

I

How Should the State Organize the Enforcement of Alcohol-Related Laws?

Prepared by Price Waterhouse
for
KPMG Peat Marwick
Government Services Management Consultants
for
North Carolina General Assembly
Government Performance Audit Committee
December 1992

HOW SHOULD THE STATE ORGANIZE THE ENFORCEMENT OF ALCOHOL-RELATED LAWS?

Issue Statement

How should the state organize the enforcement of alcohol-related laws? Should the law enforcement functions of the Alcohol Law Enforcement (ALE) Division be performed by the State Bureau of Investigations (SBI)?

In its 1991 report to the Joint Legislative Commission on Governmental Operations, Systems Design Group recommended the following (Recommendation D-2):

“Merge the State Bureau of Investigation and Alcohol and Liquor Enforcement.”

Background

The mission of Alcohol Law Enforcement is to prevent the illegal sales of alcohol and controlled substances. Also the agency is charged with enforcing the laws and regulations regarding the sale, purchase, transportation, manufacture and possession of these substances and reducing the sale of intoxicants to minors through enforcement activities and public education presentations. Most of the offenses which involve the Alcohol Law Enforcement Division are either misdemeanors or infractions which result in fines or suspended sentences. Rarely will an offense result in a jail sentence.

Alcohol Law Enforcement Agent Duties

The Alcohol Law Enforcement Officers duties involve regulatory, prevention, and law enforcement tasks. Some of the regulatory and prevention duties include the following:

- Conduct on-site inspections of each licensed ABC outlet at least once per year;
- Conduct application investigations of those persons interested in obtaining an ABC license;
- Report Alcohol Beverage Control law violations for the ABC Commission to take regulatory action;
- Investigate complaints of violations;

GOVERNMENT PERFORMANCE AUDIT COMMITTEE

- Make presentations to minors;
- Make presentations to police schools; and
- Conduct a DWI Source Prevention Program which consists of educating alcoholic beverage servers on determining authenticity of identification cards (driver's licenses), identifying persons that are intoxicated, and various other activities.

Some of the law enforcement activities consist of officers performing undercover operations in ABC licensed facilities and detecting some of the following activities:

- Sale of alcoholic beverages to minors;
- Purchase/possession of alcoholic beverages by minors;
- Sales of alcoholic beverages to intoxicated persons;
- ID violations;
- Unlawful possession and consumption;
- Unlawful hours;
- Consumption while driving;
- Driving while intoxicated (DWI);
- Gambling activities at licensed outlets; and
- Possession or sale of narcotics at licensed outlets.

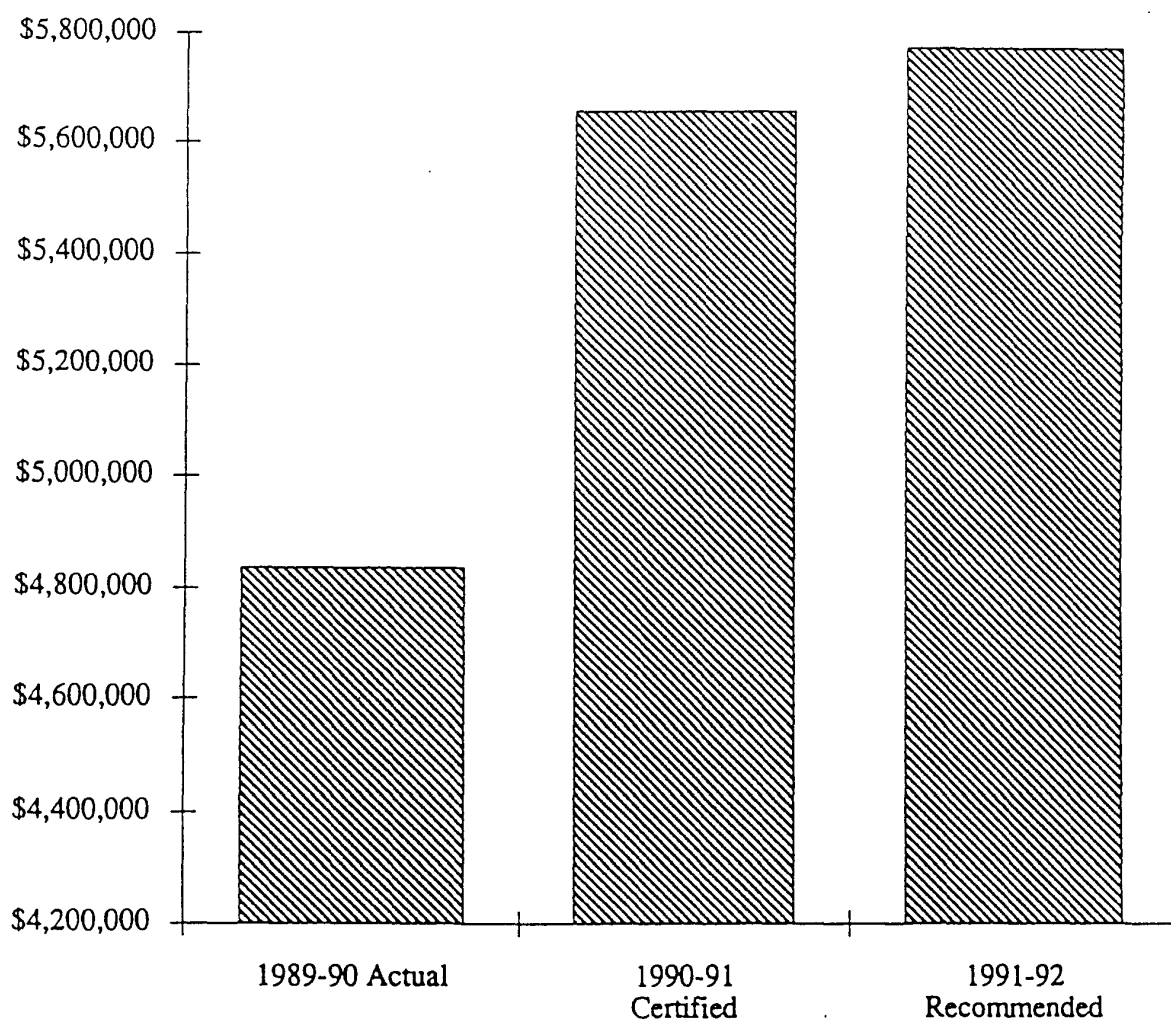
In 1982 the General Assembly enacted G.S. 18B-208(b) which established the ABC Commission Fund. This bill required that all monies collected by the ABC Commission for bailment be deposited in this fund for the purpose of carrying out of the intent and purposes of the ABC law. The ALE Division was initially funded from this fund. However, in 1987 the General Assembly returned ALE's budget to the General Fund. During the same year, the state's excise tax increased from 22.5% to 28.0%. The ALE budget was removed from funding by the Bailment Surcharge.

The expenditures and revenues budgeted for fiscal years 1989 through 1992 are displayed in Table 1.

	<i>1989-90 Actual</i>	<i>1990-91 Certified</i>	<i>1991-92 Recommended</i>
Total Requirements	\$5,043,929	\$5,834,244	\$5,937,745
Receipts	\$ 206,301	\$ 179,572	\$ 164,622
Net Appropriations	\$4,837,628	\$5,654,672	\$5,773,123

GOVERNMENT PERFORMANCE AUDIT COMMITTEE

Net Appropriations



GOVERNMENT PERFORMANCE AUDIT COMMITTEE

ALE has a total of 102 sworn law enforcement officers and 15 civilian staff. The breakdown is as follows:

Sworn Officers

Director	1
Deputy Director	2
Supervisors	12
Agents	87

Civilian Staff

Secretary	13
Clerk	1
Administrative Assistant	1

Findings

1. At a time when serious crimes are in increasing in North Carolina, the state is dedicating over \$5.7 million of General Fund money to alcohol regulatory activities and alcohol criminal investigations/undercover activities which result primarily in infractions or misdemeanor arrests. Over the last 3 years, at least 95% of the Alcohol Law Enforcement Division arrest charges were for misdemeanors or infractions. Felony arrest charges never exceeded 5 percent of total charges.

Alcohol Law Enforcement does not maintain statistics on how many convictions for their arrests result in jail time, but ALE administrators admit that the number of convictions resulting in jail time is very small. Most of the Alcohol Law Enforcement Division law enforcement activities are those which could be and often are performed by local law enforcement. For example, one of the responsibilities ALE agents perform is checking the identification of persons who appear to be underage drinkers at grocery store outlets. This task could be easily performed by local law enforcement when problem areas are identified. In another example, ALE is responsible for ensuring that bars and restaurants are not operating at unlawful hours. Local law enforcement could identify those bars that are operating unlawfully and cite those establishments.

GOVERNMENT PERFORMANCE AUDIT COMMITTEE

Alcohol Law Enforcement Statistics for Felony Verses Misdemeanor Arrest Charges

Fiscal Year	<i>Misdemeanor</i>	<i>Felony</i>	<i>Other** Other 18B</i>	<i>Percentage Felonies</i>
1989-90	9,434	402	1,190	4%
1990-91*	6,633	220	1,062	3%
1991-92	10,534	480	772	5%

*Statistics for 1990-91 are for 10 months

**Other and Other 18B category does not provide information on whether charge is a misdemeanor or felony charge. However, all of the charges in 18B other than 18B-307(c) are misdemeanors (18B-100 through 18B-1308).

2. Alcohol Law Enforcement and SBI are rarely coordinating their operations to target controlled substances in certain ABC licensed establishments. After interviewing both the Alcohol Law Enforcement Director and the State Bureau of Investigation Director, we found that there is minimal coordination in conducting undercover operations regarding controlled substances. This lack of coordination could result in both agencies working the same cases which could result in dangerous situations.

There is no formal protocol for local law enforcement officials to contact either ALE or SBI to assist in working with undercover operations involving drugs or alcohol. Currently, local law enforcement contacts whichever agency in which it has a working relationship.

3. The enforcement of the Alcohol Beverage Control Laws in the state is not coordinated and there appears to be duplication of effort. Section 18B-501 of the Alcohol Beverage Control Laws requires that,

GOVERNMENT PERFORMANCE AUDIT COMMITTEE

"... each local ABC Board shall hire one or more ABC enforcement officers. The Local Board may designate one officer as the chief ABC officer for that board. After taking the oath prescribed for a peace officer a local ABC officer may arrest and take other investigatory and enforcement actions for any criminal offense; however, the primary responsibility of a local ABC officer is enforcement of ABC laws and Article 5 of Chapter 90 (The Controlled Substance Act)."

As required by 18B-805 of the ABC laws, local ABC Boards must devote 5% of gross receipts to law enforcement. They can hire their own law enforcement or ABC officers (as is done in a larger city such as Charlotte) or contract with local law enforcement agencies to provide ABC law enforcement. The amount expended on local law enforcement by local ABC Boards in fiscal year 1990-91 was \$3.7 million.

The State Alcohol Law Enforcement Officers are essentially duplicating the same law enforcement activities as the local ABC officers. In some counties and cities, the local ABC officers and the State ALE officers are not coordinating their activities. There is no legal mandate that the officers work together or coordinate on undercover activities.

4. There is no central authority to whom local ABC Boards must regularly report their law enforcement activities. The local ABC Boards do not report their law enforcement activities to the State ABC Commission or to the Attorney General. Therefore, the state cannot easily determine whether alcohol law enforcement is adequate at the local level.

Recommendations

1. Primary responsibility for liquor law enforcement should rest with local ABC and local law enforcement agencies. The Alcohol Law Enforcement Division should be phased out over 18 months and its law enforcement functions should continue to be performed by local law enforcement. If alcohol related criminal activities occur that are inter-county or inter-state, the State Bureau of Investigation should be the responsible lead law enforcement agency.

GOVERNMENT PERFORMANCE AUDIT COMMITTEE

The regulatory and public education responsibilities of the Alcohol Law Enforcement Agency should be transferred to the Alcohol Beverage Control Commission. The State ABC Commission should take over the funding of the ABC regulators. The regulatory staffing level should consist of no more than 55 to 60 regulators and 7 support staff. Existing ALE staff should be given preference in transferring to the state ABC or taking enforcement positions with local ABC.

2. The General Assembly in conjunction with the State ABC Commission should require the local ABC Boards to double the percentage of gross profits devoted to local law enforcement and amend 18B-805 of ABC laws to reflect this change. This would increase local ABC funding available for law enforcement by \$3.7 million each year. In addition, 18B-501 of the Alcoholic Beverage Control Laws should be amended to require the State ABC Commission to monitor the local ABC enforcement efforts to ensure that enforcement activities are meeting minimum standards. The minimum standards should be established by the State ABC Commission.

Implications

1. The state would no longer be devoting as high a level of General Fund resources to the enforcement of alcohol related infractions and misdemeanors. (In many cases the criminal charges are dropped and the cases are handled administratively by the ABC Commission.)
2. The local ABC Boards will be required to become accountable to the state for their enforcement activities, something that currently does not exist. Local law enforcement would have to take on more responsibility for the enforcement of Alcohol Beverage Control laws. Funding for increased local enforcement could be provided by local ABC boards and would be tailored to local conditions, subject to meeting minimum state standards.
3. There would be reduced duplication of efforts by local law enforcement and state law enforcement agencies in enforcing alcohol related laws.

GOVERNMENT PERFORMANCE AUDIT COMMITTEE

4. Rather than indirectly responsible, the State ABC Commission would be totally responsible for the regulatory activity of alcohol in the state.
5. Could make \$5.7 million in General Fund resources available for other activities, including augmenting state law enforcement staff assigned to more serious crime. The General Fund saving could allow the General Assembly to add new SBI agents or other state level law enforcement officers. Such increased staffing could provide opportunities for placement of some of the ALE officers affected by these recommendations.

Implementation Considerations

1. Legislature must transfer the power to enforce the ABC laws to the State Bureau of Investigation.
2. The ABC laws would have to be amended to allow the State ABC Commission more authority to monitor the activities of the local ABC Boards.
3. Possible obstacles:
 - a. The alcoholic beverage industry may oppose this because they may see it leading to increased taxes or higher fees for their industry to support enforcement of alcohol laws.
 - b. The Restaurant Owners Association may oppose the change because they fear that some local law enforcement agencies may "harass" restaurant owners due to a lack of uniform enforcement standards. They also may fear the stigma of allowing SBI to participate in alcohol law enforcement to any extent because SBI is known for working drug cases and any such publicity could hurt the image of the industry.
 - c. Possible opposition from some public interest groups (MADD SADD) because they fear that the attention to alcohol related crimes will diminish dramatically.
 - d. Local ABC Board officials may not want to devote any more of their profits to law enforcement activities.