2010 ALCOHOLIC BEVERAGE CONTROL LEGISLATION

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Two different kinds of events prompted this session's interest in, and reform of, the state's alcoholic beverage control system. First, in 2008 the legislature's new program evaluation division issued a report on the state ABC system emphasizing the large number of local ABC boards, the fiscal difficulties of many local systems, and the limited control of the state ABC Commission over local operations. The report noted that some communities were voting to establish ABC stores because that was a prerequisite to having liquor-by-the-drink, and that the newer ABC systems tended to simply siphon business from other nearby systems.

The other trigger for the interest in ABC reform was the publicity given to several mishaps in operation of local systems, most notably in Mecklenburg and New Hanover counties. The Mecklenburg dustup was over a lavish holiday meal a liquor broker hosted for county ABC board members and employees. In New Hanover, the issue was the $270,000+ compensation paid to the local system manager and the employment of one of his sons. Those cases brought attention to the limited authority the ABC Commission and the county commissioners had over the county ABC boards. And they came at a time when the ethics of public officials and employees was an important issue for the General Assembly because of other scandals.

In early 2010 the legislative leadership created a special joint committee to consider the ABC issues, and it was that body's work that resulted in Session Law 2010-122 (House Bill 1717). The new legislation covers a variety of topics as the headings below indicate.

Elections — The number of registered voters a city must have to be eligible to hold an ABC store election is doubled from 500 to 1,000. The number of voters required to be eligible to hold a mixed drink election remains at 500, but the new law eliminates the requirement that the city either already have ABC stores or hold an ABC store election at the same time as the mixed drink election. These election changes are intended to slow the number of small towns voting for ABC stores. They take effect October 1, 2010.

Finances — Current law requires audits of local ABC boards, regulates the deposit and investment of money to some extent, and limits borrowing of money, but includes none of the other requirements to which counties and cities and school boards are accustomed under the

Local Government Budget and Fiscal Control Act in Chapter 159 of the General Statutes and the comparable Chapter 115C act for schools. The rules adopted by the ABC Commission for the fiscal operations of local ABC boards do not go much beyond the statutes. There is no requirement, for example, that a local ABC board even adopt a budget.

The new law addresses financial operations by enacting budget and fiscal control provisions for local ABC boards that largely mimic those in Chapter 159 for counties and cities. The new provisions, thus, set out a schedule for adoption of a budget, require budget hearings, mandate an annual balanced budget, delineate the duties of the budget officer and finance officer, define the essentials of the accounting system, add a preaudit requirement for incurring obligations, and describe the roles of the finance officer and board in approving and paying bills. Annual audits are to be provided to the appointing authority (the board of county commissioners or the city council) as well as to the ABC Commission. The commission is authorized to investigate local financial operations and require modification of internal control procedures as necessary, much as the Local Government Commission may do with respect to counties and cities. The requirement of a $5,000 bond for local board members is raised to a bond of at least $50,000, and the same requirement is applied to boards' general managers and finance officers and store managers.

The bonding changes take effect October 1, 2010, but the other revisions to fiscal operations take effect May 1, 2011, and apply to the 2011-12 and later fiscal years. The ABC Commission is directed to provide annual training to local boards on the new financial requirements through 2013.

Board composition and compensation — Current GS 18B-700 provides for county and city ABC boards to consist of three members, but some boards have local acts setting a different membership size. The new act allows the appointing authority — the board of county commissioners or city council — to choose between a three-member and five-member board. Members are appointed for three-year, staggered terms. If the appointing authority decides upon a five-member board, it may not later revert to a three-member board without the approval of the ABC Commission. These new provisions supersede any local acts.

Current law gives the appointing authority full discretion to decide on the compensation paid to local ABC board members and managers. The new law sets board member compensation at $150 per meeting unless the appointing authority approves a different amount and notifies the ABC Commission.

The salary paid to the local ABC system's general manager is not to exceed the statutory limit for the local clerk of court's salary (those salaries currently range from $82,000 to $112,000 depending on the county's population) unless a higher level is approved by the appointing authority and notice given to the ABC Commission. No other local employee's salary may exceed that of the general manager.

Board members and employees are to be reimbursed for travel on official business at the state rate set by GS 138-6 unless the appointing authority adopts and provides to the ABC Commission a different travel reimbursement policy that is consistent with the county or city's policy for its own board members and employees. Excess travel expenses are to be paid only upon written authorization of the county or city's finance officer, a copy of which is to be provided to the ABC Commission.

The new law also prohibits board members from receiving any nonmonetary compensation or benefits other than the travel reimbursement. The general manager may receive the same benefits as other local ABC employees.

The new provisions on composition of the local ABC board take effect on October 1, 2010, as do the new compensation provisions, but the provisions on general managers' salaries only apply to managers hired after that date. A separate provision stating that the new state law overrides any local acts on board composition or salary takes effect October 1, 2011.

Ethics — The new legislation addresses conflicts of interest and ethical issues in several ways. First, it sets out specific standards for determining conflicts of interest and extends the applicability of some state statutes to ABC board members; second, it requires local boards to adopt codes of ethics and mandates ethics training for them; and, third, it establishes new prohibitions on nepotism.

The first set of changes appear in the revision to GS 18B-201, the current conflicts of interest statute. The amendments to that section make the conflict of interest rules of the Article 4 of Chapter 138A, part of the State Ethics Act, applicable to the ABC Commission and enact new provisions on conflicts of interest for local ABC board members, prohibiting the use of their position for the financial benefit of themselves, their spouses, certain close relatives, and their businesses. Board members will have a duty to disclose potential conflicts, and they may seek advisory opinions from the ABC Commission. The amendments to GS 18B-201 also reiterate the applicability to ABC Commission and local ABC board members of two statutes regulating conduct of public officers: GS 14-234, the criminal statute on self-dealing, and GS 133-32, the ban on receipt of gifts or favors from contractors or suppliers.

New GS 18B-706 requires each local ABC board to adopt a code of ethics for its members and employees, just as boards of county commissioners and city councils already are required to do. The ABC Commission is to provide a model code that the local boards may use. Additionally, each board member is to take at least two hours of ethics training within a year of being appointed or reappointed. The training may come from the ABC Commission or another source approved by the commission. The local board will decide whether to require ethics training for its employees.

The new anti-nepotism law prohibits one member of a family from supervising or otherwise being in a position of influence over another family member. The ban includes spouses, parents, children, siblings, grandparents, grandchildren, and in-laws. It also extends to other people living together in a family-like relationship.

All the new provisions take effect October 1, 2010, but the new nepotism rules apply only to ABC managers and employees hired after that date.

Removal of board members — Current law allows either the ABC Commission or the local appointing authority to remove a local ABC board member for cause, and also allows the commission to remove local employees, but it does not further define cause nor describe the procedure to be followed. The commission has adopted rules which say a little about cause and provide for a hearing if requested by the board member or employee.

New GS 18B-704 provides that a board member or employee may be removed because of disqualification under the law (e.g., because of a disqualifying interest in a liquor business), violation of the ABC laws, failure to complete required training, or "any conduct constituting moral turpitude or which brings the local board or the ABC system into disrepute." (A separate amendment to GS 18B-701 says a board member may be removed for failure to comply with the ABC Commission's performance standards, as described below, but that is not listed as one of the grounds for removal in new 18B-704.) Whoever initiates the removal process, either the ABC Commission or the county commissioners or city council, is to provide the board member or employee with written findings of the grounds for removal and provide the opportunity for a hearing before the commission. Removal requires a vote of two of the three ABC Commission members. The statute sets out the hearing procedure.

The board member/employee removal process is not subject to the Administrative Procedure Act, and thus there is no involvement by the Office of Administrative Hearings. Although the new statute says the ABC Commission's decision is final, it also says the dismissed board member or employee may appeal to the Court of Appeals where the issue is whether the commission abused its discretion in the dismissal. If the decision is reversed, the board member/employee may be reinstated and awarded back pay but will not be entitled to damages.

The removal provisions take effect October 1, 2010.

Performance standards — A principal means of assuring accountability of local ABC boards, and weeding out unsustainable local systems, is the new authority given to the ABC

Commission to adopt rules setting performance standards on such matters as store appearance, operating efficiency, solvency, customer service and law enforcement. Once such rules are adopted, local board members will be obligated to follow them and may be removed for the failure to do so. The ABC Commission is to conduct regular and special audits to check compliance, as well as performance evaluations and inspections.

The ABC Commission also is authorized to adopt rules mandating training for local board members, general managers and finance officers, and presumably that training might include performance standards as well as ethics and financial operations, as discussed above. If the training rules require personal attendance, the training is to be limited to four hours, with two of those hours to be provided in connection with the mandatory ethics training.

If the ABC Commission determines that a local board is not meeting its performance standards, the commission is to meet with the chair of the local board and the chair of the appointing authority and issue its findings. The county or city appointing authority then is to develop an improvement plan within 60 days, setting time limits for achieving the goals within no later than one year. An additional six months can be allowed for good cause.

If, at the end of the improvement period, the ABC Commission determines that the local board is incapable of meeting the required standards, the commission may close stores or require merger of the ABC system with another system to avoid insolvency. As part of that action the commission can seize and liquidate assets to satisfy debt.

The performance standard provisions take effect October 1, 2010.

Law enforcement — Current law requires certain percentages of local ABC profits to be spent on enforcement of the ABC laws. Some of the larger local systems use those funds to pay for their own ABC officers, but most boards contract with local law enforcement agencies. One of the purposes of the new law is to provide more assurance that such moneys are actually being spent on enforcement of the ABC laws and not on other activities.

A new subsection is added to GS 18B-501 to provide that the ABC enforcement agency, whether it be the local board's own officers or those of an agency with whom the board contracts for enforcement, is to file a monthly report showing its ABC enforcement activity. The report goes to the local board which in turn provides copies to its appointing authority and the ABC Commission. The commission is to post the report on its website.

Under current law when a local ABC board contracts with the sheriff's department or city police department or other local agency for ABC law enforcement the officers of that agency acquire ABC officers' authority to conduct administrative inspections of licensed premises. The sheriff's deputies and city police then may enter private businesses and clubs at any time under the guise of an administrative inspection. The new law amends GS 18B-501(f) to provide that the contracting law enforcement agency can designate no more than five officers to have such inspection authority.

Another provision amends GS 18B-202 to empower a judge to prohibit a person convicted of an ABC law violation or a felony from participating as an officer in a contracting local agency's ABC law enforcement.

The new monthly reporting requirement takes effect January 1, 2011. The other law enforcement changes are effective October 1, 2010.

Location of stores — The law already requires ABC Commission approval for the location of a new ABC store. That statute is amended effective October 1, 2010, to allow the commission to take into account the store's proximity to any existing store, whether operated by the same board or another. This provision, like the election provisions discussed above, should assist in reducing the opportunity for one ABC system to siphon business from another.

Wine franchise law — Almost every significant ABC bill includes some changes to the law favored by the industry but otherwise unrelated to the main purposes of the legislation. In this instance the industry provision involves the wine franchise law found in Article 12 of Chapter 18B.

Generally a winery, whether in or outside North Carolina, must sell its wine to a wholesaler in the state, and a retailer must purchase from a wholesaler, not directly from the winery. Under the wine franchise law, a winery that sells at least 1,000 cases a year in the state must enter a franchise agreement with one or more wholesalers in which the wholesalers are assigned territories of primary distribution responsibility. The territories are not exclusive, a wholesaler still may sell to a retailer in a different area, but the definitions of territory are important in defining rights between wineries and wholesalers. The first amendment to the wine franchise law raises the case threshold to 1,250. That is, a winery will have to enter territorial distribution agreements with wholesalers only if it sells 1,250 or more cases in the state each year.

The other amendment addresses the effect of changes in the winery on existing distribution agreements. Under current law when a winery is purchased by another entity that new entity remains bound by the existing distribution agreements with wholesalers in North Carolina. The amendment specifies that the same obligation applies to an entity that acquires a winery's import rights or other rights to distribute a brand. Say a New York winery has the rights to import a French wine, and the New York winery has distribution agreements with North Carolina wholesalers. If a Virginia winery acquired, either from the New York winery or from the original French source, the rights to import and distribute that wine in this country, the Virginia winery would remain subject to the distribution agreements the New York winery had entered with North Carolina wholesalers.

The changes in the wine franchise law take effect September 15, 2010, and apply to existing wine distribution agreements. A winery's shipment of wine into the state on or after that date is considered acceptance of the new terms imposed by the statute.

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