
Coates' Canons Blog: New Legislation Addresses ABC Issues

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In most legislative sessions the alcoholic beverage control laws do not get much attention. Yes, there are the usual local acts disguised as statewide bills so they can expand ABC permits to more areas ? like the act allowing permits for a private development in any county with more than 52,000 people that “borders on the Atlantic Ocean and has a seaport supporting oceangoing vessels” and has a tourism economy “made up of more than 3,000 tourism-related jobs.” And, yes, typically there are bills that tinker with the regulatory balance among breweries, wineries, wholesalers and retailers. But it is only every so often that major revisions to the ABC law come along. The 2010 session was one of those years.

The seeds for change were planted when the General Assembly’s new (at the time) Program Evaluation Division in late 2008 issued its report “North Carolina’s Alcohol Beverage Control System is Outdated and Needs Modernization.” The report emphasized the problems created by the existence of 158 separate local ABC boards. Some of those boards are too small to make money, and new ABC stores in small communities tend to steal business from neighboring ABC systems. Plus, those 158 local boards generally operate as they wish, with neither the state ABC Commission nor the local appointing authority ? the county commissioners or city council ? having much control over their conduct.

The 2008 report got some attention but did not generate any significant legislative reaction until several local boards behaved badly in 2009, attracting news media interest to the issues. The poster children for reform were the Mecklenburg and New Hanover county boards. In Mecklenburg the ABC board accepted a \$13,000 holiday dinner from its major liquor supplier. The New Hanover board at first tried to withhold public records about the salaries and bonuses paid its employees, then revealed that its general manager received about \$280,000 the previous year and had a son on the payroll for \$140,000. Although publicity forced resignations at both boards, the ABC Commission and county commissioners were quick to point out their limited authority over the local ABC boards.

The result of the Mecklenburg and New Hanover stories was a special joint legislative committee appointed in early 2010, and the result of the committee’s work was the introduction and enactment of House Bill 1717 as Session Law 2010-122:

The major parts of the new legislation, most of which take effect on October 1, 2010, are:

- To stem the tide of small, financially shaky local ABC systems, the number of registered voters required for a city to hold an ABC store election is increased from 500 to 1,000. And the law eliminates the requirement that a city have an ABC store election in order to approve mixed drinks. Moreover, as discussed below, local ABC systems now will be subject to performance standards, and board members can be ousted and systems closed for failure to perform.
- Starting with next fiscal year, local ABC boards will be subject to fiscal control statutes that mirror the Local Government Budget and Fiscal Control Act for counties and cities. Audits are to be shared with the appointing authority as well as the ABC Commission, and the commission can require changes in a board’s internal control procedures. These changes will be significant for some ABC boards that have never previously even adopted budgets.
- The bonds required of board members and employees are increased tenfold.
- The compensation and expense reimbursement paid local ABC board members and employees is limited by state statute unless the appointing authority specifically approves and notifies the ABC Commission of the higher levels.
- Counties and cities can choose between having three-member or five-member ABC boards.
- New conflict of interest rules for local ABC boards are spelled out in the statute; boards are required to adopt codes of ethics and receive training much the same as county commissioners and city council members; the applicability of state laws against self-dealing and receipt of gifts and favors is reiterated; and a new statute limits nepotism in local board hiring.
- The ABC Commission is to adopt performance standards and is to conduct periodic and special audits to check on



local compliance. When local boards do not meet the standards, the county or city that appointed the board will have to develop a remedial plan for compliance, and continued failure can result in state action to close or merge the local ABC system.

- The authority of the ABC Commission and the appointing authority to remove local ABC board members is expanded.
- Local ABC enforcement officers, and city police and other agencies contracted for ABC enforcement, will have to report regularly on their activities to assure that their efforts are directed at ABC enforcement rather than other activity.

This is a quick and superficial summary of the new legislation. For more detail, go to this longer explanation.

Links

- www.ncga.state.nc.us/PED/Reports/documents/ABC/ABC_Report.pdf
- www.ncga.state.nc.us/Sessions/2009/Bills/House/PDF/H1717v8.pdf