



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

service ★ courtesy ★ integrity ★ accountability

COMMISSION MEETING

April 23, 2013

Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

*José Cuevas, Jr., Presiding Officer
Midland*

*Steven M. Weinberg, MD, JD, Member
Colleyville*

*Melinda S. Fredricks, Member
Conroe*

AGENDA

REGULAR COMMISSION MEETING

10:00 a.m. – April 23, 2013

5806 Mesa Drive
Austin, Texas 78731



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

service ★ courtesy ★ integrity ★ accountability

José Cuevas, Jr.
Presiding Officer-Midland

Steven M. Weinberg, MD, JD
Member-Colleyville

Melinda S. Fredricks
Member-Conroe

Sherry Cook
Administrator

Tuesday, April 23, 2013

10:00 a.m.

Agenda

1.	Call to Order	José Cuevas, Jr.
2.	Approval of Commission Meeting Minutes of February 26, 2013	José Cuevas, Jr.
3.	Commission Report: Administrator and Agency Activities, Budget Issues, Staff Achievements, Legislative Activities	Sherry Cook
4.	Legislative Session Briefing	Carolyn Beck
5.	Recruitment and Hiring Policies Report	Loretta Doty
6.	Office of Professional Responsibility and Training Briefing	Andy Peña
7.	Field Operations Organizational Changes	Ed Swedberg
8.	Promotional Introductions: Karen Smithwick, Director of Ports of Entry; Marc Decatur, Major, North Texas Region; Randy Field, Major, Coastal Bend Region	Robert Saenz
9.	Promotional Introduction: Kyle Russell, Licensing Supervisor, District 1	Amy Harrison
10.	Approval of the Internal Audit of the Business Services Division, Fixed Assets	Monday Rufus
11.	Approval of the Internal Audit of the Business Services Division, Cash Disbursements	Monday Rufus
12.	Approval of the Internal Audit of Ports of Entry	Monday Rufus
13.	Rule Review Plan Briefing	Martin Wilson

14.	Approval to Publish Proposed Amendment to Rule §31.5, Alcoholic Beverage Commission Charge Schedule	Martin Wilson
15.	Public Comments	José Cuevas, Jr.
16.	Reception to Honor TABC Employee Promotions	José Cuevas, Jr.
17.	Executive Session to Consult with Legal Counsel Regarding Pending and Anticipated Litigation Against the Agency and to Deliberate the Appointment, Employment, Evaluation, and Duties of the Position of Administrator, (Govt. Code §551.071, §551.074)	José Cuevas, Jr.
18.	Next Meeting Date: Tuesday, May 28, 2013	José Cuevas, Jr.
19.	Adjourn	José Cuevas, Jr.

Note: Items may not necessarily be considered in the order they appear on the agenda. Executive session for advice of Counsel (pursuant to §551.071 of the Government Code) may be called regarding any agenda item. Action may be taken on any agenda item.

NOTICE OF ASSISTANCE AT PUBLIC MEETINGS

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice) (512) 206-3259 (fax). Relay Texas at 1-800-735-2989 (TTY/TDD), at least three (3) days prior to the meeting so that appropriate arrangements can be made.

MINUTES

REGULAR COMMISSION MEETING

10:00 a.m. – April 23, 2013

5806 Mesa Drive
Austin, Texas 78731



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

service ★ courtesy ★ integrity ★ accountability

COMMISSION MEETING MINUTES

April 23, 2013

The Commissioners of the Texas Alcoholic Beverage Commission (TABC) met in Regular Session on Tuesday, April 23, 2013 at the Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Suite 185, Austin, Texas.

**COMMISSIONERS
PRESENT:**

José Cuevas, Jr.
Steven Weinberg, MD, JD

STAFF PRESENT:

Sherry Cook, Administrator

Rachel Bayani, Agent, Houston Enforcement Regional Office
Carolyn Beck, Director, Communication & Governmental
Relations

Gene Bowman, Supervisor, Audit & Investigations, Austin
District Office

Josephine Brown, Administrative Assistant, Houston
Compliance Regional Office

Darryl Darnell, Inspector, Field Operations

Julie Davis, Technical Writer, Human Resources

Marc Decatur, Major, North Texas Region

Ryan Decuire, Lieutenant, Houston Enforcement Regional
Office

Luann Dickerson, Executive Assistant, Executive Division

Loretta Doty, Director, Human Resources Division

Elsa Dovalina, District 5 Audit Supervisor, San Antonio

Shelby Eskew, Director, Business Services Division
Randy Field, Major, Coastal Bend Region
Toni Hale, Program Specialist, Education & Prevention
Division
Amy Harrison, Director, Licensing Division
Emily Helm, General Counsel, Legal Division
Christina Hutchinson, Administrative Assistant, Licensing
Division
Heley Jaramillo, Sergeant, Houston Enforcement Regional
Office
Dora Jones, Administrative Assistant, Houston Enforcement
Regional Office
Ashleigh Jons, Seller Training Coordinator, Education &
Prevention Division
Shaun Jordan, Licensing Supervisor, Austin District Office
Joann Joseph, Assistant Director, Licensing Division
Office
Earl Pearson, Assistant Chief, Enforcement Division
Andy Pena, Director, Office of Professional
Responsibility/Training Division
Elias Pereyra, Agent Trainee, Houston Enforcement Regional
Office
Nicole Phillips, Regional Supervisor, Houston Compliance
Regional Office
Alexis Reed, Administrative Assistant, OPR
Gloria Darden Reed, Executive Assistant, Executive
Division
John Reney, Investigator, OPR
Daniel Reyna, Sergeant, Houston Enforcement Regional
Office
Albert Rodriquez, Director, Training Division
Monica Ross, Benefits Coordinator, Human Resources
Robert Saenz, Chief of Field Operations
Kyle Russell, Licensing Supervisor, Lubbock District Office
Michael Sehon, Agent, Houston Enforcement Regional Office
Karen Smithwick, Director, Ports of Entry Division
Todd Talley, Management Analyst, Field Operations
Tana Travis, Lieutenant, Houston Enforcement Regional
Office
Jay Webster, Director, Information Resources Division
Twila Williams, Administrative Assistant, Houston Compliance
Regional Office
Martin Wilson, Assistant General Counsel, Legal Division

GUESTS PRESENT:

Lou Bright, General Counsel, Texas Wine & Grape Growers Association
M L Calcote, Consultant, Republic National Distributing Company
Andrea Field, daughter of Randy Field, Lieutenant
Belva Field, mother of Randy Field, Lieutenant
Terry Field, brother of Randy Field, Lieutenant
Robert Gonzales, Monday N. Rufus, P.C., CPAs
Jack Martin, Attorney, Jack Martin & Associates
Reginaldo Ramon
Monday Rufus, Certified Public Accountant, Monday N. Rufus, P.C., CPAs

CALL TO ORDER

The meeting of the Texas Alcoholic Beverage Commission was called to order at 10:08 a.m. by Presiding Officer José Cuevas. Commissioner Melinda Fredricks was unable to attend the Commission meeting due to illness.

APPROVAL OF COMMISSION MINUTES OF FEBRUARY 26, 2013

Presiding Officer Cuevas called for approval of the Commission meeting minutes of February 26, 2013. Commissioner Weinberg so moved to approve the minutes as written. Presiding Officer Cuevas seconded. The motion carried.

ADMINISTRATOR'S REPORT: ADMINISTRATOR AND AGENCY ACTIVITIES, BUDGET ISSUES, STAFF ACHIEVEMENTS, LEGISLATIVE ACTIVITIES

Presiding Officer Cuevas called upon Administrator Sherry Cook to present the Administrator's Report: Administrator and Agency Activities, Budget Issues and Staff Achievements, and Legislative Activities.

After welcoming the Commissioners back to Austin for another Commission meeting, Administrator Cook announced that Commissioner Fredricks was not able to attend the meeting due to illness. She added that she was, however, able to participate in a conference call the previous day to discuss the three internal audits that our new Internal Auditor, Monday Rufus will present to the Commission later in the meeting. Administrator Cook commented that Mr. Rufus and his team did an excellent job on the audits and identified several areas for the Agency to address and some areas that action has already been taken on.

Administrator Cook stated that Communications and Governmental Relations Director Carolyn Beck will address the Commission on how the 83rd Legislative Session is progressing and how specific legislation the Agency is tracking is fairing in the legislative process. Administrator Cook stated that currently the Agency is revisiting and reprioritizing our budget items in anticipation of the conference committee announcements. She praised the Executive Team for their hard work and dedication during this Legislative Session.

Administrator Cook next addressed the Commissioners' questions from the last Commission meeting. She stated that one question pertained to HB 310, which would allow minors to plead guilty by mail. The question was asked if the minor could also plead no contest or not guilty by mail. Administrator Cook advised that currently, the Alcoholic Beverage Code does not prohibit a minor from pleading no contest or not guilty by mail.

Administrator Cook responded to a question asked by Commissioner Fredricks at the last Commission meeting. She inquired if there is a law or rule that prohibits the issuance of a license or permit if there has been criminal activity at that location. Administrator Cook stated that under various circumstances, TABC may or shall deny an application for a license or permit due to criminal activity at the location, or criminal activity by the applicant, for a certain period of time. She added that the Agency has dealt with this situation recently in the Yassine Case where a permit holder was legally evicted, but a new permit could not be issued to another entity on the same premises as stated in the Alcoholic Beverage Code.

Presiding Officer Cuevas inquired if there was legislation filed this session to amend that part of the Alcoholic Beverage Code. Administrator Cook responded affirmably. She stated that the legislation filed would deal specially with the same issue as in the Yassine case. She added that the bill would allow the Agency to go forward with cancelling the permit and issuing a new permit on the same premises, once the former tenant has been legally evicted from the location.

Next Administrator Cook addressed significant Agency events. She stated that recently the Agency had been requested to assist other law enforcement agencies in other areas of the state. The first request was to provide protection to Kaufman County officials following the murders of the Assistant District Attorney, the District Attorney and the District Attorney's wife. TABC Agents provided round the clock personal security details to a Kaufman County District Judge and his wife.

Commissioner Weinberg quizzed Administrator Cook if the Agency will receive any reimbursement for the Agency's assistance. Administrator Cook responded that we would not be reimbursed in this situation as it was local to that community and no Federal assistance was provided.

Administrator Cook stated that the second request was made after the fertilizer plant explosion in West, TX. The West Police Chief requested the Agency's assistance to provide security for the evacuation area during curfew hours. The agents also provided backup assistance to handle service calls in the city of West. Administrator Cook stated that the agents would also be offering to provide relief to emergency

personnel so that they may attend funeral services for the firefighters and first responders that were killed in the explosion. She added that the decision has not been made whether or not to request federal reimbursement for the Agency's assistance with this disaster.

Commissioner Weinberg quizzed Administrator Cook if the agents assisting in West were from the TABC Waco office. Administrator Cook responded that initially they were from the Waco office, but TABC agents from other areas of the state provided back up relief as needed.

The last significant event addressed by Administrator Cook involved a minor sting operation planned in the Corpus Christi area. She stated that because of a TABC Agent and police presence in the area, a bank robbery attempt was foiled.

Administrator Cook briefed the Commission on the status of the next Agent Academy. She stated that there were a total of 178 applicants for this academy. Of those 178 applicants, 45 applicants progressed to be interviewed, and 30 applicants went on to have background checks performed. She added that the Agency plans on hiring 15 new agents and that these agents will be stationed in the following locations:

- 10 in Houston
- 1 in Bryan
- 1 in Beaumont
- 2 in Arlington
- 1 in Laredo

Administrator Cook stated that the start date for this academy is June 10, 2013. She added that another academy is scheduled in the fall, but will depend on what is finalized in the budget.

Commissioner Weinberg quizzed Administrator Cook if the other 15 applicants that weren't offered positions could be utilized in the Fall Agent Academy. Administrator Cook responded that there may be some applicants identified that could potentially make it into the next class, but she would have to discuss that with Director Pena to ensure that we hire the best candidates.

Administrator Cook's presentation continued with Agency trends. She stated that at the end of FY 2012 product coming into the state had a significant 54% growth. She added that the trend has continued into FY 2013, but at a slower rate of growth. Administrator Cook stated that the largest rate of growth seen so far in FY2013 was in the malt beverages label applications.

Administrator Cook stated that protest investigations have trended down since FY 2008. She added that protest investigations did spike by 40% in FY 2012. She added that for the beginning of FY 2013 the number of protest investigations are down slightly, but above the numbers for FY 2010 and FY 2011. Administrator Cook stated that the largest category for protest investigations is in the Place or Manner Category,

which includes sale to intoxicated person and sale to minor and other things of that nature. She added that 80% of the protests are for on-premises licensed locations.

Administrator Cook addressed Inspection trends next in her report to the Commissioners. She stated that the number of Inspections have continued to trend down since FY 2008. As of FY 2012, Enforcement Inspections were 43% lower than they were in FY 2008. She added that this downward trend cannot be attributed solely to vacancies and offered four explanations for the decline in Enforcement Inspection volume.

(1) A policy change initiated after the start of FY 2008 that discouraged repeated inspections of businesses that did not have a recent history of complaints or violations;

(2) A second policy change initiated in FY 2010 that deemphasized enforcement activities taking place away from licensed premises and was intended to shift enforcement resources to activities involving licensed businesses with a recent history of complaints or violations;

(3) A decline in agent staffing due both to actual FTE cuts by the legislature and to replacement hiring delays that reduced the number of agents and agent work hours available for inspections; an

(4) Decreased agent productivity with regards to inspections.

Administrator Cook stated that in addition to these four things the Agency has brought on board over thirty new agents who are on the clock, but as part of a Field Training Officer (FTO) program, they are not out in the field performing inspections. She added that an agent is pulled from regular duty, and paired with a new agent for training, which cuts into work productivity.

Administrator Cook stated that the largest factor in the decline in inspection volume is the shift in the Agency's philosophy to more of an investigative and regulatory agency, not focusing on inspections. She added that there must be a balance; the Agency must have a presence in the community in order to ensure success in administrative cases and identify criminal activity.

In requesting Agents to increase inspections, Administrator Cook stated that the Agency needs to be cognizant of the Agent's perceptions toward the number of inspections they are asked to perform weekly.

- Too few inspections will not increase the inspections to have a significant impact on reaching the Annual Goal.
- Too many inspections will create the perception Agents are being asked to only focus on inspections.

- The reaction by the Agents will be to reduce their efforts in other areas such as investigations.

Administrator Cook stated that in moving forward the goal must be voluntary compliance. She added that the inspections should focus on public safety issues and top problem locations.

Administrator Cook stated that a plan of action is being put into place for inspection performance. This plan of action will include:

- Inspection performance discussions at Field Operations meetings
- Increase inspection of licensed locations that are subject of a complaint
- Define priority/at-risk locations to include retail businesses that are the subject of even one public safety or vice complaint.
- Assign low-risk inspections to Auditing Division
- Redirect low level tasks to employees on light duty
- Continue to monitor the service area concept.

Administrator Cook stated the service area concept will include an overlapping model that will cover a service area during an Agent's absence. She added that there will be another agent who knows the service area and can continue day-to-day operations.

Administrator Cook thanked Chief Saenz and Assistant Administrator Swedberg for their hard work in this area. She reported that inspection numbers are up going into the third quarter.

Administrator Cook's report is supported by a PowerPoint presentation.
(Attachment 1)

Commissioner Weinberg commented that he was pleased with Administrator Cook's report. He stated that his only complaint is that we should have addressed the falling inspection numbers sooner. He commented that the Inspection Performance meetings should be held by video conference to have face-to-face interaction.

Presiding Officer Cuevas requested the Chief Saenz come forward for questions.

Presiding Officer Cuevas stated that he wants the Agency to continue to move forward and not revert to past ways of Agency operations. He quizzed Chief Saenz what message he is sending out to his division. Chief Saenz responded that his message to his agents is that when they are out in the field, have a reason for being there. He added that the agents should have a legitimate reason for being at a location and if

they don't, they need to reevaluate why they are there. He stated that he is working to change outdated methods of operation to reflect the new philosophy of the Agency. He added that there are new Majors in place who understand this new philosophy of how things need to be done. Chief Saenz stated that education is one of the most important ways to gain voluntary compliance of licensed locations.

Presiding Officer Cuevas quizzed Chief Saenz if the Agency spends a lot of time at unlicensed locations. Chief Saenz responded the negative. He stated that unlicensed locations are not a primary focus in the new philosophy of the Agency.

Presiding Officer Cuevas quizzed Chief Saenz if Enforcement Agents and Auditors work together. Chief Saenz responded they are coming together as a team. He added that supervisors are also being held more accountable in their area operations.

LEGISLATIVE SESSION BRIEFING

Presiding Officer Cuevas called upon Communications and Governmental Relations Director Carolyn Beck to present the next agenda item, Legislative Session Briefing.

Director Beck stated that as of April 21, 2013 there have been a total of 6176 bills filed this Legislative Session. This number is on par with the number of bills filed during the last session. She added that what is not on par is that ninety-five to one hundred of these bills have been alcohol related. She added that that this is an unprecedented amount of alcohol bills and has made for a busy Legislative session. In addition to tracking the alcohol-related bills, Director Beck advised that the Agency is also tracking other bills that are high impact issues for the Agency; including the budget, gambling, human trafficking and handguns.

Director Beck's presentation continued with a thorough overview of each of the tracked alcohol bills. This overview grouped the bills into related topics, explained the purpose of the bill and provided a current status of where the bill stands in the Legislative process.

Director Beck summarized all the alcohol bills relating to On-Premise Retailers.

- HB 893, Geren / SB 400– Allows TX Rangers Stadium to let patrons come and go from MB areas of stadium with drinks.
- HB 34, Menendez – Creates BYOB permit for businesses operating after hours.
- HB 880, Chris Turner – Requires liquor liability insurance for bars, not restaurants.
- SB 861, Davis – Requires DWI penalty signs in bars, not restaurants.
- SB 1516, West – Creates BYOB permit
- HB 1269, Martinez-Fischer / SB 1547– Requires on-premises locations to offer non-alcoholic wine or beer for sale.

Presiding Officer Cuevas inquired as to how HB 34, which creates a permit for BYOB businesses operating after hours, would work? Director Beck responded that the after-hours BYOB permit would function by allowing patrons to bring their own alcohol into the establishment. She added that permittees charge a fee to enter these establishments and they can operate until 1 a.m. or 2 a.m. depending on the size of the city.

Director Beck stated that this bill would let the Agency and other peace officers to accomplish two important things. First, it would allow peace officers into the permitted establishments to conduct an inspection without having to have probable cause or a search warrant. She added that currently, if there is reason to believe that there is illegal activity happening in one of these establishments, the establishments are not required to allow access to peace officers. Secondly, if an establishment holds a permit any bad behavior can result in the loss of the permit, which would result in the establishment being shut down. Director Beck stated that not all, but many of these establishments are sexually oriented businesses, where prostitution and drugs are common. She added that is critical that there is control over these businesses, both sexually oriented and non-sexually oriented, as they are a public safety concern.

Commissioner Weinberg quizzed Director Beck on how HB 34 is doing in the Legislative process? Director Beck stated that the bill could be doing better. It has made it out of committee, but has not progressed past that point.

Director Beck continued her presentation by summarizing the bills relating to Wineries and Distilleries.

- SB 642, Van de Putte – Allows distillers to sell bulk spirits to food processors holding an industrial permit.
- SB 652, Van de Putte / HB 2041– Authorizes a brewery to transfer bulk product to a distillery for production purposes.
- SB 828, Van de Putte / HB 3518 – Creates Distiller's Agent's Permit.
- SB 905, Van de Putte / HB 1997– Authorizes distilleries to sell to consumers on-site.
- SB 131, Nelson – Extends hours of winery sales on New Year's Eve.
- HB 2537, Geren – Production of wine by winery.
- SB 45, Carona – Production of wine by winery

In regards to SB 905, which authorizes distilleries to sell to consumers on-site; Commissioner Weinberg quizzed Director Beck if this bill removes a tier. Director Beck responded that it only removes the tier in this particular transaction. She added that these permit holders still would not be able to sell their product directly to a retailer.

Director Beck summarized the bills relating to Brewers and Brewpubs.

- SB 350, Williams / HB 1555 – Changes criteria for holding a Manufacturer’s Agent’s Warehousing License
- CSSB 515, Eltife / HB 1763 – Authorizes brewpubs to make up to 10K barrels a year (up from 5K) and sell up to 1,000 to retailers or any qualified person outside of Texas, and the rest to consumers or distributors.
- SB 516 and SB 517, Eltife / HB 1764 and HB 1765 – Authorizes brewers / manufacturers producing up to 125,000 barrels a year to self-distribute up to 40,000 barrels.
- SB 518, Eltife / HB 1766 – Authorizes brewers / manufacturers producing up to 225,000 barrels a year to sell up to 5,000 barrels a year direct to consumer for on-premises consumption.
- SB 639, Carona / HB 1538 – Prohibits price discrimination, prohibits payment for territorial agreements, authorizes other payment agreements.
- HB 3307, Geren – Contract brewing, alternating proprietorships.

Director Beck explained that CCSB 515, SB 516, SB 517, SB 518 create a package of beer bills that were part of an Interim Study Workgroup. The brewers, brewpubs, beer distributors and the big breweries have all agreed upon the language of these bills. She added that these bills are tied together with strict language stating that if one bill passes they all pass and vice versa.

Director Beck next presented a summary of the bills relating to Marketing Practices and Alcohol Taxes.

- HB 1917, Rodriguez – Alcohol ads on vehicles
- HB 3502, Smith – Experiential dinners
- HB 3503, Smith / SB 903 – Branded promotional vehicles on retail premises.
- HB 3504, Smith – Awarding sweepstakes prize to consumer on retail premises.
- HB 2084, Smith / SB 870 – Marketing items provided by upper tier to retailers or consumers.
- HB 3716, Smith / SB 883 – Relating to promotional items provided by upper tier to retailers SB 559, Duncan / HB 515 / HB 1062 / HB 3855 – Repeals sections of the AB Code enacted during special session (early excise tax payments).
- HB 3572, Hilderbran – Moving mixed beverage taxes to be collected at wholesale level.
- HB 2078, S. Thompson – Additional mixed beverage tax for crime victim compensation fund.
- HB 2543, Eiland – Changing the manner in which the tax on mixed beverages is imposed.
- HB 3095, Strama / SB 1179 – Reducing MB tax for live music venues.

For the next section of Director Beck's presentation she summarized the bills regarding more effective regulation

- SB 409, Watson – Allows a second permit or license to be issued to certain premises if the permit holder has been evicted in court.
- SB 1035, Carona / HB 2884, Smith – Streamlining the licensing process.
- HB 1953, S. Thompson – Depositing checks
- HB 2460, S. Thompson – Possessing stamps

Commissioner Weinberg quizzed Director Beck as to how retailers come into possession of these rolls of stamps? Director Beck responded that they are often obtained through illegal activity.

- HB 2806, Geren / SB 1493 – Adding four business days to delinquent list.

Commissioner Weinberg asked Director Beck if we were trying to get the number of days until a business goes on the delinquent list down to zero days. Director Beck responded that that was correct. She added that if this bill passes, by statute the number would remain at 4 business days.

- SB 950, Carona – Primary American Source
- SB 962, Carona – Label Approval
- SB 1034, Carona – Subterfuge
- HB 575, Anchia – Authorizing administrative actions prior to final conviction in related criminal case.

Director Beck explained that SB 1090 by Carona is an Alcoholic Beverage Code clean-up bill. She added that this bill would clean up various sections of the AB Code which are confusing or unconstitutional.

Director Beck stated that of the two bills relating to Local Option Elections and of the two, only HB 1622 is progressing through the Legislative process.

- HB 1622, Stickland – Authorizes BGs in area already wet for MB and BQ.
- HB 2818, Sheffield – Changing the wet or dry status in certain areas of a political subdivision.

Director Beck stated that there are many bills relating to package stores, but there is only one making progress, HB 2910. This bill by Kuempel would allow for sales in a package store after 9 p.m. Director Beck stated that currently, the Agency allows customers in a package store 15 minutes after the store closes at 9 p.m. to make their final purchases. She added that the package stores felt that they would be more comfortable having this policy stated in statute.

- HB 2910, Kuempel / SB 1491 – Sales in package store after 9 p.m.

- HB 421, Thompson / SB 236 – allows package store sales on Sundays.
- HB 703, Canales – Allows package store sales on Sundays in counties that border Mexico.
- HB 668, Martinez / SB 598 – Repeals law that limits package store owner to five stores.
- HJR 76, Kuempel – Constitutional Amendment to require a person to be 21 to enter a package store

Director Beck finished her presentation by stating that there have been other bills filed in several different areas that affect the Agency. In these other areas, very few bills are progressing through the Legislative process. The other areas include:

- Wholesalers/ Local Distributors
- Minors
- Alcohol Education
- Other Bills Amending the Code
- Other Bills Affecting TABC

Upcoming important dates for the 83rd Legislative Session:

- May 27, 2013 – Sine Die
- June 16, 2013 – Last day Governor can sign or veto bills

Presiding Officers Cuevas quizzed Director Beck if there was a specific date that bills would need to be passed by before they die? Director Beck responded that any bill can be tacked onto another bill as long if it is germane. She added that this can happen right up to the last minute.

Commissioner Weinberg inquired if Director Beck knew the status of Senator Carona's constitutional amendment on Casino Gambling? Director Beck responded that she did not have that status available for him, but would get the information to him.

Director Beck's report is supported by a PowerPoint presentation.
(Attachment 2)

RECRUITMENT AND HIRING POLICIES REPORT

Presiding Officer Cuevas called upon Human Resources Director Loretta Doty to come forward and present the next agenda item, Recruitment and Hiring Policies Report.

Director Doty greeted the Commissioners and advised that her report is an annual report required by the Alcoholic Beverage Code. Director Doty stated that her report will cover activities for Fiscal Year 2012. She added that the data for her report is taken from a workforce summary issued by the Civil Rights Division of the Texas Workforce Commission and is reported to the Governor's office. The collected data is intended as a guide to the Agency to compare ourselves and ensure that our practices are open, fair and we will achieve natural diversity. Director Doty stated that over all, the Agency does have the same representation as the State of Texas.

Director Doty's report provided the Commissioners with an overview of the Agency's gender representation, its demographics according to race, the statewide workforce comparison of females, African Americans, and Hispanics.

Director Doty stated that during Fiscal Year 2012, there were 55 employees hired and 58 employees that left TABC's employment. Of those 58, the highest number of employees left due to resignations followed closely by retirements. The smallest number of employees left the Agency as a separation (for cause). She added that we follow the Agency's over all diversity in our hiring and terminations practices.

Director Doty stated that our gender representation has remained steady during her tenure with the male population continuing to be the dominate gender. She added that this is because our commissioned peace officer and our tax compliance officer positions are primarily held by male employees. Director Doty stated that the Agency has 247 female employees and 386 male employees.

Director Doty's next chart defined the TABC Demographics by race. She stated that Caucasians continued to make up the largest part of our employee base with 304 employees. Hispanics are the second largest with 229 employees followed by African-Americans with 86 employees. She added that the smallest representation, categorized as other in her chart, is made up of Asians, Pacific Islanders and American Indians with a total of 14 employees. Director Doty stated that our race demographics do mirror the state's race demographics. She added that the Agency could increase the number of Hispanics employed by the Agency, but the current representation of Hispanic employees is not significantly lower than the state representation.

In the area of demographic trends, Director Doty presented a chart that demonstrated that when one employee group increases, another group will decrease. She added that in Fiscal Year 2009 the Agency showed growth in Hispanic representation. This was mainly in the area of Commissioned Peace Officers. She added that last fiscal year African-American representation trended upward as well.

The next 3 slides of Director Doty's presentation compared Agency employees by ethnicity and gender. The Equal Employment Opportunity (EEO) category types listed are:

- Official/Administrator
- Professional

- Administrative Support
- Service/ Maintenance
- Technical

In the workforce comparison for female representation, the Agency met or exceeded the statewide representation in 3 of the 5 categories. The most significant under-utilization falls in the Service/ Maintenance category. Director Doty stated that this is due to a male dominated workforce in this category.

Director Doty provided a more clear definition of the Technical category to the Commissioners. She stated that there are only 7 positions in this category. She added that because there is very seldom any turn over; it remains a very steady category. Commissioner Weinberg quizzed Director Doty if she had any numbers that show a comparison between TABC and other law enforcement agencies. Director Doty responded that she did not have those numbers in this report, but she could provide them.

Commissioner Weinberg commented that he would expect the Agency's numbers to reflect the same numbers in other law enforcement agencies. Director Doty concurred.

In the workforce comparison for Hispanic representation, the Agency met or exceeded the statewide representation in 4 of the 5 EEO categories. Administrative Support proved to be the most under-utilized category in this comparison. Director Doty stated that the Administrative Support category does not have a large number of positions, but the Agency could improve in this area.

In the workforce comparison for African-American representation, the Agency met or exceeded in 4 of the 5 EEO categories. Service/Maintenance proved to be under-utilized category in this representation. Director Doty stated that she plans to address the female and African-American under-utilization in the recruitment of commissioned peace officers. She added that the Agency is hiring a recruiter in the fall to specifically target those populations and drive those applicants to the Agency.

Commissioner Weinberg commented that this was a great report and he looks forward to this report each year. He added that Texas will be a minority Caucasian state in the near future and we are behind in the hiring of Hispanics and need to move forward in that area. Commissioner Weinberg commented that the hiring of a recruiter is a good idea and that he thanked Director Doty for her good work.

Director Doty's report is supported by a PowerPoint presentation.
(Attachment 3)

OFFICE OF PROFESSIONAL RESPONSIBILITY AND TRAINING BRIEFING

Presiding Officer Cuevas call upon OPR/Training Director Andy Pena to come forward to present the next agenda item, Office of Professional Responsibility and Training Briefing.

Director Pena began his presentation by stating that he had good news to report to the Commissioners. He added that his presentation would cover the Office of Professional Responsibility trends going back to FY 2009 and the template that was put into place and has brought us to where we are today.

Director Pena stated that in the second half of FY 2009 the number of personnel complaints increased dramatically. He added the Agency needed to identify what was taking place, who was responsible and what needed to be done to change so it would not be repeated again.

Director Pena stated that in FY 2009, changes began to be made. He added that it was an important year for the Agency. The Agency began examining the hiring and training of employees as well as how the Agency produces policy. Director Pena stated that when you want to change the mindset of the Agency, you have to look beyond the numbers. He added that a training team was put in place. He stated that the personnel complaint numbers began to trend downward and this trend has continued through the second quarter of FY 2013. He added that in the second quarter of FY 2013 there was only 1 personnel complaint investigation performed.

Director Pena asked his team to break down the investigation numbers even further to see what had changed from FY 2009 to the second quarter of FY 2013. The investigations numbers were further broken down into two categories: allegations and sustained allegations. He added that if the number of sustained allegations could be changed, then the overall number of allegations and investigations could be changed as well. The blueprint was formed to continue this trend:

- Know what we are doing
- How much is true
- Who is responsible

Commissioner Weinberg quizzed Director Pena as to how in FY 2011 there were more sustained allegations than investigations. Director Pena responded that a complainant can file multiple allegations.

Director Pena stated that by looking at the trends, something has changed for the better in how the Agency does things, particularly in the Enforcement Division.

Director Pena stated that to get a better understanding of what type of Agency do we have. He directed his team to calculate the number of contacts Enforcement has with the public as well as the contacts with co-workers and compare to the number of complaints. He stated that this gave the Agency a sense of how we are interacting

with the public as well as with ourselves. As the trends continued to go down, you could immediately tell that things had changed. Director Pena stated that the mindset of the Agency: the attitude, accountability, and professionalism had changed.

Director Pena stated that those comparisons were of normal interaction, but there are also Use of Force interactions encountered by the Enforcement Division. Director Pena stated that a wealth of Use of Force training experience came to the Agency when Captain Albert Rodriguez was hired. He added that Captain Rodriguez is nationally recognized as an expert on use of force incidents. He added that Captain Rodriguez put a team together from within the Agency that has created new forms, training, and policy to prepare employees in use of force situations. Director Pena stated that use of force incidents have trended downward from 55 incidents in FY 2009 to 4 incidents in the first quarter of FY 2013.

Director Pena stated that the Agency should think BIG

B= Set the bar: Where should the bar be set?

I= Identify deficiencies:

Was the Agency providing enough training?

Were policies strong enough? Were the right people being hired?

G= Produces and promote growth/movement: Who within the Agency was capable and ready to promote?

Director Pena stated that this action plan must be a continuous process of personnel, policy and training; without any of these categories an agency will fail.

Director Pena outlined the Cycle of Progress template that has been put into place.

PERSONNEL (CPOs)

- Hiring practices changed

- Creation of Background Investigation Team
 - Command Structure
 - Training (expectations and procedures)
 - In person interviews
 - New forms
 - Standardized, accurate and fair product

- Investigative Function

- Supervisor Promotions
 - Accountability
 - Professionalism

POLICY

- Policy Review Team was formed
 - Command Structure
 - Meets regularly, agenda and procedures
 - Review and evaluate all agency policies
 - Produce policy that is clear, up-to-date and has a purpose

TRAINING

- Training hours increased in needed areas
- Agency programs of In-Service, New Agent Academy and Specialized Classes are currently under review for upgrades and direction
- Organizational Changes
- Educated agency – top to bottom

Director Pena stated that Captain Rodriguez now oversees the Training Division and the goal has been set to have all employees fully trained within a two year time frame.

Director Pena stated that to continue the trends and keep the force/complaints down, the Agency must continue to use the template. He added that it is a work in progress.

Commissioner Weinberg thanked Director Pena for not only a good report, but for a good news report. He quizzed Director Pena as to what the current staffing level of the OPR Division was. Director Pena responded that he and Investigator John Reney are the only personnel in the division.

Commissioner Weinberg quizzed Director Pena if he thought that level of staffing in the OPR Division was adequate. Director Pena answered affirmatively. He added that the use of the IAPro Database gives OPR an early warning system to track and anticipate problems in the areas of complaints, management issues and fleet incidents.

Commissioner Weinberg commented that the use of IAPro allows the Agency to be proactive instead of reactive.

Presiding Officer Cuevas thanked Director Pena for great presentation. He stated that we have a lot of talented people in the Agency. He added that if they are given the proper training and the tools to succeed; there is no reason to go outside of the Agency.

Presiding Officer quizzed Director Pena if his division tracks employees who have a complaint filed against them and they decide to resign rather than be investigated. Director Pena responded that those situations are tracked and that he has been given the authority from the Administrator to accept a resignation in that situation. He added that while some behaviors can be corrected with training; separation from the Agency is the best solution in certain situations.

Commissioner Weinberg commented that it appeared that Director Pena was working on succession planning. Director Pena responded that as the background investigations improve, the best qualified people are brought into the Agency to carry it forward.

Director Pena's report is supported by a PowerPoint presentation.
(Attachment 4)

FIELD OPERATIONS ORGANIZATIONAL CHANGES

Presiding Officer Cuevas called upon Assistant Administrator Ed Swedberg to present the next agenda item, Field Operation Organizational Changes.

Assistant Administrator Swedberg presented to the Commissioners a new organizational chart for the Agency. He stated that the Agency has had the opportunity to relook at the top several tiers of the organization and make adjustments to better align with the Agency's vision.

Assistant Administrator Swedberg stated that Field Operations has been divided into two divisions: Auditing and Investigations and Enforcement Divisions. He added that all FTEs and salary dollars for this reorganization came from existing vacancies in the Enforcement and Compliance Divisions. Assistant Administrator Swedberg provided detailed information and the mission of each Field Operations unit.

Assistant Administrator Swedberg stated the Assistant Chief Earl Pearson will oversee the Enforcement Division. He added that the Enforcement Division will be comprised of field enforcement agents and the Special Response Team (SRT). Assistant Administrator Swedberg advised that the Enforcement Division will focus on public safety issues and will standardize policies and procedures across all regions of the state to enable the Agency to meet the required performance measures.

Assistant Administrator Swedberg presented an overview of the Audit and Investigations Division. He stated that Assistant Chief Dexter Jones will oversee this division. He added that it will be comprised of our field auditors and two new investigations units: Special Investigations and Financial Crimes. Assistant Administrator Swedberg stated that the new division title replaces the compliance designation in favor of the term audit to better reflect the core mission.

Assistant Administrator Swedberg stated that the focus of the Audit unit will be to ensure compliance with the code and provide the primary agency presence for inspection and education for the large number of licensees that pose no public safety risk. The core missions of this unit will be:

- Audits
- Inspections
- Education and Training

- Licensing support
- Marketing practices
- Compliance Investigations

Assistant Swedberg stated that the Special Investigations Unit (SIU) will consist of a SIU Supervisor and SIU Operations Team Leader and seven investigators. The investigators will be mainly internal hires of a more senior level (Agent II-V). He added that external hires are also a possibility for the right candidate. Assistant Administrator Swedberg stated that the focus of the SIU will be on at-risk locations. He added that this unit will be able to conduct long-term investigations of organized criminal activities in licensed locations. This unit will operate as part of a joint task force with other law enforcement agencies. The core missions of this unit will be:

- Narcotics
- Human Trafficking
- Theft
- Fraud
- Other Organized Criminal Activities

Assistant Administrator Swedberg stated that the Financial Crimes Unit (FCU) will consist of a FCU Team Leader and two existing FTEs that will be moved over to the FCU. He added that this unit is similar to the SIU, but will focus on the financial aspects of criminal activities committed by licensed entities. This unit will also operate as part of a joint task force with other law enforcement agencies. The core missions of this unit will be:

- Money laundering
- Prohibited tier relationships
- Tax fraud
- Business and corporate fraud

Assistant Administrator Swedberg next presented an overview of the Special Response Team. He stated that the new position of SRT Team Leader has been created to lead this unit. He added the team leader has the responsibility to organize, train and equip the SRT members to support local and state officials during an emergency. He added that the team leader will have ancillary responsibilities as Field Operations training and policy coordinator. Assistant Administrator Swedberg stated that the Agency will be seeing more requests for our services in non-traditional TABC areas. The core missions of this unit will be:

- Search and recovery
- Traffic control
- Perimeter and shelter security
- Evacuation support
- Logistics support
- Personal security

Assistant Administrator Swedberg ended his presentation by stating that Field Operations is in the process of putting staff in place for these units. He added that the FCU and SIU will spend the next two years in a pilot program to develop policies and procedures, training programs and build relationships. Assistant Administrator Swedberg stated that a program plan will be developed for the SRT as well.

Assistant Administrator Swedberg's report is supported by a PowerPoint presentation. **(Attachment 5)**

PROMOTIONAL INTRODUCTIONS: KAREN SMITHWICK, DIRECTOR OF PORTS OF ENTRY; MARC DECATUR, MAJOR, NORTH TEXAS REGION; RANDY FIELD, MAJOR, COASTAL BEND REGION; NICOLE PHILLIPS, AUDIT & INVESTIGATIONS, REGION 2 SUPERVISOR, HOUSTON; ELSA DOVALINA, DISTRICT 5 SUPERVISOR, SAN ANTONIO

Presiding Officer Cuevas called for the next agenda item, Promotional Introductions presentation by Chief of Field Operations Robert Saenz. Chief Saenz read biographical information on each honoree.

- Nicole Phillips – District 3 Audit Supervisor, Houston
- Elsa Dovalina - District 5 Audit Supervisor, San Antonio
- Karen Smithwick - Director of Ports of Entry
- Marc Decatur - Major, North Texas Region
- Randy Field - Major, Coastal Bend Region



Elsa Dovalina



Karen Smithwick



Nicole Phillips

Assistant Administrator Ed Swedberg, Commissioner Steve Weinberg, Presiding Officer José Cuevas, Administrator Sherry Cook

Marc Decatur



Randy Field



PROMOTIONAL INTRODUCTION: KYLE RUSSELL, LICENSING SUPERVISOR, DISTRICT 1

Presiding Officer Cuevas called for the next agenda item, Promotional Introduction presentation by Director of Licensing Amy Harrison. Director Harrison gave biographical information on the honoree.

Kyle Russell – District 1 Licensing Supervisor, Lubbock

Mr. Russell is a third generation TABC employee. Both his grandfather and father were TABC Agents. Director Harrison stated that she is very pleased to have Kyle in the TABC family. She added that he is already making a positive impact in his new position.



Assistant Administrator Ed Swedberg, Commissioner Steve Weinberg, Kyle Russell, Presiding Officer Cuevas, Administrator Sherry Cook, Director of Licensing Amy Harrison

Commissioner Weinberg commented to both Chief Saenz and Director Harrison that they have found some really good people. He added that he enjoys seeing people move up in the Agency.

Presiding Officer Cuevas concurred with Commissioner Weinberg's comments. He stated that he appreciates the hard work of the employee and the sacrifices that their families have made

RECEPTION TO HONOR TABC EMPLOYEE PROMOTIONS

Presiding Officer Cuevas announced that a reception honoring the Agency's promoted employees would take place in the foyer. The Commission meeting was recessed for the reception.

Presiding Officer Cuevas called upon Internal Auditor Monday Rufus to come forward to present the next three agenda items: Internal Audits for Fixed Assets, Cash Disbursements Processes and Ports of Entry.

APPROVAL OF THE INTERNAL AUDIT OF THE BUSINESS SERVICES DIVISION, FIXED ASSETS

After introducing himself and his associate Robert Gonzales to the Commissioners, Mr. Rufus stated that his firm conducted three internal audits for the Agency. Mr. Rufus stated that there were four primary objectives for all three of the internal audits performed:

- Reliability and Integrity of Information
- Compliance with Policies, Procedures, Laws and Regulation
- Efficiency and Effectiveness of Operating Procedures
- Safeguarding of Assets

Mr. Rufus began his presentation with the Summary of the Internal Audit results for the Business Services Division, Fixed Asset Audit. He stated that his firm evaluated the controls implemented by the Commission regarding Fixed Assets Management as of January 31, 2013.

- The Commission has written policies and procedures to receive, tag, track, and dispose of property.
- There are also written policies and procedures to address stolen and missing property.
- Each fiscal year the Commission takes an annual physical inventory for property listed as “Capitalized” and “Controlled” as per the Texas Comptroller of Public Accounts State Property Accounting (SPA) Process User’s Guide – FF N. 005. This property is certified by the Commission and reported to the Texas Comptroller of Public Accounts in accordance with Government Code Subchapter L., Property Accounting.
- Required year-end property certification and fiscal balance forms are being timely submitted to the Texas Comptroller of Public Accounts (SPA) as required.

Finding:

Mr. Rufus stated that during the Internal Audit, forty-five fixed asset items were with a cost value of \$65,797.42 that had been traded in or disposed of at the beginning of FY 2009 were still included in the Commission's Mobile Inventory as of November 14, 2012. He added that one of these fixed asset items, which was described as a Telephone- Other Equipment- Cell/Portable, was listed with a value of \$9,788.92. This piece of equipment had also been included in the certified inventory that was reported to the State Comptroller's Office. Mr. Rufus stated that the recommendation to the Commission is to institute control over the fixed assets and ensure that all items on the fixed asset inventory list are updated on a regular basis.

Commissioner Weinberg inquired if these audit findings had been discussed with Commissioner Fredricks. Mr. Rufus answered affirmatively.

Presiding Officer Cuevas inquired if management was in agreement with the findings of this audit. Administrator Cook answered affirmatively.

APPROVAL OF THE INTERNAL AUDIT OF THE BUSINESS SERVICES DIVISION, CASH DISBURSEMENTS

Mr. Rufus continued his presentation with the Summary of the Internal Audit Results for the Business Services Division, Cash Disbursements Processes. He began his presentation with the Summary of the Internal Audit results for the Business Services Division, Fixed Asset Audit. He stated that his firm had conducted an internal audit of the Cash Disbursement Processes as of March 15, 2013.

The Commission has cash disbursement processes in place to provide reasonable assurance that the Commission is in adherence and compliance with the State's cash disbursements requirements.

- Clear policies and procedures have been established and implemented for the processing of cash disbursements.

Mr. Rufus stated that some of these procedures include:

- Appropriate approval of purchases
- Review and approval of all invoices
- Review and signatures on all purchase vouchers and cash disbursements

Finding:

Mr. Rufus stated that there were no deficiencies in the process detected that are significant to the objectives of this internal audit. Any significant issues noted have

been communicated to the management as required by Government Auditing Standards.

Presiding Officer Cuevas and Commissioner Weinberg were both pleased with the results of this audit.

Commissioner Weinberg commented that it was almost unheard of to have an audit where there were no deficiencies reported in the findings.

APPROVAL OF THE INTERNAL AUDIT OF PORTS OF ENTRY

Mr. Rufus began his final presentation with the Summary of the Internal Audit of the Ports of Entry Division. He stated that his firm had evaluated the controls implemented regarding Tax Administration- Ports of Entry as of March 7, 2013.

- The Commission has policies and procedures to monitor compliance with the personal importation laws of the State of Texas along the Texas-Mexico border and to verify that persons importing alcoholic beverages and cigarettes meet all legal requirements of importing and collecting the appropriate fees and taxes.
- Procedures and controls are in place to ensure that daily taxes collected for alcoholic beverages and cigarettes involve several ports of entry personnel in the collection securing, and depositing of cash into the local bank.
- Although required by the Commission's policies and procedures, based on inquiries and review of quality assurance audits, we noted Taxpayer Compliance Officer (TCO) cash box audits were not being consistently conducted during the weekends at the Laredo ports of entry.
- The Ports of Entry confiscated property procedures call for confiscated items to be submitted to the Port Supervisor and to follow the established destruction schedule.
- However, we did not notice any established destruction schedule.
- Although there appears to be noncompliance with these policies, the Commission should re-evaluate each of its cash audit policies to ensure that their intended benefits are being realized.

Matters for Future Consideration:

Mr. Rufus stated that although his firm did not consider this a finding, he felt it was an obligation to bring it to the Commission's attention.

Mr. Rufus advised that during the months of December and January holiday season, traffic is heavy and constantly crossing the ports of entry at all hours due to all the festivities. He added that during that period Management should research the possibility of extending the Laredo ports of entry hours of operation during the busy holiday season.

Potential results include:

- More effective compliance with the Texas Alcoholic Beverage Code and Cigarette Tax Code
- Mitigation of potential loss of revenue over a short period of time with temporary costs paid with additional revenue collected.

Mr. Rufus advised that the Commission should conduct a pilot study to evaluate the hours of operation at other ports of entry offices.

Commissioner Weinberg requested Ports of Entry Director Karen Smithwick to come forward and respond to questions regarding the Ports of Entry Internal Audit. He stated that this was a great audit and that he took a particular interest in and learned a lot from this audit.

Commissioner Weinberg commented that through reading this audit he learned that half of the revenue comes from money collected at one port. He added that this should be a factor in placing our staff. Commissioner Weinberg inquired of Mr. Rufus if he felt our staffing was at adequate levels and if staffing was including in this audit. Mr. Rufus responded that staffing was a part of this audit. He stated that there was staffing in place, but he did question as to why staffing and hours of operation were not extended during the busier times during December and January to handle the larger volume of customers. He added that the response he received to that question was that the resources for additional staffing were not available.

Presiding Officer Cuevas commented that staff should be located where the largest hourly revenue is collected. He stated that by moving our staff to cover the heavy traffic times, revenues would increase and lines would move through at a faster rate.

Director Smithwick responded that she will look into extending the hours of operation on certain days and holidays to two or three a.m. Commissioner Weinberg commented that he thought it was a good idea. He encouraged Director Smithwick to consider varying the days with extended hours of operation to avoid setting a predictable pattern. Commissioner Weinberg commented that there is less money being collected per FTE currently than in years past. He added that the Ports of Entry Division has plenty of employees. He added that these employees might be better utilized by moving them into other locations.

Commissioner Weinberg quizzed Director Smithwick as to when there will be a Port of Entry office at Galveston. Director Smithwick responded that it depends on funding from the Legislature. Commissioner Weinberg stated with that we are required to be there and need to have personnel at that port now. Director Smithwick stated that a unit would have to be relocated to Galveston. Commissioner Weinberg disagreed. He stated that the staffing requirements and the hours of operation for that port would be very small and that it could be managed from another POE office.

Administrator Cook stated that a contingency to operations at this port is the ability to accept credit cards to speed up the process and get passengers off the ship as quickly as possible. Commissioner Weinberg suggested that in addition to the ability to accept credit cards, the taxes could be collected from onboard the ship before the passengers disembark. He added that we are losing a significant amount of revenue for the State of Texas by not collecting taxes at this port.

Presiding Officer Cuevas quizzed Director Smithwick if the Ports of Entry Division was still using metal cash boxes to collect revenue. Director Smithwick answered affirmably. Presiding Officer Cuevas commented that a Point of Sale (POS) system would not only be a more secure method to collect cash, but it would also collect all the data to one central location where it could be analyzed in real time from various locations. Commissioner Weinberg stated that even though the Tax Compliance Officers are doing a good job, a metal cash box is still an outdated practice. Director Smithwick stated that even though the Agency does not have a point of sale system, the POETCS system currently being used, is a good system and provides a tremendous amount of data, but does lack a cash register feature.

Director Smithwick stated that importation from Columbia is another possible source of revenue. She added that currently, there are only spot checks being performed. Presiding Officer Cuevas commented that all the details need to be worked out before we expand to other areas. Director Smithwick added that before the Agency begins to implement collections, the public should be educated on how the process works and the importation limits as well.

Presiding Officer Cuevas quizzed Director Smithwick on the destruction process for confiscated property. Director Smithwick responded that the destruction of property is carried out on site by a Commissioned Peace Officer. She stated that all of the property is locked up until a CPO comes by on their rounds and destroys the property. Director Smithwick stated that a formal schedule is being implemented for all ports of entry locations. Internal Auditor Robert Gonzales stated that the destruction schedule should be based on a risk-based schedule. He added that there would be a cost savings to the Agency by not making unnecessary destruction rounds to all the Ports offices

Mr. Rufus' presentation is supported by a PowerPoint presentation.
(Attachment 6)

Presiding Officer Cuevas called for a motion. Commissioner Weinberg moved to approve all three Internal Audits: Business Services Division, Fixed Assets,

Business Services, Cash Disbursements and Ports of Entry as presented by Mr. Monday Rufus. Presiding Officer Cuevas seconded the motion. Presiding Officer Cuevas stated a motion was made and seconded. All those in favor say “Aye.” All those opposed say “No.” The “Ayes” have it and the motion passes.

RULE REVIEW PLAN BRIEFING

Presiding Officer Cuevas called upon Assistant General Counsel Martin Wilson to present the next agenda item, Rule Review Plan Briefing.

Assistant General Counsel Wilson updated the Commissioners on the status of the Rule Review Plan. He stated that the last time the Rule Review Plan was reviewed was in August of 2011. He added that he has provided information to the Commissioners on the proposed rule review plan and also on the rules that have been reviewed over the last year. Assistant General Counsel Wilson stated that within the last month, meetings have been held to go through each of the rules, assign responsibility and prioritize them to be brought before the Commission.

Assistant General Counsel Wilson’s presentation is supported by a PowerPoint presentation. **(Attachment 7)**

APPROVAL TO PUBLISH PROPOSED AMENDMENT TO RULE §31.5, ALCOHOLIC BEVERAGE COMMISSION CHARGE SCHEDULE

Presiding Officer Cuevas called upon Assistant General Counsel Martin Wilson to present the next agenda item, Approval to Publish proposed Amendment to Rule §31.5, Alcoholic Beverage Commission Charge Schedule.

Assistant General Counsel Martin Wilson stated that when the current rule was reviewed it was decided that the rule contained some unnecessary wording. He added that this rule is constrained by the Attorney General’s rules and follows the charge schedule as listed in the Government Code.

As amended, this rule does the following:

- Gives notification of where the charge schedule can be found
- Designates the General Counsel’s office to coordinate the Open Records Requests

Assistant General Counsel Wilson’s presentation is supported by a PowerPoint presentation. **(Attachment 8)**

Presiding Officer Cuevas called for a motion. Commissioner Weinberg moved for the approval to publish proposed Rule §31.5, Alcoholic Beverage Commission Charge Schedule Presiding Officer Cuevas seconded the motion. Presiding Officer Cuevas stated that a motion was made and seconded. All those in favor say "Aye." All those opposed say "No." The "Ayes" have it and the motion passes.

NEXT MEETING DATES: Tuesday, May 28, 2013

Commissioner Weinberg proposed that the TABC Commission meeting schedule be adjusted to meet every other month beginning with the May 2013 meeting. He added that this topic had been brought up before and it was decided to wait to make a decision until the Legislative Session was over and the Agency's new Executive team was in place.

Presiding Officer Cuevas concurred.

EXECUTIVE SESSION TO CONSULT WITH LEGAL COUNSEL REGARDING PENDING AND ANTICIPATED LITIGATION AGAINST THE AGENCY AND TO DISCUSS THE DUTIES, RESPONSIBILITIES, AND EVALUATION, DUTIES OF THE ADMINISTRATOR (Govt. Code §551.071, §551.074)

Presiding Officer Cuevas announced the regular open session of the Texas Alcoholic Beverage Commission will be recessed at this time, 1:37 p.m., April 23, 2013 and an executive session will be held to consult with Legal Counsel regarding pending and anticipated litigation against the Agency and to discuss the duties, responsibilities, and evaluation of the Administrator (Govt. Code §551.071, §551.074)

The Texas Alcoholic Beverage Commission has concluded its Executive session and is now in open regular session. The date is April 23, 2013 and the time is 2:00 p.m. No final action, decision or vote was made in Executive session.

PUBLIC COMMENTS

Presiding Officer Cuevas opened the floor for additional comments before the Commission. No one came forward to address the Commission.

ADJOURN

Presiding Officer Cuevas called for a motion to adjourn. Commissioner Weinberg made a motion. Presiding Officer Cuevas seconded. The motion was made and

seconded. The motion passes. Presiding Officer Cuevas announced that the meeting was adjourned at 2:00 p.m.

Attachment 1

**Commission Report: Administrator and Agency
Activities, Budget Issues, Staff Achievements,
Legislative Activities**



January 8, 2013 –
83rd Legislature
convened

March 8 - Last
day to file regular
bills

April 22 –
Waiting on
conference
committee to be
named

May 27 – Sine Die

June 16 - Last day
governor can sign
or veto bills

83rd Legislative Session Update

April 23, 2013

TABC Commission Meeting



Commission Follow-up

HB310 allows certain minors to plead guilty by mail. A question was asked if a minor can plead “no contest or not guilty” and take care of the violation by mail.

Current law prohibits minors from pleading guilty by mail.

“Sec. 106.10. PLEA OF GUILTY BY MINOR. No minor may plead guilty to an offense under this chapter except in open court before a judge.” **House Bill 310 provides an exception to that statute.** Currently there is nothing in the Alcoholic Beverage Code that prohibits minors from pleading “no contest or not guilty” by mail.

Commission Follow-up

A question from Commissioner Fredericks inquired if there is a law or rule that prohibits the issuance of a license or permit if there has been criminal activity at that location.

Under various circumstances, TABC may or shall deny an application for a license or permit due to criminal activity at the location, or criminal activity by the applicant, for a certain period of time.

SIGNIFICANT EVENTS

April 4, 2013: A request for assistance concerning protection of county officials in Kaufman County. With the recent murders of three Kaufman County DA's office personnel, to include the DA and his wife, high profile officials were provided personal protective details.

- TABC provided six (6) agents to Kaufman County Sheriff's Office (KCSO) for the District Judge and his wife.
- Agents worked in two-person teams in 8 hour shifts.
- April 17, 2013, charges filed on the parties involved in the murders of the Assistant DA, The DA and the DA's wife.



SIGNIFICANT EVENTS

West Texas Explosion

April 17, 2013: Fertilizer Plant Explosion

- Request for Assistance By West Police Chief
 - 12 Agents have been assigned to assist.
 - Security for the evacuation area during the curfew hours for non-emergency personnel and
 - Security to prevent looting within the restricted area.
- Assist in handling calls within the City as backup.



Significant Events



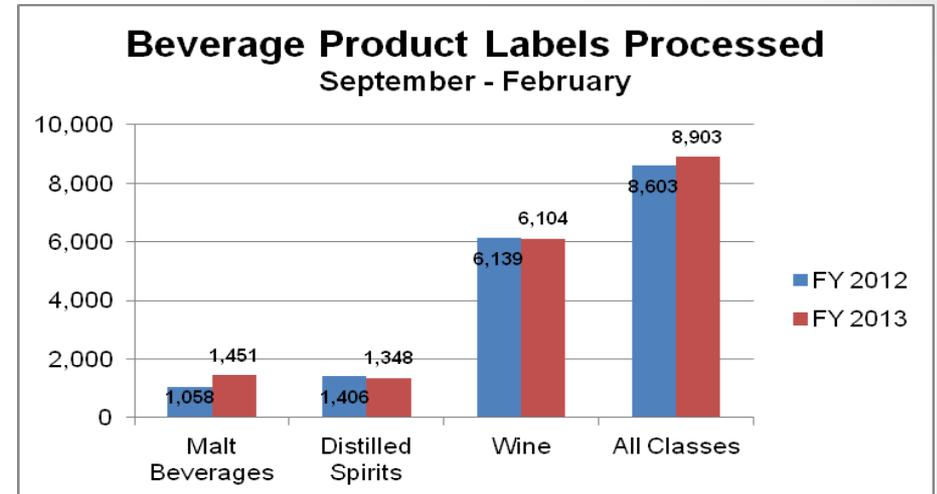
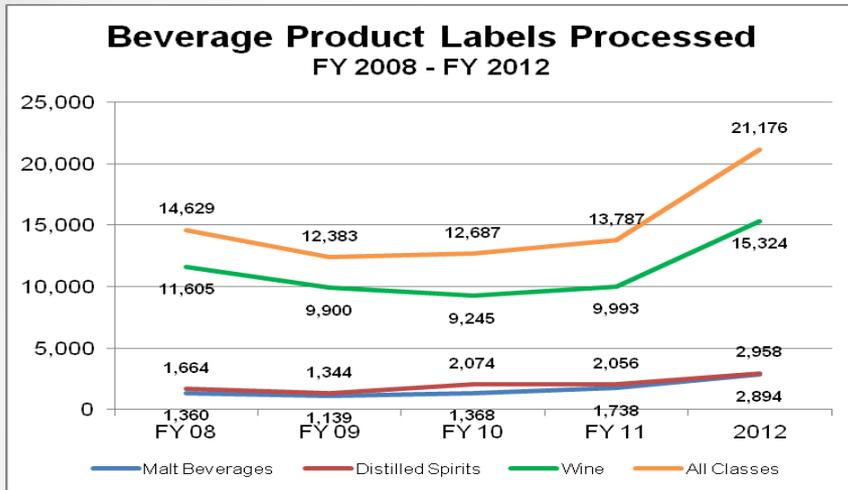
During a routine evening of minor stings in the Corpus Christi area, a bank inside one of our targeted locations, Wal-Mart in Rockport, had just been robbed before agents arrived. The minor sting for that location was cancelled and agents moved on to other locations, an HEB in Aransas Pass, where they found a highly intoxicated patron whom they then turned over to the local PD. Later on the suspect for the Wal-Mart robbery was arrested and confessed that he also intended to rob the Aransas Pass HEB but did not do so due to obvious police presence.



Significant Activity

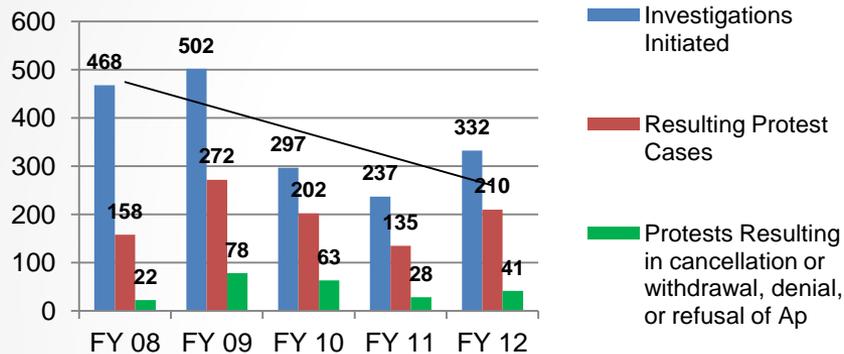
- Agent Academy (Update)
 - # of Applicants (178)
 - # Interviewed (45)
 - # going to Background (30)
 - # we plan to hire (15 total)
 - 10 in Houston,
 - 1 in Bryan,
 - 1 in Beaumont,
 - 2 in Arlington and
 - 1 in Laredo
 - Start date for the school? (June 10, 2013)

Trends

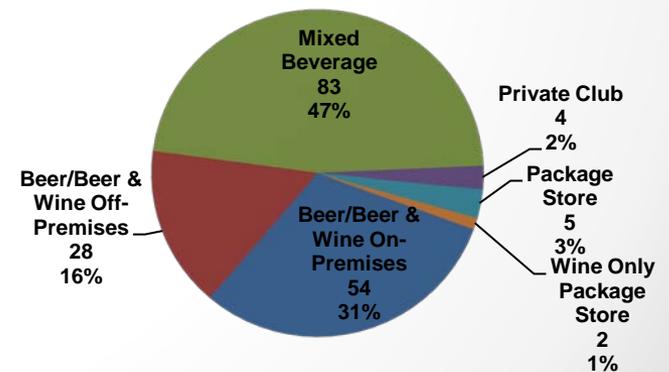


Trends

Protest Investigations & Investigation Outcomes FY 2008 - FY 2012

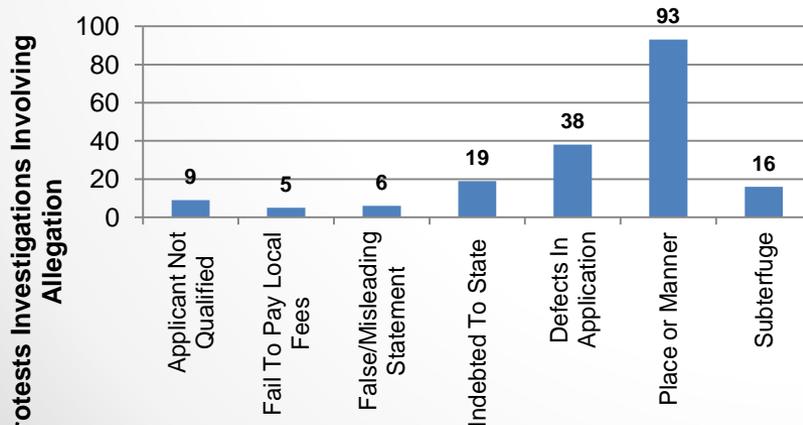


Protest Investigations by License Class September 2012 - March 2013



Allegations Investigated

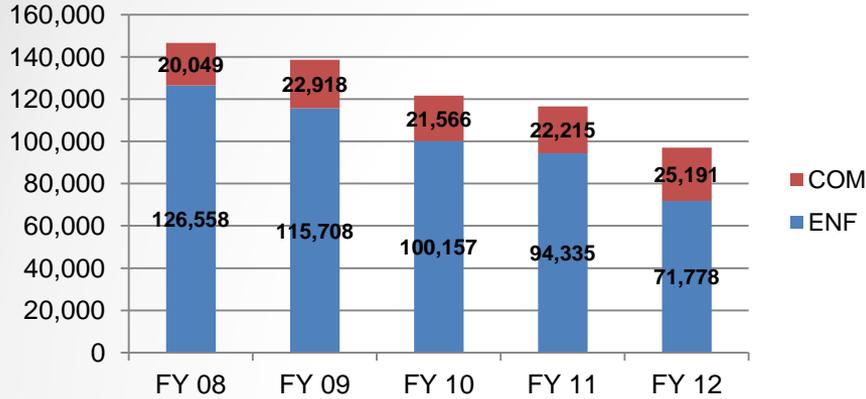
Protests Initiated 09/01/2012 - 03/31/2013



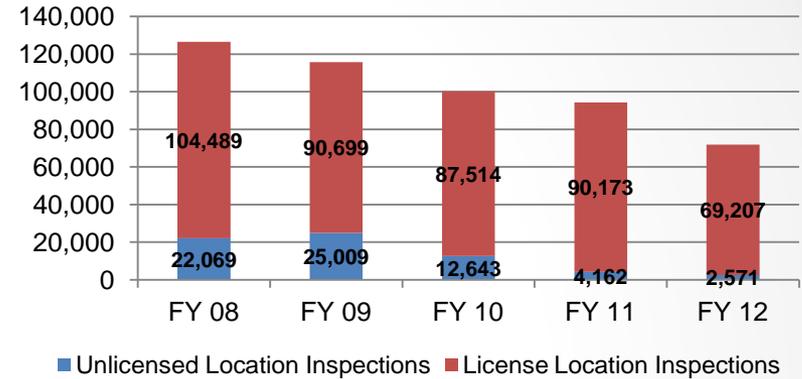
Protests Investigated Involving Allegation

Trends

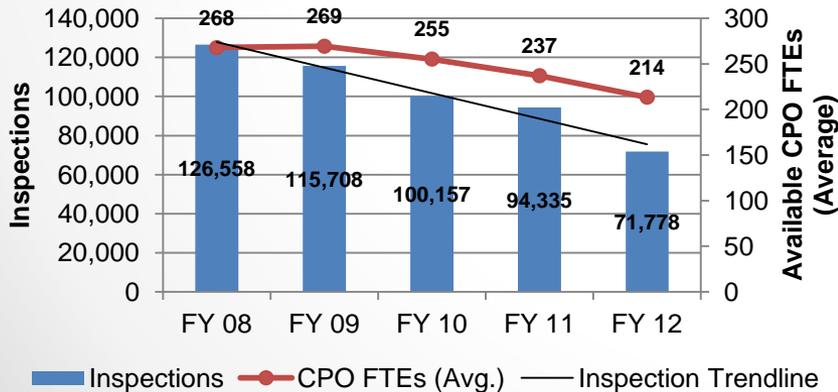
Field Inspections FY 2008 - FY 2012



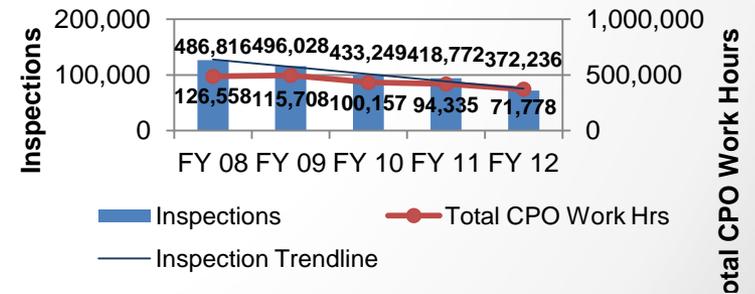
Enforcement Inspections FY 2008 - FY 2012



Enforcement Inspections & CPO FTEs FY 2008 - FY 2012



Enforcement Inspections & CPO Work Hours FY 2008 - FY 2012



Trends

Caution with the Messaging

In asking the Agents to increase the number of inspections we have to be cognizant of the Agent's perceptions toward how many inspections they are asked to perform weekly.

- Too few inspections will not increase the inspections to have a significant impact on reaching the Annual Goal.
- Too many inspections will create the perception Agents are being asked to only focus on inspections.
- The reaction by the Agents will be to reduce their efforts in other areas such as investigations.
- **Moving Forward** the increase must be done with the goal of voluntary compliance in mind.
 - Increased inspections should focus on public safety issues, not merely increasing inspection numbers.
 - The increased inspections should focus on priority list, complaints
 - and top problem locations.

Plan of Action

- Discussing prior month and FY-year-to-date performance at the second Tuesday of the month Field Operations meeting to include the Majors and Captains.
- Increase the inspection of licensed locations that are the subject of a complaint.
- Defining priority/at-risk locations to include retail businesses that are the subject of even one public safety or vice complaint.
- Assign low-risk location inspections to our Auditing Division.
- Redirect low level tasks to employees on light duty.
- Continue to monitor the service area concept.





Attachment 2

Legislative Session Briefing

83RD LEGISLATIVE SESSION UPDATE

April 23, 2013

TABC Commission Meeting



Nov. 12, 2012
Pre-filing of bills

January 8, 2013 -
83rd Legislature
convened

March 8 - Last day
to file regular
bills

May 27 - Sine Die

June 16 - Last day
Governor can sign
or veto bills

83RD LEGISLATIVE SESSION

- ◎ 6,176 bills filed as of 4/21/13
 - 6,304 total bills filed last session
- ◎ **~95 alcohol-related bills (unprecedented)**
- ◎ Other high impact issues
 - The Budget - annual budgets, zero-based budgeting, hiring freeze, etc.
 - Gambling, Poker, 8-Liners
 - Human Trafficking
 - Handguns



- THE KEY -



- Passed First House, Voted out of Committee in Second House



- Passed First House



- Voted out of Committee in First House, Recommended for Local & Consent or Local & Uncontested



- Voted out of Committee

- ON-PREMISE RETAILERS -



● HB893 by Geren / SB400 by Hancock - Allows TX Rangers Stadium to let patrons come and go from MB areas of stadium with drinks.



● HB34 by Menendez - Creates BYOB permit for businesses operating after hours.



● HB880 by Chris Turner - Requires liquor liability insurance for bars, not restaurants.



● SB861 by Davis - Requires DWI penalty signs in bars, not restaurants.

● SB 1516 by West - Creates BYOB permit.

● HB1269 by Martinez-Fischer / SB1547 by Van de Putte - Requires on-premises locations to offer non-alcoholic wine or beer for sale.



No Progress So Far

- LOCAL OPTION ELECTIONS -

Local &
Consent

- HB1622 by Stickland - Authorizes BGs in area already wet for MB and BQ.
- HB2818 by Sheffield - Changing the wet or dry status in certain areas of a political subdivision.

No Progress So Far



- PACKAGE STORES -

Local &
Consent

- HB2910 by Kuempel / SB1491 Van de Putte - Sales in package store after 9 pm.
- HB421 by Thompson / SB236 by Hinojosa - Allows package store sales on Sundays.
- HB703 by Canales - Allows package store sales on Sundays in counties that border Mexico.
- HB668 by Martinez / SB598 by Birdwell - Repeals law that limits package store owner to five stores.
- HJR76 by Kuempel - Constitutional Amendment to require a person to be 21 to enter package store.

No Progress So Far



- WINERIES AND DISTILLERIES -



- SB642 by Van de Putte - Allows distillers to sell bulk spirits to food processors holding an industrial permit.



- SB652 by Van de Putte / HB2041 - Authorizes a brewery to transfer bulk product to a distillery for production purposes.



- SB828 by Van de Putte / HB3518 - Creates Distiller's Agent's Permit.



- SB905 by Van de Putte / HB1997 by Kuempel - Authorizes distilleries to sell to consumers on-site.



- SB131 by Nelson - Extends hours of winery sales on New Year's Eve.



- HB2537 by Geren - Production of wine by winery.
- SB451 by Carona - Production of wine by winery.



BEER - BREWERS - BREWPUBS



- SB350 by Williams / HB1555 - Changes criteria for holding a Manufacturer's Agent's Warehousing License.



- SB515 by Eltife / HB1763 - Authorizes brewpubs to make up to 12,500 barrels a year (up from 5K) and sell up to 1,000 to retailers and the rest to distributors, consumers, or any qualified person outside of Texas.



- SB516 and SB517 by Eltife / HB1764 and HB1765 - Authorizes brewers / manufacturers producing up to 125,000 barrels a year to self-distribute up to 40,000 barrels.



- SB518 by Eltife / HB1766 - Authorizes brewers / manufacturers producing up to 225,000 barrels a year to sell up to 5,000 barrels a year direct to consumer for on-premises consumption.



- SB639 by Carona / HB1538 - Includes severability language, prohibits price discrimination, prohibits payment for territorial agreements.



- HB3307 by Geren - Contract brewing.



- MINORS -



- HB232 by Guillen - Allows certain minors to perform community service in lieu of alcohol awareness course.
- HB310 by Guillen - Allows certain minors to plead guilty by mail. (Current Law: Sec. 106.10. PLEA OF GUILTY BY MINOR. No minor may plead guilty to an offense under this chapter except in open court before a judge.)
- HB892 by Lozano - Redefines "minor" to EXCLUDE a person at least 18 and on active duty in military.
- HB1012 by King - Upgrades penalty for providing alcohol to a minor to state jail felony if the minor's drinking causes another person to suffer serious injury or death.
- HB1013 by King - Amends law related to civil liability for damages caused by the intoxication of a minor, raising age from 18 to 21.



NO PROGRESS SO FAR

- ALCOHOL TAXES -



SB559 by Duncan / HB515 / HB1062 / HB3855 - Repeals sections of the AB Code enacted during special session (early excise tax payments).



HB3572 by Hilderbran - Moving mixed beverage taxes to be collected at wholesale level.

HB 2078 by S. Thompson - Additional mixed beverage tax for crime victim compensation fund. (LAP 4/23/13)

HB2543 by Eiland - Changing the manner in which the tax on mixed beverages is imposed.

HB3095 by Strama / SB1179 by Deuell - Reducing MB tax for live music venues.

No Progress So Far



- ALCOHOL EDUCATION -

Local &
Consent

- HB1020 by Reynolds - Changes reference to TCADA to TDSHS.
- HB3306 by Geren - Relating to the delivery of alcoholic beverage seller training programs.
- HB3632 by Canales - Relating to a mandatory drug, alcohol, and substance abuse education program for certain minors convicted of, or placed on deferred disposition or community supervision for, certain drug or alcohol related offenses.
- SB278 by Watson - Adding alcohol awareness component to science curriculum used in public schools.



- MARKETING PRACTICES -

- C** ● HB1917 by Rodriguez - Alcohol ads on vehicles
- C** ● HB3502 by Smith - Experiential Dinners
- C** ● HB3503 by Smith / SB903 - Branded Promotional Vehicles
- C** ● HB3504 by Smith - Awarding sweepstakes prize to consumer on retail premises.
- HB 2084 by Smith / SB870 by Van de Putte - Marketing items provided by upper tier to retailers or consumers. (LAP 4/23/13)
- HB 3716 by Smith / SB883 by Van de Putte - Relating to promotional items provided by upper tier to retailers. (LAP 4/23/13)



- MORE EFFECTIVE REGULATION -



- SB409 by Watson- Allows a second permit or license to be issued to certain premises if the permit holder has been evicted in court.



- SB1035 by Carona / HB2884 by Smith - Streamlining the licensing process.

Local &
Consent
Local &
Consent

- HB1953 by S. Thompson - Depositing checks

- HB2460 by S. Thompson - Possessing stamps

Local &
Consent

- HB2806 by Geren / SB1493 by Van de Putte - Adding four business days to delinquent list.

C

- SB950 by Carona - Primary American Source

C

- SB962 by Carona - Label Approval

C

- SB1034 by Carona - Subterfuge

- HB575 by Anchia - Authorizing admin actions prior to final conviction in related criminal case.





- SB1090 BY CARONA-

- SB1090 - Cleans up various sections of the AB Code that have been found to be confusing, outdated, inconsistent, or even unconstitutional. It also provides for gender-neutral language in several sections of the Code.



OTHER BILLS AMENDING CODE

- HB 2126 by Gutierrez / SB1181 by Van de Putte - Creating auxiliary wholesaler permit.
- HB 2378 by Geren / SB1036 by Carona - Applications for licenses and permits denied within the past year. (LAP 4/23/13)
- HB3558 by Oliveira - Authorizing overlapping ownership in different tiers of industry.
- SB596 by Birdwell - Protests and denials.

No Progress So Far



- INDUSTRY BILLS -

- HB 2114 by Gutierrez / SB1182 by Van de Putte - Sale of equipment used in selling spirits, by wholesaler to retailer.
- HB2807 by Geren - Mixed beverage permittees buying from local distributors outside county.
- HB3344 by Geren / SB1777 by Lucio - Authorizing importation of liquor by local distributors.
- HB3345 by Geren / SB1776 by Lucio - Prohibiting discrimination in the sale of distilled spirits to holders of wholesaler's permits.
- HB3541 by Menendez / SB1345 by Hinojosa - Authorizing wholesalers to sell directly to MBs and private clubs.

NO Progress So Far



OTHER BILLS AFFECTING TABC

- HB700 by Lavender / HB1194 by Paddie - Open carry
- HB3218 by Springer - Legalizing concealed handguns in bars.
- HB911 by Moody - Increasing the penalty for stealing less than \$50 worth of alcoholic beverages from a Class C misdemeanor to a Class B. More than \$50 is already a Class B.
- HB130 by Raymond - Relating to honesty in taxation - requires state agencies and the legislature to refer to fines, fees and surcharges as "Regulatory Taxes."
- HB231 by Isaac - Suspending ERS annuity payments for retired employees who return to work for the state.

No Progress So Far



83RD LEGISLATIVE SESSION UPDATE



QUESTIONS?

May 27 - Sine Die

June 16 - Last day
Governor can sign
or veto bills

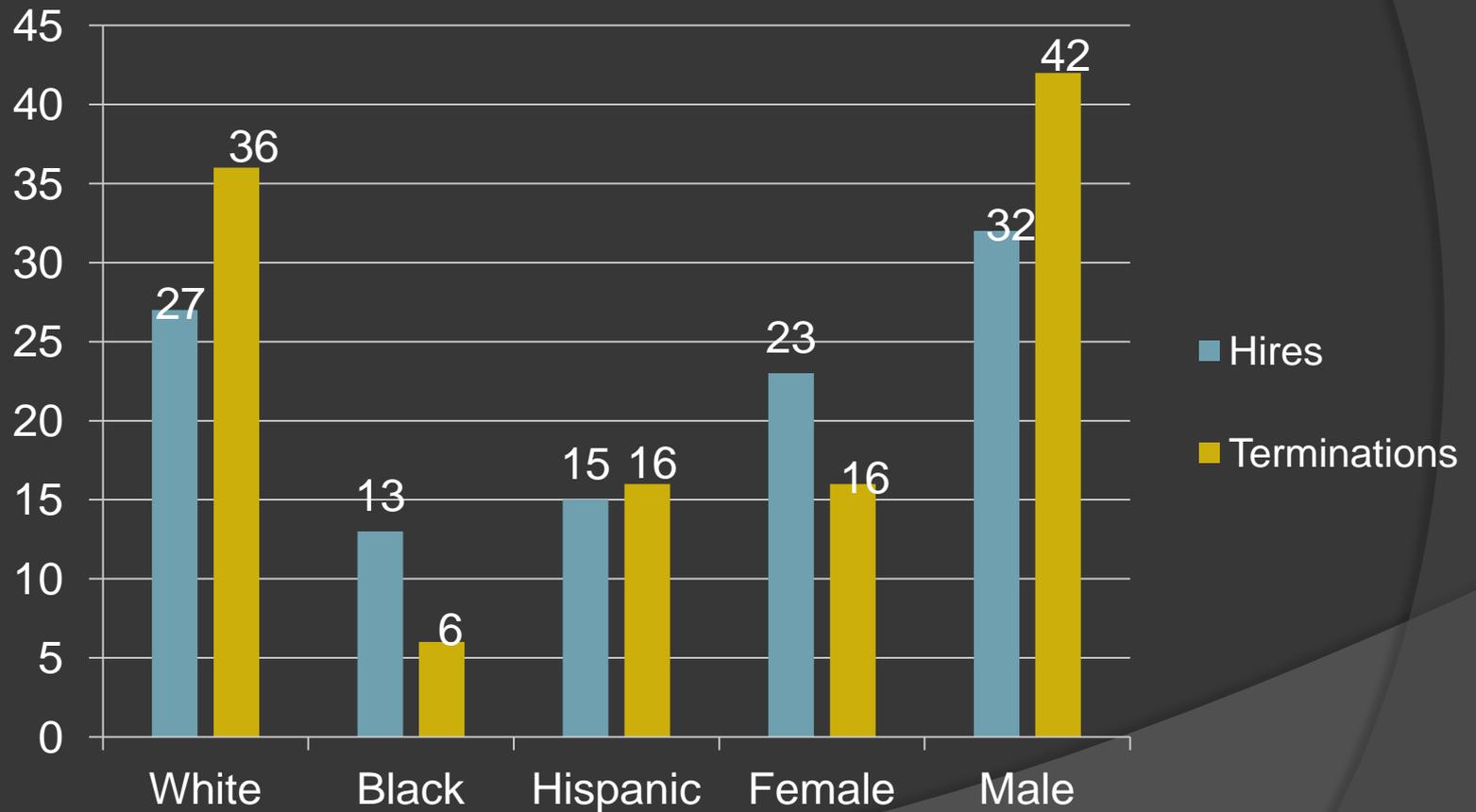
Attachment 3

Recruitment and Hiring Policies Report

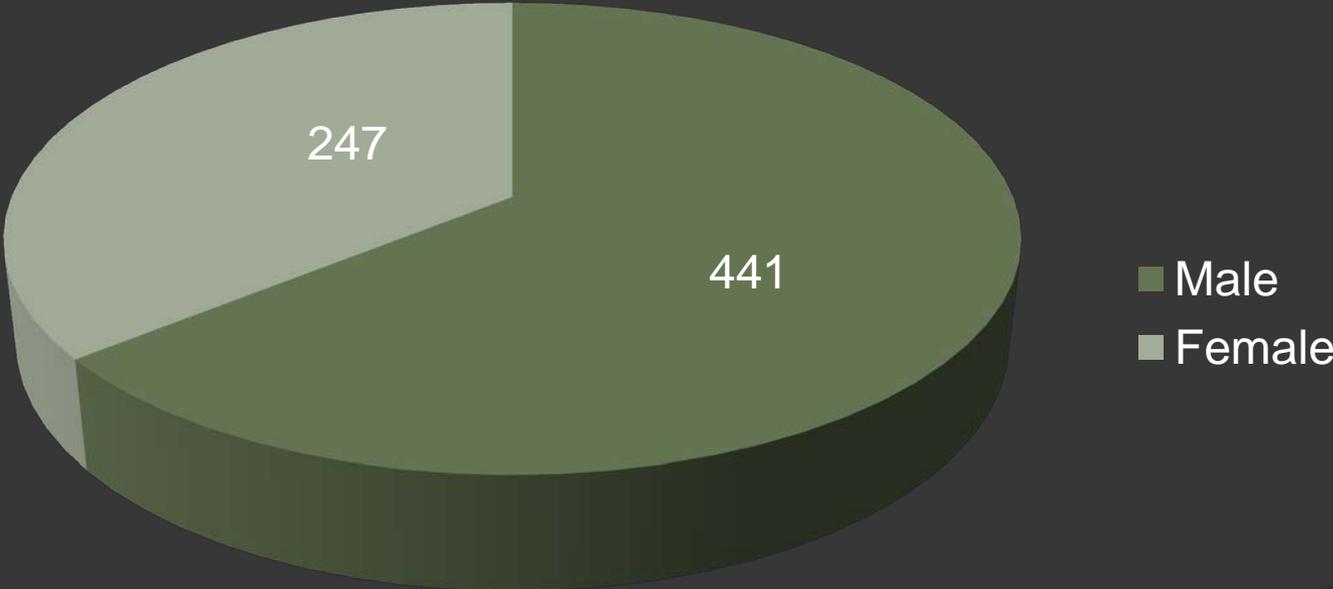
TABC Workforce Comparison Summary
Fiscal Year 2012

FISCAL STEWARDSHIP REPORT

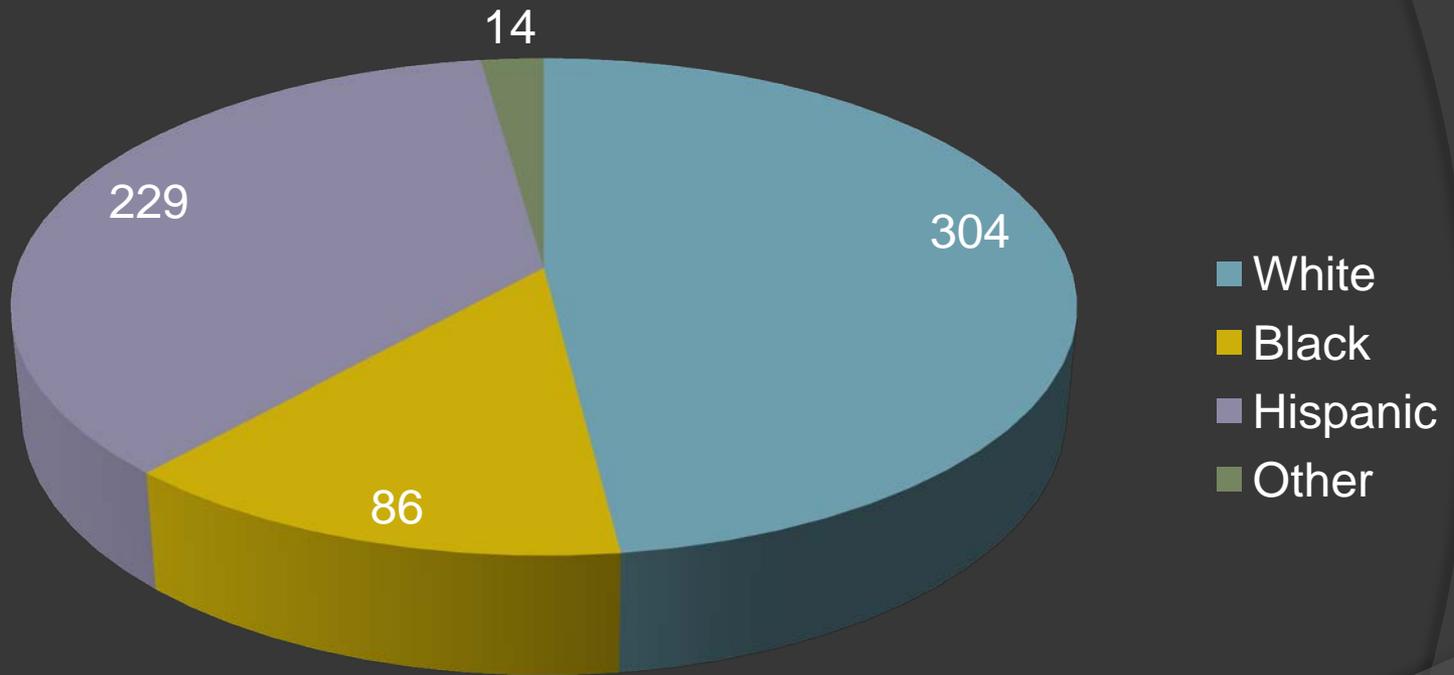
Hiring and Separation Summary



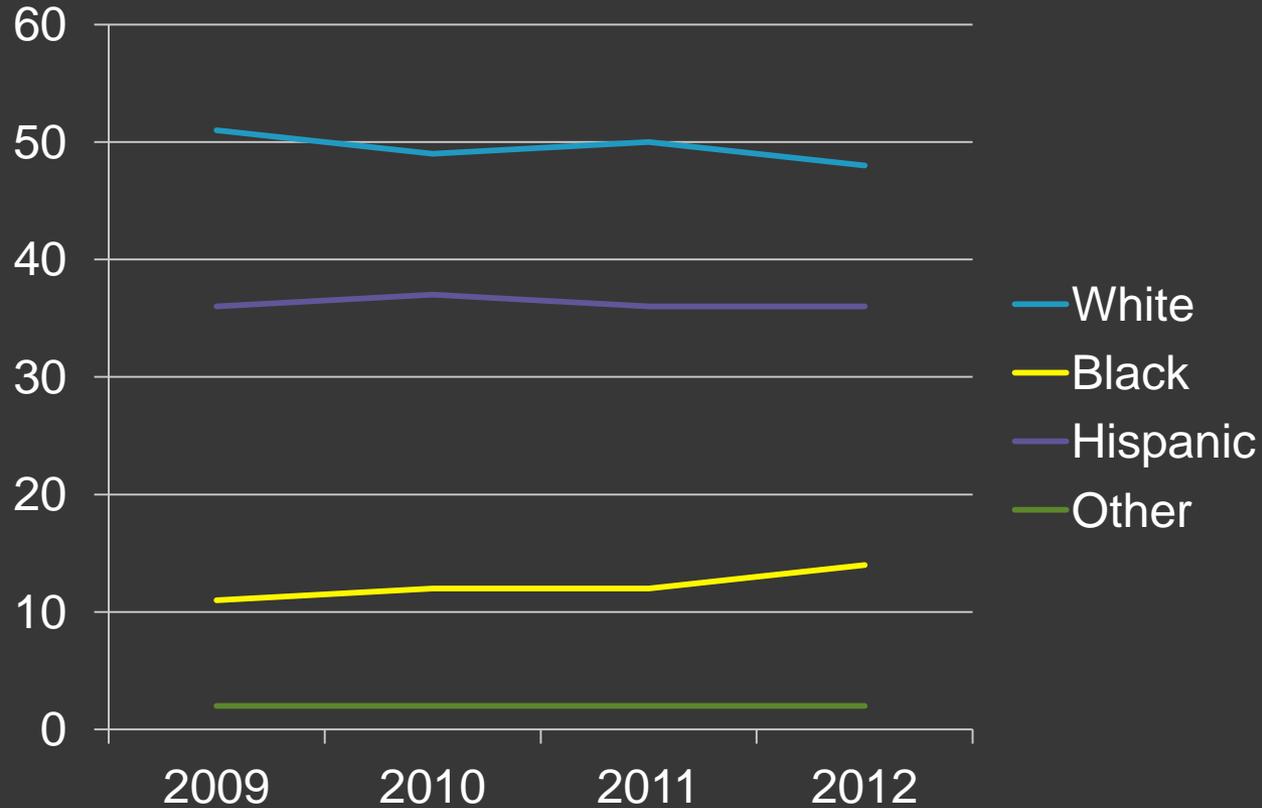
TABC Gender Representation



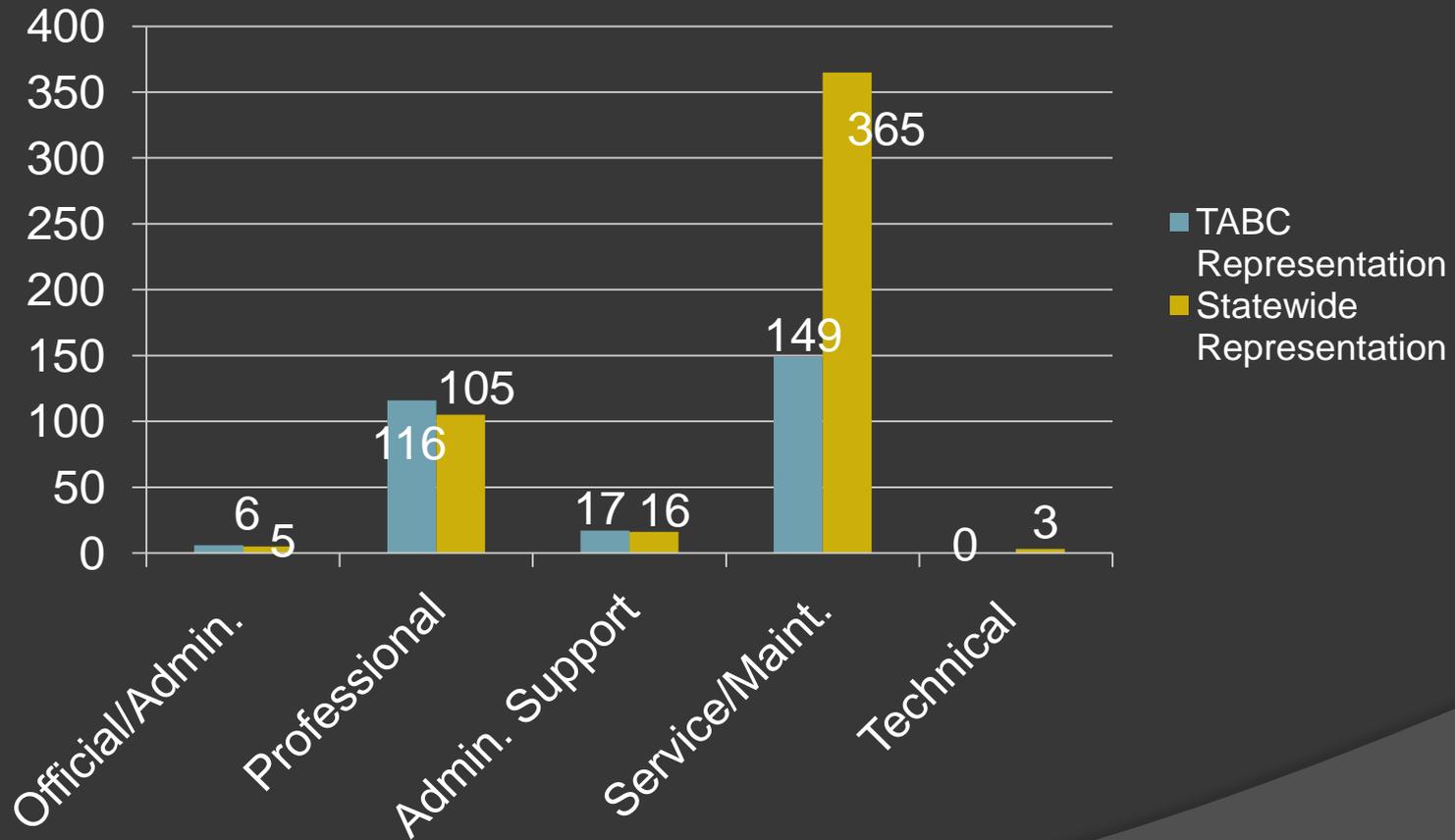
TABC Demographics -- Race



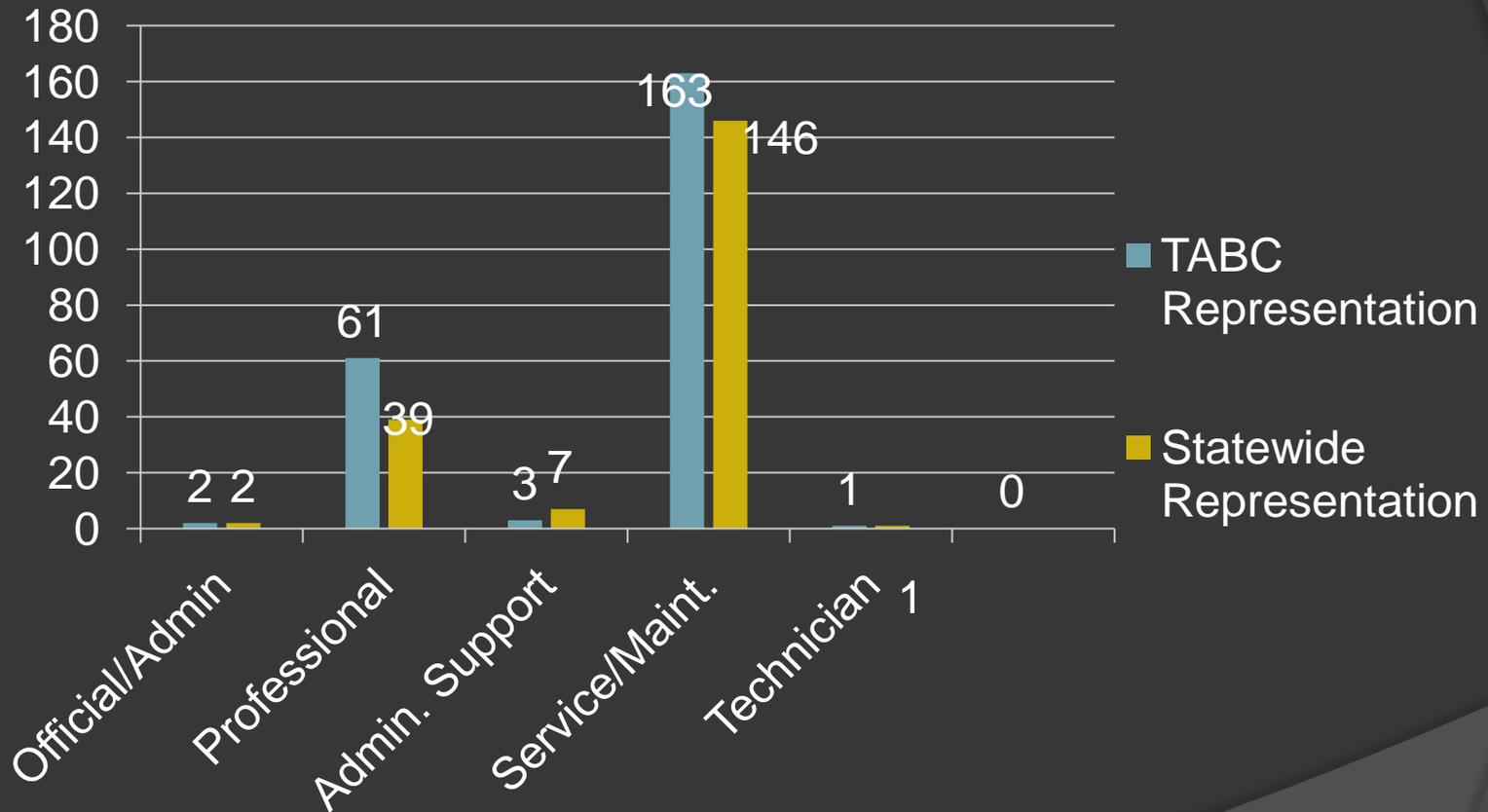
TABC Demographic Trend



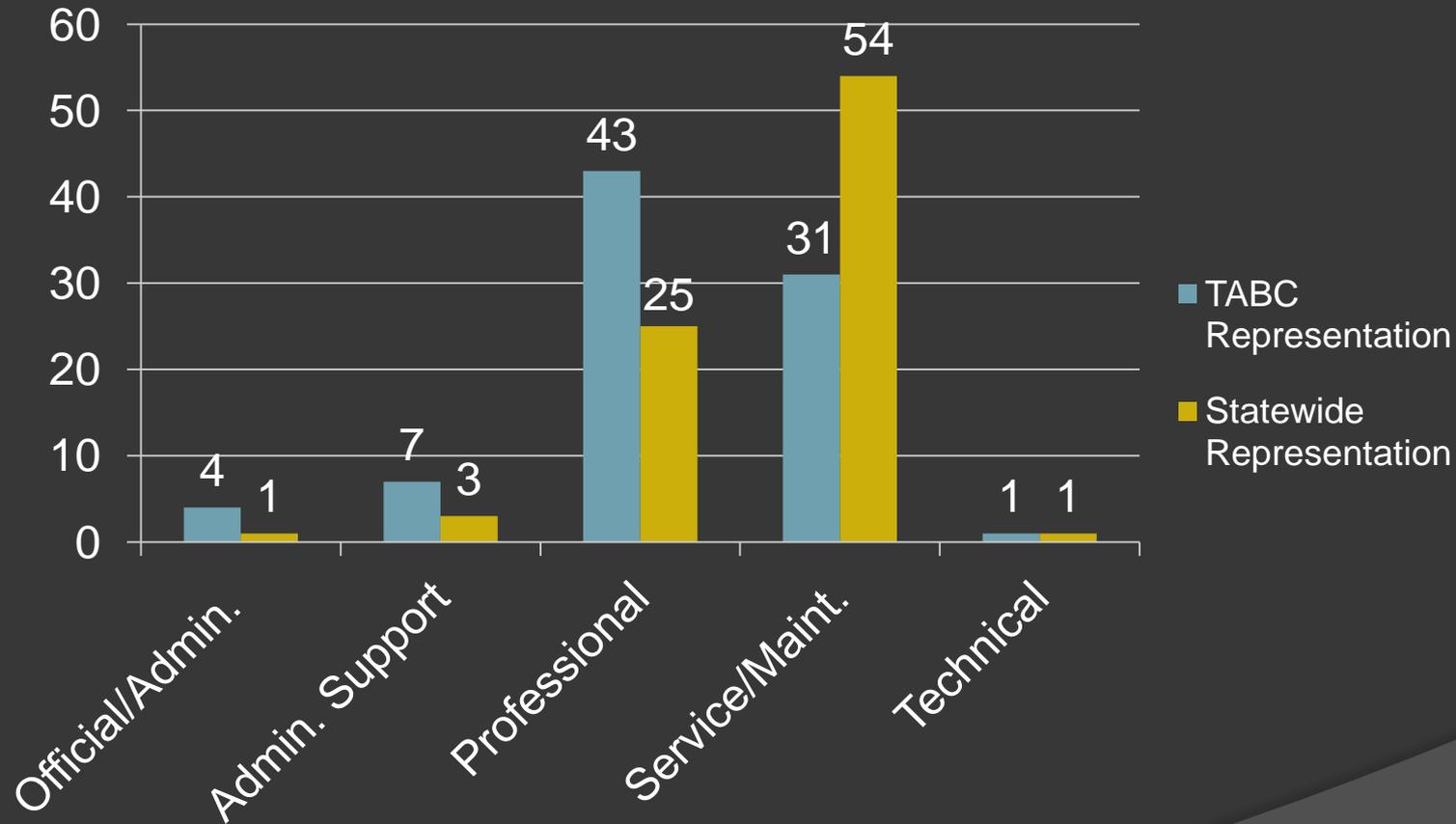
Statewide Workforce Comparison -- Females



Statewide Workforce Comparison - Hispanic



Statewide Workforce Comparison – African Americans



Attachment 4

**Office of Professional Responsibility and Training
Briefing**

OFFICE OF PROFESSIONAL RESPONSIBILITY



TRENDS

Presented by: Captain Andy Pena

PERSONNEL COMPLAINTS

FY2009

66

FY2010

40

FY2011

31

FY2012

14

FY2013-Q1

4

FY2013-Q1

1

PERSONNEL COMPLAINTS



FY2009 FY2010 FY2011

Investigations

66

40

31

Allegations

125

97

76

Sustained

44

33

46

PERSONNEL COMPLAINTS



	FY2009	FY2010	FY2011
--	--------	--------	--------

Investigations	66	40	31
Allegations	125	97	76
Sustained	44	33	46



TRENDS

	Enforcement	Enforcement	Enforcement
--	-------------	-------------	-------------

Investigations	53	25	21
Allegations	108	76	42
Sustained	36	27	20

PERSONNEL COMPLAINTS



FY2012 FY2013-Q1 FY2013-Q2

Investigations	14	4	1
Allegations	28	7	2
Sustained	10	4	2



TRENDS

Enforcement Enforcement Enforcement

Investigations	9	4	1
Allegations	25	7	2
Sustained	7	4	2

of public contacts



+

of co-worker contacts



= HIGH #

of complaints per # of contacts = LOW

USE OF FORCE INCIDENTS

FY2009

55

FY2010

45

FY2011

20

FY2012

13

FY2013-Q1

4

FY2013-Q1

4

of reported public contacts = HIGH

of UOF incidents per contacts = LOW

BIG

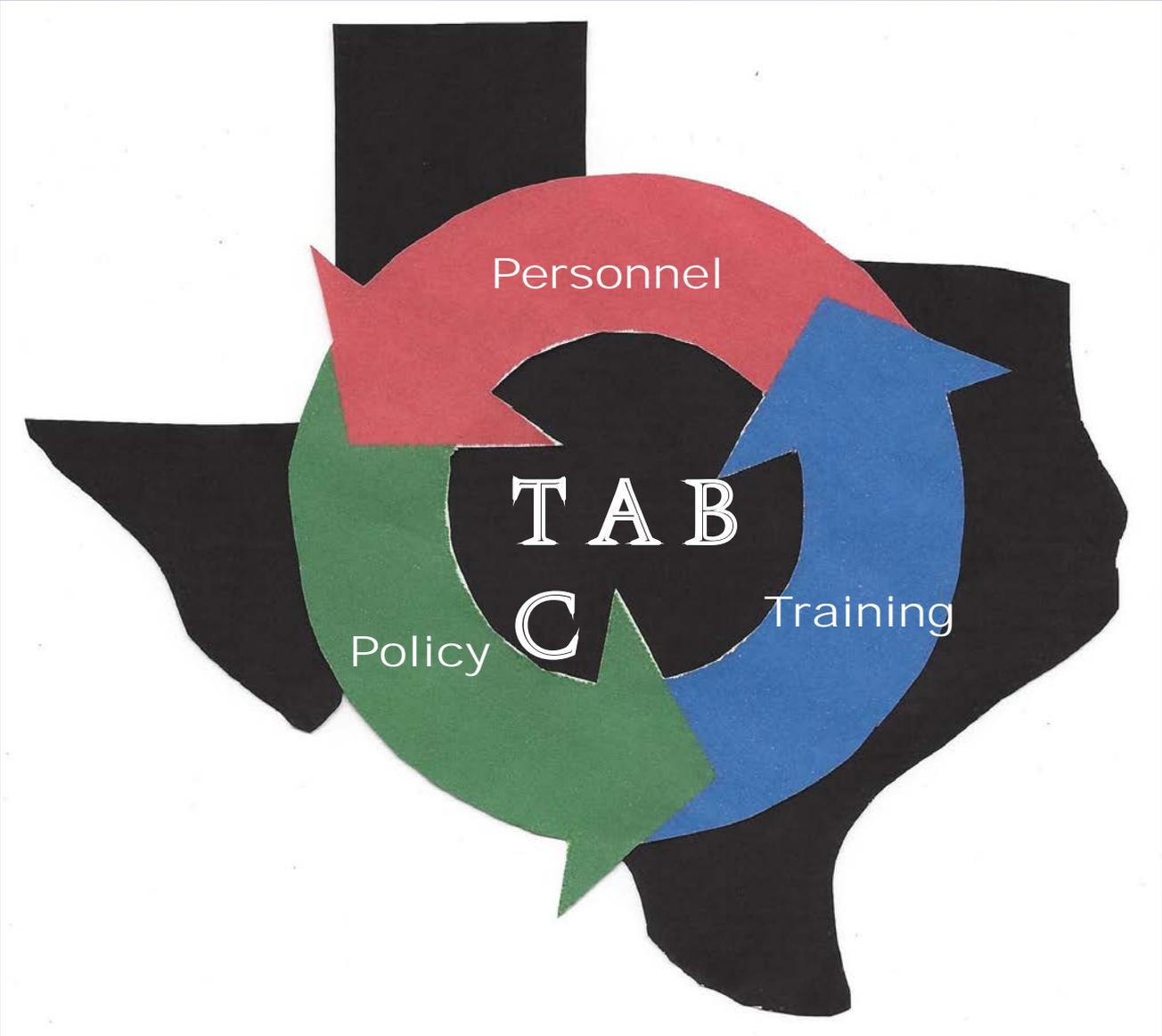
B = Set the bar

I = Identify deficiencies

G = Produce and promote
growth/movement



CYCLE OF PROGRESS





Personnel (CPO's)

- Hiring practices changed
- Creation of Background Investigation Team
 - Command structure with 7 members
 - Training (expectations and procedures)
 - In person interviews
 - New forms
 - Standardized, accurate and fair product
- Investigative Function
- Supervisor Promotions
 - Accountability
 - Professionalism



Policy

- Policy Review Team was formed
 - Command structure with 5 members
 - Meet regularly, agenda and procedures
 - Review and evaluate all agency policies
 - Produce policy that is clear, up-to-date and has a purpose



Training

- Training hours increased in needed areas
- Agency programs of In-Service, New Agent Academy and Specialized Classes are currently under review for upgrades and direction
- Organizational Changes
- Educated agency---top to bottom

FUTURE



TRENDS

BIG

+

CYCLE OF PROGRESS

=

FORCE/COMPLAINTS



Questions

Attachment 5

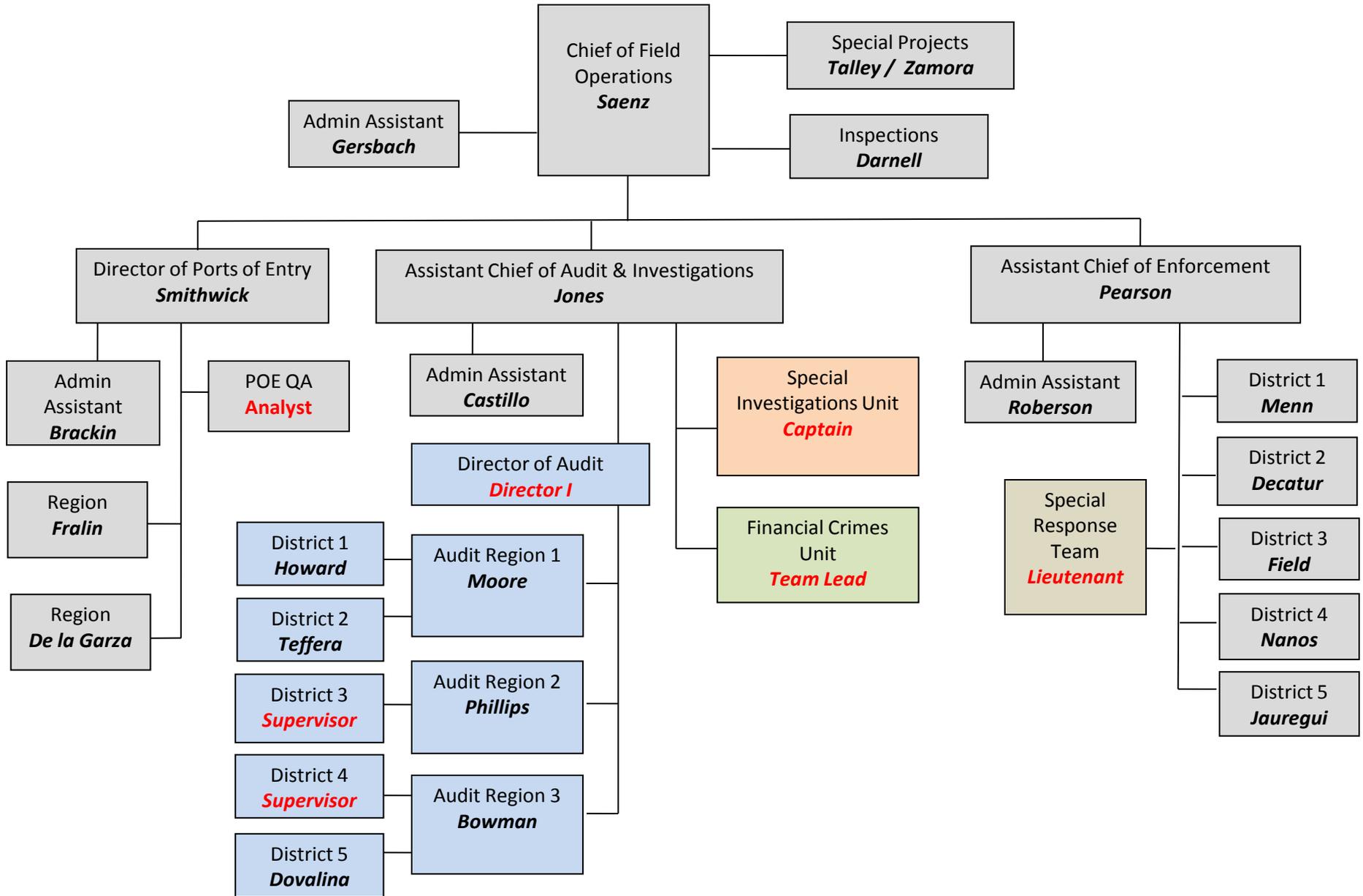
Field Operations Organizational Changes



Field Operations Organizational Changes

Ed Swedberg
Assistant Administrator
4/23/13

New Field Operations Organization



New and Reorganized Units

Auditing Unit

- Eliminated Compliance designator
- Created new position of Director of Audit located at Headquarters (from ENF)
- Provides Audit Director-level HQ representation
- Changed field leadership from 5 Regional Supervisors and 4 Assistant Regional Supervisors to 3 Regional Supervisors and 5 District Supervisors
- Core missions: Audits, inspections, education and training, licensing support, marketing practices, compliance investigations.

Financial Crimes Unit

- Created new position of FCU Team Leader (from COMP)
- Reallocated 2 existing FTEs to FCU to form initial certified fraud examiner cadre (from COMP)
- Core mission: Investigations of financial-related crimes committed by licensed entities, including money laundering, prohibited tier relationships, tax fraud, and business and corporate fraud. Operates as part of joint task force.

Special Investigations Unit

- Created new positions of SIU Supervisor/Capt and SIU Operations Team Leader/Sgt (from ENF)
- Moved one existing investigator supporting JTTF to SIU (from ENF)
- Reallocated 7 existing FTEs to SIU to form initial investigator cadre of Agent II through Agent V equivalents (from ENF)
- Core mission: Long-term investigations of at-risk licensed locations engaged in narcotics, human trafficking, theft, fraud, and other organized criminal activities. Operates as part of joint task force.

Special Response Team

- Created new position of SRT Team Leader/Lt (from ENF)
- Given responsibility to organize, train, and equip SRT members for defined missions
- Will deploy as on-scene-commander to lead SRT members in support of local/state officials during a declared emergency
- Will have ancillary responsibilities as Field Ops training and policy coordinator
- Core missions: Search and recovery, traffic control, perimeter and shelter security, evacuation support, logistics support, personal security.



Mission Demarcation within Field Ops

Mission Area	ENF	AUD	SIU	FCU	SRT
Undercover Operations (Public Safety)	P				
Source and Public Safety Investigations	P				
Undercover Operations (Organized Crime)	S		P		
Long-term Criminal & Admin Investigations	S		P	S	
Minor Stings	P				
Open Inspections (High Risk)	P				
Open Inspections (Unique)	S	P			
Pre-Licensing Assessments	P	S			
Risk Assessments	P	S			
Education (Public & Licensees)	S	P			
Marketing Practices Audits & Investigations		P			
Audits (Tax, Depletion, Food, PC, LP, etc)		P		S	
Financial Crimes Investigations		S	S	P	
Tier Violation Investigations		S	S	P	
Disaster and Crisis Support	S				P
Training Coordination	S				P



Way Ahead

- Staffing
 - Audit Field Supervisor Changes Implemented
 - New Leadership Position Postings In-Process
 - AUD Director I, SIU Captain, SRT Lieutenant, FCU Team Lead
 - Remaining Positions Awaiting New Leadership Fills
- Pilot Program for SIU / FCU
 - Develop Policies / Procedures / Training
 - Develop LAR for FY16/17
- Program Plan for SRT

Attachment 6

Approval of the Internal Audits for:

Business Services Division, Fixed Assets

Business Services Division, Cash Disbursements

Ports of Entry Division

INTERNAL AUDIT OF FIXED ASSETS MANAGEMENT

AS OF JANUARY 31, 2013

AT THE

TEXAS ALCOHOLIC BEVERAGE COMMISSION

MONDAY N. RUFUS, P.C.
Certified Public Accountants & Consultants
Member: American Institute of Certified Public Accountants

Commission Members
Texas Alcoholic Beverage Commission
Austin, Texas

We have evaluated the controls implemented by the Texas Alcoholic Beverage Commission (Commission) regarding Fixed Assets Management as of January 31, 2013. The results of our evaluation disclosed that the Commission has procedures and controls in place for the fixed asset processes. We noted some opportunities for enhancing the controls in place. The report that accompanies this letter summarizes our comments and recommendations.

We have already discussed this report with various Commission personnel, and we will be pleased to discuss it in further detail at your convenience.

Monday N. Rufus, P.C.

January 31, 2013
Austin, Texas

Objectives, Observations, Recommendations, and Management's Response

The primary objectives of the internal audit were:

1. Reliability and Integrity of Information
2. Compliance with Policies, Procedures, Laws, and Regulations
3. Efficiency and Effectiveness of Operating Procedures
4. Safeguarding of Assets

Summary of Internal Audit Results

- The Commission has written policies and procedures to receive, tag, track, and dispose of property.
- There are also written policies and procedures to address stolen and missing property.
- Each fiscal year the Commission takes an annual physical inventory for property listed as “Capitalized” and “Controlled” as per the Texas Comptroller of Public Accounts State Property Accounting (SPA) Process User’s Guide – FF N. 005. This property is certified by the Commission and reported to the Texas Comptroller of Public Accounts in accordance with Government Code Subchapter L. Property Accounting.
- Required year- end property certification and fiscal balance forms are being timely submitted to the Texas Comptroller of Public Accounts (SPA) for as required.

Finding

During our audit engagement we noticed forty-five (45) fixed asset items with a cost value of \$65,797.42 that had been traded in or disposed at the beginning of fiscal year 2009 were still included in the Commission's MOBILE Inventory as of November 14, 2012. One of the fixed asset items described as a *Telephone – Other Equipment-Cell-/Portable* listed on the inventory at \$9,788.92 had also been included in the CERTIFIED Inventory reported to the State Comptroller for fiscal year 2012.

INTERNAL AUDIT OF THE
CASH DISBURSEMENT PROCESSES

AS OF MARCH 15, 2013

AT THE

TEXAS ALCOHOLIC BEVERAGE COMMISSION

MONDAY N. RUFUS, P.C.
Certified Public Accountants & Consultants
Member: American Institute of Certified Public Accountants

Commission Members
Texas Alcoholic Beverage Commission
Austin, Texas

We have conducted an internal audit of the Texas Alcoholic Beverage Commission (Commission) Cash Disbursement processes as of March 15, 2013. Our objectives were to determine the reliability and integrity of information, compliance with policies, procedures, laws, and regulations, efficiency and effectiveness of operating procedures, and safeguarding of assets. The results of our internal audit disclosed that the Commission has implemented good controls over the cash disbursements processes. The report that accompanies this letter summarizes our comments.

We have already discussed this report with various Commission personnel, and we will be pleased to discuss it in further detail at your convenience, or to perform any additional study of this matter.

Monday N. Rufus, P.C.

March 15, 2013
Austin, Texas

Objectives, Observations, Recommendations, and Management's Response

The primary objectives of the internal audit were:

1. Reliability and Integrity of Information
2. Compliance with Policies, Procedures, Laws, and Regulations
3. Efficiency and Effectiveness of Operating Procedures
4. Safeguarding of Assets

Internal Audit Results

- The Commission has cash disbursements processes in place to provide reasonable assurance that the Commission is in adherence and compliance with the State's cash disbursements requirements.
- Clear policies and procedures have been established and implemented for the processing of cash disbursements.
- Some of these procedures include: appropriate approval of all purchases, review and approval of all invoices, review and signature of all purchase vouchers and cash disbursements.

There were no deficiencies in the process detected that are significant to the objectives of this engagement. Any insignificant issues noted have been communicated to the management of the Board as required by *Government Auditing Standards*.

INTERNAL AUDIT OF THE
TAX ADMINISTRATION – PORTS OF ENTRY

AS OF MARCH 07, 2013

AT THE

TEXAS ALCOHOLIC BEVERAGE COMMISSION

MONDAY N. RUFUS, P.C.
Certified Public Accountants & Consultants
Member: American Institute of Certified Public Accountants

Commission Members
Texas Alcoholic Beverage Commission
Austin, Texas

We have evaluated the controls implemented by the Texas Alcoholic Beverage Commission (Commission) regarding the Tax Administration – Ports of Entry as of March 07, 2013. The results of our evaluation disclosed that the Commission has procedures and controls in place for the collection of taxes. We noted some opportunities for enhancing the controls in place. The report that accompanies this letter summarizes our comments and recommendations.

We have already discussed this report with various Commission personnel, and we will be pleased to discuss it in further detail at your convenience.

Monday N. Rufus, P.C.

March 07, 2013
Austin, Texas

Objectives, Observations, Recommendations, and Management's Response

The primary objectives of the internal audit were:

1. Reliability and Integrity of Information
2. Compliance with Policies, Procedures, Laws, and Regulations
3. Efficiency and Effectiveness of Operating Procedures
4. Safeguarding of Assets

Summary of Internal Audit Results

- The Commission has policies and procedures to monitor compliance with the personal importation laws of the State of Texas along the Texas-Mexico border and to verify that persons importing alcoholic beverages and cigarettes meet all legal requirements of importing and collecting the appropriate fees and taxes.
- Procedures and controls are in place to ensure that daily taxes collected for alcoholic beverages and cigarettes involve several ports of entry personnel in the collection, securing, and depositing of cash into the local bank.
- Although required by the Commission's policies and procedures, based on inquiries and review of quality assurance audits, we noted Taxpayer Compliance Officer (TCO) cash box audits were not being consistently conducted during the weekends at the Laredo ports of entry.

Summary of Internal Audit Results (cont'd)

- The Ports of Entry confiscated property procedures call for confiscated items to be submitted to the Port Supervisor and to follow the established destruction schedule.
- However, we did not notice any established destruction schedule.
- Although there appears to be noncompliance with these policies, the Commission should re-evaluate each of its cash audit policies to ensure that their intended benefits are being realized.

Matters For Future Consideration

During the months of December and January holiday season, traffic is heavy and constantly crossing the ports of entry at all hours due to all the festivities during that period. Management should research the possibility of extending the Laredo ports of entry hours opened for a certain period(s) of time during the months of January and December. Potential results include:

More effective compliance with the Texas Alcoholic Beverage Code and Cigarette Tax Code

Mitigation of potential loss of revenue over a short period of time with temporary costs paid with additional revenue collected.

We also recommend that the Commission management conduct a pilot study by evaluating the hours of operation at other ports of entry.

Report Distribution

As required by Gov't Code 2102.0091, copies of these reports should be filed with the following:

Governor's Office of Budget and Planning

Attn: Mike Meyers
P.O. Box 12428
Austin, Texas 78711
Phone: (512) 463-1778

Legislative Budget Board

Attn: Ed Osner
P.O. Box 12666
Austin, Texas 78711
Phone: (512) 463-1200

State Auditor's Office

Attn: Internal Audit Coordinator
P.O. Box 12067
Austin, Texas 78711
Phone: (512) 936-9500

Sunset Advisory Commission

Attn: Ken Levine
P.O. Box 13066
Austin, Texas 78711
Phone: (512) 463-1300

Texas Alcoholic Beverage Commission

Jose Cuevas, Jr., Presiding Officer
Steven M. Weinberg, MD, JD
Melinda S. Fredricks

**Texas Alcoholic Beverage Commission
Management**

Sherry Cook, Administrator

Attachment 7

Rule Review Plan Briefing

Texas Alcoholic Beverage Commission Government Code §2001.039 Rule Review Plan

CHAPTERS	REVIEW DATE
Chapter 31. Administration	Adopted, Proposed & Under Review - Emily Helm, Amy Harrison, Dexter Jones
Chapter 32. Subchapter A. Grants General Provisions	Repealed
Chapter 32. Subchapter B. Grant Budget	Repealed
Chapter 32. Subchapter C. Grant Funding	Repealed
Chapter 32. Subchapter D. Grant Administration	Repealed
Chapter 32. Subchapter E. Grant Monitoring and Audits	Repealed
Chapter 33. Licensing	Adopted & Under Review - Amy Harrison
Chapter 34. Schedule of Sanctions and Penalties	Adopted & Under Review – Robert Saenz, Earl Pearson, Dexter Jones, Steve Greinert, Thomas Graham, Mindy Carroll, Judith Kennison
Chapter 35. Enforcement	Adopted & Under Review - Dexter Jones, Steve Greinert, Amy Harrison, Todd Talley, Judith Kennison
Chapter 36. Gun Regulation	Under Review - Emily Helm, Robert Saenz, Dexter Jones, Earl Pearson
Chapter 37. Legal	Under Review - Judith Kennison;
Chapter 39. Ports of Entry	Under Review - Karen Smithwick
Chapter 41. Auditing	Under Review - Steve Greinert, Amy Harrison, Dexter Jones
Chapter 45. Subchapter A. Standards of Identity Registration and Advertising of Distilled Spirits	Repealed & Adopted
Chapter 45. Subchapter B. Standards of Identity Registration and Advertising of Wine	Repealed & Adopted
Chapter 45. Subchapter C. Standards of Identity Malt Beverages	Adopted & Under Review - Steve Greinert, Thomas Graham
Chapter 45. Subchapter D. Advertising and Promotion All Beverages	Adopted & Under Review – Steve Greinert, Thomas Graham, , Robert Saenz, Dexter Jones, Earl Pearson
Chapter 50. Alcoholic Beverage Seller Server Training	Adopted

For further information, please contact Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, P. O. Box 13127, Austin, Texas 78711 or call (512) 206-3489 or email to martin.wilson@tabc.state.tx.us.

Attachment 8

**Proposed Amendment to Rule §31.5,
Alcoholic Beverage Commission Charge Schedule**

April 23, 2013 AGENDA, ITEM 14:

PREAMBLE FOR PROPOSED AMENDMENT OF §31.5, Alcoholic Beverage Commission Charge Schedule

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §31.5, relating to Alcoholic Beverage Commission Charge Schedule, to re-title it to more accurately reflect its content, to change a reference to the state agency responsible for promulgating rules related to charges for public information requests, to eliminate unnecessary text that merely restates requirements already found elsewhere in Texas law or that is more appropriately addressed as a matter of internal policy, and to clarify the relationship between the officer for public information and the open records coordinator.

Texas Government Code §552.262 provides that the Attorney General shall adopt rules for use by each governmental body in determining charges for providing public information. The Attorney General's rules are found at 1 Texas Administrative Code §§70.1 – 70.12. Under Texas Government Code §552.201, the chief administrative officer of a governmental body is the officer for public information for purposes of the Public Information Act. The commission must abide by these provisions of the Government Code and therefore it is not necessary to replicate their requirements in the commission's rules.

Section 31.5 was reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The commission has determined that the need for the rule continues to exist but that it should be amended.

Emily E. Helm, General Counsel, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no fiscal impact on state or local government.

The proposed amendment will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Ms. Helm has determined that for each year of the first five years that the proposed amendment will be in effect, the public will benefit because the agency's rules will accurately reflect administration of the agency's responses to public information requests.

Comments on the proposed amendment may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127,

Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the Texas Register.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendment if a request for such a hearing is made by May 17, 2013. Requests for a hearing may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. They may also be submitted by e-mail to martin.wilson@tabc.state.tx.us. Notice of the hearing, if one is requested, will be provided to the requestor and on the commission's website at <http://www.tabc.state.tx.us/>. The hearing, if one is requested, will be held no earlier than June 3, 2013 at the commission's headquarters at 5806 Mesa Drive in Austin, Texas.

Martin Wilson, Assistant General Counsel of the Texas Alcoholic Beverage Commission, certifies that the proposed amendment has been reviewed by legal counsel and found to be within the agency's authority to adopt.

The proposed amendment is authorized by Alcoholic Beverage Code §5.12, which provides that the commission shall specify the duties and powers of the administrator by printed rules and regulations entered in its minutes, by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and by Government Code §2001.039, which requires the agency to periodically review its rules to determine whether the need for them continues to exist.

The proposed amendment affects Alcoholic Beverage Code §§5.12 and 5.31, and Government Code §§552.201, 552.262 and 2001.039.

§31.5 Public Information Act Requests ~~Alcoholic Beverage Commission Charge Schedule.~~

(a) Charges made for providing copies of public information by the Texas Alcoholic Beverage Commission shall be assessed in accordance with the schedule of charges maintained by the ~~Office of the Attorney General Texas General Services Commission~~ and found at 1 TAC §§~~70.1 – 70.12 411.63–411.70~~.

(b) ~~All agency charges for the production of public records will be itemized and billed utilizing an agency standardized billing statement. The statement shall reflect the following information:~~

~~—— (1) —— date of billing;~~

- ~~_____ (2) _____ description of information requested;~~
 - ~~_____ (3) _____ name of agency, company, corporation, individual, or entity requesting the information;~~
 - ~~_____ (4) _____ address of requestor to include street, P.O. Box, city and zip code;~~
 - ~~_____ (5) _____ telephone number of requestor;~~
 - ~~_____ (6) _____ method of payment, i.e. cash, check, etc;~~
 - ~~_____ (7) _____ itemization of charges to include the delivery medium cost, personnel charges, overhead charges, computer resource charges, programming time, postage/shipping charges, fax charges, and other miscellaneous charges; and~~
 - ~~_____ (8) _____ total charges to requestor.~~
- ~~-(e) The General Counsel ~~counsel for the agency or the General Counsel's designee~~ shall be the agency's open records coordinator. The open records coordinator is subject to the direction of the Administrator, who is the officer for public information of the agency pursuant to Texas Government Code §552.201.~~

CERTIFICATION

REGULAR COMMISSION MEETING

10:00 a.m. – April 23, 2013

5806 Mesa Drive
Austin, Texas 78731



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

service ★ courtesy ★ integrity ★ accountability

STATE OF TEXAS

COUNTY OF TRAVIS

This certifies that the attached is a true copy of the proceedings of the Texas Alcoholic Beverage Commission meeting held on April 23, 2013.

A handwritten signature in cursive script that reads "Sherry K. Cook".

Sherry Cook
Administrator

Sworn and subscribed before me this the 30th day of May 2013.

A handwritten signature in cursive script that reads "Gloria Darden Reed".

Gloria Darden Reed
Notary in and for Travis County



