



**TABC**

TEXAS ALCOHOLIC BEVERAGE COMMISSION

*service ★ courtesy ★ integrity ★ accountability*

# COMMISSION MEETING

*May 24, 2011*

Texas Alcoholic Beverage Commission  
5806 Mesa Drive  
Austin, Texas 78731

*José Cuevas, Jr., Presiding Officer  
Midland*

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

*Melinda Fredricks, Member  
Conroe*

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# **AGENDA**

## **REGULAR COMMISSION MEETING**

**9:30 a.m. – May 24, 2011**

**5806 Mesa Drive  
Austin, TX 78731**



# TABC

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José Cuevas, Jr.  
Presiding Officer-Midland

Steven M. Weinberg, MD, JD  
Member-Colleyville

Melinda S. Fredricks  
Member-Conroe

Alan Steen  
Administrator

**Tuesday, May 24, 2011 – 9:30 a.m.**

**Agenda**

1.	Call to Order	José Cuevas, Jr.
2.	Approval of Commission Meeting Minutes of April 26, 2011	José Cuevas, Jr.
3.	Administrator's Report: Administrator and Agency Activities, Budget Issues, Staff Achievements	Alan Steen
4.	82 <sup>nd</sup> Legislative Session Briefing	Carolyn Beck
5.	Internal Audit of the Human Resources Systems and Controls	Russell Gregorczyk
6.	IT Initiatives Briefing	Jay Webster
7.	Approval to Publish Proposed Amendment to Rule §33.1, Final Conviction or Deferred Adjudication	Martin Wilson
8.	Approval to Publish Proposed New Rule §35.32, Reporting a Breach of the Peace	Martin Wilson
9.	Approval To Publish Proposed Amendment to Rule §33.23, Alcoholic Beverage License and Permit Surcharges	Martin Wilson
10.	Approval to Publish Proposed Repeal of Chapter 32, Grant Administration	Martin Wilson
11.	Approval to Publish Proposed Amendment to Rule §45.117, Gifts and Advertising Specialties	Martin Wilson
12.	Approval to Publish Proposed Amendment to Rule §33.25, Alcoholic Beverage License and Permit Fees and Surcharges	Martin Wilson
13.	Discussion of Rule Activity	Martin Wilson
14.	Public Comment	José Cuevas, Jr.

15.	<b>Executive Session 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)</b>	<b>José Cuevas, Jr.</b>
16.	<b>Next Meeting Dates: Tuesday, July 26, 2011 Tuesday, August 23, 2011</b>	<b>José Cuevas, Jr.</b>
17.	<b>Adjourn</b>	<b>José Cuevas, Jr.</b>

*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 Luann Dickerson at (512) 206-3217 (voice) (512) 206-3203 (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**

**9:30 a.m. – May 24, 2011**

**5806 Mesa Drive  
Austin, TX 78731**



# TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

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## **COMMISSION MEETING MINUTES**

**May 24, 2011**

The Commissioners of the Texas Alcoholic Beverage Commission (TABC) met in Regular Session on Tuesday, May 24, 2011, at the Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Suite 185, Austin, Texas.

### ***PRESIDING***

#### ***OFFICER:***

José Cuevas, Jr.

#### ***COMMISSIONERS***

#### ***PRESENT:***

Melinda Fredricks

Steven M. Weinberg, MD, JD

### ***STAFF PRESENT:***

Alan Steen, Administrator

Carolyn Beck, Director of Communications and  
Governmental Relations

David Brandon, Enterprise Development Manager,  
Information Resources Division

Mindy Carroll, Assistant Director, Education and Prevention  
Education

Sherry Cook, Assistant Administrator, Executive Division  
David Clowe, Network Operations Manager, Information  
Resources Division

Darryl Darnell, Inspector, Office of Chief of Staff  
Luann Dickerson, Executive Assistant, Executive Division  
Joey Estrada, Grants Coordinator, Education and  
Prevention

Shelby Eskew, Director, Business Services Division

Kathy Gersbach, Executive Assistant, Executive Division

Bobby Gideon, Captain of Training Division

Thomas Graham, Supervisor, Marketing Practices

Amy Harrison, Director, Licensing Division

Emily Helm, General Counsel, Legal Division

Sammy Henson, Training Specialist, Training Division

Tanya Jimenez, Administrative Assistant, Executive Division

Dexter K. Jones, Assistant Chief of Field Operations

Charlie Kerr, Director, Tax Division/Education  
and Prevention  
Roland Luna, Lieutenant, Office of Professional  
Responsibility  
Richard Maness, System Support Specialist, Information  
Resources Division  
Earl Pearson, Chief of Staff, Executive Division  
Andy Pena, Director, Office of Professional Responsibility  
Gloria Darden Reed, Executive Assistant, Executive Division  
Albert Rodriguez, Lieutenant, Office of Professional  
Responsibility  
Santos Saldana, Supervisor, Ports of Entry  
Teresa Shed, Program Specialist, Licensing Division  
Jay Webster, Director, Information Resources Division  
Martin Wilson, Assistant General Counsel, Legal Division

**GUESTS  
PRESENT:**

Jeanie Beckham, Republic National Distributing Company  
Dewey Brackin, Attorney, Gardere Wynne Sewell,  
Texas Retailer's Association  
Lou Bright, General Counsel, Texas Wine and Grape  
Growers Association (TWGGA)  
Doug DuBois, Director of Government Affairs, Texas  
Petroleum Marketers and Convenience Store  
Association (TPCA)  
James "Beau" Eccles, Assistant Attorney General, Office of  
the Texas Attorney General  
Glen Garey, General Counsel, Texas Restaurant  
Association  
Russell Gregorczyk, Internal Auditor, Jansen & Gregorczyk  
Certified Public Accountants  
Lane Lively, Executive Director, Texas Package Stores  
Association  
Fred Marosko, Contractor, Texas Package Stores  
Association  
Tyler Rudd, Lobbyist, California Wine Institute  
Ralph Townes, Senior Vice President, Licensed Beverage  
Distributors/Glazers  
Kelle Case Wilson, Assistant, Hill Company Partners  
Randy Yarbrough, Consultant, Wholesale Beer Distributors  
of Texas

## **CALL TO ORDER**

The meeting of the Texas Alcoholic Beverage Commission was called to order at 9:35 a.m. by Presiding Officer José Cuevas. Presiding Officer Cuevas announced that Commissioner Melinda Fredricks' absence was due to the late arrival of her plane.

## **APPROVAL OF COMMISSION MEETING MINUTES OF APRIL 26, 2011**

**Presiding Officer José Cuevas called for approval of the Commission meeting minutes of April 26, 2011. Commissioner Steven Weinberg so moved to approve the minutes as written, and Presiding Officer Cuevas seconded. The motion carried.**

## **82<sup>nd</sup> LEGISLATIVE SESSION BRIEFING**

Presiding Officer Cuevas called upon Director Carolyn Beck to present the agenda item entitled, 82<sup>nd</sup> Legislative Session Briefing.

Director Beck's report began with a briefing of the alcoholic related bills signed by Governor Perry:

- SB 351 – Legalizes wine kegs
- SB 7890 – Allows wholesalers to clean and maintain coil connections for wine kegs
- SB 24 – Penalties for human traffickers and protections for victims
- SB 423 – Survivors of public servant killed in line of duty who was eligible but not enrolled is eligible for coverage
- SB 1303 – Clean-up bill
- HB 11 – Reports to Comptroller
- HB 1401 – Local option elections if petition precedes annexation
- HB 1936 – Ports of Entry: equalization, \$3 administrative fee, importing personal collections of beer and spirits

Commissioner Weinberg inquired about an estimation of revenues that would be collected at the border with the increase of the administrative fee from \$.50 to \$3.00. Administrator Steen stated an increase of \$1.4 million per year (\$2.8 per biennium).

- HB 1952 – TABC can cancel, suspend or fine seller training schools, trainers, trainees
- HB 1953 – Post sign 60 days before permit issued, not 60 days before application is filed
- HB 1956 – 20 days for district court judge to hear and decide on appeal
- HB 2012 – Wineries abide by credit law when buying from wholesaler
- HB 2014 – Human trafficking changes in AB Code
- HB 2033 – Mixed beverage tax on receipts

- HB 2035 – Allows wholesaler and distributor to temporarily relocate during emergencies
- HB 3000 – First degree felony for continuous human trafficking
- SB 331 – Bans synthetic marijuana, also known as K2, Spice, Genie, and Fire & Ice

Director Beck reported on House and Senate bills that have passed both legislative bodies and bills that have passed in the first house and are in committee in the second house.

Presiding Officer Cuevas quizzed Director Beck on HB2707. Director Beck stated that the bill relates to the holding of an interest in certain alcoholic beverage licenses, permits, or premises by certain persons whose alcoholic beverage license or permit has been revoked. He asked how long TABC could refuse to issue a permit or license. Director Beck answered three years.

Director Beck spoke on two bills, SB411 and SB923 that dealt with wineries. Commissioner Weinberg inquired on the number of wineries in the State of Texas. Director Beck responded that there are over 200 wineries in the state.

Director Beck stated that due to the support of the Human Trafficking Prevention Task Force from the Attorney General's Office, a significant number of bills were introduced during the 81<sup>st</sup> and 82<sup>nd</sup> legislative sessions. Bills introduced are: **HB289**, amending a common nuisance statute to include human trafficking; **HB1930**, relating to the membership and duties of the Human Trafficking Prevention Task Force to study the association of the Sexual Oriented Businesses (SOBs) and human trafficking; **HB1994**, prostitution prevention program; and **HB2329**, protects trafficking victims.

Presiding Officer Cuevas asked if the human trafficking problems were greater internationally or is it a problem widespread in America. Director Beck responded that the human trafficking problem is a constant problem both internationally and in America, but could not respond to which was greater. Director Beck stated that persons who are juvenile runaways or homeless people with low self-esteem seem to fall victim to human trafficking.

Presiding Officer Cuevas asked about the measures being taken by TABC to defuse the human trafficking problem in licensed premises. Administrator Steen stated that TABC has formed a partnership with other state agencies to share information that is beneficial in deterring the problem of human trafficking. Furthermore, he also stated that the Agency is a participant on the panel of statewide task forces in every major city. Administrator Steen commented that the Agency has used various resources available to identify the human trafficking problem locations in order to file administrative and criminal actions against the violators.

Director Beck briefed the Commissioners on legislative bills that were introduced and passed the first house but was left pending in committee: **HB175**, relating to the on-premises consumption of certain alcoholic beverages (BYOB permits); **HB882**, relating to the creation of an offense prohibiting certain transactions involving malt liquor containing certain stimulants (caffeinated malt beverages); **HB1563**, relating to the period of time between certain local option elections to legalize or prohibit the sale of alcoholic beverages.

### **Important Dates - 82nd Legislative Session Update**

November 8, 2010	Pre-filing of bills
January 11, 2011	82 <sup>nd</sup> Legislature Convene
March 11, 2011	Last day to file regular bills
May 30, 2011	Sine Die
June 19, 2011	Last Day Governor can sign or veto bills
August 29, 2011	Date that bills without specific effective dates become law

Director Beck's report is supported by a PowerPoint presentation.  
(Attachment 1)

### **IT INITIATIVES BRIEFING**

Presiding Officer Cuevas asked for Jay Webster, Director of Information Resources Division to present the next agenda item entitled "IT Initiatives Briefing."

Director Webster's report highlighted his division's successful initiatives completed in the fiscal year of 2010-11:

- The deployment of the new online Cash Credit Law System

Presiding Officer Cuevas inquired where the Agency was in the new automation of Cash Credit Law and the effect it will have by reducing the number of days available to pay. Administrator Steen responded that the process would be reduced by two days.

- The implementation of enhancements to the public inquiry for intranet

Director Webster stated that since 2006 his staff has maintained and constantly improved TABC's public inquiry. With suggestive input from TABC personnel, industry and the public, the public inquiry has evolved into a convenient user friendly system. He spoke on the satisfaction enabling its users to check the status of pending, active or inactive permits, view complaints lodged against permit holders and related violations and locate retailers on the agency's credit law delinquent list.

Presiding Officer Cuevas asked what happens when someone appears on an active suspension list chooses to illegally purchase an alcoholic product. Administrator Steen stated that if the violator is caught, a \$3,600 fine is levied against the violator and a fine is charged to the person who sold the product.

- The completion of IT security upgrades

Director Webster spoke briefly on some of the IT upgrades to the security measures that included the encrypted data leakage protection that would eliminate the removal of confidential information when a thumb drive or similar device is plugged into an agency-owned desk/laptop.

Commissioner Weinberg commented that in the Administrator's monthly report, can he assume that all of the spasms/viruses/popups are blocked due to the Agency's efficient security system. Director Webster answered "affirmatively." He stated the number is close to "zero" in compromising the system.

- A work in progress with Neubus on Label Approval Certificate in public inquiry

Director Webster stated that in working with the Neubus vendor, the Agency will be able to feature about 70,000 label approval certificate applications with graphical images. He stated the process will be tested during the month of June for an anticipated deployment to the public inquiry website in July 2011. The goal in this process is the capability of the public inquiry user to search by brand, size, volume, and to view the application for a license.

Commissioner Weinberg quizzed Director Webster if this process was within the approved budget allowance. Administrator Steen and Director Webster answered affirmatively.

Other initiatives discussed in Director Webster's report included:

- The completion of the PC repurpose effort
- The completion of data transfers for LEAP and GEMS
- The completion and deployment of SharePoint for intranet
- The completion and migration of SQL Server Reporting Services

### **Commissioner Melinda Fredricks arrives for Commission meeting at 10:23 a.m.**

Budget issues were Director Webster's next issue in his report. He stated that during the 81<sup>st</sup> Legislative Session the Excise Tax Automation and Seller Server Training projects were funded and then cancelled by budget cuts. He stated that the Case Management's (ARTS Expansion project) funding was also cancelled by budget cuts; however, grant funding was obtained through the Governor's Office.

Director Webster proudly announced the “Go Live” date of May 31, 2011 for the deployment of the Online Applications. He stated this deployment would include the implementation of online license renewals, original applications, and use of Texas.gov to collect fees, and an upgrade to Versa regulation from LicenseEase.

**Commissioner Weinberg asked Director Webster to provide a demonstration to the Commissioners of the online application process.**

Commissioner Weinberg quizzed Director Webster on testing procedures before deploying the online application process. Director Webster assured the Commissioner that key personnel in various division/departmental offices have been involved in the testing of specific application scenarios to resolve any issues in processing before the deployment.

Director Webster discussed projects that were pending, upgraded, and completed on the Telecommunication initiatives in field operations, ports of entry, and district offices around the state. He stated the service provided through Information Resources’ in-house personnel is vital to the modernization of the Agency’s systems. He commented that the Agency has benefitted significant cost savings with his staff’s capabilities in replacing, changing, and/or upgrading old network circuits to newer circuits and routers.

Presiding Officer Cuevas asked if there is an audit of the operating systems at off-site locations to ensure data security. Director Webster answered affirmatively stating that the off-site locations’ operating systems are in a private network. He stated that there is an agreement with DIR in which they perform a penetration test to hack into the system. A report is generated on how well the system protects the data. Presiding Officer Cuevas inquired who receives the report. Director Webster stated he and Administrator Steen receives the annual report.

In 2007 Director Webster stated the initiation of the first installation of in-car computers. As of the fiscal year of 2011, he stated through Agency and grant funding, marked the completion of the in-car computers and HP mobile printers in all five regions of the state.

Presiding Officer Cuevas quizzed Chief Moreno if any cost savings measures have been realized in the use of the in-car computers. Chief Moreno answered that it has been a convenience and a helpful tool for the agents.

Director Webster’s discussion focused on Data Center Services. He gave the Commissioners a brief background of the beginning of the seven year contract period that began in April 2007. He stated the Agency lost two full-time employees to IBM. As of this date, the annual contract cost is \$600,000, as compared to the cost in 2007, which was \$344,138. He spoke about servers that reside at the Austin Data Center and those that reside in the San Angelo Data Center. Director Webster stated that he has chosen to delay transfer of the server responsible for the Agency’s email

until he is confident that all systems are working properly and that there will not be another email outage. He stated that during the Odessa outage, the data was moved to a remote server and this server along with 18 other servers will be consolidated to the Austin Data Center. This consolidation will allow the user's remote access to data from their remote site to the Austin Data Center.

Commissioner Weinberg inquired where the data's backup is located. Director Webster stated the data is backed up and taken off-site to a vendor named Iron Mountain. Presiding Officer Cuevas asked how often the data is backed up. Director Webster responded that the data is done in a batch daily and transferred to a tape format and archived normally during the evening hours.

Other issues discussed by Director Webster concerning the Data Center Services included:

- Ongoing invoice disputes
- Service Delivery backlog
- Project Support (new servers)
- Server Transformation and Refresh (Legacy Servers)

Commissioner Weinberg asked Director Webster to give a current status report of the DIR and IBM agreement contracts. Director Webster stated the companies are in a complicated procurement process. He stated that the Agency committed Enterprise Development Manager David Brandon and Security Officer Wes Fitzsimmons to serve on Data Center Services (DCS) committees. He does not expect any decisions to be made until possibly late fall.

Director Webster talked about future projects in providing public transaction systems. He is excited and feels confident with the Agency's shifting to online systems that interact directly with the industry and public. Director Webster stated the Agency is working with Texas.gov to offer the convenience of an online payment plan. Projects that the industry and public can use Texas.gov will include:

- Online Licensing Applications
- Public Inquiry
- Seller Server Training
- TABC: Online re-branding
- Label Approval Certificate Inquiry
- Cash Credit Law
- Excise Tax forms

Commissioner Weinberg commented that he is impressed with the presentation and the direction the Information Resources Division is going under the leadership of Director Webster. He concurs with Presiding Officer Cuevas' comments of the Agency's continual progress to move forward through modern installation, upgrades, and cost saving measures. Commissioner Weinberg complimented IRD for the work successfully completed in the licensing and in-car projects that have produced monetary savings and employee work hours. As an added note, Commissioner Weinberg voiced his continued desire for the expansion in the Agency's ability in the

use of video conferencing and envisions cost saving measures through its use. Director Webster stated he will continue to explore the idea of video conferencing.

Director Webster introduced Network Operations Manager David Clowe to the Commissioners. Director Webster stated Mr. Clowe maintains central control over the operations staff to ensure that issues and change requests are addressed in a timely manner. He further stated that under Mr. Clowe's guidance, the operation's team is able to effectively meet their day-to-day workload while taking on new project assignments.

Presiding Officer Cuevas quizzed Mr. Clowe about his credentials. Mr. Clowe responded that he has been with the Agency for four years and stated that he enjoys working at TABC, but prefers to be in the Data Center. Presiding Officer Cuevas thanked him for his work in IRD.

Presiding Officer Cuevas asked Director Webster for more information on the Excise Tax Automation that is shown as funding cancelled due to budget cuts in his report. Director Webster briefly described the operations in Excise Tax toward automation. He stated that reports through Excise Tax are a manual paper process. The manufacturers send in multiple detailed paper sheets each month. He stated the goal of the project was to upgrade from manual paper reporting to electronic invoicing, automated reconciliation, with generation and submission of reports. The paperwork would be reduced through this automation. Director Webster stated that phase I of the electronic processing project had started and then the Agency was notified of the five percent budget cut which eliminated the project.

Administrator Steen stated that the Agency collects about one half a billion dollars each biennium through Excise Tax using the manual paper process. He stated that the budget cuts caused the Agency to prioritize projects and the Excise Tax automation project was selected in order to push forward the licensing online project.

Presiding Officer Cuevas stated that with the money spent and the enormous amount of paper used in the manual paper processing reports to Excise Tax, a joint partnership between the Agency and the private sector could work toward getting the Excise Tax automation project back on track. Administrator Steen stated that the industry has agreed, in the past, to harness some of the cost associated in the automation process and offered a suggestion of contacting the Attorney General's Office for an opinion on how such a partnership could be accomplished. Presiding Officer Cuevas asked would the Agency and industry systems be compatible. In his discussion, Administrator Steen stated there are issues that involve a variety of reporting systems and levels of expertise in the private sector's technology that would need to be converted in order to be compatible with the Agency's system.

Administrator Steen stated the legislature concurs with the automation process, however when it comes to the final budget, the Agency had to return funds back to the LBB.

**Administrator Steen will put together a workgroup consisting of IRD and Industry members to explore the idea of Excise Tax Automation. A pilot project will be developed of automation versus manual paper processing. When the project study has been completed, a report with the results will be presented to the Legislature.**

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

### **INTERNAL AUDIT OF THE HUMAN RESOURCES SYSTEMS AND CONTROLS**

Presiding Officer Cuevas called upon Mr. Russell Gregorczyk, Internal Auditor, Jansen & Gregorczyk Certified Public Accountants for the presentation of the next agenda item. (Attachment 3)

The Audit Committee members held a teleconference call on Monday, May 23, 2011. Commissioner Melinda Fredricks spoke with the group from her residence in Conroe. Audit Committee members. Internal Auditor Russell Gregorczyk and Assistant Administrator Sherry Cook teleconferenced with Commissioner Fredricks in the Executive Conference Room at Austin Headquarters. Also in attendance were Chief of Staff Earl Pearson and Human Resources Director Loretta Doty.

Mr. Gregorczyk briefed the Commission on the primary purposes of the internal audit. He stated the audit of human resources systems and controls were to determine if TABC is complying with federal and state laws regarding human resources issues and has all necessary policies, procedures and practices for effectively managing the agency's human resources.

He discussed the scope of the audit work involved in the review, analysis and/or testing of the following areas:

- Human resources policies and procedures

Mr. Gregorczyk stated that the State Auditor's Office has a publication that summarizes each law passed after each legislative session that affects the human resources area. He commented that the document is compared to the Agency's Human Resources' Policies and Procedures document for data that may be omitted or data that require changes. Through that comparison and review, Mr. Gregorczyk stated that the Agency's Human Resources policies and procedures are in compliance within the scope of the State Auditor's Office law publication.

- Recruitment and selection processes

Mr. Gregorczyk stated that the audit conducts a close examination of the recruitment and application selection process. Upon the testing process of the applications received from the past year, he stated that the documentation is excellent and the

Agency is following the established policies and procedures. He commented that the Agency has a very effective recruitment and selection process that should enable the Agency to hire the best applicant for the job position.

Presiding Officer Cuevas quizzed Mr. Gregorczyk on the number of job applications sampling reviewed for the audit. Mr. Gregorczyk stated 30 or 40 hiring files were selected. Commissioner Fredricks asked Mr. Gregorczyk if applications are randomly selected for the audit. Mr. Gregorczyk answered affirmatively and stated that he presents to HR a random selected list of job position posting files to be reviewed. Administrator Steen clarified Mr. Gregorczyk's reference to a "file" meant that a file for a job position posting could contain from 100 to 300 applicants and in a Commissioned Peace Officer's file posting, there could be as many as 1000 applicants. Mr. Gregorczyk complimented Director Doty and her staff in having a well organized, thorough and documented in the recruitment and selection process section of the audit.

- Classification and compensation systems

Mr. Gregorczyk stated that in the classification and compensation systems, the audit focuses on whether the Agency is complying with the rules that apply to payroll and to job classification. Primarily, he stated that the documents that deal with payroll are good and the internal procedures such as merit are documented. However, in the government code there is a requirement for an annual review to be conducted for each job position. This review should verify that the person in the position is performing the duties as outlined in the job classification and it should be documented annually.

Other areas discussed in the scope of the audit work involved in the review, analysis and/or testing of the following areas:

- Employee relations practices

Mr. Gregorczyk cited the publication of a newsletter and the posting of current and upcoming changes that occur in the Human Resources Division on the Agency's intranet website are excellent forms of communication between the employees and human resources.

- Disciplinary and grievances processes

Mr. Gregorczyk stated that there is not a specific requirement in federal or state law detailing the disciplinary process. The audit conducted involved a sampling of disciplinary cases reviewing the paperwork and in his opinion, the Agency is well documented and is in accordance with procedures process and is very effective process dealing with disciplinary issues. In reviewing the grievances process, Mr. Gregorczyk commented that the Agency appears to have a comprehensive policy that outlines in detail to inform the employee of the process.

Mr. Gregorczyk discussed key audit observations from a list of eight categories reviewed. He cited three recommendations from the report findings and recommendations:

- 1. The Human Resources Director should take the necessary steps to comply with Government Code Section 654.0155 by developing a system to ensure that all agency job positions are reviewed annually for proper classification and maintaining appropriate documentation of the annual review performed;*
- 2. The Human Resources Director should monitor past-due performance evaluations and work with the Assistant Administrator and Chief of Enforcement to obtain delinquent performance evaluations that are past due by more than 30 days;*

Commissioner Weinberg asked about the average number of evaluations that are the responsibility for each supervisor. Administrator Steen response dealt with an average number of evaluations that a lieutenant performing the evaluation which is about 13 to 15 per region.

- 3. Human Resources should develop a process to ensure employee personnel files contain the required information and acknowledgements. To ensure compliance with various required state acknowledgements; Human Resources staff should periodically review the personnel files to ensure that all required information is up-to-date.*

Mr. Gregorczyk stated that TABC Management concurs with the report findings and recommendations. He stated that two of the three recommendations in the report have been implemented and the remaining recommendation will be implemented by August 31, 2011.

Commissioner Fredricks commented that the Human Resources Division's audit was a "straight forward audit" and the recommendations cited were not major. She stated that some of the recommendations have been addressed including the delinquent performance evaluations. She alluded to the timing of the legislative session along with the performance evaluation's deadline as a contributing factor in the delinquency in the completion of the performance evaluations. Commissioner Fredricks offered a suggestion of "flexibility" in changing the deadline should the two events coincide again.

Commissioner Weinberg stated that the Human Resources Division is a critical part of any agency and complimented Director Doty and her staff for a wonderful job on the audit.

Presiding Officer Cuevas called for a motion. Commissioner Fredricks moved for the approval of the Texas Alcoholic Beverage Commission's Human Resources Systems and Controls Internal Audit. Commissioner Weinberg seconded and the motion carried.

**APPROVAL TO PUBLISH PROPOSED AMENDMENT TO RULE §33.1, FINAL CONVICTION OR DEFERRED ADJUDICATION**

Presiding Officer Cuevas called upon Assistant General Counsel Martin Wilson, for agenda item #7, Approval to Publish Proposed Amendment to Rule §33.1, Final Conviction or Deferred Adjudication. Assistant General Counsel Wilson stated that the proposed amendment clarifies the circumstances in which a deferred adjudication disqualifies an applicant for a permit or license. (Attachment 4)

Presiding Officer Cuevas asked if the deferred adjudication help on pretrial diversion. Assistant General Counsel Wilson answered affirmatively.

**Commissioner Weinberg moved to publish in the *Texas Register* for a 30-day comment period, the Proposed Amendment to Rule §33.1, Final Conviction or Deferred Adjudication. Commissioner Fredricks seconded and the motion carried.**

**APPROVAL TO PUBLISH PROPOSED NEW RULE §35.32, REPORTING A BREACH OF THE PEACE**

Assistant General Counsel Wilson briefed the Commissioners on the next agenda item, Approval to Publish Proposed New Rule §35.32, Reporting A Breach of The Peace stating this section establishes criteria for reportable incidents and procedures for reporting them. Under the Alcoholic Beverage Code §§11.61(b)(21) and 61.71(a)(31) requires permittees and licensees to promptly report to the commission a breach of the peace that occurred on the licensed premises. (Attachment 5)

Assistant General Counsel Wilson seeks clarification in the rule with the following:

- a. Require prompt reporting of breaches of the peace by permittees and licensees;
- b. Establishes when a report must be filed by providing specific deadlines for reporting various breaches of the peace;
- c. Establishes how a report must be made and allows various means of reporting;
- d. Provides a permittee or licensee who has previously violated Alcoholic Beverage Code §11.61(b) (21) or §61.71(a) (31) may be required to report in a specific manner, as instructed by the Commission;
- e. Establishes what a report must contain;

- f. Describes specific conduct that may constitute a reportable breach of the peace;
- g. Describes when the conduct described must be reported and defines certain terms used in the section.

Assistant General Counsel Wilson stated that a stakeholders' meeting was held on May 5, 2011, a drafted rule for discussion was presented with significant changes in the version discussed at the meeting, however, there were issues addressed at the meeting that remain unresolved. It is his recommendation for the Commission to pursue the agenda item by approving the publication of the proposed new rule.

Commissioner Weinberg asked Assistant General Counsel Wilson to summarize §11.49 from the Texas Alcoholic Beverage Code. Assistant General Counsel Wilson stated that §11.49 of the Texas Alcoholic Beverage Code define designation of licensed premises. In the code "premises" means the grounds and all buildings vehicles, and appurtenances pertaining to the grounds, including any adjacent premises if they are directly or indirectly under the control of the same person. Commissioner Weinberg asked if that included the parking lot. Assistant General Counsel Wilson answered affirmatively.

Presiding Officer Cuevas quizzed Assistant General Counsel Wilson on the attendance at the Stakeholders' meeting. Assistant General Counsel Wilson responded 24 were invited and about 10 stakeholders' attended.

Presiding Officer Cuevas asked for the issues that were discussed and what cause of concern. Assistant General Counsel Wilson stated one issue dealt with the length of time to file the report. The original draft had 2 days. The Stakeholder's wanted to have a minimum of 5 business days to file a report to allow contact through their company's chain of command. This arrangement was unsatisfactory with legal counsel stating too much time presents an interruption in the investigation and a possibility of loss of contact with witnesses. He stated it is better to conduct the investigation closer to the time of the incident. As a compromise, legal counsel and the stakeholders settled on 3 business days (days that TABC are open) to submit the report. Assistant General Counsel Wilson stated an exception to that filing of the report include incident of violent crimes committed such as stabbings, shootings, or murders happen on premises, a mandatory filing would be effect within 24 hours of the incident.

Commissioner Fredricks asked if the parking lot premise is located across the street from the establishment, how the street is figured in defining the breach of peace. Assistant General Counsel Wilson stated the owner cannot be held liable for public incidents in the street. Administrator Steen commented that the Agency's position in an investigation of a breach of peace normally lie with the behavior of the bar establishment's owner that may contribute to the offense committed inside or outside of the establishment.

Presiding Officer Cuevas asked if a problem with a patron from a bar causes a problem in the street how would the investigation be handled. Administrator Steen and Assistant General Counsel Wilson concurred that the establishment's owner does not have control of the street problem.

Commissioner Weinberg called upon Chief Moreno to comment on an offense that happens in the street, what investigative techniques can he rely on to gain information. Chief Moreno stated that he can get information from the local law enforcement officers.

Presiding Officer Cuevas asked for clarification of 3 business days to file a report with the Agency. Assistant General Counsel Wilson stated that if an incident happened on Friday or Saturday evening, the report should be filed and received at the Agency by the close of business on Wednesday of the following week. He stated a form has been created on the intranet that allows a report to be completed and submitted. As an added convenience, Assistant General Counsel stated a completed report can be emailed.

**Before entertaining a motion for the agenda item, Presiding Officer Cuevas opened the floor for comments.**

Mr. Dewey Brackin, Attorney, came forward to make an oral statement before the Commission on reporting a breach of the peace. Before addressing the Commission, Mr. Brackin commented on Director Webster's report on the IT initiatives of public inquiry. He stated that the implementation of the public inquiry is one of the best tools created with a wealth of information. He applauded the upgrades to the system and is appreciative that his suggestions are received in such a positive manner.

Mr. Brackin stated that the breach of peace is not defined in the Texas Alcoholic Beverage Code. He contends that the issue is not a dispute with the Agency and agrees that the rule needs to be in a uniform format; however the rule is a common law term that dates back before prohibition when the alcoholic beverage code was part of the penal code. Mr. Brackin stated that if one would examine the case law of the code examples that could be considered as breach of the peace would be shootings, stabbings, offensive language, lewd conduct or basically any disturbance of the peace. He stated that some of the language contained in the draft version presented at the stakeholders' meeting of May 5<sup>th</sup> has been taken out and will meet with his approval. He stated that there are a couple of subsections of the language used in the code that has caused some concerns from a number of individual bar clients and the Retailers' Association. Mr. Brackin stated that he realizes that the rule is a proposal and further discussion will be available at a later time, but he is hopeful that the Commission will table the agenda item. He feels another stakeholder meeting should be held for more discussion toward resolving issues of concern between the industry and the Agency.

Commissioner Weinberg called upon Chief Moreno for comments. Chief Moreno commented that the industry and the Agency issues can be resolved by defining what constitutes a breach of peace and an agreement in filing the report in a timely manner.

Administrator Steen asked Assistant General Counsel Wilson how he derived at the definitions in the rule. Assistant General Counsel Wilson responded the definitions came from the penal code. Commissioner Fredricks asked if the specific language came from the penal code. Assistant General Counsel Wilson answered in the affirmative. He stated most of the basic language is from the penal code.

**Commissioner Weinberg moved to publish in the Texas Register, for a 30-day comment period, the Proposed New Rule §35.32, Reporting a Breach of the Peace. Commissioner Fredricks seconded and the motion carried.**

**APPROVAL TO PUBLISH PROPOSED AMENDMENT TO RULE §33.23, ALCOHOLIC BEVERAGE LICENSE AND PERMIT SURCHARGES**

Assistant General Counsel Martin Wilson stated that the Texas Alcoholic Beverage Commission proposes an amendment to §33.23 that relates to the Alcoholic Beverage License and Permit Surcharges. The amendment increases the amount of the surcharges currently paid by permit, license and certificate holders to conform with House Bill 1 of the 82<sup>nd</sup> Legislative Regular Session. (Attachment 6)

Assistant General Counsel Wilson briefed the Commissioners in the Alcoholic Beverage Code §5.50 that requires the Commission to have a rule assessing surcharges on all applicants for an original or renewal certificate, permit or license, in addition to the application fees prescribed in the Code. The current amendment §33.23 sets the assessment on an annual basis. He stated that the permits, licenses and certificates are now issued for two-year terms, and the surcharges are assessed accordingly. In the proposed amendment to §33.23, Assistant General Counsel Wilson states there will be changes to the annual surcharge assessment to a biennial assessment. This change will update the rule to conform to the current practice and does not represent an increase in the amount of surcharges currently being assessed.

**Commissioner Weinberg moved to publish in the *Texas Register* for a 30-day comment period, the proposed repeal of Chapter 32, Grant Administration. Commissioner Fredricks seconded and the motion carried.**

**APPROVAL TO PUBLISH PROPOSED REPEAL OF CHAPTER 32, GRANT ADMINISTRATION**

Assistant General Counsel Wilson stated that Chapter 32 was adopted in 2002 and is reviewed under the Government Code §2001.039 that requires each state agency to review and consider for readoption each rule adopted by that agency. He cites that adopting the chapter no longer exist due to the fact that the Commission's receipt and distribution of grant funds are governed by contracts and internal Commission processes as related to grants are addressed appropriately in agency policies or procedures rather than in rules. Therefore Chapter 32 should be deleted. (Attachment 7)

**Commissioner Weinberg moved to publish in the *Texas Register* for a 30-day comment period, the proposed repeal of Chapter 32, Grant Administration. Commissioner Fredricks seconded the motion and the motion carried.**

**APPROVAL TO PUBLISH PROPOSED AMENDMENT TO RULE 45.117, GIFTS AND ADVERTISING SPECIALTIES**

Assistant General Counsel Wilson stated that the proposed amendment implements Senate Bill 890 of the 82<sup>nd</sup> Legislative Regular Session that requires the Commission to adopt rules allowing certain permittees to maintain coil connections for the dispensing of wine. This amendment will become effective on September 1, 2011.

Assistant General Counsel Wilson explained that the Alcoholic Beverage Code §102.07 prohibits certain upper-tier and middle-tier permittees from furnishing any service of value to a retailer and from furnishing to a retail dealer any equipment, fixtures or supplies to be used in dispensing alcoholic beverages. Under Senate Bill 890, an addition of §108.042 to the Alcoholic Beverage Code requires the Commission to adopt rules to ease the restrictions of §102.07 in order to allow some of the named permittees to clean and main coil connections used in the dispensing of wine. (Attachment 8)

**Commissioner Weinberg moved to publish in the *Texas Register* for a 30-day comment period, the proposed amendment to Rule §45.117, Gifts and Advertising Specialties. Commissioner Fredricks seconded and the motion carried.**

**APPROVAL TO PUBLISH PROPOSED AMENDMENT TO RULE §33.25, ALCOHOLIC BEVERAGE LICENSE AND PERMIT FEES AND SURCHARGES**

Assistant General Counsel Wilson presented a proposal to the Commissioners to amend Rule §33.25, Alcoholic Beverage License and Permit Fees and Surcharges.

He stated that the proposed amendment deletes the subsections implementing the transition from one-year to two-year terms for permits, licenses, and certificates. (Attachment 9)

**Commissioner Weinberg moved to publish in the *Texas Register* for a 30-day comment period, the proposed amendment to Rule §33.25, Alcoholic Beverage License and Permit Fees and Surcharges. Commissioner Fredricks seconded and the motion carried.**

### **DISCUSS OF RULE ACTIVITY**

Assistant General Counsel Wilson briefed the Commissioners of the progress of the Rule Review Plan. He stated his intention is to maintain and remain on track to keep the plan updated with changes and/or deletions as necessary. (Attachment 10)

Commissioner Weinberg asked if the two-year plan for completion was still in effect. Assistant General Counsel Wilson answered affirmatively.

Assistant General Counsel Wilson spoke on an increased number of attendees interested in the Stakeholders meetings. In order to communicate with those interested persons, he will use the Agency's website as a tool to post a schedule of the stakeholders' meeting and other pertinent information pertaining to items for discussion at the meeting. When a specific agenda item is to be presented, invitations will be addressed to those persons in that "specialized area" of that group and on the website. Public hearings will be published on the Agency's website with a form that can be completed and returned with comments to a designated office.

Presiding Officer Cuevas applauded Administrator Steen for his leadership. He stated that it was through his leadership that the Stakeholders and the Agency has partnered and formed an open line of communication. Presiding Officer Cuevas stated that Administrator Steen's leadership and character play an important part of the process because he will not "blindsides" anyone.

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

Presiding Officer José Cuevas called upon Administrator Alan Steen for the Administrator's Report. Before giving his report, Administrator Steen asked Bobby Gideon to come to the podium.

Administrator Steen announced that Captain Bobby Gideon will retire after 30 years of state service. Administrator Steen stated he was enrolled in a law enforcement course taught by Captain Gideon. A reorganization had occurred at the Agency and Administrator Steen envisioned a new department entitled "Office of Professional

Responsibility” that focused on training, investigations, background checks, and policymaking. He stated Captain Gideon had career service with the Department of Public Safety (DPS), so he enlisted him to be the Director. Administrator Steen stated that Captain Gideon has always done a great job for the Agency. Administrator Steen thanked Captain Bobby Gideon for his dedication to law enforcement, his leadership and work ethic that he brought to the Agency.

Presiding Officer Cuevas thanked Captain Gideon for his leadership to the Agency and wished him the best. Commissioner Weinberg stated Captain Gideon has achieved a task that many of the men in the room would like to know his secret. That is, how he is retiring but his wife will continue to work. Commissioner Fredricks thanked Captain Gideon for his professionalism and polite demeanor. She stated he will be missed.

To all the comments, Captain Gideon responded, “He truly has been blessed.”

Administrator Steen began his report with a status report on the upcoming budget. He stated that the budget has taken a downturn, but hopes it will balance out. Administrator Steen discussed the budget recommendations for the fiscal year 2012-2013. (Refer to PowerPoint slide presentation – Conference Committee Recommendations FY 2012-2013)

In the review of the budget strategy line items under Ports of Entry, Commissioner Weinberg asked if the Ports of Entry bridges at Donna and Anzaldua were opened for business. Administrator Steen answered affirmatively. His report continued. Administrator Steen explained “Rider 7” which states fees, fines and other miscellaneous revenues as authorized and generated by the agency shall cover, at a minimum, the cost of the appropriations made above as well as an amount equal to the amount identified above in the informational item “Other Direct and Indirect Costs Appropriated Elsewhere in this Act.” He continued his report with an explanation of “Rider 12” which states these appropriations are contingent upon the Texas Alcoholic Beverage Commission increasing revenue through surcharges pursuant to the Texas Alcoholic Beverage Code 5.50(b) by \$7,000,000 during the 2012-13 biennium and providing such information deemed necessary by the Comptroller of Public Accounts to issue a finding of fact that the increased revenues are estimated to be available in excess of the Comptroller’s Biennial Revenue Estimate, including supplemental estimates used in certifying this Act, to fund the increased appropriations and benefits.

Administrator Steen completed his report with an explanation of Article 9 - Group Health Insurance Payroll Contribution, stating that the Agency will have a large deficit in this area of the budget of about \$600,000.

Presiding Officer Cuevas asked about the amount of shortfall will be experienced by the Employees Retirement System. Administrator Steen responded “billions of dollars.” He stated that is a combination of all the state agencies.

Administrator Steen's report is supported by a PowerPoint presentation.  
(Attachment 11)

### **PUBLIC COMMENT**

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

### **EXECUTIVE SESSION**

The regular open session of the Texas Alcoholic Beverage Commission was recessed at 11:49 a.m., May 24, 2011 and an executive session was 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, pursuant to Texas Government Code, §551.071, §551.074.

The Texas Alcoholic Beverage Commission concluded its executive session and resumed in open regular session on May 24, 2011 at 12:44 p.m. No final action, decision or vote was made in executive session.

### **NEXT MEETING**

Presiding Officer Cuevas announced the next meeting dates are scheduled for Tuesday, July 26, 2011 and Tuesday, August 23, 2011. There will not be a meeting in June.

### **ADJOURNMENT**

Presiding Officer Cuevas called for a motion to adjourn. Commissioner Weinberg so moved and Commissioner Fredricks seconded. The motion was made and seconded. The motion carried, and Presiding Officer Cuevas announced that the meeting was adjourned at 12:45 p.m.

# **Attachment 1**

**82<sup>nd</sup> Legislative Session Briefing**

# 82<sup>ND</sup> LEGISLATIVE SESSION UPDATE

May 24, 2011

TABC Commission Meeting



# BILLS SIGNED BY GOVERNOR

**It's  
The Law**

- SB351 by Williams/Deshotel
  - Legalizes wine kegs. 4/12/11
- SB890 by Corona/Hamilton
  - Allows wholesalers to clean and maintain coil connections for wine kegs (like beer kegs). 9/1/11
- SB24 by Van de Putte/Thompson
  - Penalties for human traffickers / protections for victims. 9/1/11
- SB423 by Lucio/Menendez
  - Survivors of public servant killed in line of duty who was eligible but not enrolled is eligible for coverage. 5/12/11
- SB1303 by West/Fletcher - Clean-Up Bill. 9/1/11

# BILLS SENT TO GOVERNOR

- HB11 by Cook/Eltife

- reports to Comptroller



- HB1401 by Laubenberg/Estes

- local option elections if petition precedes annexation

- HB1936 by Gutierrez/Lucio

- Ports of Entry: equalization, \$3 admin fee, importing personal collections of beer/spirits

- HB1952 by Kuempel/Eltife

- TABC can cancel, suspend or fine seller training schools, trainers, trainees



# BILLS SENT TO GOVERNOR



- HB1953 by Kuempel/Eltife
  - post sign 60 days before permit issued, not 60 days before application is filed
- HB1956 by Thompson/Carona
  - 20 days for district court judge to hear and decide on appeal
- HB2012 by Thompson/Gallegos
  - wineries abide by credit law when buying from wholesaler
- HB2014 by Thompson/Van de Putte
  - Human trafficking changes in AB Code



# BILLS SENT TO GOVERNOR



- HB2033 by Hamilton/Eltife
  - Mixed beverage tax on receipts
- HB2035 by Hamilton/Mike Jackson
  - Allows wholesaler/distributor to temporary relocate during emergency
- HB3000 by Thompson/Van de Putte
  - 1st degree felony for continuous human trafficking
- SB331 by Shapiro/Madden
  - Bans synthetic marijuana, also known as K2, Spice, Genie, and Fire & Ice



# PASSED BOTH HOUSES



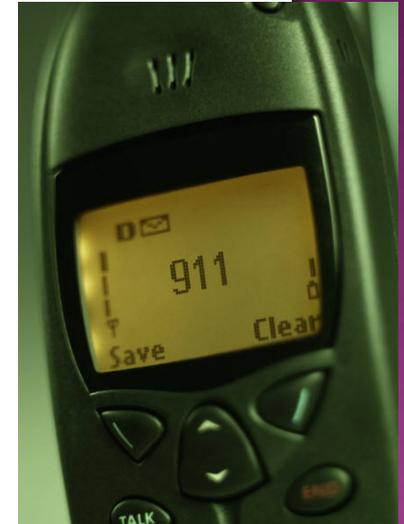
- HB1469 by Hernandez-Luna/Gallegos
  - exempting veteran/fraternal from conduct surety bonds
- HB2582 by Murphy/Whitmire
  - repeals 25% excise tax exemption for Texas microbreweries
- HB3329 by Keffer/Fraser
  - temp permits for non profits in dry areas
- SB438 by Nelson
  - winery festival permits
- SB799 by Nelson
  - clarifies First Sales / excise taxes paid by wineries



# PASSED BOTH HOUSES



- SB1331 by Watson/Gallego
  - 911 Lifeline Legislation
- SB1732 by Van de Putte
  - post exchanges on state military bases
- SB1811 by Duncan/Pitts
  - House version bans smoking in any TABC-licensed location with some exceptions
- HCR68 by Hunter/Van de Putte
  - creates interim committee on human trafficking



# PASSED THE FIRST HOUSE, AND COMMITTEE IN 2<sup>ND</sup> HOUSE



- ◉ HB602 by Farrar - tours by breweries
- ◉ HB1959 by Thompson - appeal wet/dry certification
- ◉ HB2707 by Burnam - permit refusal
- ◉ HB3474 by Gallego - 911 Lifeline Legislation
- ◉ SB411 by Estes - increase how much wine wineries can sell to ultimate consumers (35K to 55K)
- ◉ SB923 by Deuell - non-contiguous wineries

# PASSED THE FIRST HOUSE, AND COMMITTEE IN 2<sup>ND</sup> HOUSE (HUMAN TRAFFICKING)

- HB289 by Jim Jackson - amends common nuisance statute to include human trafficking, etc.
- HB1930 by Zedler - assigns HT Task Force with studying association of SOBs and human trafficking
- HB1994 by Weber - prostitution prevention program
- HB2329 by Zedler - protects trafficking victims



# PASSED THE FIRST HOUSE, THEN STALLED OUT



- ◉ HB175 by Jim Jackson - BYOB permits
- ◉ HB882 by Alvarado - caffeinated malt beverages
- ◉ HB1563 by Flynn - limiting local option elections
- ◉ SB291 by Watson - moves alcohol awareness component from health to science class curriculum
- ◉ SB995 by Fraser - souvenir bottles at distilleries



# MAYBE NEXT SESSION



- HB406/HB616 by Quintanilla - BYOB restrictions
- HB407 by Quintanilla - protest hearings
- HB660 by Villarreal - brewpub sales to distributors
- HB700 by Hilderbran - The Consolidation Bill aka Trifecta Bill
- HB1480/SB989 by Truitt/Etife - retailers and wine transfers
- HB1540/SB595 by Aliseda/Ellis - Sunday sales
- HB1562 by Guillen - authorizing 4-day work week for state agencies
- HB1845 by Castro - required counseling for college students convicted of age related alcohol violation
- HB1958 by Thompson - hearings held within 60 days
- HB3159 by Van Taylor - 90 days to process applications
- HB3581 by Driver - sale of beer by wineries
- SB621 by Nelson - winery activities (clean-up bill)
- SB839 by Dan Patrick - no minors in bars
- SB1316 by Mike Jackson - source investigations going back 24 hours
- SB1575 by Watson - brewery sales to consumers

November 8, 2010 -  
Pre-filing of bills

January 11, 2011 -  
82nd Legislature  
convened

March 11 - Last day  
to file regular bills

**May 30 -Sine Die**

June 19 - Last day  
governor can sign  
or veto bills

August 29 - Date  
that bills without  
specific effective  
dates become law

# 82<sup>ND</sup> LEGISLATIVE SESSION UPDATE



# QUESTIONS?

# **Attachment 2**

**IT Initiatives Briefing**



*TABC*

TEXAS ALCOHOLIC BEVERAGE COMMISSION

*service ★ courtesy ★ integrity ★ accountability*

# *Texas Alcoholic Beverage Commission*

## IT Initiatives Briefing

May 24, 2011



# FY10-11 Initiatives

- Deployed the New Online **Cash Credit Law System** (September 2009)
- Implemented numerous **Public Inquiry enhancements**
- Completed **IT security upgrades**
- Implemented **HelpDesk Authority** tool
- Completed PC repurpose effort (Dec 2010)
- Completed data transfers for **LEAPS, GEMS** (2011)
- Completed **SharePoint** deployment for intranet (2010)
- Completed SQL Server Reporting Services migration
- Working with Neubus on **Label Approval Certificate public inquiry**



# Applications Projects

## 81<sup>st</sup> LAR Funding

Project Name	Business Objective & Purpose	Status	Budget
<b>Online Applications</b>	Implement online license renewals, original applications, use Texas.gov to collect fees. Upgrade LicenseEase to Versa Regulation.	Go-Live scheduled for <b>May 31, 2011</b>  Online renewals for As, BKs & Ts by Summer 2011.	\$839,981
<b>Case Management (ARTS Expansion)</b>	Build a comprehensive view of cases between ARTS & LicenseEase. Replace NETRMS/CrisNet.	<b>Funding cancelled by budget cuts</b> Quick wins implemented. Requested grant funding 03/2011 Scheduled start 10/1/2011.	\$150,000
<b>Excise Tax Automation</b>	Electronic submission of reports and invoices and automated reconciliation and reporting.	<b>Project requirements completed.</b> <b>Funding cancelled by budget cuts</b>	<b>\$728,530</b>
<b>Seller Server Training</b>	Improve training to beverage sellers/servers. Offer curriculum online. Modify the rule to accommodate technology improvements.	<b>Rules adopted July, 2010.</b> <b>Funding cancelled by budget cuts</b> <b>Automation improvements included in Online Applications project.</b>	<b>\$263,977</b>

# Telecom/Communications Initiatives 2010/11

LOCATION	TASK/PROJECT	ROUTER/BANDWIDTH UPGRADE	VOICE OVER IP	CABLING	CABLE MODEM INSTALL	MOVE/ CONSTRUCTION	PHONE SYSTEM INSTALL	SCHEDULE DATE FY 2010/2011
Bryan Outpost	UPGRADE	COMPLETED	COMPLETED	NA	COMPLETED	NA	NA	COMPLETED 2010
Wichita Falls	UPGRADE	COMPLETED	COMPLETED	NA	COMPLETED	NA	NA	COMPLETED 2010
LOS INDIOS	UPGRADE	COMPLETED	NA	NA	NA	NA	NA	COMPLETED 2010
BROWNSVILLE VIB	UPGRADE	COMPLETED	NA	NA	NA	NA	NA	COMPLETED 2010
PHARR	UPGRADE	COMPLETED	NA	NA	NA	NA	NA	COMPLETED 2010
Longview	UPGRADE	COMPLETED	COMPLETED	COMPLETED	COMPLETED	COMPLETED	NA	COMPLETED 2010
Corpus Christi	UPGRADE	COMPLETED	COMPLETED	COMPLETED	COMPLETED	COMPLETED	NA	COMPLETED 2010
McAllen	UPGRADE	COMPLETED	COMPLETED	NA	COMPLETED	COMPLETED	NA	COMPLETED 2010
Beaumont	UPGRADE	COMPLETED	COMPLETED	NA	COMPLETED	NA	NA	COMPLETED 2010
Victoria	UPGRADE	COMPLETED	COMPLETED	NA	COMPLETED	NA	NA	COMPLETED 2010
San Antonio	UPGRADE	PENDING	COMPLETED	COMPLETED	PENDING	COMPLETED	NA	COMPLETED 2010
Ft. Worth	UPGRADE	NA	NA	NA	NA	COMPLETED	NA	COMPLETED 2010
Odessa	UPGRADE	COMPLETED	COMPLETED	COMPLETED	COMPLETED	COMPLETED	NA	COMPLETED 2010
Amarillo	UPGRADE	COMPLETED	COMPLETED	NA	COMPLETED	NA	NA	COMPLETED 2010
Abilene	UPGRADE	COMPLETED	COMPLETED	NA	COMPLETED	NA	NA	COMPLETED 2010
Waco	UPGRADE	COMPLETED	COMPLETED	NA	COMPLETED	NA	NA	COMPLETED 2010
Galveston	UPGRADE	COMPLETED	COMPLETED	NA	NA	NA	NA	COMPLETED 2010
CONROE O/P	UPGRADE	COMPLETED	COMPLETED	COMPLETED	COMPLETED	COMPLETED	NA	COMPLETED 2010
HOUSTON	UPGRADE	COMPLETED	COMPLETED	COMPLETED	COMPLETED	COMPLETED	NA	COMPLETED 2010
SAN MARCOS	UPGRADE	COMPLETED	COMPLETED	NA	COMPLETED	NA	NA	COMPLETED 2010
RICHMOND	UPGRADE	COMPLETED	COMPLETED	COMPLETED	COMPLETED	COMPLETED	NA	COMPLETED 2010
BRAZORIA O/P	UPGRADE	COMPLETED	NA	NA	COMPLETED	NA	NA	COMPLETED 2010
BELTON O/P	UPGRADE	COMPLETED	NA	NA	COMPLETED	COMPLETED	NA	COMPLETED 2010
LAREDO O/P	UPGRADE	COMPLETED	NA	COMPLETED	COMPLETED	NA	NA	COMPLETED 2010
MT. PLEASANT O/P	UPGRADE	COMPLETED	NA	COMPLETED	COMPLETED	NA	NA	COMPLETED 2010
HUNTSVILLE O/P	UPGRADE	COMPLETED	NA	NA	COMPLETED	NA	NA	COMPLETED 2010
TYLER O/P	UPGRADE	COMPLETED	NA	NA	COMPLETED	NA	NA	COMPLETED 2010
Anzaldua POE	NEW INSTALL	COMPLETED	NA	COMPLETED	NA	COMPLETED	NA	COMPLETED 2010
PROGRESO POE	UPGRADE	COMPLETED	NA	NA	NA	NA	NA	COMPLETED 2010
EAGLE PASS 1	UPGRADE	COMPLETED	NA	NA	COMPLETED	NA	NA	COMPLETED 2010
EAGLE PASS 2	UPGRADE	COMPLETED	NA	NA	COMPLETED	NA	NA	COMPLETED 2010
Austin D.O	UPGRADE	COMPLETED	COMPLETED	COMPLETED	COMPLETED	NA	NA	COMPLETED 2011
Warehouse	UPGRADE	PENDING	PENDING	NA	NA	NA	PENDING	PENDING 2011
EL PASO	NEW INSTALL	PENDING	COMPLETED	COMPLETED	PENDING	COMPLETED	COMPLETED	PENDING 2011
Lubbock	UPGRADE	COMPLETED	COMPLETED	NA	COMPLETED	COMPLETED	NA	PENDING 2011
AUSTIN HQ	UPGRADE	NA	COMPLETED	PENDING	NA	PENDING	COMPLETED	PENDING 2011
Arlington/Dallas	Move	NA	NA	PENDING	NA	PENDING	PENDING	PENDING 2011
LAREDO POE 1	UPGRADE	PENDING	NA	PENDING	PENDING	NA	NA	PENDING 2011
LAREDO POE2	UPGRADE	PENDING	NA	PENDING	PENDING	NA	NA	PENDING 2011
TERRELL O/P	UPGRADE	PENDING	NA	NA	PENDING	NA	NA	PENDING 2011
MINERAL WELLS O/P	UPGRADE	PENDING	NA	NA	PENDING	NA	NA	PENDING 2011



# TABC

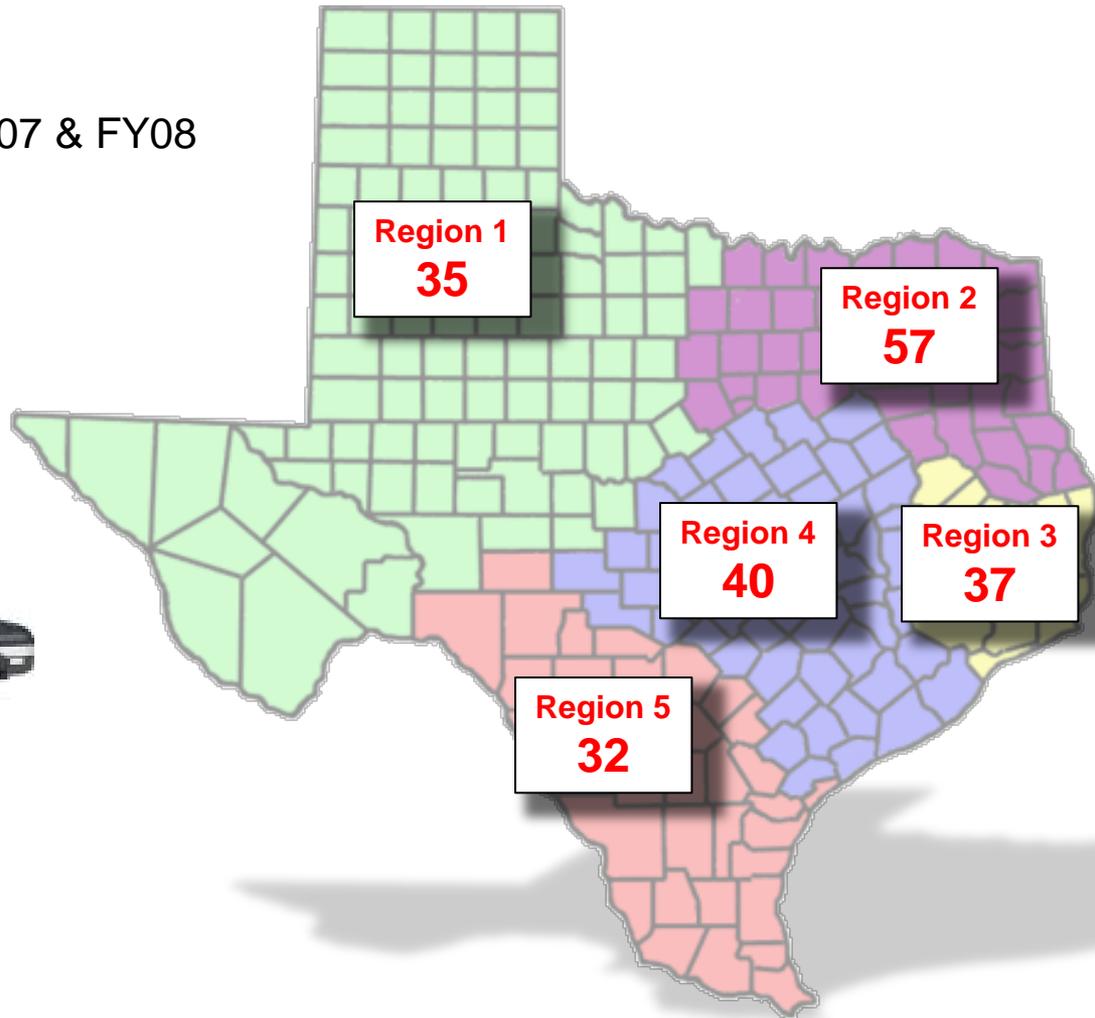
TEXAS ALCOHOLIC BEVERAGE COMMISSION

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## In-Car Computers

### •Deployment Status

- 43 CF-30 units deployed in FY07 & FY08
- 50 CF-30 units deployed FY10
- 130 CF-52 units deployed FY11
- 130 HP mobile printers



# Data Center Services

- **Background**

- 7 year contract that started April 2007 (HB1516)
- 2 agency FTEs transferred to IBM
- Annual cost ~\$600,000 (\$344,138 pre-contract avg. cost)

- **Data Center Transformation** – 26 servers:

- 6 test/dev servers reside at the Austin Data Center
- 17 application/utility servers reside to San Angelo Data Center
- 3 servers remain untransformed (email)

- **Remote Office Transformation** – 19 servers:

- 19 servers consolidated to the Austin Data Center (July-Sept)
- Improved backup, more disk space, new equipment

- **Outstanding Issues:**

- Ongoing Invoice Disputes
- Project Support (New Servers)
- Server Transformation and Refresh (Legacy Servers)
- Service Delivery backlog

## Before



## After





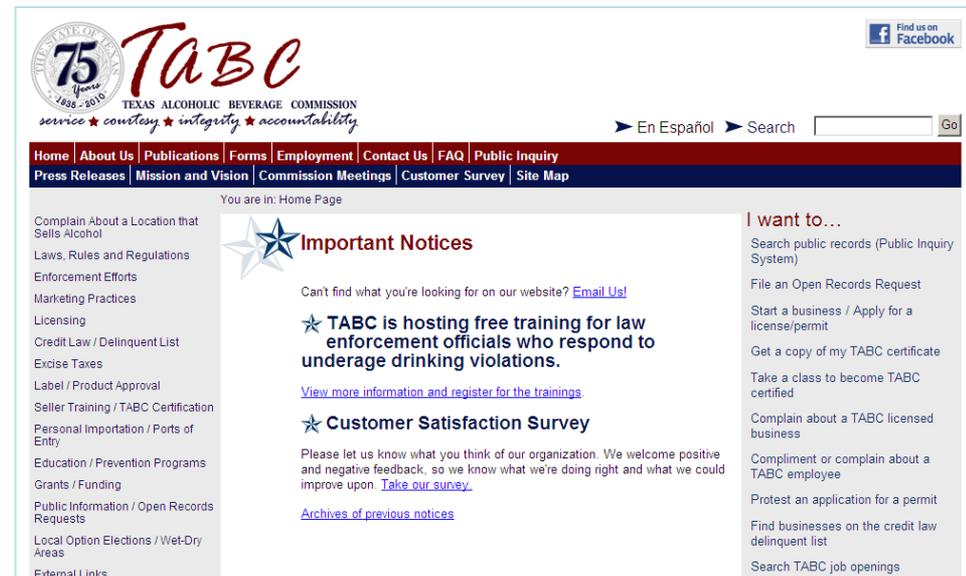
# Public Transaction Systems

- **Agency is shifting to online systems that interact directly with the industry and interested public.**

- Public Inquiry
- Cash Credit Law
- Seller Server Training
- Online Licensing Applications
- Excise Tax forms
- Label Approval Certificate Inquiry
- TABC:Online re-branding

- **Leveraging texas.gov**

- Re-launched May 2010
- Payment Portal (TPE) for online payments
- Application Development Services
- Label Approval Certificate submission
- TABC:Online Storefront
- Mobile applications





*TABC*

TEXAS ALCOHOLIC BEVERAGE COMMISSION

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Questions?



# **Attachment 3**

**Internal Audit of the Human Resources Systems  
and Controls**



# Internal Audit of Human Resources Systems & Controls

As Prepared By  
Jansen & Gregorczyk, CPAs



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# Purpose:

The purposes of the internal audit of human resources systems and controls were to determine if TABC is complying with federal and state laws regarding human resources issues and has all necessary policies, procedures and practices for effectively managing the agency's human resources.



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# HR Policies and Procedures:

The human resources policies and practices are in compliance with federal and state requirements and contain the required provisions designed to protect the agency against liability related to discriminatory practices, sexual harassment, and other potential adverse actions arising from applicants, employees, and former employees.



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# Recruitment and Selection Processes:

The recruitment and selection processes for filling positions are in compliance with federal and state laws, the processes are being adhered to in filling positions, the selection criteria are documented, and the overall recruitment and selection processes are effective and efficient in ensuring the best applicants are selected.



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## Recruitment and Selection Files:

Audit testing of a sample of hiring files for FY 2010-11 indicated that all files were thoroughly documented and the agency hiring policies and procedures were followed in filling the positions. The TABC has a well organized, well planned process for recruiting and selecting new employees.



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# Classification & Compensation Systems

The classification and compensation systems comply with state and federal laws, they are effective in attracting and retaining employees, they promote effective human resource utilization, and they enable the agency to meet its goals and objectives.



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## Position Classification Reviews:

All individual job assignments within the agency are required by Section 654.0155 of the Government Code to be reviewed annually by the agency to ensure each position is properly classified. The agency does not routinely perform and document these required annual position classification reviews.



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# Employee Relations:

The TABC Human Resources Division does an excellent job in providing necessary information regarding agency HR policies and procedures to all employees, including those related to employee relations.



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## Employee Performance Appraisal Process:

The employee performance appraisal system is effective in providing constructive feedback to employees on job performance, and performance evaluations are being performed in accordance with state requirements and agency guidelines, except they are not all completed by the established deadline.



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## Delinquent Employee Performance Appraisals:

At March 3, 2011 there were 184 delinquent performance evaluations. A system of follow-up with executive management on delinquent performance evaluations may be necessary when performance evaluations are past due by more than 30 days.



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# Disciplinary Actions:

A review of a sample of disciplinary cases determined that the agency is adhering to its policy in dealing with disciplinary issues, and the policy is effective in dealing with disciplinary problems that arise.



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# Grievance Policy:

**TABC's grievance policy is extremely comprehensive and clearly delineates the procedures for employees to follow when filing a grievance. All grievances reviewed adhered to the steps in the grievance policy.**



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# Personnel Files:

The personnel files are generally complete and organized; however, State law requires employees to acknowledge the receipt of various documents provided by the agency or to acknowledge compliance with various restrictions regarding employment by the State. In reviewing personnel files, many of the forms were missing and there was no consistent method of filing them, though they were all in one section.



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## Recommendation 1:

The HR Director should take the necessary steps to comply with Government Code Section 654.0155 by developing a system to ensure that all agency job positions are reviewed annually for proper classification and maintaining appropriate documentation of the annual review performed.



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## Recommendation 2:

The Human Resources Director should monitor past-due performance evaluations and work with the Assistant Administrator and Chief of Enforcement to obtain delinquent performance evaluations that are past due by more than 30 days.



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## Recommendation 3:

Human Resources should develop a process to ensure employee personnel files contain the required information and acknowledgements. To ensure compliance with various required state acknowledgments, Human Resources staff should periodically review the personnel files to ensure that all required information is up-to-date.



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# Management Response:

**TABC Management concurs with the report findings and recommendations. Two of the three recommendations in the report have been implemented. The target date for implementation of the remaining recommendation is August 31, 2011.**



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# **Attachment 4**

**Approval to Publish Proposed Amendment to  
Rule §33.1, Final Conviction or Deferred  
Adjudication**

**May 24, 2011 AGENDA, ITEM 7:**

**PREAMBLE FOR PROPOSED AMENDMENT TO §33.1, FINAL CONVICTION OR DEFERRED ADJUDICATION**

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §33.1, relating to Final Conviction or Deferred Adjudication. The proposed amendment clarifies the circumstances in which a deferred adjudication disqualifies an applicant for a permit or license.

Alcoholic Beverage Code §109.532(b)(1) provides that the commission may deny a permit or license application if the commission determines that a previous criminal conviction or deferred adjudication indicates that the applicant is not qualified or suitable for a permit or license. Currently, Commission Rule 33.1 provides that a final conviction or deferred adjudication for certain named offenses may be grounds for cancelling or denying a permit or license unless five years have passed since the applicant's sentence, parole or probation is terminated. The commission seeks to clarify the factors that will be considered in deciding whether an applicant is disqualified because of a deferred adjudication.

Subsection (a) refers to the applicable provision of the Alcoholic Beverage Code that is being interpreted and implemented.

Subsection (b) establishes the circumstances when a deferred adjudication may disqualify an applicant, based on the underlying offense.

Subsection (c) requires an applicant to provide information to assist the commission in determining whether the applicant is qualified and suitable to hold a permit or license, notwithstanding that the applicant has a deferred adjudication. Subsection (c) also lists factors that the commission will consider in making that determination.

Subsection (d) clarifies that the commission will not consider an applicant's deferred adjudication to be disqualifying if the applicant has successfully completed the terms of the deferred adjudication prior to the time the application is filed.

Amy Harrison, Director of the Licensing Division, has determined that for each year of the first five years that the section will be in effect, there will be no impact on state or local government.

The rule will have no adverse economic effect on persons required to comply with the rule, including micro-businesses and small businesses. There is no anticipated negative impact on local employment.

Amy Harrison, Director of the Licensing Division, has determined that for each year of the first five years the section is in effect, the public will benefit because the public health, safety and welfare will continue to be protected from bad actors, while the state's

interest in encouraging successful completion of the probationary period associated with a deferred adjudication will be accommodated.

Comments on the proposed section 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 at (512) 206-3480. They may also be submitted electronically through the commission's public website at [http://www.tabc.state.tx.us/laws/proposed\\_rules.asp](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 July 7, 2011 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 1:30 p.m. Staff will not respond to comments at the public hearing. The commission's response to comments received at the public hearing will be in the adoption preamble. The commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. Persons with disabilities who plan to attend this hearing 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), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

Martin Wilson, Assistant General Counsel, certifies that the proposed section has been reviewed by legal counsel and found to be within the agency's authority to adopt.

The section is authorized by Alcoholic Beverage Code §§5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and 109.532(b)(1), which allows the commission to consider a deferred adjudication in determining whether an applicant for a permit or license is qualified and suitable.

The proposed section affects Alcoholic Beverage Code §§5.31 and 109.532(b)(1).

**§33.1. Deferred Adjudication**

(a) This section relates to Alcoholic Beverage Code §§11.46, 25.06, 61.42, 61.43, 69.06, and 109.532.

(b) In determining whether an applicant is not qualified or is unsuitable to hold a permit or license under Alcoholic Beverage Code §109.532(b)(1), or whether an application should be cancelled or denied, the Commission may consider whether the person is currently serving deferred adjudication for:

- (1) any felony offense;
- (2) any controlled substance offense in Health and Safety Code Chapter 481;
- (3) any firearm or deadly weapon offense in Penal Code Chapter 46;
- (4) any prostitution offense in Penal Code Chapter 43;
- (5) any gambling offense in Penal Code Chapter 47;
- (6) any human trafficking offense in Penal Code Chapter 20A;
- (7) any fraud offense in Penal Code Chapters 32 or 35;
- (8) any money laundering offense in Penal Code Chapter 34; or
- (9) any violation of the Alcoholic Beverage Code.

(c) An applicant currently serving deferred adjudication for one of the offenses listed in subsection (b) shall provide information requested by the Commission to allow the Commission to determine whether the applicant is qualified or suitable to hold a license or permit. In determining whether an applicant is qualified or suitable to hold a license or permit, the Commission shall consider the relationship between the offense and the particular license or permit being sought, taking into account these factors:

- (1) the extent and nature of the person's past criminal activity;
- (2) the age of the person at the time of the commission of the crime;
- (3) the amount of time that has elapsed since the person's last criminal activity;
- (4) the conduct and work activity of the person prior to and following the criminal activity;
- (5) evidence of the person's rehabilitation; and
- (6) other evidence presented by the person of the person's present suitability, including letters of recommendation.

(d) If an applicant has completed the conditions of a deferred adjudication prior to filing an application, the commission will not consider the offense for which the deferred adjudication was served in deciding whether the applicant is qualified or suitable to hold a permit or license under Alcoholic Beverage Code §109.532(b)(1).

MAY 24, 2011 AGENDA, ITEM 7:

**§33.1. ~~Final Conviction or~~ Deferred Adjudication.**

(a) This ~~rule~~section relates to Alcoholic Beverage Code §§11.46, 25.06, 61.42, 61.43, 69.06, and 109.532 ~~of the Alcoholic Beverage Code.~~

(b) ~~Final conviction or deferred adjudication for the following offenses may indicate that the~~In determining whether an applicant is not qualified or ~~suitable~~is ~~unsuitable~~ to hold a permit or license under ~~the~~Alcoholic Beverage Code, §109.532(b)(1), ~~and may or whether an application should~~ be ~~grounds for cancellation or denial unless five years have elapsed since the termination of a sentence, parole, or probation served by the applicant for: cancelled or denied,~~ the Commission may consider whether the person is currently serving deferred adjudication for:

- (1) any felony offense;
- (2) any controlled substance offense in Health and Safety Code Chapter 481;
- (3) any firearm or ~~weapons~~deadly weapon offense in Penal Code Chapter 46;
- (4) any prostitution offense in Penal Code Chapter 43;
- (5) ~~bookmaking;~~
- ~~(6) any gambling or gaming; offense in Penal Code Chapter 47;~~
- ~~(7) bootlegging.~~

- ~~(c) Current permit~~(6) any human trafficking offense in Penal Code Chapter 20A;
- ~~(7) any fraud offense in Penal Code Chapters 32 or 35;~~
  - ~~(8) any money laundering offense in Penal Code Chapter 34; or license holders who previously qualified for a permit or license and have not been subsequently convicted or received~~
  - ~~(9) any violation of the Alcoholic Beverage Code.~~

(c) ~~An applicant currently serving deferred adjudication for any offense one of the offenses listed in this rule are not disqualified from holding~~subsection (b) shall provide information requested by the Commission to allow the Commission to determine whether the applicant is qualified or suitable to hold a license or permit. ~~In determining whether an applicant is qualified or suitable to hold a license or permit, the Commission shall consider the relationship between the offense and the particular license or permit being sought, taking into account these factors:~~

- ~~(1) the extent and nature of the person's past criminal activity;~~
- ~~(2) the age of the person at the time of the commission of the crime;~~
- ~~(3) the amount of time that has elapsed since the person's last criminal activity;~~
- ~~(4) the conduct and work activity of the person prior to and following the criminal activity;~~
- ~~(5) evidence of the person's rehabilitation; and~~
- ~~(6) other evidence presented by the person of the person's present suitability, including letters of recommendation.~~

(d) ~~If an applicant has completed the conditions of a deferred adjudication prior to filing an application, the commission will not consider the offense for which the deferred adjudication was served in deciding whether the applicant is qualified or suitable to hold a permit or license under the~~Alcoholic Beverage Code, §109.532:

Compare current rule & proposed 5/20/2011 6:31 PM

**MAY 24, 2011 AGENDA, ITEM 7:**

| (b)(1).

# **Attachment 5**

**Approval to Publish Proposed New Rule §35.32,  
Reporting a Breach of the Peace**

**May 24, 2011 AGENDA, ITEM 8:**

**PREAMBLE FOR PROPOSED NEW §35.32, REPORTING A BREACH OF THE PEACE**

The Texas Alcoholic Beverage Commission (commission), proposes new §35.32, relating to Reporting a Breach of the Peace. The section establishes criteria for reportable incidents and procedures for reporting them.

Alcoholic Beverage Code §§11.61(b)(21) and 61.71(a)(31) require permittees and licensees to promptly report to the commission a breach of the peace occurring on the licensed premises. The commission seeks to minimize doubts that good actors may have about when reports are required, thereby reducing their exposure to risk of noncompliance. The commission also seeks to encourage more reporting from bad actors who may currently hide behind the uncertainty in the Code provisions. It appears that failure to report breaches of the peace can be an indicator that an establishment may have other serious problems.

Subsection (a) contains references to the applicable provisions of the Alcoholic Beverage Code that require prompt reporting of breaches of the peace by permittees and licensees.

Subsection (b) establishes when a report must be filed by providing specific deadlines for reporting various breaches of the peace.

Subsection (c) establishes how a report must be made, and allows various means of reporting. Subsection (d) provides that a permittee or licensee who has previously violated Alcoholic Beverage Code §§11.61(b)(21) or 61.71(a)(31) may be required to report in a specific manner, as instructed by the commission.

Subsection (e) establishes what a report must contain.

Subsection (f) describes specific conduct that may constitute a reportable breach of the peace.

Subsection (g) describes when the conduct described in subsection (f) must be reported, and defines certain terms used in the section.

Joel Moreno, Chief of Field Operations, has determined that for each year of the first five years that the section will be in effect, there will be no impact on state or local government.

The rule will have no adverse economic effect on persons required to comply with the rule, including micro-businesses and small businesses, because all permittees and licensees are already required to promptly report breaches of the peace to the commission. Failure to promptly report a breach can subject a permittee or licensee to a range of penalties, up to and including cancellation of the permit or license. While some

compliance costs may be incurred, they are offset by the certainty provided by having the reporting requirements clarified, thereby reducing the risks associated with unintentional or inadvertent failures to report. The commission is also proposing to allow several options for reporting, including electronically, with the expectation that a permittee or licensee will use the most efficient means to report. There is no anticipated negative impact on local employment.

Joel Moreno, Chief of Field Operations, has determined that for each year of the first five years the section is in effect, the public will benefit because requirements for reporting breaches of the peace are clarified, the risk of non-compliance for permittees and licensees is diminished, and commission resources will be used more efficiently and effectively to protect public health, safety and welfare.

Comments on the proposed section 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 at (512) 206-3480. They may also be submitted electronically through the commission's public website at [http://www.tabc.state.tx.us/laws/proposed\\_rules.asp](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 July 7, 2011 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 1:30 p.m. Staff will not respond to comments at the public hearing. The commission's response to comments received at the public hearing will be in the adoption preamble. The commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. Persons with disabilities who plan to attend this hearing 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), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

Martin Wilson, Assistant General Counsel, certifies that the proposed section has been reviewed by legal counsel and found to be within the agency's authority to adopt.

The section is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed section affects Alcoholic Beverage Code §§5.31, 11.61 and 61.71.

**MAY 24, 2011 AGENDA, ITEM 8:**

**§35.32. Reporting a Breach of the Peace**

- (a) This section relates to Alcoholic Beverage Code §§11.61(b)(21) and 61.71(a)(31).
- (b) Except as provided in this subsection, a permittee or licensee shall report to the commission a breach of the peace on a licensed premises as soon as possible, but not later than three business days after the occurrence. If a shooting, stabbing or murder occurs on the licensed premises, the permittee or licensee shall report the breach of the peace not later than 24 hours from the time of the incident.
- (c) Unless the report is required to be made in a specific manner pursuant to subsection (d), the report required by this section shall be made:
  - (1) in person at any commission office;
  - (2) by facsimile transmission to the appropriate commission office;
  - (3) through the commission's website; or
  - (4) by e-mail to "breachofpeace@tabc".
- (d) The administrator or administrator's designee may require, in writing, that a permittee or licensee make any reports required by this section in a specific manner as instructed, if the permittee or licensee has previously violated Alcoholic Beverage Code §§11.61(b)(21) or 61.71(a)(31).
- (e) At a minimum, the report required by this section shall include:
  - (1) the date and time of the report;
  - (2) the date and time of the incident being reported;
  - (3) the trade name of the licensed premises where the incident occurred;
  - (4) the name and physical location of the licensed premises where the incident occurred, including the city (if applicable) and county;
  - (5) the name of the person filing the report, that person's relationship to the holder of the permit or license, and contact information for that person;
  - (6) if different from the information given in response to paragraph (5) of this subsection, the name of the person designated by the holder of the permit or license to answer questions from the commission about the incident, that person's relationship to the permit or license holder, and contact information for that person;
  - (7) a brief description of the incident;

**MAY 24, 2011 AGENDA, ITEM 8:**

(8) the name of all law enforcement agencies who were called or otherwise appeared in connection with the incident, and the names of the officers involved (if known); and

(9) the names and contact information of any witnesses to the incident (if known).

(f) For purposes of subsection (b), a reportable "breach of the peace" occurs when a disturbance is created on the licensed premises by a person:

(1) shooting, stabbing or murdering a person;

(2) causing bodily injury to another person;

(3) threatening another person in an offensive manner;

(4) placing another person in imminent danger of serious bodily injury;

(5) discharging a firearm in, or in the direction of, the licensed premises;

(6) damaging or destroying the permittee's or licensee's property; or

(7) fighting with another person.

(g) For purposes of this section:

(1) conduct identified in subsection (f) (other than a shooting, stabbing or murder) creates a "disturbance", and therefore is a reportable breach of the peace, when it:

(A) occurs at a time when the permittee or licensee, or any person allowed by the permittee or licensee, is on the licensed premises; and

(B) interferes with, interrupts, or intrudes upon:

(i) the operation or management of the licensed premises; or

(ii) the conduct of any person present on such premises;

(2) a shooting, stabbing or murder on the licensed premises is always a "disturbance", and therefore is always a reportable breach of the peace;

(3) a "business day" is a day when the Texas Alcoholic Beverage Commission is open for business;

(4) a "licensed premises" is as defined in Alco. Bev. Code §11.49;

(5) a "permittee" is as defined in Alco. Bev. Code §1.04(11); and

(6) a "licensee" is as defined in Alco. Bev. Code §1.04(16).

# **Attachment 6**

**Approval to Publish Proposed Amendment to  
Rule §33.23, Alcoholic Beverage License and  
Permit Surcharges**

**May 24, 2011 AGENDA, ITEM 9:**

**PREAMBLE FOR PROPOSED AMENDMENT TO §33.23, ALCOHOLIC BEVERAGE LICENSE AND PERMIT SURCHARGES**

The Texas Alcoholic Beverage Commission (commission), proposes an amendment to §33.23, relating to Alcoholic Beverage License and Permit Surcharges. The amendment increases the amount of the surcharges currently paid by permit, license and certificate holders to conform with H.B. 1 (82<sup>nd</sup> Leg., Regular Session).

Alcoholic Beverage Code §5.50 requires the commission to have a rule assessing surcharges on all applicants for an original or renewal certificate, permit or license, in addition to the application fees prescribed in the Code. Currently, §33.23 sets the assessment on an annual basis. However, permits, licenses and certificates are now issued for two-year terms, and the surcharges are assessed accordingly (pursuant to Alcoholic Beverage Code §§11.09 and 61.03). The proposed amendment to §33.23 changes the annual surcharge assessment to a biennial assessment. Currently, the surcharge is assessed at twice the amount of the surcharge prescribed in the rule, in recognition of the two-year terms. This change merely updates the rule to conform to current practice, and does not represent an increase in the amount of surcharges currently being assessed.

In addition, H.B. 1 (the General Appropriations Bill in the 82<sup>nd</sup> Legislature) authorizes the commission to increase the surcharges pursuant to Alcoholic Beverage Code §5.50. Rider 12 of the Alcoholic Beverage Commission section of Article V of H.B. 1 provides that certain appropriations made to the commission are contingent upon the commission increasing the surcharges by an amount sufficient to raise \$7,000,000 during the 2012-13 biennium. The proposed amendment increases the various surcharges by an amount sufficient to generate the authorized \$7,000,000.

Subsection (a) contains references to the applicable provisions of the Alcoholic Beverage Code.

Subsection (b) prescribes the new biennial surcharge for each biennial permit, license and certificate.

Subsection (c) prescribes the new biennial surcharge for each temporary permit and license.

Subsection (d) provides that a private club established by a veteran or fraternal organization that holds a Private Club Exemption Certificate Permit is exempt from the requirement to pay a surcharge. This subsection is consistent with Alcoholic Beverage Code §32.11, which provides an exemption to such an organization from the requirement to pay a fee.

Subsection (e) provides the term of the surcharge.

Subsection (f) provides when the surcharge must be paid.

Subsection (g) provides that the penalty for failure to pay a surcharge is the same as the penalty for failure to pay a fee.

Subsection (h) provides that fees and surcharges may not be prorated or refunded.

Shelby Eskew, Director of the Business Services Division, has determined that for the first two years the section will be in effect, the commission will generate sufficient revenue to pay for the amount appropriated by the legislature. The amount of revenue required in years three to five will be evaluated at that time. There will be no impact on local government.

The rule will have an adverse economic effect on persons required to comply with the rule, including micro-businesses and small businesses. The amount of the impact on each business is set forth in the rule itself. The amount of the increase applicable to each permit, license or certificate was calculated to spread the burden among permit, license and certificate holders in the same proportion that each category now carries. The commission has determined that all of the \$7,000,000 authorized by the legislature to be raised by increasing surcharges is necessary to maintain operations at the commission at a level that continues to protect the public health, safety and welfare.

There is no anticipated negative impact on local employment.

Shelby Eskew, Director of the Business Services Division, has determined that for the first two years the section is in effect, the public will benefit because sufficient revenue will be generated to allow the commission to maintain operations at a level that continues to protect the public health, safety and welfare. The amount of revenue required in years three to five will be evaluated at that time, and the surcharge amounts may be adjusted.

Comments on the proposed section 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 at (512) 206-3480. They may also be submitted electronically through the commission's public website at [http://www.tabc.state.tx.us/laws/proposed\\_rules.asp](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 July 7, 2011 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 1:30 p.m. Staff will not respond to comments at the public hearing. The commission's response to comments received at the public hearing will be in the adoption preamble. The commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are

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deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

Martin Wilson, Assistant General Counsel, certifies that the proposed section has been reviewed by legal counsel and found to be within the agency's authority to adopt.

The section is authorized by Alcoholic Beverage Code §§5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and 5.50, which requires the commission to have a rule assessing surcharges on all applicants for an original or renewal certificate, permit or license, in addition to the application fees prescribed in the Code, and H.B. 1 (82<sup>nd</sup> Legislature, Regular Session), which authorizes the commission to increase the amount of surcharges currently being assessed..

The proposed section affects Alcoholic Beverage Code §§5.31, 5.50, 11.09, 32.11, and 61.03.



**TABC**

TEXAS ALCOHOLIC BEVERAGE COMMISSION

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**Proposed Amendment to Rule 33.23 Alcoholic Beverage License and Permit Surcharges and Proposed Amendment to Rule 33.25 Alcoholic Beverage License and Permit Fees and Surcharges**

Stakeholder Meeting  
May 20, 2011

**Proposed Amendment to Rule 33.23 Alcoholic Beverage License and Permit Surcharges and Proposed Amendment to Rule 33.25 Alcoholic Beverage License and Permit Fees and Surcharges..... 1**

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**I. EIGHTY-SECOND LEGISLATURE**

**2012-2013 Biennium**

**General Appropriations Bill**

**HB 1**

**Article V – Public Safety and Criminal Justice**

**Alcoholic Beverage Commission**

12. **Contingent Revenue: Fee Increases.** Included in the amounts appropriated above in Strategy A.1.1, Enforcement, B.1.1, Licensing and Investigation, C.2.1, Ports of Entry, D.1.1, Central Administration, and D.1.2, Information Resources, is \$3,149,808 in fiscal year 2012 and \$3,181,383 in fiscal year 2013 out of the General Revenue Fund. These appropriations are contingent upon the Texas Alcoholic Beverage Commission increasing revenue through surcharges pursuant to the Texas Alcoholic Beverage Code 5.50 (b) by \$7,000,000 during the 2012-13 biennium and providing such information deemed necessary by the Comptroller of Public Accounts to issue a finding of fact that the increased revenues are estimated to be available in excess of the Comptroller's Biennial Revenue Estimate, including supplemental estimates used in certifying this Act, to fund the increased appropriations and benefits. Also contingent on the finding of fact, the "Number of Full-time-equivalents (FTE)" indicated above includes 45.2 FTEs in fiscal year 2012, and 45.2 FTEs in fiscal year 2013.

## II. ALCOHOLIC BEVERAGE CODE

### Sec. 5.50. ESTABLISHMENT OF CERTAIN FEES.

(a) The commission by rule may establish reasonable fees for tasks and services performed by the commission in carrying out the provisions of this code, including fees incidental to the issuance of licenses and permits under Title 3 of this code.

(b) The commission may not increase or decrease a fee set by this code, but if a statute is enacted creating a certificate, permit, or license and there is no fee established, the commission by rule may set a fee. The commission by rule shall assess surcharges on all applicants for an original or renewal certificate, permit, or license issued by the commission in addition to any fee set by this code and collect the surcharges at the time of application. In assessing a surcharge, the commission may not overly penalize any segment of the alcoholic beverage industry or impose an undue hardship on small businesses.

(c) Insofar as they relate to the levying and collection of a local fee, Sections 11.38 and 61.36 of this code do not apply to fees set by rule of the commission.

(d) Revenues and surcharges from fees collected by the commission under this section shall be deposited in the general revenue fund.

### III. CURRENT VERSION OF RULE 33.23

#### §33.23. Alcoholic Beverage License and Permit Surcharges.

- (a) An annual surcharge of all original or renewal permit or license fees set by the Texas Alcoholic Beverage Code shall be levied against license and permit holders as follows:

Liquor Permits	
Agent's Permit	\$40.00
Airline Beverage Permit	\$139.00
Beverage Cartage Permit	\$64.00
Bonded Warehouse Permit	\$58.00
Bonded Warehouse Permit (Dry Area)	\$58.00
Brewer's Permit	\$245.00
Brewpub License	\$181.00
Carrier's Permit	\$107.00
Caterer's Permit	\$118.00
Daily Temporary Mixed Beverage Permit (Per Day)	\$171.00
Daily Temporary Private Club Registration Permit	\$192.00
Direct Shipper's Permit	\$160.00
Distiller's & Rectifier's Permit	\$149.00
Food and Beverage Certificate	\$245.00
Forwarding Center Authority	\$118.00
Industrial Permit	\$111.00
Local Cartage Permit	\$86.00
Local Distributor's Permit	\$192.00
Local Industrial Alcohol Manufacturer's Permit	\$139.00
Manufacturer's Agent's Permit	\$40.00
Manufacturer's Agent's Warehousing Permit	\$277.00
Market Research Packager's Permit	\$54.00
Minibar Permit	\$149.00

Mixed Beverage Permit	\$256.00
Mixed Beverage Late Hours Permit	\$139.00
Mixed Beverage Restaurant Permit with Food and Beverage Certificate	\$256.00
Non Resident Brewer's Permit	\$160.00
Non Resident Seller's Permit	\$160.00
Package Store Permit	\$213.00
Package Store Tasting Permit	\$75.00
Promotional Permit	\$160.00
Wine Only Package Store Permit	\$235.00
Passenger Train Beverage Permit	\$256.00
Private Carrier's Permit	\$107.00
Private Club Registration Permit	\$383.00
Private Club Beer and Wine Permit	\$383.00
Private Club Late Hours Permit	\$149.00
Private Storage Permit	\$86.00
Temporary Charitable Auction Permit	\$171.00
Public Storage Permit	\$86.00
Wholesaler's Permit	\$298.00
General Class B Wholesaler's Permit	\$277.00
Local Class B Wholesaler's Permit	\$277.00
Wine and Beer Retailer's Permit Railway Car	\$235.00
Wine and Beer Retailer's Permit Excursion Boat	\$235.00
Wine Bottler's Permit	\$256.00
Winery Permit	\$298.00
Winery Storage Permit	\$86.00

Beer Licenses	
Agent's Beer License	\$40.00
Branch Distributor's License	\$298.00
General Distributor's License	\$298.00

Importer's License	\$118.00
Importer's Carrier's License	\$86.00
Local Distributor's License	\$298.00
Manufacturer's License	\$277.00
Manufacturer's Warehouse License	\$235.00
Non Resident Manufacturer's License	\$245.00
Beer Retailer's Off Premise License	\$235.00
Beer Retailer's On Premise License	\$235.00
Retail Dealer's On Premise Late Hours License	\$139.00
Storage License	\$86.00
Temporary License	\$171.00
Temporary License Special 3 Day Wine and Beer	\$171.00
Temporary License Special 4 Day Wine and Beer	\$171.00
Wine and Beer Retailer's Permit	\$235.00
Wine and Beer Retailer's Off Premise Permit	\$235.00

(1) The surcharge shall apply to each brewpub licensed under Texas Alcoholic Beverage Code, Chapter 74, even though one or more are licensed under the same general management or ownership.

(2) An organization which meets the requirements for exemption from a private club registration permit under the Texas Alcoholic Beverage Code §32.11, is also exempt from the surcharge.

(b) The surcharges shall be due and payable at the same time and in the same place and manner as the original or renewal permit, certificate, or license fee to which the surcharges apply.

(c) Failure or refusal to timely pay the license, certificate or permit surcharge shall be considered the same as failure to timely pay the original or renewal certificate, permit or license fee and the same penalties will apply.

### IV. COMPARING CURRENT BIENNIAL SURCHARGE WITH PROPOSED NEW BIENNIAL SURCHARGE

<b>TWO-YEAR SURCHARGE CHART EFFECTIVE 9/1/2011</b>				
<b>Surcharge Increases Required For Rider 12</b>				
Page 1				
Class Code	Class Description	Current Biennial Surcharge	Proposed Biennial Surcharge	Proposed Biennial Increase
<b>Liquor Permits</b>				
AW	Agent's Manufacturing Warehousing Permit	\$554	\$651	\$97
A	Agent's Permit	\$80	\$94	\$14
AB	Airline Beverage Permit	\$278	\$327	\$49
PE	Beverage Cartage Permit	\$128	\$151	\$23
J	Bonded Warehouse Permit	\$116	\$136	\$20
JD	Bonded Warehouse Permit (Dry Area)	\$116	\$136	\$20
B	Brewer's Permit	\$490	\$576	\$86
C	Carrier's Permit	\$214	\$252	\$38
CB	Caterer's Permit	\$236	\$278	\$42
TB	Daily Temporary Mixed Beverage Permit (Per Day)	\$171	\$201	\$30
TN	Daily Temporary Private Club Registration Permit	\$192	\$228	\$34
DS	Direct Shipper's Permit	\$320	\$376	\$56
D	Distiller's & Rectifier's Permit	\$298	\$350	\$52
FB	Food and Beverage Certificate	\$490	\$576	\$86
BP	Brewpub License	\$362	\$428	\$64
FC	Forwarding Center Authority	\$236	\$278	\$42
I	Industrial Permit	\$222	\$261	\$39
E	Local Cartage Permit	\$172	\$202	\$30
ET	Local Cartage Transfer Permit	\$172	\$202	\$30
LP	Local Distributor's Permit	\$384	\$452	\$68
LI	Local Industrial Alcohol Manufacturer's Permit	\$278	\$327	\$49
T	Manufacturer's Agent's Permit	\$80	\$94	\$14
MR	Market Research Packager's Permit	\$108	\$127	\$19
MI	Minibar Permit	\$298	\$350	\$52
	1st Renewal	\$298	\$350	\$52
	2nd Renewal	\$298	\$350	\$52
	3rd and All Subsequent Renewals	\$298	\$350	\$52
MB	Mixed Beverage Permit	\$512	\$602	\$90
	1st Renewal	\$512	\$602	\$90
	2nd Renewal	\$512	\$602	\$90
	3rd and All Subsequent Renewals	\$512	\$602	\$90
RM	Mixed Beverage Permit with FB	\$512	\$602	\$90
	1st Renewal	\$512	\$602	\$90
	2nd Renewal	\$512	\$602	\$90
	3rd and All Subsequent Renewals	\$512	\$602	\$90
LB	Mixed Beverage Late Hours	\$278	\$327	\$49
U	Nonresident Brewer's Permit	\$320	\$376	\$56

Class Code	Class Description	Current Biennial Surcharge	Proposed Biennial Surcharge	Proposed Biennial Increase	
<b>Liquor Permits Cont'd</b>					
S	Nonresident Seller's Permit	\$320	\$376	\$56	
P	Package Store Permit	\$426	\$501	\$75	
PS	Package Store Tasting Permit	\$150	\$176	\$26	
Q	Wine Only Package Store	\$470	\$553	\$83	
PT	Passenger Train Beverage Permit	\$512	\$602	\$90	
O	Private Carrier's Permit	\$214	\$252	\$38	
NE	Private Club Exemption Certificate Permit	\$0	\$0	\$0	
N	Private Club Registration Permit-Option 1	0 to 250 Members	\$766	\$901	\$135
		251 to 450 Members	\$766	\$901	\$135
		451 to 650 Members	\$766	\$901	\$135
		651 to 850 Members	\$766	\$901	\$135
		851 to 1000 Members	\$766	\$901	\$135
		Over 1000 Members	\$766	\$901	\$135
N	Private Club Registration Permit-Option 2	Original	\$766	\$901	\$135
		1st Renewal	\$766	\$901	\$135
		2nd and All Subsequent Renewals	\$766	\$901	\$135
NB	Private Club Beer and Wine Permit	\$766	\$901	\$135	
NL	Private Club Late Hours Permit	\$298	\$350	\$52	
L	Private Storage Permit	\$172	\$202	\$30	
PR	Promotional Permit	\$320	\$376	\$56	
K	Public Storage Permit	\$172	\$202	\$30	
W	Wholesaler's Permit	\$596	\$701	\$105	
X	General Class B Wholesaler's Permit	\$554	\$651	\$97	
LX	Local Class B Wholesaler's Permit	\$554	\$651	\$97	
V	Wine and Beer Retailer's Permit Excursion Boat	\$470	\$553	\$83	
Y	Wine and Beer Retailer's Permit Railway Car (Fee - Per Car)	\$470	\$553	\$83	
Z	Wine Bottler's Permit	\$512	\$602	\$90	
G	Winery Permit	\$596	\$701	\$105	
GF	Winery Festival Permit	\$236	\$278	\$42	
GS	Winery Storage Permit	\$172	\$202	\$30	

Class Code	Class Description	Current Biennial Surcharge	Proposed Biennial Surcharge	Proposed Biennial Increase
<b>Beer Licenses</b>				
BK	Agent's Beer License	\$80	\$94	\$14
BC	Branch Distributor's License	\$596	\$701	\$105
BB	General Distributor's License	\$596	\$701	\$105
BI	Importer's License	\$236	\$278	\$42
BJ	Importer's Carrier's License	\$172	\$202	\$30
BD	Local Distributor's License	\$596	\$701	\$105
BA	Manufacturer's License			
	1st Establishment	\$554	\$651	\$97
	2nd Establishment	\$554	\$651	\$97
	3rd, 4th, & 5th Establishments	\$554	\$651	\$97
	Excess of 5 Establishments	\$554	\$651	\$97
MW	Manufacturer's Warehouse License	\$470	\$553	\$83
BS	Nonresident Manufacturer's License	\$490	\$576	\$86
FB	Food and Beverage Certificate	\$490	\$576	\$86
BP	Brewpub License	\$362	\$426	\$64
BF	Beer Retailer's Off Premise License	\$470	\$553	\$83
BE	Beer Retailer's On Premise License			
	(Excluding DALLAS, HARRIS, TARRANT Counties)	\$470	\$553	\$83
BE	Beer Retailer's On Premise License			
	(DALLAS, HARRIS, TARRANT Counties) Original	\$470	\$553	\$83
	Renewal	\$470	\$553	\$83
BL	Retail Dealer's On Premise Late Hours License	\$278	\$327	\$49
SL	Storage License	\$172	\$202	\$30
BH	Temporary License	\$171	\$201	\$30
CA	Temporary Charitable Auction Permit	\$171	\$201	\$30
BG	Wine and Beer Retailer's Permit			
	(Excluding DALLAS, HARRIS, TARRANT Counties)	\$470	\$553	\$83
BG	Wine and Beer Retailer's Permit			
	(DALLAS, HARRIS, TARRANT Counties) Original	\$470	\$553	\$83
	Renewal	\$470	\$553	\$83
BQ	Wine and Beer Retailer's Off Premise Permit	\$470	\$553	\$83

## V. PROPOSED AMENDED VERSION OF RULE 33.23

### §33.23. Alcoholic Beverage Permit, License and Certificate Surcharges.

- (a) This section relates to Alcoholic Beverage Code §5.50.
- (b) A biennial surcharge on original or renewal permit, license and certificate fees is levied against permit, license and certificate holders as follows:

Liquor Permits and Certificates	
Agent's Permit (A)	\$94.00
Airline Beverage Permit (AB)	\$327.00
Beverage Cartage Permit (PE)	\$151.00
Bonded Warehouse Permit (Dry Area) (JD)	\$136.00
Bonded Warehouse Permit (J)	\$136.00
Brewer's Permit (B)	\$576.00
Carrier's Permit (C)	\$252.00
Caterer's Permit (CB)	\$278.00
Direct Shipper's Permit (DS)	\$376.00
Distiller's & Rectifier's Permit (D)	\$350.00
Food and Beverage Certificate (FB)	\$576.00
Forwarding Center Authority (FC)	\$278.00
General Class B Wholesaler's Permit (X)	\$651.00
Industrial Permit (I)	\$261.00
Local Cartage Permit (E)	\$202.00
Local Cartage Transfer Permit (ET)	\$202.00
Local Class B Wholesaler's Permit (LX)	\$651.00
Local Distributor's Permit (LP)	\$452.00
Local Industrial Alcohol Manufacturer's Permit (LI)	\$327.00

Manufacturer's Agent's Permit (T)	\$94.00
Manufacturer's Agent's Warehousing Permit (AW)	\$651.00
Market Research Packager's Permit (MR)	\$127.00
Minibar Permit (MI)	\$350.00
Mixed Beverage Late Hours Permit (LB)	\$327.00
Mixed Beverage Permit (MB)	\$602.00
Mixed Beverage Restaurant Permit with Food and Beverage Certificate (RM)	\$602.00
Non Resident Brewer's Permit (U)	\$376.00
Non Resident Seller's Permit (S)	\$376.00
Package Store Permit (P)	\$501.00
Package Store Tasting Permit (PS)	\$176.00
Passenger Train Beverage Permit (PT)	\$602.00
Private Carrier's Permit (O)	\$252.00
Private Club Beer and Wine Permit (NB)	\$901.00
Private Club Late Hours Permit (NL)	\$350.00
Private Club Registration Permit (N)	\$901.00
Private Storage Permit (L)	\$202.00
Promotional Permit (PR)	\$376.00
Public Storage Permit (K)	\$202.00
Wholesaler's Permit (W)	\$701.00
Wine and Beer Retailer's Permit Excursion Boat (V)	\$553.00
Wine and Beer Retailer's Permit Railway Car (Y)	\$553.00
Wine Bottler's Permit (Z)	\$602.00
Wine Only Package Store Permit (Q)	\$553.00
Winery Festival Permit (GF)	\$278.00
Winery Permit (G)	\$701.00
Winery Storage Permit (GS)	\$202.00

Beer Licenses and Wine and Beer Permits	
Agent's Beer License (BK)	\$94.00
Beer Retailer's Off Premise License (BF)	\$553.00
Beer Retailer's On Premise License (BE)	\$553.00
Branch Distributor's License (BC)	\$701.00
Brewpub License (BP)	\$426.00
General Distributor's License (BB)	\$701.00
Importer's Carrier's License (BJ)	\$202.00
Importer's License (BI)	\$278.00
Local Distributor's License (BD)	\$701.00
Manufacturer's License (BA)	\$651.00
Manufacturer's Warehouse License (MW)	\$553.00
Non Resident Manufacturer's License (BS)	\$576.00
Retail Dealer's On Premise Late Hours License (BL)	\$327.00
Storage License (SL)	\$202.00
Wine and Beer Retailer's Off Premise Permit (BQ)	\$553.00
Wine and Beer Retailer's Permit (BG)	\$553.00

(c) A surcharge on temporary permit and license fees is levied against permit and license holders as follows:

Daily Temporary Mixed Beverage Permit (TB)	\$201.00
Daily Temporary Private Club Registration Permit (TN)	\$226.00
Temporary Charitable Auction Permit (CA)	\$201.00
Temporary License (BH)	\$201.00
Temporary Wine and Beer Retailers Permit (BH) and (HP)	\$201.00
Temporary Special 3 Day Wine and Beer License (SB)	\$201.00

(d) An organization that holds a Private Club Exemption Certificate Permit under Alcoholic Beverage Code §32.11 is exempt from the requirement to pay a surcharge.

(e) Each surcharge imposed by this section is for the term of the original or renewal permit, license or certificate to which the surcharge applies.

(f) The permit, license or certificate surcharge is due and payable at the same time and in the same place and manner as the original or renewal permit, license or certificate fee to which the surcharge applies.

(g) Failure or refusal to timely pay the permit, license, or certificate surcharge is considered the same as failure to timely pay the original or renewal permit, license or certificate fee, and the same penalties apply.

## VI. COMPARING CURRENT AND PROPOSED AMENDED VERSIONS OF TEXT OF RULE 33.23

**§33.23. Alcoholic Beverage Permit, License and PermitCertificate Surcharges.**

(a) ~~An annual~~ This section relates to Alcoholic Beverage Code §5.50.

(b) ~~A biennial surcharge of all on original or renewal permit or license and certificate fees set by the Texas Alcoholic Beverage Code shall be~~ is levied against permit, license and permitcertificate holders as follows:

Liquor Permits and Certificates	
Agent's Permit (A)	\$94.00
Airline Beverage Permit (AB)	\$327.00
Beverage Cartage Permit (PE)	\$151.00
Bonded Warehouse Permit (Dry Area) (JD)	\$136.00
Bonded Warehouse Permit (J)	\$136.00
Brewer's Permit (B)	\$576.00
Carrier's Permit (C)	\$252.00
Caterer's Permit (CB)	\$278.00
Direct Shipper's Permit (DS)	\$376.00
Distiller's & Rectifier's Permit (D)	\$350.00
Food and Beverage Certificate (FB)	\$576.00
Forwarding Center Authority (FC)	\$278.00
General Class B Wholesaler's Permit (X)	\$651.00
Industrial Permit (I)	\$261.00
Local Cartage Permit (E)	\$202.00
Local Cartage Transfer Permit (ET)	\$202.00
Local Class B Wholesaler's Permit (LX)	\$651.00
Local Distributor's Permit (LP)	\$452.00
Local Industrial Alcohol Manufacturer's Permit (LI)	\$327.00

Manufacturer's Agent's Permit (T)	\$94.00
Manufacturer's Agent's Warehousing Permit (AW)	\$651.00
Market Research Packager's Permit (MR)	\$127.00
Minibar Permit (MI)	\$350.00
Mixed Beverage Late Hours Permit (LB)	\$327.00
Mixed Beverage Permit (MB)	\$602.00
Mixed Beverage Restaurant Permit with Food and Beverage Certificate (RM)	\$602.00
Non Resident Brewer's Permit (U)	\$376.00
Non Resident Seller's Permit (S)	\$376.00
Package Store Permit (P)	\$501.00
Package Store Tasting Permit (PS)	\$176.00
Passenger Train Beverage Permit (PT)	\$602.00
Private Carrier's Permit (O)	\$252.00
Private Club Beer and Wine Permit (NB)	\$901.00
Private Club Late Hours Permit (NL)	\$350.00
Private Club Registration Permit (N)	\$901.00
Private Storage Permit (L)	\$202.00
Promotional Permit (PR)	\$376.00
Public Storage Permit (K)	\$202.00
Wholesaler's Permit (W)	\$701.00
Wine and Beer Retailer's Permit Excursion Boat (V)	\$553.00
Wine and Beer Retailer's Permit Railway Car (Y)	\$553.00
Wine Bottler's Permit (Z)	\$602.00
Wine Only Package Store Permit (Q)	\$553.00
Winery Festival Permit (GF)	\$278.00
Winery Permit (G)	\$701.00
Winery Storage Permit (GS)	\$202.00

Beer Licenses and Wine and Beer Permits	
Agent's Beer License (BK)	\$94.00
Beer Retailer's Off Premise License (BF)	\$553.00
Beer Retailer's On Premise License (BE)	\$553.00
Branch Distributor's License (BC)	\$701.00
Brewpub License (BP)	\$426.00
General Distributor's License (BB)	\$701.00
Importer's Carrier's License (BJ)	\$202.00
Importer's License (BI)	\$278.00
Local Distributor's License (BD)	\$701.00
Manufacturer's License (BA)	\$651.00
Manufacturer's Warehouse License (MW)	\$553.00
Non Resident Manufacturer's License (BS)	\$576.00
Retail Dealer's On Premise Late Hours License (BL)	\$327.00
Storage License (SL)	\$202.00
Wine and Beer Retailer's Off Premise Permit (BQ)	\$553.00
Wine and Beer Retailer's Permit (BG)	\$553.00

~~\_\_\_\_\_ (1) The surcharge shall apply to each brewpub licensed under Texas Alcoholic Beverage Code, Chapter 74, even though one or more are licensed under the same general management or ownership.~~

~~\_\_\_\_\_ (2)~~

(c) A surcharge on temporary permit and license fees is levied against permit and license holders as follows:

Daily Temporary Mixed Beverage Permit (Per Day) (TB)	\$201.00
Daily Temporary Private Club Registration Permit (TN)	\$226.00
Temporary Charitable Auction Permit (CA)	\$201.00
Temporary License (BH)	\$201.00
Temporary Wine and Beer Retailer's Permit (BH) and (HP)	\$201.00
Temporary Special 3 Day Wine and Beer License (SB)	\$201.00

(d) An organization ~~which meets the requirements for exemption from a Private Club Registration Permit that holds a Private Club Exemption Certification Permit under the Texas Alcoholic Beverage Code § 32.11;~~ is ~~also exempt from the requirement to pay a surcharge.~~

~~(b) The surcharges shall be~~

(e) Each surcharge imposed by this section is for the term of the original or renewal permit, license or certificate to which the surcharge applies.

(f) The permit, license or certificate surcharge is due and payable at the same time and in the same place and manner as the original or renewal permit, license or certificate, or license fee to which the surcharges apply.

~~(e)~~

(g) Failure or refusal to timely pay the permit, license, or certificate or permit surcharge shall be considered the same as failure to timely pay the original or renewal certificate, permit or license or certificate fee, and the same penalties will apply.

## VII. CURRENT VERSION OF RULE 33.25

### §33.25. Alcoholic Beverage License and Permit Fees and Surcharges.

(a) This rule implements the provisions of §§5.50, 11.09 and 61.03 of the Texas Alcoholic Beverage Code (Code). Section 5.50 authorizes the Texas Alcoholic Beverage Commission (commission) by rule to assess surcharges on all applicants for original or renewal certificate, permit, or license issued by the commission. Sections 11.09 and 61.03 of the Code authorize the commission to issue a license or permit for a two-year term and double the amount of the fees established for each license or permit by the Code or a rule of the commission, and surcharges established in §33.23 of this chapter (relating to Alcoholic Beverage License and Permit Surcharges).

(b) **Implementation Plan.** To maintain a reasonable annual distribution of renewal application review work and permit fees, the commission will implement the two-year licensing schedule based on the type of permit or license type for which an application is submitted.

(c) An original or renewal application for a permit or license listed in the following chart, with an issue date before October 1, 2008, will expire one year from the date the license or permit is issued. An original or renewal application for a permit or license listed in the following chart, with an issue date on or after October 1, 2008, will expire two years from the date the license or permit is issued.

Permit/License Type (agency code)	Texas Alcoholic Beverage Code Chapter
Agent's Permit (A)	Ch. 35
Manufacturer's Agent's Permit (T)	Ch. 36
Agent's Beer License (BK)	Ch. 37

(d) An original or renewal application for a primary permit or license listed in the following chart, with an issue date before January 1, 2009, will expire one year from the date the license or permit is issued. An original or renewal application for a primary permit or license listed in the following chart, with an issue date on or after January 1, 2009, will expire two years from the date the license or permit is issued.

<b>Permit/License Type (agency code)</b>	<b>Texas Alcoholic Beverage Code Chapter</b>
Airline Beverage Permit (AB)	Ch. 34
Beverage Cartage Permit (PE)	Ch. 44
Bonded Warehouse Permit (J)	Ch. 46
Bonded Warehouse Permit (Dry Area) (JD)	Ch. 46
Brewpub License (BP)	Ch. 74
Carrier's Permit (C)	Ch. 41
Caterer's Permit (CB)	Ch. 31
Direct Shipper's Permit (DS)	Ch. 54
Distiller's & Rectifier's Permit (D)	Ch. 14
Food and Beverage Certificate (FB)	Ch. 25
Industrial Permit (I)	Ch. 38
Local Industrial Alcohol Manufacturer's Permit (LI)	Ch. 47
Market Research Packager's Permit (MR)	Ch. 49
Minibar Permit (MI)	Ch. 51
Mixed Beverage Permit (MB)	Ch. 28
Mixed Beverage Restaurant Permit (RM) with FB	Ch. 28
Mixed Beverage Late Hours (LB)	Ch. 29
Passenger Train Beverage Permit (PT)	Ch. 48
Private Carrier's Permit (O)	Ch. 42
Private Club Exemption Certificate Permit (NE)	Ch. 32
Private Club Registration Permit (N)	Ch. 32
Private Club Beer and Wine Permit (NB)	Ch. 32

Private Club Late Hours Permit (NL)	Ch.33
Promotional Permit (PR)	Ch. 54
Wine Bottler's Permit (Z)	Ch. 18
Winery Permit (G)	Ch. 16
Winery Storage Permit (GS)	Ch. 45

(e) An original or renewal application for a primary permit or license listed in the following chart, with an issue date before September 1, 2009, will expire one year from the date the license or permit is issued. An original or renewal application for a primary permit or license listed in the following chart, with an issue date on or after September 1, 2009, will expire two years from the date the license or permit is issued.

<b>Permit/License Type (agency code)</b>	<b>Texas Alcoholic Beverage Code Chapter</b>
Agent's Manufacturing Warehousing Permit (AW)	Ch. 55
Brewer's Permit (B)	Ch. 12
Forwarding Center Authority (FC)	Rule §35.6
Local Cartage Permit (E)	Ch. 43
Local Cartage Transfer Permit (ET)	Ch. 43
Local Distributor's Permit (LP)	Ch.23
Private Storage Permit (L)	Ch. 45
Public Storage Permit (K)	Ch. 45
Package Store Permit (P)	Ch. 22
Wine Only Package Store Permit (Q)	Ch. 24
Package Store Tasting Permit (PS)	Ch. 52
Non-Resident Seller's Permit (S)	Ch. 37
Non-Resident Brewer's Permit (U)	Ch. 13
Storage License (SL)	Ch. 75
Wholesaler's Permit (W)	Ch. 19

General Class B Wholesaler's Permit (X)	Ch. 20
Local Class B Wholesaler's Permit (LX)	Ch. 21
Branch Distributor's License (BC)	Ch. 66
General Distributor's License (BB)	Ch. 64
Importer's License (BI)	Ch. 67
Importer's Carrier's License (BJ)	Ch. 68
Local Distributor's License (BD)	Ch. 65
Manufacturer's License (BA)	Ch. 62
Manufacturer's Warehouse License (MW)	Ch. 62
Non Resident Manufacturer's License (BS)	Ch. 63
Beer Retailer's Off Premise License (BF)	Ch. 71
Beer Retailer's On Premise License (BE) Counties under 1.4 million population	Ch. 69
Beer Retailer's On Premise License (BE) Counties over 1.4 million population - Original	Ch. 69
Beer Retailer's On Premise License (BE) Counties over 1.4 million population - Renewal	Ch. 69
Retail Dealer's On Premise Late Hours License (BL)	Ch. 70
Wine and Beer Retailer's On Premise License (BG) Counties under 1.4 million population	Ch. 25
Wine and Beer Retailer's On Premise License (BG) Counties over 1.4 million population	Ch. 25
Wine and Beer Retailer's Off Premise License (BQ)	Ch. 26

Wine and Beer Retailer's Permit Railway Car (Y)	Ch. 25
Wine and Beer Retailer's Permit Excursion Boat (V)	Ch. 25
Food and Beverage Certificate (FB)	Ch. 25

(f) The following permits and licenses are time limited and the fees and surcharges are assessed each time a permit or license is issued.

<b>Permit/License Type (agency code)</b>	<b>Texas Alcoholic Beverage Code Chapter</b>
Daily Temporary Mixed Beverage Permit (Per Day) (TB)	Ch. 30
Daily Temporary Private Club Registration Permit (TN)	Ch. 33
Temporary Charitable Auction Permit (CA)	Ch. 53
Temporary License	Ch. 72

(g) A secondary permit or license which requires the holder to first obtain another permit, including a late hours permit, expires on the same date as the primary permit expires. A temporary permit or license expires on the date indicated on the license or permit or the same date as the primary permit, whichever occurs earlier. The fees for a secondary or temporary permit or license may not be prorated or refunded.

# **Attachment 7**

**Approval to Publish Proposed Repeal of Chapter  
32, Grant Administration**

**MAY 24, 2011 AGENDA, ITEM 10**

**PREAMBLE FOR PROPOSED REPEAL OF CHAPTER 32, GRANT ADMINISTRATION**

The Texas Alcoholic Beverage Commission (commission), proposes the repeal of Chapter 32, Grant Administration.

Chapter 32 was reviewed under Government Code §2001.039, which requires that each state agency review and consider for re-adoption each rule adopted by that agency. The commission has determined that the reasons for initially adopting the chapter no longer exist. The commission's receipt and distribution of grant funds are governed by contracts, and internal commission processes related to grants are more appropriately addressed in agency policies or procedures rather than in rules. Current Chapter 32 does not accurately reflect current practice, and the commission has determined that it should be deleted to avoid confusion.

Mindy Carroll, Assistant Director of Education and Prevention, has determined that for each year of the first five years that the proposed repeal will be in effect, there will be no impact on state or local government.

The proposed repeal 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.

Mindy Carroll, Assistant Director of Education and Prevention, has determined that for each year of the first five years that the proposed repeal will be in effect, the public will benefit because outdated and potentially confusing regulations will not be in effect.

Comments on the proposed section 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 at (512) 206-3480. They may also be submitted electronically through the commission's public website at [http://www.tabc.state.tx.us/laws/proposed\\_rules.asp](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 July 7, 2011 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 1:30 p.m. Staff will not respond to comments at the public hearing. The commission's response to comments received at the public hearing will be in the adoption preamble. The commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. Persons with disabilities who plan to attend this hearing 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), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

5/21/2011 4:10 PM

## MAY 24, 2011 AGENDA, ITEM 10

Martin Wilson, Assistant General Counsel, certifies that the proposed section has been reviewed by legal counsel and found to be within the agency's authority to adopt.

The section is authorized by Alcoholic Beverage Code §§5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed section affects Alcoholic Beverage Code §§5.31.

# **Attachment 8**

**Approval to Publish Proposed Amendment  
to Rule §45.117, Gifts and Advertising  
Specialties**

**MAY 24, 2011 AGENDA, ITEM 11:**

**PREAMBLE FOR PROPOSED AMENDMENT TO §45.117, GIFTS AND ADVERTISING SPECIALTIES**

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §45.117, relating to Gifts and Advertising Specialties. The proposed amendment implements S.B. 890 (82<sup>nd</sup> Leg., Regular Session), which becomes effective on September 1, 2011 and which requires the commission to adopt rules allowing certain permittees to maintain coil connections for the dispensing of wine.

Alcoholic Beverage Code §102.07 prohibits certain upper- and middle-tier permittees from furnishing any service of value to a retailer and from furnishing to a retail dealer any equipment, fixtures or supplies to be used in dispensing alcoholic beverages. S.B. 890 (82<sup>nd</sup> Leg., Regular Session) adds §108.042 to the Alcoholic Beverage Code, which requires the commission to adopt rules relaxing the restrictions of §102.07 in order to allow some of the named permittees to clean and maintain coil connections used in the dispensing of wine.

Subsection (a) is amended to include the reference to Alcoholic Beverage Code §108.042.

Subsection (d) is amended to add new paragraph (d)(3), which applies to holders of wholesaler's, general class B wholesaler's, or local class B wholesaler's permits, or their agents, the same provisions as to the dispensing of wine that are applicable to distributors and members of the manufacturing tier as to the dispensing of draft malt beverages under 16 T.A.C. § 45.113(e)(3).

Dexter K. Jones, Director of the Compliance and Marketing Practices Division, has determined that for each year of the first five years that the section will be in effect, there will be no impact on state or local government.

The rule will have no adverse economic effect on persons required to comply with the rule, including micro-businesses and small businesses. There is no anticipated negative impact on local employment.

Dexter K. Jones, Director of the Compliance and Marketing Practices Division, has determined that for each year of the first five years the section is in effect, the public will benefit because the listed wholesalers will have more incentive to support a more efficient method of dispensing wine, i.e., through by-the-glass pours from wine kegs.

Comments on the proposed section 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 at (512) 206-3480. They may also be submitted electronically through the commission's public website at

[http://www.tabc.state.tx.us/laws/proposed\\_rules.asp](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 July 7, 2011 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 1:30 p.m. Staff will not respond to comments at the public hearing. The commission's response to comments received at the public hearing will be in the adoption preamble. The commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. Persons with disabilities who plan to attend this hearing 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), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

Martin Wilson, Assistant General Counsel, certifies that the proposed section has been reviewed by legal counsel and found to be within the agency's authority to adopt.

The section is authorized by Alcoholic Beverage Code §§5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and 108.042 (effective September 1, 2011), which requires the commission to adopt rules addressing maintenance of coil connections for the dispensing of wine.

The proposed section affects Alcoholic Beverage Code §§5.31, 102.07, and 108.042.

**§45.117. Gifts and Advertising Specialties.**

(a) General.

(1) This rule is enacted pursuant to §§102.07(b), 102.07(d), 108.042 and 109.58 of the Alcoholic Beverage Code.

(2) This rule applies to buyers, sellers and consumers of liquor.

(b) Gifts to consumers. Manufacturers and wholesalers may furnish gifts to consumers.

(1) The gifts shall be offered consistently with the restrictions contained in §102.07(d) of the Alcoholic Beverage Code.

(2) The items given may be novelty items of limited value. Such items shall be designed to promote a specific product or brand and may have a utilitarian function in addition to product promotion.

(3) Liquor may be purchased for consumers provided that such beverages are consumed on retail licensed premises in the presence of the purchaser. Such purchases shall not be excessive. All members of the manufacturing and wholesaler tiers participating in promotions authorized by this paragraph must hold an agent's permit or manufacturer's agent's permit.

(4) Manufacturers and wholesalers may, as a social courtesy, provide liquor or other things of value to unlicensed persons who are not employed or affiliated with the holder of a retail license or permit.

(c) Gifts to Retailers. Manufacturers and wholesalers may furnish advertising specialties to retailers.

(1) Advertising specialties are things designed to advertise or promote a specific product or brand. Such items may have a utilitarian function in addition to product promotion.

(2) The total cost of all advertising specialties furnished to a retailer shall not exceed \$101 per brand per calendar year. Dollar limitations may not be pooled to provide a retailer with advertising specialties in excess of the maximum permitted under this subsection.

(d) Service provided to retailer.

(1) Manufacturers and wholesalers may service and repair items furnished to retailers under the provisions of this rule.

(2) Manufacturers and wholesalers may furnish meeting rooms to retailers for purposes of product promotions. In no event shall anything be furnished to retailers except samples of the manufacturer's or wholesaler's product or food provided as a courtesy in accompaniment to such samples.

(3) The holder of a wholesaler's, general class B wholesaler's, local class B wholesaler's permit, or the permit holder's agent, may furnish and install shanks, washers, hose and hose connections, tap rods, tap markers, and coil cleaning service necessary for the proper delivery and dispensing of wine.

(e) Gifts to Unlicensed Organizations. Manufacturers and wholesalers may donate money, liquor or other things of value to unlicensed civic, religious, or charitable organizations.

(1) Liquor may only be given for consumption in wet areas.

(2) Advertising of events sponsored by organizations receiving donations shall include promotion of the organization sponsor or cause in a manner at least equal to or greater than the advertising of the industry donor.

(3) "Unlicensed" means not having a permit or license authorizing the sale or service of alcoholic beverages.

**§45.117. Gifts and Advertising Specialties.**

(a) General.

(1) This rule is enacted pursuant to §§102.07(b), 102.07(d), 108.042 and 109.58 of the Alcoholic Beverage Code.

(2) This rule applies to buyers, sellers and consumers of liquor.

(b) Gifts to consumers. Manufacturers and wholesalers may furnish gifts to consumers.

(1) The gifts shall be offered consistently with the restrictions contained in §102.07(d) of the Alcoholic Beverage Code.

(2) The items given may be novelty items of limited value. Such items shall be designed to promote a specific product or brand and may have a utilitarian function in addition to product promotion.

(3) Liquor may be purchased for consumers provided that such beverages are consumed on retail licensed premises in the presence of the purchaser. Such purchases shall not be excessive. All members of the manufacturing and wholesaler tiers participating in promotions authorized by this paragraph must hold an agent's permit or manufacturer's agent's permit.

(4) Manufacturers and wholesalers may, as a social courtesy, provide liquor or other things of value to unlicensed persons who are not employed or affiliated with the holder of a retail license or permit.

(c) Gifts to Retailers. Manufacturers and wholesalers may furnish advertising specialties to retailers.

(1) Advertising specialties are things designed to advertise or promote a specific product or brand. Such items may have a utilitarian function in addition to product promotion.

(2) The total cost of all advertising specialties furnished to a retailer shall not exceed \$101 per brand per calendar year. Dollar limitations may not be pooled to provide a retailer with advertising specialties in excess of the maximum permitted under this subsection.

(d) Service provided to retailer. ~~Manufacturers and wholesalers may:~~

(1) Manufacturers and wholesalers may service and repair items furnished to retailers under the provisions of this rule; ~~and,~~

(2) Manufacturers and wholesalers may furnish meeting rooms to retailers for purposes of product promotions. In no event shall anything be furnished to retailers except samples of the manufacturer's or wholesaler's product or food provided as a courtesy in accompaniment to such samples.

(3) The holder of a wholesaler's, general class B wholesaler's, local class B wholesaler's permit, or the permit holder's agent, may furnish and install shanks, washers, hose and hose connections, tap rods, tap markers, and coil cleaning service necessary for the proper delivery and dispensing of wine.

(e) Gifts to Unlicensed Organizations. Manufacturers and wholesalers may donate money, liquor or other things of value to unlicensed civic, religious, or charitable organizations.

(1) Liquor may only be given for consumption in wet areas.

(2) Advertising of events sponsored by organizations receiving donations shall include promotion of the organization sponsor or cause in a manner at least equal to or greater than the advertising of the industry donor.

(3) "Unlicensed" means not having a permit or license authorizing the sale or service of alcoholic beverages.

# **Attachment 9**

**Approval to Publish Proposed Amendment to  
Rule §33.25, Alcoholic Beverage License and  
Permit Fees and Surcharges**

**May 24, 2011 AGENDA, ITEM 12:**

**PREAMBLE FOR PROPOSED AMENDMENT TO §33.25, ALCOHOLIC BEVERAGE LICENSE AND PERMIT FEES AND SURCHARGES**

The Texas Alcoholic Beverage Commission (commission), proposes an amendment to §33.25, relating to Alcoholic Beverage License and Permit Fees and Surcharges. The amendment deletes those subsections implementing the transition from one-year to two-year terms for permits, licenses and certificates.

Alcoholic Beverage Code §§11.09 and 61.03 provide that permits and licenses will generally expire two years from the date of issuance, except for certain temporary and secondary permits and licenses. However, these sections of the Code authorized the commission to transition from one-year to two-year terms, in order to maintain a reasonable annual distribution of renewal application review work and fees. Current §33.25 implemented the transition from one-year to two-year terms by prescribing certain expiration dates for specific categories of permits and licenses. That transition was successfully implemented and these provisions in §33.25 are no longer necessary.

Current subsections (b) through (e) are deleted, and the remaining subsections are edited and reorganized.

Amy Harrison, Director of the Licensing Division, has determined that for each year of the first five years the section will be in effect, there will be no impact on state or local government.

The rule will have no adverse economic effect on persons required to comply with the rule, including micro-businesses and small businesses. There is no anticipated negative impact on local employment.

Amy Harrison, Director of the Licensing Division, has determined that for the first five years the section is in effect, the public will benefit because unnecessary and potentially confusing regulations will not be in effect.

Comments on the proposed section 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 at (512) 206-3480. They may also be submitted electronically through the commission's public website at [http://www.tabc.state.tx.us/laws/proposed\\_rules.asp](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 July 7, 2011 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 1:30 p.m. Staff will not respond to comments at the public hearing. The commission's response to comments received at the public hearing will be in the adoption preamble.

5/21/2011 3:30 PM

The commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. Persons with disabilities who plan to attend this hearing 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), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

Martin Wilson, Assistant General Counsel, certifies that the proposed section has been reviewed by legal counsel and found to be within the agency's authority to adopt.

The section is authorized by Alcoholic Beverage Code §§5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed section affects Alcoholic Beverage Code §§5.31, 11.09 and 61.03.

## VIII. PROPOSED AMENDED VERSION OF RULE 33.25

### §33.25. Temporary and Secondary Permits and Licenses.

- (a) This section relates to Alcoholic Beverage Code §§11.09 and 61.03.
- (b) A secondary permit or license which requires the holder to first obtain another permit, including a late hours permit, expires on the same date the primary permit expires.
- (c) A temporary permit or license expires on the date indicated on the license or permit or on the same date as the primary permit, whichever occurs earlier.
- (d) The fees and surcharges for a secondary or temporary permit or license may not be prorated or refunded.

## IX. COMPARING CURRENT AND PROPOSED AMENDED VERSIONS OF RULE 33.25

### §33.25. [~~Alcoholic Beverage License~~] Temporary and [~~Permit Fees~~] Secondary Permits and [~~Surcharges~~] Licenses.

(a) This [~~rule implements the provisions of §§5.50, 11.09 and 61.03 of the Texas Alcoholic Beverage Code (Code). Section 5.50 authorizes the Texas Alcoholic Beverage Commission (commission) by rule to assess surcharges on all applicants for original or renewal certificate, permit, or license issued by the commission. Sections 11.09 and 61.03 of the Code authorize the commission to issue a license or permit for a two-year term and double the amount of the fees established for each license or permit by the Code or a rule of the commission, and surcharges established in §33.23 of this chapter (relating to Alcoholic Beverage License and Permit Surcharges).~~] section relates to Alcoholic Beverage Code §§11.09 and 61.03.

~~[(b) Implementation Plan. To maintain a reasonable annual distribution of renewal application review work and permit fees, the commission will implement the two-year licensing schedule based on the type of permit or license type for which an application is submitted.~~

~~[(c) An original or renewal application for a permit or license listed in the following chart, with an issue date before October 1, 2008, will expire one year from the date the license or permit is issued. An original or renewal application for a permit or license listed in the following chart, with an issue date on or after October 1, 2008, will expire two years from the date the license or permit is issued.~~

~~[(d) An original or renewal application for a primary permit or license listed in the following chart, with an issue date before January 1, 2009, will expire one year from the date the license or permit is issued. An original or renewal application for a primary permit or license listed in the following chart, with an issue date on or after January 1, 2009, will expire two years from the date the license or permit is issued.~~

~~[(e) An original or renewal application for a primary permit or license listed in the following chart, with an issue date before September 1, 2009, will expire one year from the date the license or permit is issued. An original or renewal application for a primary permit or license listed in the following chart, with an issue date on or after September 1, 2009, will expire two years from the date the license or permit is issued.~~

~~[(f) The following permits and licenses are time limited and the fees and surcharges are assessed each time a permit or license is issued.~~

~~[(g) (b) A secondary permit or license which requires the holder to first obtain another permit, including a late hours permit, expires on the same date [as the primary permit expires. A temporary permit or license expires on the date indicated on the license or permit or the same~~

~~date as the primary permit, whichever occurs earlier. The fees for a secondary or temporary permit or license may not be prorated or refunded]~~ the primary permit expires.

(c) A temporary permit or license expires on the date indicated on the license or permit or on the same date as the primary permit, whichever occurs earlier.

(d) The fees and surcharges for a secondary or temporary permit or license may not be prorated or refunded.

# **Attachment 10**

**Discussion of Rule Activity**

**Texas Alcoholic Beverage Commission  
Government Code §2001.039 Rule Review Plan**

CHAPTERS	REVIEW DATE
Chapter 31. Administration	August 2011 - Alan Steen; Shelby Eskew; Carolyn Beck; Emily Helm
Chapter 32. Subchapter A. Grants General Provisions	Proposed - Mindy Carroll
Chapter 32. Subchapter B. Grant Budget	Proposed - Mindy Carroll
Chapter 32. Subchapter C. Grant Funding	Proposed - Mindy Carroll
Chapter 32. Subchapter D. Grant Administration	Proposed - Mindy Carroll
Chapter 32. Subchapter E. Grant Monitoring and Audits	Proposed - Mindy Carroll
Chapter 33. Licensing	Adopted, Proposed & Under Review - Amy Harrison; Shelby Eskew
Chapter 34. Schedule of Sanctions and Penalties	Adopted & Under Review - Joel Moreno; Rod Venner; Dexter Jones; Mindy Carroll; Judith Kennison
Chapter 35. Enforcement	Proposed & Under Review - Joel Moreno; Rod Venner; Dexter Jones; Steve Greinert; Judith Kennison
Chapter 36. Gun Regulation	Under Review - Joel Moreno; Rod Venner
Chapter 37. Legal	Under Review - Judith Kennison; Amy Harrison; Joel Moreno; Rod Venner; Dexter Jones
Chapter 39. Ports of Entry	Under Review - Charlie Kerr; Santos Saldana
Chapter 41. Auditing	Under Review - Dexter Jones; Steve Greinert; Amy Harrison
Chapter 45. Subchapter A. Standards of Identity Distilled Spirits	Proposed - Steve Greinert; Dexter Jones; Thomas Graham
Chapter 45. Subchapter B. Standards of Identity Wine	Proposed - Steve Greinert; Dexter Jones; Thomas Graham
Chapter 45. Subchapter C. Standards of Identity Malt Beverages	Proposed & Under Review - Steve Greinert; Dexter Jones; Thomas Graham
Chapter 45. Subchapter D. Advertising and Promotion All Beverages	Adopted, Proposed & Under Review - Dexter Jones; Thomas Graham; Steve Greinert
Chapter 50. Alcoholic Beverage Seller Server Training	Adopted - Sherry Cook; Charlie Kerr; Mindy Carroll; Ashleigh Jons

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](mailto:martin.wilson@tabc.state.tx.us).

Updated: May 21, 2011

**Texas Alcoholic Beverage Commission**  
**Rule Review Plan**  
Pursuant to Texas Government Code §2001.039

CHAPTERS	REVIEW DATE
Chapter 31. Administration	December 2010 Commissioners; Alan Steen; Shelby Eskew; D.K. Jones; Emily Helm
Chapter 32. Subchapter A. Grants General Provisions	January 2011 Mindy Carroll
Chapter 32. Subchapter B. Grant Budget	January 2011 Mindy Carroll
Chapter 32. Subchapter C. Grant Funding	January 2011 Mindy Carroll
Chapter 32. Subchapter D. Grant Administration	January 2011 Mindy Carroll
Chapter 32. Subchapter E. Grant Monitoring and Audits	January 2011 Mindy Carroll
Chapter 33. Licensing	January 2011 Amy Harrison
Chapter 34. Schedule of Sanctions and Penalties	January 2012 Chief Moreno; Judith Kennison
Chapter 35. Enforcement	Under Review Rod Venner; Chief Moreno; Steve Greinert
Chapter 36. Gun Regulation	Under Review Rod Venner; Chief Moreno
Chapter 37. Legal	December 2010 Chief Moreno; Rod Venner; Judith Kennison
Chapter 39. Ports of Entry	Under Review Charlie Kerr; Santos Saldana
Chapter 41. Auditing	Under Review Steve Greinert; D.K. Jones
Chapter 45. Subchapter A. Standards of Identity Distilled Spirits	Under Review D.K. Jones; Thomas Graham; Steve Greinert; Chief Moreno
Chapter 45. Subchapter B. Standards of Identity Wine	Under Review D.K. Jones; Thomas Graham; Steve Greinert; Chief Moreno
Chapter 45. Subchapter C. Standards of Identity Malt Beverages	Under Review D.K. Jones; Thomas Graham; Steve Greinert; Chief Moreno
Chapter 45. Subchapter D. Advertising and Promotion All Beverages	Under Review D.K. Jones; Thomas Graham; Steve Greinert; Chief Moreno
Chapter 50. Alcoholic Beverage Seller Server Training	July 2013 Sherry Cook; Charlie Kerr; Mindy Carroll; Ashleigh Jones;

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](mailto:martin.wilson@tabc.state.tx.us).

Updated: September 1, 2010

Texas Alcoholic Beverage Commission  
 July 27, 2010 Rule Review Plan  
 Pursuant to Texas Government Code §2001.039

CHAPTERS	REVIEW DATE
Chapter 31. Administration	December 2010 Commissioners; Alan Steen; Shelby Eskew; D.K. Jones; Emily Helm
Chapter 32. Subchapter A. Grants General Provisions	January 2011 Mindy Carroll
Chapter 32. Subchapter B. Grant Budget	January 2011 Mindy Carroll
Chapter 32. Subchapter C. Grant Funding	January 2011 Mindy Carroll
Chapter 32. Subchapter D. Grant Administration	January 2011 Mindy Carroll
Chapter 32. Subchapter E. Grant Monitoring and Audits	January 2011 Mindy Carroll
Chapter 33. Licensing	January 2011 Amy Harrison
Chapter 35. Enforcement	August 2010 Rod Venner; Chief Moreno; Steve Greinert
Chapter 36. Gun Regulation	August 2010 Rod Venner; Chief Moreno
Chapter 37. Legal	December 2010 Chief Moreno; Rod Venner; Judith Kennison
Chapter 39. Ports of Entry	September 2010 Charlie Kerr; Santos Saldana
Chapter 41. Auditing	September 2010 Steve Greinert; D.K. Jones
Chapter 45. Subchapter A. Standards of Identity Distilled Spirits	June 2010 D.K. Jones; Thomas Graham; Steve Greinert; Chief Moreno
Chapter 45. Subchapter B. Standards of Identity Wine	June 2010 D.K. Jones; Thomas Graham; Steve Greinert; Chief Moreno
Chapter 45. Subchapter C. Standards of Identity Malt Beverages	June 2010 D.K. Jones; Thomas Graham; Steve Greinert; Chief Moreno
Chapter 45. Subchapter D. Advertising and Promotion All Beverages	June 2010 D.K. Jones; Thomas Graham; Steve Greinert; Chief Moreno

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](mailto:martin.wilson@tabc.state.tx.us).

# **Attachment 11**

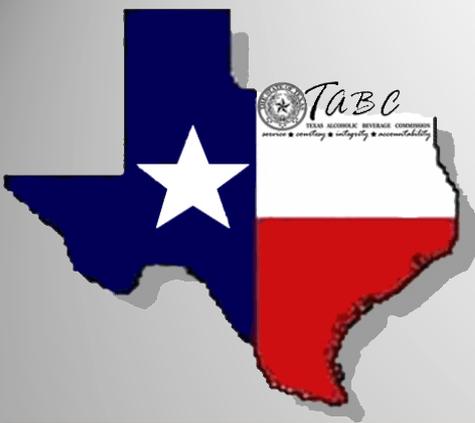
**Administrator's Report: Administrator and  
Agency Activities, Budget Issues, Staff  
Achievements**



# Administrator's Report

TABC Commission Meeting

May 24, 2011



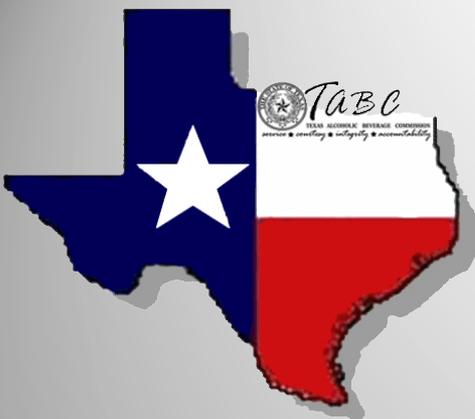
# Conference Committee Recommendations FY 2012 - 2013

Biennial Totals											
Strategy		TABC Base Request		Introduced HB 1		Difference		Conference Committee			
		Dollars	FTE	Dollars	FTE	Dollars	FTE	Dollars	FTE	Dollars	FTE
A.1.1.	Enforcement	\$46,192,626	322.5	\$41,288,870	271.0	(\$4,903,756)	(51.5)	\$44,520,954	297.0	\$3,232,084	26.0
B.1.1.	Licensing and Investigations	8,583,718	82.1	7,891,552	72.1	(692,166)	(10.0)	8,255,416	77.1	363,864	5.0
C.1.1.	Compliance Monitoring	12,224,981	93.5	12,224,981	93.5	-	0.0	12,239,029	93.5	14,048	0.0
C.2.1.	Ports of Entry	8,497,879	100.9	8,068,843	95.5	(429,036)	(5.4)	9,298,168	107.9	1,229,325	12.4
D.1.1.	Central Administration	4,144,187	27.0	3,729,768	24.3	(414,419)	(2.7)	3,980,051	24.3	250,283	0.0
D.1.2.	Information Resources	4,686,655	20.0	3,596,412	18.2	(1,090,243)	(1.8)	4,837,647	20.0	1,241,235	1.8
D.1.3.	Other Support Services	1,279,510	12.0	1,279,510	12.0	-	0.0	1,279,862	12.0	352	0.0
		<b>\$85,609,556</b>	<b>658.0</b>	<b>\$78,079,936</b>	<b>586.6</b>	<b>(\$7,529,620)</b>	<b>(71.4)</b>	<b>\$84,411,127</b>	<b>631.8</b>	<b>\$6,331,191</b>	<b>45.2</b>



# Rider 7

- **Appropriations Limited to Revenue Collections.** Fees, fines and other miscellaneous revenues as authorized and generated by the agency shall cover, at a minimum, the cost of the appropriations made above as well as an amount equal to the amount identified above in the informational item "Other Direct and Indirect Costs Appropriated Elsewhere in this Act." In the event that actual and/or projected revenue collections are insufficient to offset the costs identified by this provision, the Legislative Budget Board may direct that the Comptroller of Public Accounts reduce the appropriation authority provided above to be within the amount of revenue expected to be available.



# Rider 12

**Contingent Revenue: Fee Increases. Included in the amounts appropriated above in Strategy A.1.1, Enforcement, B.1.1, Licensing and Investigation, C.2.1, Ports of Entry, D.1.1, Central Administration, and D.1.2, Information Resources, is \$3,149,808 in fiscal year 2012 and \$3,181,383 in fiscal year 2013 out of the General Revenue Fund. These appropriations are contingent upon the Texas Alcoholic Beverage Commission increasing revenue through surcharges pursuant to the Texas Alcoholic Beverage Code 5.50 (b) by \$7,000,000 during the 2012-13 biennium and providing such information deemed necessary by the Comptroller of Public Accounts to issue a finding of fact that the increased revenues are estimated to be available in excess of the Comptroller's Biennial Revenue Estimate, including supplemental estimates used in certifying this Act, to fund the increased appropriations and benefits. Also contingent on the finding of fact, the “Number of Full-time-equivalents (FTE)” indicated above includes 45.2 FTEs in fiscal year 2012, and 45.2 FTEs in fiscal year 2013.**



## **Sec. 18.10. Payroll Contribution for Group Health Insurance**

- (a) Notwithstanding any other provision of this Act, out of appropriations made elsewhere in this act to state agencies and institutions of higher education for the state fiscal biennium beginning September 1, 2011, each agency and institution of higher education shall contribute, in an amount equal to 1.0 percent of the total base wages and salaries for each employee of a state agency or institution of higher education during the state fiscal biennium beginning September 1, 2011 to the Employees Retirement System's Group Benefits Program.**
- (b) For purposes of this section “institution of higher education” does not include components within the University of Texas and Texas A&M Systems.**
- (c) The Comptroller of Public Accounts shall transfer appropriations of state agencies and institutions of higher education pursuant to this section and deposit the funds into the Employees Life, Accident and Health Insurance and Benefits Trust Account to offset the costs of providing group health insurance coverage.**
- (d) The calculation of base salary for purposes of the reductions made under this section excludes longevity pay, hazardous duty pay, benefit replacement pay, overtime pay, and other payments that are not part of the base salary of the employee.**
- (e) Transfers made under this section shall be consistent with provisions requiring salaries and benefits to be proportional to the source of funds.**
- (f) The Texas Higher Education Coordinating Board shall administer the requirements of this section for public community/junior colleges.**
- (g) The Comptroller of Public Accounts shall promulgate rules and regulations as necessary to administer this section.**
- (h) General Revenue appropriations to the Employee Retirement System made elsewhere in this Act are hereby reduced by the value of the 1% contribution, estimated to be \$160 million for the 2012-13 biennium.**



Texas Alcoholic Beverage Commission

# QUESTIONS

# **CERTIFICATION**

## **REGULAR COMMISSION MEETING**

**9:30 a.m. – May 24, 2011**

**5806 Mesa Drive  
Austin, Texas 78759**



# 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 May 24, 2011.

A handwritten signature in black ink, appearing to read "Alan Steen".

Alan Steen  
Administrator

Sworn and subscribed before me this the 18th day of July 2011.



A handwritten signature in black ink, appearing to read "Gloria Darden Reed".

Gloria Darden Reed  
Notary in and for Travis County, Texas