitations shall bind the local board in adopting
41 the budget:

42 (1) The full amount estimated by the finance officer to be required for debt
43 service during the budget year shall be appropriated.

44 (2) The full amount of any deficit in each fund shall be appropriated.

45 (3) Working capital funds set aside pursuant to G.S. 18B-805 shall be
46 established by rule of the Commission. "Working capital" means the total of
47 cash, investments, and inventory less all unsecured liabilities. Gross sales
48 means gross receipts from the sale of alcoholic beverages less distributions
49 as defined in G.S. 18B-805(b)(2), (3), (4), and (5). Any expenditure to be
50 charged against working capital funds shall be authorized by resolution of
51 the local board, which resolution shall be deemed an amendment to the

1 budget setting up an appropriation for the object of expenditure authorized.
2 The local board may authorize the budget officer to authorize expenditures
3 from working capital funds subject to such limitations and procedures as it
4 may prescribe. Any such expenditure shall be deemed an amendment and
5 reported to the board at its next regular meeting and recorded in the minutes.

6 (4) Estimated revenues shall include only those revenues reasonably expected to
7 be realized in the budget year.

8 (5) Sufficient funds to meet the amounts to be paid during the fiscal year under
9 continuing contracts previously entered into shall be appropriated unless
10 such contract reserves to the local board the right to limit or not to make
11 such appropriation.

12 (6) The sum of estimated net revenues and appropriated fund balance in each
13 fund shall be equal to appropriations in that fund. Appropriated fund balance
14 in a fund shall not exceed the sum of cash and investments minus the sum of
15 liabilities, encumbrances, and deferred revenues arising from cash receipts,
16 as those figures stand at the close of the fiscal year next preceding the budget
17 year.

18 The budget shall be entered in the minutes of the local board and within five days after
19 adoption, and copies thereof shall be filed with the finance officer, the budget officer, the
20 appointing authority, and the Commission.

21 (h) Amendments to the Budget. – Except as otherwise restricted by law, the local board
22 may amend the budget at any time after adoption, in any manner, so long as the budget, as
23 amended, continues to satisfy the requirements of this section. The local board by appropriate
24 resolution may authorize the budget officer to transfer monies from one appropriation to
25 another within the same fund subject to such limitations and procedures as it may prescribe.
26 Any such transfers shall be reported to the local board at its next regular meeting and shall be
27 entered in the minutes. Amendments to the adopted budget shall also be provided to the
28 appointing authority and the Commission.

29 (i) Interim Budget. – In case the adoption of the budget is delayed until after July 1, the
30 local board shall make interim appropriations for the purpose of paying salaries, debt service
31 payments, and the usual ordinary expenses of the local board for the interval between the
32 beginning of the budget year and the adoption of the budget. Interim appropriations so made
33 shall be charged to the proper appropriations in the adopted budget.

34 (j) Finance Officer. – Except as otherwise provided, the local board shall designate (i) a
35 part-time or full-time employee of the board other than the general manager or (ii) the finance
36 officer of the appointing authority with consent of the appointing authority to be the finance
37 officer for the local board. The Commission, for good cause shown, may allow the general
38 manager of a board also to be the finance officer. Good cause includes, but is not limited to, the
39 fact that the board operates no more than two stores, and any approval for the general manager
40 also to be the finance officer shall apply until the board operates more than two stores; in any
41 event, the approval shall be effective for 36 months.

42 (k) Duties and Powers of the Finance Officer. – The finance officer for a local board
43 shall:

44 (1) Keep the accounts of the local board in accordance with generally accepted
45 principles of governmental accounting and the rules and regulations of the
46 Commission.

47 (2) Disburse all funds of the local board in strict compliance with this Chapter,
48 the budget, preaudit obligations, and disbursements as required by this
49 section.

- 1 (3) As often as may be requested by the local board or the general manager,
2 prepare and file with the board a statement of the financial condition of the
3 local board.
- 4 (4) Receive and deposit all monies accruing to the local board, or supervise the
5 receipt and deposit of money by other duly authorized employees.
- 6 (5) Maintain all records concerning the debt and other obligations of the local
7 board, determine the amount of money that will be required for debt service
8 or the payment of other obligations during each fiscal year, and maintain all
9 funds.
- 10 (6) Supervise the investment of idle funds of the local board pursuant to
11 subsection (t) of this section.

12 The finance officer shall perform such other duties as may be assigned by law, by the
13 general manager, budget officer, or local board, or by rules and regulations of the Commission.

14 (1) Accounting System. – Each local board shall establish and maintain an accounting
15 system designed to show in detail its assets, liabilities, equities, revenues, and expenditures.
16 The system shall also be designed to show appropriations and estimated revenues as established
17 in the budget originally adopted and subsequently amended.

18 (m) Incurring Obligations. – No obligation may be incurred in a program, function, or
19 activity accounted for in a fund included in the budget unless the budget includes an
20 appropriation authorizing the obligation and an unencumbered balance remains in the
21 appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction
22 for the current fiscal year. No obligation may be incurred for a capital project unless the budget
23 authorizes the obligation and an unencumbered balance remains in the appropriation sufficient
24 to pay the sums obligated by the transaction. If an obligation is evidenced by a contract or
25 agreement requiring the payment of money or by a purchase order for supplies and materials,
26 the contract, agreement, or purchase order shall include on its face a certificate stating that the
27 instrument has been preaudited to assure compliance with this subsection. The certificate,
28 which shall be signed by the finance officer or any deputy finance officer approved for this
29 purpose by the local board, shall take substantially the following form:

30 "This instrument has been preaudited in the manner required by G.S. 18B-702.
31

32 (Signature of finance officer)."

33 An obligation incurred in violation of this subsection is invalid and may not be enforced.
34 The finance officer shall establish procedures to assure compliance with this subsection.

35 (n) Disbursements. – When a bill, invoice, or other claim against a local board is
36 presented, the finance officer shall either approve or disapprove the necessary disbursement. If
37 the claim involves a program, function, or activity accounted for in a fund included in the
38 budget or a capital project or a grant project authorized by the budget, the finance officer may
39 approve the claim only if:

- 40 (1) The finance officer determines the amount to be payable; and
41 (2) The budget includes an appropriation authorizing the expenditure and either
42 (i) an encumbrance has been previously created for the transaction or (ii) an
43 unencumbered balance remains in the appropriation sufficient to pay the
44 amount to be disbursed.

45 A bill, invoice, or other claim may not be paid unless it has been approved by the finance
46 officer or, under subsection (o) of this section, by the local board. The finance officer shall
47 establish procedures to assure compliance with this subsection.

48 (o) Local Board Approval of Bills, Invoices, or Claims. – The local board may, as
49 permitted by this subsection, approve a bill, invoice, or other claim against the local board that
50 has been disapproved by the finance officer. It may not approve a claim for which no
51 appropriation appears in the budget, or for which the appropriation contains no encumbrance

1 and the unencumbered balance is less than the amount to be paid. The local board shall approve
2 payment by formal resolution stating the board's reasons for allowing the bill, invoice, or other
3 claim. The resolution shall be entered in the minutes together with the names of those voting in
4 the affirmative. The chairman of the board or some other member designated for this purpose
5 shall sign the certificate on the check or draft given in payment of the bill, invoice, or other
6 claim. If payment results in a violation of law, each member of the board voting to allow
7 payment is jointly and severally liable for the full amount of the check or draft given in
8 payment.

9 (p) Checks or Drafts Signed by Finance Officer. – Except as otherwise provided by law,
10 all checks or drafts on an official depository shall be signed by the finance officer or a properly
11 designated deputy finance officer. The chairman of the local board or general manager of the
12 local board shall countersign these checks and drafts. The Commission may waive the
13 requirements of this subsection if the board determines that the internal control procedures of
14 the unit or authority will be satisfactory in the absence of dual signatures.

15 (q) Payment of a Bill, Invoice, Salary, or Claim. – A local board may not pay a bill,
16 invoice, salary, or other claim except by a check or draft on an official depository or by a bank
17 wire transfer from an official depository. Except as provided in this subsection, each check or
18 draft on an official depository shall bear on its face a certificate signed by the finance officer or
19 a deputy finance officer approved for this purpose by the local board (or signed by the
20 chairman or some other member of the board pursuant to subsection (o) of this section). The
21 certificate shall take substantially the following form:

22 "This disbursement has been approved in the manner required by G.S. 18B-702.
23

24 (Signature of finance officer)."

25 No certificate is required on payroll checks or drafts on an imprest account in an official
26 depository if the check or draft depositing the funds in the imprest account carried a signed
27 certificate. No certificate is required for expenditures of fifty dollars (\$50.00) or less from a
28 petty cash fund, provided the expenditure is accounted for by a receipt for the expended item.

29 ~~(b)~~(r) Borrowing Money. – A local board may borrow money only for the purchase of
30 land, buildings, equipment and stock needed for the operation of its ABC system. A local board
31 may pledge a security interest in any real or personal property it owns other than alcoholic
32 beverages. A city or county whose governing body appoints a local board shall not in any way
33 be held responsible for the debts of that board.

34 ~~(e)~~(s) Audits. – A local board shall submit to the appointing authority and Commission an
35 annual independent audit of its operations, performed in accordance with generally accepted
36 accounting standards and in compliance with a chart of accounts prescribed by the
37 Commission. The audit report shall contain a summary of the requirements of this Chapter, or
38 of any local act applicable to that local board, concerning the distribution of profits of that
39 board and a description of how those distributions have been made, including the names of
40 recipients of the profits and the activities for which the funds were distributed. A local board
41 shall also submit to any other audits and submit any reports demanded by the appointing
42 authority or the Commission.

43 ~~(d)~~(t) Deposits and Investments. – A local board may deposit ~~moneys~~monies at interest in
44 any bank or trust company in this State in the form of savings accounts or certificates of
45 deposit. Investment deposits shall be secured as provided in G.S. 159-31(b) and the reports
46 required by G.S. 159-33 shall be submitted. A local board may invest all or part of the cash
47 balance of any fund as provided in G.S. 159-30(c) and (d), and may deposit any portion of
48 those funds for investment with the State Treasurer in the same manner as State boards and
49 commissions under G.S. 147-69.3.

50 ~~(e)~~(u) Compliance with Commission Rules. – The Commission shall adopt, and each local
51 board shall comply with, fiscal control rules concerning the borrowing of money, maintenance

1 of working capital, investments, appointment of a budget officer, appointment of a financial
2 officer, daily deposit of funds, bonding of employees, auditing of operations, and the schedule,
3 manner and other procedures for distribution of profits. The Commission may also adopt any
4 other rules concerning the financial operations of local boards which are needed to assure the
5 proper accountability of public funds. The Commission may vary these rules and regulations
6 according to any other criteria reasonably related to the purpose or complexity of the financial
7 operations involved. The Commission has the authority to inquire into and investigate the
8 internal control procedures of a local board and may require any modifications in internal
9 control procedures which, in the opinion of the Commission, are necessary or desirable to
10 prevent embezzlements or mishandling of public monies.

11 (v) Penalties. – If a board member or employee of a local board incurs an obligation or
12 pays out or causes to be paid out any funds in violation of this section, the member or employee
13 and the sureties on the official bond are liable for any sums so committed or disbursed. If the
14 finance officer or any properly designated deputy finance officer gives a false certificate to any
15 contract, agreement, purchase order, check, draft, or other document, the finance officer and the
16 sureties on the official bond are liable for any sums illegally committed or disbursed thereby.

17 (w) Applicability of Criminal Statutes. – The provisions of G.S. 14-90 and G.S. 14-254
18 shall apply to any person appointed to or employed by a local board, and any person convicted
19 of a violation of G.S. 14-90 or G.S. 14-254 shall be punished as a Class H felon.

20 (x) Local Acts. – Notwithstanding the provisions of any local act, this section applies to
21 all local boards."

22 **SECTION 19.** Chapter 18B of the General Statutes is amended by adding a new
23 section to read:

24 **"§ 18B-704. Removal of local board members and employees.**

25 (a) Improper Influence. – Neither the Commission nor its individual members shall
26 attempt to coerce any appointing authority to appoint a particular person as a member of a local
27 board or attempt to coerce a local board to employ any particular applicant.

28 (b) Purpose. – This section is intended to provide a uniform system of removal for
29 appointing authorities and the Commission.

30 (c) Cause for Removal. – (i) Disqualification of a local board member or employee
31 under the law, (ii) a violation of the ABC laws, (iii) failure to complete training required by this
32 Chapter or the Commission, or (iv) engaging in any conduct constituting moral turpitude or
33 which brings the local board or the ABC system into disrepute is cause for the Commission to
34 remove any member or employee of a local board. The employment or retention of any
35 employee who is known to be disqualified under the law to hold a position with a local board is
36 cause for the Commission to remove the board members involved.

37 (d) Removal Process. – The Commission or appointing authority shall provide, in
38 writing, to the local board member or employee the findings of fact upon which the decision for
39 removal is based. The Commission or appointing authority shall also provide the local board
40 member or employee with notice of the availability of a hearing before the Commission to
41 review the removal.

42 (e) Removal Hearing. – Any local board member or employee removed from office or
43 discharged by the Commission or the appointing authority may request a hearing before the
44 Commission. Such a request operates to stay the action of the Commission or the appointing
45 authority with regard to the matter until after the hearing, unless the Commission finds that the
46 public interest requires immediate action. At the hearing, the employee or the employee's
47 counsel may examine all evidence used against the employee and present evidence in the
48 employee's own behalf. A removal hearing is not subject to the provisions of Chapter 150B of
49 the General Statutes. All hearings shall be conducted informally and in such manner as to
50 preserve the substantial rights of the parties.

1 (f) Hearing Procedure. – The Commission shall hold the hearing required by subsection
2 (e) of this section within 15 days of the member's or employee's request for a hearing. The
3 standard of review by the Commission is de novo. The Commission or appointing authority
4 shall be represented by a Commission hearing officer. The Commission shall discharge the
5 member or employee if two-thirds of the Commission's members vote for removal. The
6 Commission shall make findings of fact. The Commission may adopt the findings of fact of the
7 Commission or the appointing authority, may add new findings of fact to the original findings
8 of fact, or may substitute new findings of fact for the original findings of fact. The Commission
9 shall make conclusions of law and shall issue a written decision to the member or employee of
10 the local board, and to the appointing authority, within 15 days of the hearing.

11 (g) Commission Authority. – The Commission shall have the sole power, in its
12 discretion, to determine if cause exists for removal of a local board member or employee who
13 has requested a hearing before the Commission. The Commission's decision in a removal
14 hearing is final.

15 (h) Appeal. – A local board member or employee may appeal the Commission's final
16 decision to the Court of Appeals. The standard of review for an appeal shall be abuse of
17 discretion. The sole remedy for a local board member or employee shall be the reinstatement of
18 the board member or employee to the local board with back pay. All awards for back pay shall
19 be paid by the local board from which the board member or employee was removed.

20 (i) Removal Hearing Not a Substitute for Termination of Employee. – Nothing in this
21 section replaces or is intended to replace a local board's policy regarding the termination of an
22 employee for personnel reasons. The removal process under this section is reserved solely for
23 the appointing authority or the Commission to remove a board member or employee for cause.

24 (j) Local Acts. – Notwithstanding the provisions of any local act, this section applies to
25 all local boards."

26 **SECTION 20.** Chapter 18B of the General Statutes is amended by adding a new
27 section to read:

28 **"§ 18B-705. Compliance with performance standards; remedies.**

29 (a) Local Board Compliance. – The Commission shall establish performance standards
30 pursuant to G.S. 18B-203(a)(20). The Commission shall ensure that all local boards comply
31 with established performance standards by conducting regular or special audits, conducting
32 performance evaluations, or taking other measures, which may include inspections by
33 Commission auditors or alcohol law enforcement agents.

34 (b) Performance Improvement Plans. – The Commission, upon determining that a local
35 board is failing to meet performance standards established pursuant to G.S. 18B-203(a)(20),
36 shall meet with the chair of the local board and the appointing authority and issue a statement
37 of findings. The appointing authority, in consultation with the Commission and the local board,
38 shall develop and deliver a performance improvement plan to the local board within 60 days of
39 the meeting with the Commission. The performance improvement plan shall include, but not be
40 limited to, recommendations for improved performance based on the performance standards
41 established by the Commission. The plan shall also state a period of time in which the
42 performance improvements are to occur and what action will be taken by the Commission if
43 performance standards are not met within the given time limits. The appointing authority shall
44 allow up to, but no more than, 12 months' time to the local board to implement and show
45 improvement under the performance improvement plan. The local appointing authority, in
46 consultation with the Commission and upon good cause shown, may allow up to an additional
47 six-month period of time for the local board to meet all requirements in the performance
48 improvement plan and to establish that the performance standards established by the
49 Commission are met.

50 (c) Remedies. – If the Commission determines that the established performance
51 standards identified in the statement of findings cannot be met after a performance

1 improvement plan has been implemented and adequate time has been given, but in no case less
2 than 12 months, the Commission shall take appropriate action to avoid insolvency. This action
3 may include closing the board pursuant to G.S. 18B-801(d), closing a store or multiple stores,
4 or merging the local board with another local board in order to maintain solvency. The
5 Commission may also seize the assets of the local board and liquidate any assets necessary to
6 satisfy any debt in order to maintain the solvency of the local board. Prior to taking action
7 pursuant to this subsection, the Commission shall issue a notice of intent to take such action to
8 the appointing authority and the local board.

9 (d) Local Acts. – Notwithstanding the provisions of any local act, this section applies to
10 all local boards."

11 **SECTION 21.** Chapter 18B of the General Statutes is amended by adding a new
12 section to read:

13 **"§ 18B-706. Ethics requirements for local boards.**

14 (a) Each local board shall adopt a policy containing a code of ethics, consistent with the
15 provisions of G.S. 18B-201, to guide actions by the local board members and employees of the
16 local board in the performance of their official duties. The policy shall address at least all of the
17 following:

- 18 (1) The need to obey all applicable laws regarding official actions taken as a
19 local board member or employee.
- 20 (2) The need to uphold the integrity and independence of the local board
21 member or employee's position.
- 22 (3) The need to avoid impropriety in the exercise of official duties.
- 23 (4) The need to faithfully perform the duties of the position.
- 24 (5) The need to conduct the affairs of the board in an open and public manner,
25 including complying with all applicable laws governing open meetings and
26 public records.

27 (b) Each member of a local board shall receive a minimum of two hours of ethics
28 education within 12 months after initial appointment to the office and again within 12 months
29 after each subsequent appointment to the office. The ethics education shall cover laws and
30 principles that govern conflicts of interest and ethical standards of conduct for local ABC
31 boards. The education may be provided by the Commission or another qualified source
32 approved by the Commission. The local board shall maintain a record verifying receipt of the
33 ethics education by each member of the local board. The local board may require appropriate
34 ethics training and education for employees of the local ABC board.

35 (c) The Commission shall develop a model ethics policy that local ABC boards may
36 adopt to be in compliance with this section."

37 **SECTION 22.** G.S. 18B-801(b) reads as rewritten:

38 "(b) Location of Stores. – A local board may choose the location of the ABC stores
39 within its jurisdiction, subject to the approval of the Commission. In making its decision on a
40 location, the Commission may consider:

- 41 (1) Whether the health, safety, or general welfare of the community will be
42 adversely affected; ~~and~~ affected.
- 43 (2) Whether the citizens of the community or city in which the proposed store is
44 to be located voted for or against ABC stores in the last election on the
45 question.
- 46 (3) The proximity of the new location to existing ABC stores operated by the
47 local board or any other board."

48 **SECTION 23.** G.S. 18B-801(c) reads as rewritten:

49 "(c) Closing of Stores. – Subject to the provisions of ~~subsection (a),~~ subsection (a) of
50 this section, a local board may ~~close,~~ close a store, or the Commission may order a local board
51 to ~~close,~~ close any store when the local board or the Commission determines that:

- 1 (1) ~~The operation of the store is not sufficiently profitable to justify its~~
2 ~~continuation;~~
3 (2) The store is not operated in accordance with the ABC law; or
4 (3) The continued operation of that store will adversely affect the health, safety,
5 or general welfare of the community in which the store operates."

6 **SECTION 24.** G.S. 18B-803 reads as rewritten:

7 "**§ 18B-803. Store management.**

8 (a) Manager. – A local board shall provide for the management of each store operated
9 by it. The board shall employ at least one manager for each store, who shall operate the store
10 pursuant to the directions of that board.

11 (b) Bonding of Manager. – Each store manager shall be bonded in an amount not less
12 than ~~five thousand dollars (\$5,000)~~, fifty thousand dollars (\$50,000) secured by a corporate
13 surety, for the honest performance of his duties. A public employees' blanket position bond,
14 honesty form, in the required amount satisfies the requirements of this subsection. The bond
15 shall be payable to the local board and shall be approved by the appointing authority for the
16 local board. The appointing authority may increase the amount of bond required for store
17 managers under this subsection.

18 (c) Bonding of Other Employees. – A local board or the appointing authority may
19 require any of its other employees who handle funds to obtain bonds. The amount and form of
20 those bonds shall be determined by the local board.

21 (d) Local Acts. – Notwithstanding the provisions of any local act, this section applies to
22 all local boards."

23 **SECTION 25.** G.S. 18B-1213 reads as rewritten:

24 "**§ 18B-1213. Obligations of purchaser.**

25 The purchaser of a ~~winery~~ winery, and any successor to the import rights of a winery, is
26 obligated to all the terms and conditions of an agreement in effect on the date of the
27 purchase, purchase or other acquisition of the right to distribute a brand, except for good cause,
28 which includes,

- 29 (1) Revocation of the wholesaler's permit or license to do business in this State,
30 (2) Bankruptcy or insolvency of the wholesaler,
31 (3) Assignment for the benefit of creditors or similar disposition of the assets of
32 the wholesaler, or
33 (4) Failure by the wholesaler to comply substantially, without reasonable excuse
34 or justification, with any reasonable and material requirement imposed upon
35 ~~him~~ the wholesaler by the winery.

36 As used in this Article, "purchase" includes the sale of stock, sale of assets, merger, lease,
37 transfer, or consolidation."

38 **SECTION 26.** G.S. 18B-1201(4) reads as rewritten:

- 39 "(4) "Winery" means any holder of an unfortified winery permit, fortified winery
40 permit, limited winery permit, or nonresident wine vendor permit issued
41 under the authority of this Chapter who sells at least ~~1,000~~ 1,250 cases of
42 wine in North Carolina per year."

43 **SECTION 27.** G.S. 93B-9 reads as rewritten:

44 "**§ 93B-9. Age requirements.**

45 Any other provision notwithstanding, except certifications issued by the North Carolina
46 Criminal Justice Education and Training Standards Commission and the North Carolina
47 Sheriffs' Education and Training Standards Commission pursuant to Chapters 17C, 17E, 74E,
48 and 74G of the General Statutes, no occupational licensing board may require that an individual
49 be more than 18 years of age as a requirement for receiving a license."

50 **SECTION 28.** Section 4 of S.L. 2004-92 reads as rewritten:

1 ~~"SECTION 4. If an election is held pursuant to this act and the operation of ABC stores in~~
2 ~~the City of Kannapolis is approved, the~~The Rowan County ABC Board shall be renamed the
3 Rowan/Kannapolis ABC Board. ~~The terms of the current members of the Rowan County ABC~~
4 ~~Board shall not be affected by this act, and the Rowan County Board of Commissioners shall~~
5 ~~continue to appoint three members for staggered, three-year terms on the same schedule as is~~
6 ~~now followed.~~There shall be three board members appointed for staggered three-year terms.
7 One member shall be appointed by each of the following governing bodies: Rowan County
8 Board of Commissioners, Kannapolis City Council, and the Salisbury City Council.
9 Appointments shall be made in the following order as current board member terms expire:
10 Salisbury City Council, Kannapolis City Council, and the Rowan County Board of
11 Commissioners. The chair of the Rowan/Kannapolis ABC Board shall be determined by a vote
12 of the members of the Rowan/Kannapolis ABC Board. A member of the Rowan/Kannapolis
13 ABC Board may be removed for cause at anytime by the appointing authority. Members and
14 employees of the Rowan/Kannapolis ABC Board are subject to the removal provisions of
15 G.S. 18B-202."

16 **SECTION 29.** Section 6 of this act becomes effective January 1, 2011. Sections 12
17 and 15 of this act become effective October 1, 2010, and apply to general managers and
18 employees hired on or after that date. Section 16 of this act becomes effective October 1, 2011.
19 Section 18 of this act becomes effective May 1, 2011, and is applicable for local board fiscal
20 years beginning July 1, 2011. The ABC Commission shall offer training and education to local
21 boards to assist local boards in complying with Section 18 of this act, and such training and
22 education shall be offered at least once annually after the effective date of this act; however, the
23 Commission shall have no obligation to provide such training and education after December
24 31, 2013. Section 25 of this act is effective September 15, 2010, and its provisions shall apply
25 to all existing wine distribution agreements. A supplier's shipment of wine to a wholesaler in
26 North Carolina following the effective date of Section 25 of this act shall constitute acceptance
27 by the supplier of the terms of this act and shall be incorporated into the distribution agreement
28 between the supplier and wholesaler. Section 25 of this act shall be effective prospectively only
29 and shall not apply to any administrative action pending before the ABC Commission or to
30 pending litigation or claims that accrued before the effective date of this act. Section 26 of this
31 act is effective September 15, 2010. Section 27 of this act is effective when it becomes law.
32 Section 28 of this act is effective when it becomes law and applies to appointments and
33 vacancies that occur on or after that date. The remainder of this act becomes effective October
34 1, 2010. Nothing in this act shall be deemed to repeal or amend S.L. 1997-224 applicable to
35 Mecklenburg County. Nothing in this act shall be deemed to repeal or amend Chapter 886 of
36 the 1985 Session Laws applicable to the Greensboro ABC Board.