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A Program and Operational Review of the PA State Police's Bureau of Liquor Control Enforcement

June 2006

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Report Summary and Recommendations

Study Background

Between 1933 and 1987, the responsibility for enforcing Pennsylvania's liquor laws was vested in the Pennsylvania Liquor Control Board (PLCB). During 1985, the Liquor Control Board underwent a sunset performance audit and legislative review. The Board was subsequently reestablished by Act 1987-14.

Act 1987-14 also transferred responsibility for liquor control enforcement from the PLCB to the Pennsylvania State Police. Under this new enforcement arrangement, the State Police Commissioner was authorized to assign State Police officers to "such supervisory and other capacities in the enforcement bureau as he deems necessary," but all other enforcement personnel were to be civilians.

Personnel employed in the Liquor Control Board's Bureau of Enforcement in 1987 were given the option of remaining with the PLCB or transferring to the new State Police Bureau of Liquor Control Enforcement (BLCE). The BLCE was created effective July 1, 1987, and 144 enforcement officers, 81 clerical personnel, and 2 attorneys transferred to the new bureau from the PLCB.

Since the transfer, questions frequently arise about various aspects of liquor law enforcement operations and, in particular, about how well a contingent of civilian liquor enforcement officers (LEOs) has been assimilated into the Pennsylvania State Police organization. While the Legislature has not conducted any further formal reviews of the law enforcement function since 1987, the House Liquor Control Committee has held a number of hearings concerning BLCE operations since that time.

To address issues raised during these hearings and to obtain a status report on liquor law enforcement activities in the Commonwealth, the Legislative Budget and Finance Committee directed its staff to conduct a program and operational review of the Bureau of Liquor Control Enforcement. This review was to include an examination of the current structure and operation of the BLCE, liquor law enforcement staffing, the nature and level of liquor control enforcement activities, and the organizational placement of the liquor law enforcement function. The study also includes a detailed accounting and itemization of BLCE expenditures.

BLCE Overview

The mission of the BLCE is to maintain or improve the quality of life of the citizens of the Commonwealth through education and ensuring compliance with the provisions of the Liquor Code, PLCB regulations, and certain provisions of the Crimes Code. Civilian officers assigned to the Bureau investigate and issue both

administrative and criminal citations to liquor licensees. The BLCE's area of responsibility includes over 18,000 licensed establishments, as well as unlicensed places of business (i.e., "speakeasies") where the illegal sale of alcoholic beverages occurs.

The BLCE has an authorized staff complement of 252, including 164 enforcement officers. The organizational structure consists of a Bureau Headquarters located in Harrisburg, nine District Enforcement Offices located throughout the Commonwealth, and the Compliance Auditing and Gambling Enforcement Unit (C.A.G.E.).

District offices are located in Philadelphia, Wilkes-Barre, Allentown, Williamsport, Harrisburg, Altoona, Pittsburgh, Punxsutawney, and Erie. The BLCE is headed by a Pennsylvania State Police Major, who serves as the Bureau Director, and consists of two divisions, the Administration and the Operations Division. The Office of Chief Counsel for the State Police represents the BLCE in all proceedings before the Office of Administrative Law Judge (OALJ) or any other adjudicatory body.

The Bureau's priority enforcement areas for 2005 and 2006 are (1) detection and reduction of underage drinking through the College and University Underage Drinking Enforcement Program; (2) high school and middle school education programs; (3) nuisance bars; (4) service to licensees; (5) speakeasies; and (6) video gambling. To this end, the BLCE engages in the following programs and activities to both respond to complaints and conduct proactive, or routine, enforcement work.

- Age Compliance Check Program
- Border Patrols
- "Choices" Alcohol Education Program
- Gambling Investigations
- Intoxicating Source Program
- Licensee Audits
- Licensed and Unlicensed (Speakeasy) Investigations
- Minor Patrols
- Nuisance Bar/Establishment Investigations
- Routine Inspections
- University/College Underage Drinking Enforcement Program
- Worthless Check Investigations
- Other Activities and Involvement With Related Agencies and Stakeholder Groups

A glossary of common terms related to the BLCE and liquor law enforcement in Pennsylvania is provided in Appendix A of this report.

Study Conclusion

The problems the Legislature was attempting to address in 1987 when it transferred the liquor law enforcement function from the Pennsylvania Liquor Control Board to the Pennsylvania State Police have largely been resolved. Specifically, the transfer of the function to the State Police has effectively separated the liquor licensing and revenue-generating functions from the liquor law enforcement function. It has also effectively addressed the public perception of corruption and lax and uneven enforcement that existed when the function was in the Liquor Control Board.

While the current system has successfully addressed these concerns and proven to be workable, the transition of a contingent of civilian enforcement officers to a paramilitary police organization has not been without problems. Our study concluded that a number of factors and conditions are hampering a full liquor law enforcement effort in Pennsylvania. To address these, various organizational, operational and legislative changes will be necessary.

We also concluded that, although considered in recent years, a further transfer of the liquor law enforcement function to another state agency is neither necessary nor practical as a means of dealing with these problems. Rather, a major change in the organizational approach to liquor law enforcement and how the function is staffed within the Pennsylvania State Police is needed to address existing system deficiencies while providing for a substantially expanded and intensified liquor control enforcement effort in Pennsylvania.

Findings

A. Under the current organizational and staffing structure, there are a number of factors and conditions that pose barriers to a full liquor law enforcement effort by the BLCE.

- 1. Liquor control enforcement work is performed by "civilian" BLCE officers who have limited police powers. (See pages 71 to 85.)**

Although organizationally located in the Pennsylvania State Police, the BLCE's liquor enforcement duties are performed by "civilian officers" who are granted only limited enforcement powers and duties. Since the transfer of the liquor control enforcement function to the State Police in 1987, questions have increasingly been raised about the nature and extent of police powers given to LEOs and whether there is a need for additional powers.

Act 80 of 1994 expanded the arrest powers of LEOs beyond violations relating to liquor laws but did not grant them full police powers. We found that LEOs do not currently have powers and authority in the areas listed below.

Areas in Which LEOs Do Not Currently Have Specific Authority to Enforce	
- Drug Code violations	- Open lewdness
- Driving under the influence (DUI) violations	- Certain theft crimes
- Illegal sale of cigarettes	- Fraudulent destruction, removal, or concealment of recordable instruments
- Forgery	- Identity theft
- Falsification to authorities	- Threats and other improper influence in official and political matters
- Prostitution	- Retaliation for past official action
- Small games of chance	- False swearing
- Indecent exposure	- False reports
- Tampering with public records	- Intimidation of witnesses or victims
- False identification to law enforcement authorities	- Hindering apprehension or prosecution
- Dealing in proceeds of unlawful activities	

Although some of the LEOs with whom we met during this study were not interested in acquiring additional police powers, more stated that not having full police powers both hampers their enforcement efforts and negatively impacts morale.

2. Various terms and conditions of their employment in the PSP continue to generate concerns and morale issues among a considerable segment of the enforcement officer (LEO) workforce. (See pages 85 to 93.)

The transition of a contingent of civilian enforcement officers to a special bureau within a police organization with a strong paramilitary orientation has not been entirely smooth. This was particularly evident as we met with representatives of both the LEO and EO3 unions and made field visits to six of the nine BLCE district offices during the course of this study.

During this time, enforcement officers expressed numerous issues and concerns related to the terms and conditions of their employment as civilian officers within the State Police organization. The following were most frequently cited by enforcement officers:

- *“Us Versus Them” Work Environment.* Many enforcement officers believe that a general “us” (civilians) versus “them” (enlisted Troopers) environment pervades the BLCE work environment. Many indicated that they feel like “second class citizens” who have not been accepted in the organization, especially by Troopers at the Troop and Station levels. They feel that they are constantly reminded that they are not “members” (i.e., enlisted personnel). Some enforcement officers believe that transfer to another agency or full civilianization of the liquor law enforcement function would be the only way to eliminate the “us versus them” mindset.

- *Lack of Career Advancement Opportunities.* The lack of career advancement opportunities is a widespread LEO concern. The EO3 supervisor position (of which there are 24) is the top civilian position within the BLCE. The next higher position, District Office Commander, is only available to Troopers. As such, some LEOs have described the EO3 position as a terminal “first-line supervisor” position. Some LEOs also expressed frustration that EO3 positions effectively become “locked up” for many years upon being filled. This eliminates the only promotion opportunity available to LEOs within BLCE. Such limited opportunity for advancement within BLCE has been identified by some as a primary contributing factor to turnover among LEOs.
- *Limited Police Powers.* Another very common theme relates to the limitations that currently exist in LEO enforcement powers. Given their limited arrest powers, some enforcement officers report feeling a constant reliance on State Troopers and local police. Some say they sometimes are discouraged from contacting PSP Troops and local law enforcement when needed due to their possible unavailability or lack of timely response. This was identified as a particular concern when requesting Troop assistance for the purpose of pursuing vehicles for suspected DUI offenses, as well as the potential sale of alcoholic beverages to minors.
- *Working Conditions/Officer “Burnout.”* LEOs frequently expressed concerns about the nature of the position and attendant health and safety risks they face. They cite the requirement to work shifts late at night on undercover assignments and in potentially dangerous establishments as being factors in “officer burnout.”

Some cite the demands of prolonged duty in undercover status with associated occupational hazards (e.g., alcohol and second-hand smoke) as being significant health threats.¹ They also point out that, unlike State Troopers who work in pairs on night duty, LEOs often work alone at night;² some officers expressed concerns about the reliability of cell phones and radios for obtaining back-up assistance.

In other areas, enforcement officers also expressed concerns about working without a contract since June 2003 and about required statistical measures and reporting practices, excessive paperwork requirements, and, in some cases, inadequate or unavailable equipment.

Whether actual or perceived, these concerns impact agency morale. And, while not easily quantifiable, morale issues can directly impact individual job

¹According to the LEO job description, an LEO is required to feign consumption of alcoholic and non-alcoholic beverages and, if appropriate, exercises the option of consuming such beverages during the course of performing official duties.

²The LEO contract dictates the circumstances in which a partner may be assigned and requires that due consideration be given to the safety of the officers when determining such assignment.

performance and overall agency operations. In presenting this information, it is also important to recognize that many, but not all LEOs with whom we spoke, identified these as issues and concerns. In some cases, officers reported that they are very satisfied with their current position and work conditions and assignments.

3. LEOs spend an excessive amount of time and effort investigating bad checks issued by liquor licensees. (See pages 47 and 48.)

BLCE efforts to investigate bad checks written by liquor licensees consume an inordinate amount of the Bureau's enforcement time and resources. Two sections added to the Liquor Code in 1961 mandate the Bureau's involvement in what is essentially an administrative "collection agency-type" function.

In both CY 2004 and CY 2005, the BLCE issued more citations for the issuance of worthless checks by licensees than any other violation, 429 in CY 2004 and 601 in CY 2005. Many BLCE officers with whom we spoke question having LEOs function as "bill collectors." While the Bureau's time and activity reporting system does not account for LEO hours spent on worthless check investigations, both the management staff as well as the enforcement officers state that this activity consumes considerable time and resources which could be better spent on more serious violations and investigations.

4. There has been a substantial reduction in the staff size of the Bureau's "special investigations unit." (See pages 129 and 130.)

When the liquor law enforcement function was housed in the Liquor Control Board, the Bureau of Enforcement had a "Special Investigations Section" made up of 15 officers and support staff. The BLCE disbanded this unit in 2003 and created a Compliance, Auditing and Gambling Enforcement Unit (C.A.G.E.) staffed by an Enforcement Officer 3, two members of the State Police, and one clerical position. BLCE officials point out that the functions of the Special Investigations Section were transferred to the district offices and that C.A.G.E. was not intended to be a replacement for the Special Investigations Section.

As presently constituted, the C.A.G.E. Unit is more a policy and compliance unit and is not staffed sufficiently to do all that its name implies (e.g., audits). BLCE officials acknowledge that consideration should be given to developing a more descriptive title for the unit.

5. The BLCE has historically had difficulty maintaining its enforcement officer (LEO) force at full authorized complement strength. (See pages 64 to 69.)

During the period January 1995 through January 2006, the average monthly number of LEO vacancies was 15, or roughly 11 percent of the authorized LEO complement. During the period FY 1998-99 to FY 2004-05, 114 new LEOs joined the BLCE while 92 LEOs terminated their employment. As of January 30, 2006, the BLCE had 16 vacancies in the LEO ranks.

- 6. A lack of diversity in the LEO workforce very likely means that many licensed establishments are being under-patrolled and many minority neighborhoods are being underserved.** (See pages 61 to 64.)

During the course of the LB&FC study, LEOs frequently expressed concerns regarding the lack of gender and racial diversity within the organization as it pertains to full enforcement of the Liquor Code. There is a significant under-representation of minorities and women in the LEO workforce. As of January 30, 2006, the 124 person LEO workforce was about 90 percent white and 81 percent male. The LEO workforce included only 11 African-American LEOs and one Hispanic officer.

B. Numerous problems and deficiencies in the BLCE's statistical reporting and management information systems make it difficult to accurately assess the nature and extent of the Bureau's enforcement efforts

Our examination of BLCE statistical reports and recordkeeping systems found numerous problems and limitations in the data. Taken together, the concerns discussed below constitute a significant operational and management deficiency and call into question the validity and reliability of much of the BLCE's existing statistical data.

- 1. The manual systems BLCE currently uses to account for enforcement officers' hours and activities are not effective record-keeping or management tools.** (See pages 94 to 97.)

We found that time and activity reporting by enforcement officers is based on manual systems that are prone to data entry errors and inconsistent interpretation. Also, the categories currently used to record LEO hours and activities are not consistent, clearly defined, or reflective of the full-range of BLCE operations.

- 2. The format and content of existing BLCE statistical reports are not meaningful or reliable for management information or public and legislative oversight purposes.** (See pages 98 to 108.)

The data elements on many BLCE reporting formats are inconsistent, insufficiently defined, and in some cases misleading. We also found inaccuracies and inconsistencies in various statistical data reported by the BLCE.

- 3. The BLCE does not have a standardized caseload or workload measure.** (See pages 106 and 107.)

The BLCE is a complaint-driven operation in which LEOs are routinely assigned work on a “case” basis. However, the BLCE does not define or have a method of calculating a standard caseload or workload measure. This is important management information for BLCE managers and supervisors.

- 4. The BLCE daily reporting system and statistical reporting formats are not tied to a clearly identifiable set of performance measures.** (See page 107.)

The measures the State Police reports to the Governor’s Budget Office and that appear in the Governor’s Budget Document for liquor law enforcement (investigations, inspections of open liquor establishments, and warning notices) are not reflective of the overall operation of the BLCE or current enforcement priorities. They are not effective as measures of agency performance for either budgetary or legislative oversight purposes.

- 5. Although most of its enforcement activities are initiated in response to complaints, the BLCE does not have a formal system to track complaint/incident handling and disposition.** (See pages 107 and 108.)

During CY 2005, the BLCE reported receiving a total of 16,717 complaints. We found that existing BLCE systems do not provide a means by which headquarters command staff or district commanders can track the assignment, status, outcome, and final disposition of individual complaints. BLCE managers are also not able to monitor the timeliness of district office actions in assigning and completing investigations on complaints received.

C. Despite the previously discussed problems and limitations in existing statistical reports, an examination of BLCE enforcement programs and activities provides a perspective on the Bureau’s primary areas of law enforcement emphasis and how available LEO hours are being expended.

- 1. BLCE enforcement activities are largely complaint-driven and reactive in nature; relatively few LEO efforts can be characterized as “proactive enforcement.”** (See pages 18 and 19.)

The BLCE policy is to follow up on each complaint it receives. During CY 2005, the Bureau reported receiving 16,717 complaints. BLCE officials concede that the LEOs spent the vast majority of their time investigating these complaints. After allowing for training, court time, and administrative paperwork requirements, there is relatively little, if any, time for LEOs to undertake proactive patrols or other enforcement work such as routine inspections and audits. Previously discussed problems in the BLCE’s time and activity reporting system prevent a more precise calculation/estimation of LEO time spent on proactive versus reactive enforcement work.

- 2. In CY 2005, “issuing bad checks” was again the violation most frequently cited by the BLCE; this is a “non-enhanced penalty” violation.** (See pages 51 to 60.)

BLCE Liquor Enforcement Officers issue both administrative and criminal citations. The Liquor Code creates two categories of administrative violations: sometimes referred to as “enhanced” and “non-enhanced” penalty violations.

The concept of “enhanced violations” refers to those violations identified in the Liquor Code for the imposition of higher fines (e.g., sales to minors and visibly intoxicated individuals; lewd, immoral, or improper entertainment; permitting minors to frequent premises; public nuisances; the sale or purchase of a controlled substance; prostitution; and corruption of minors). Non-enhanced violations have a potential fine of \$50 to \$1,000. Enhanced violations have potential fines of \$1,000 to \$5,000 and are most often associated with the kinds of violations that can lead to an establishment being classified as a nuisance bar.

Only two of the ten violations most frequently cited by LEOs in CY 2005 were for an enhanced penalty violation. These were: “permitted sales to a minor” and “sold/furnished alcohol to a visibly intoxicated person.”

- 3. The BLCE is aggressively implementing several programs and initiatives targeting the reduction of underage drinking.** (See pages 21 to 23; pages 33 to 35; and pages 45 and 46.)

The detection and prevention of underage drinking is a major BLCE enforcement priority. The Bureau has placed increasing emphasis and effort on conducting minor patrols through two special initiatives to reduce underage drinking:

- *The University/College Underage Drinking Enforcement Program.* This program was implemented in 1992 and is a joint effort of the District Enforcement Offices and area PSP Troops to curtail the purchase and consumption of alcoholic beverages by minors. The program targets large, planned gatherings of minors consuming alcoholic beverages in conjunction with social events on university and college campuses. Statistics for this program show a marked increase in activity between CY 2004 and CY 2005, with raids nearly doubling from 85 to 162 and arrests increasing from 453 to 1,000.
- *The Age Compliance Check Program.* An age compliance check is defined as “an undercover investigation of a licensed premise during which an underage buyer purchases or attempts to purchase liquor or malt or brewed beverages under the supervision of a Bureau officer.”

The Bureau initiated the program in January 2005 and conducted age compliance checks at 377 licensed establishments during the remainder of the year. The Bureau reports that 166, or 44 percent of the establishments checked, were non-compliant (i.e., a sale was made to the underage buyer). During CY 2006, the Bureau plans to conduct age compliance checks at 1,000 additional liquor licensed establishments as well as make follow-up visits to past violators.

4. Fewer border patrols are being conducted than are required by internal BLCE procedures. (See pages 23 to 25.)

Border patrols are specialized enforcement activities carried out by the BLCE in order to prevent the unlawful importation of alcoholic beverages into the state and the corresponding loss of state tax revenues. These investigations are usually conducted through undercover surveillance of liquor and beer retail outlets in neighboring states (focusing on Delaware, Maryland, and New Jersey).

We found that in both CY 2004 and CY 2005, the BLCE conducted fewer border patrols than required under PSP policy. Statistics show that both the total number of border patrols conducted and the number of citations issued declined in CY 2005 to 56 patrols and 24 arrests. In total, this is 48 fewer patrols than are required.

According to the BLCE Director of Operations, border patrol details have been hindered by legislation enacted in neighboring states. Also, because LEOs are not authorized to make traffic stops, border patrols are dependent upon the availability of state or local police to work with the LEOs.

5. The BLCE does not regularly conduct required audits of liquor licensees. (See pages 29 to 32.)

The *BLCE Procedures Manual* states that LEOs are to conduct 19 different types of licensee audits. An audit function is presumably also to be a part of the Bureau's Compliance Auditing and Gambling Enforcement Unit (C.A.G.E.). This unit does not, however, have trained auditors on staff.

The BLCE Director explained that audits are not a high priority and, when conducted, usually arise during an investigation and are related in some way to a complaint. While audit-type activities may be a part of various BLCE investigations or inspections, there is no formal audit plan or program in place. Agencies that have audit responsibilities typically develop an annual audit plan and schedule to proactively direct and focus audit resources.

BLCE statistical reports do not provide information on how many and what types of audits were conducted during the calendar years we examined.

6. Since 2000, a total of 52 licensed liquor establishments were closed as a result of the BLCE's nuisance bar program. (See pages 35 to 39.)

The BLCE and the Pennsylvania Liquor Control Board operate separate nuisance bar programs. In the case of the BLCE's program, a licensed liquor establishment is identified as a potential "problem establishment" based on one or more allegations of a violation of the Liquor Code, or other statutes or local ordinances that materially affect the quality of life in the surrounding neighborhood.

Once one or more of these violations are found, and even though the establishment may not yet legally be defined as a "nuisance bar," the BLCE converts its activities from a general investigation to a nuisance bar investigation. This investigation seeks to establish if the licensed premises is a nuisance bar pursuant to the Liquor Code. If the BLCE finds this to be the case, it seeks to have the establishment closed by court order through what is referred to as a Liquor Code "Section 611 action." The BLCE also provides evidence to the PLCB to be considered during the license renewal review phase of its nuisance bar process.

While a total of 52 problem liquor licensees were closed as a result of BLCE-initiated Section 611 nuisance bar actions since 2000, several factors appear to prevent the BLCE from doing considerably more in this regard. These include the required emphasis on bad check investigations, limited LEO police powers, and LEO complement issues, all of which would appear to restrict BLCE nuisance bar efforts.

7. The BLCE does not perform routine inspections of all liquor licensees. (See pages 39 to 44.)

A routine inspection is an open, proactive inspection activity that is intended to provide a comprehensive examination of licensee operations with respect to the Liquor Code and all associated regulations.

From current BLCE centralized reports and records, it is not possible to determine when each of the state's 18,000 plus licensees received their last routine inspection. The BLCE does not have an automated system that records routine inspection activity for each licensee. Bureau officials concede that it is possible that some licensees may not have received a routine inspection visit from an LEO in many years or, possibly, not since the enforcement function was transferred to the BLCE.

The BLCE reports that it conducted 2,567 routine inspections in CY 2004. As a result of a headquarters initiative, this number was increased to 3,058 in CY 2005. Statewide, the number of routine inspections done in CY 2005 represents 16.6 percent of all licensees. If inspections were done at this annual rate, it would take at least six years to conduct a routine inspection of all licensees.

8. The BLCE's gambling-related work focuses on video gambling and small games of chance. (See pages 26 to 28.)

A 1994 amendment to the Liquor Code gave the BLCE enforcement authority over all forms of illegal gambling occurring in establishments licensed by the PLCB. This responsibility focuses primarily on electronic video gambling and small games of chance such as punchboards, pull-tabs, and raffles.

LEOs are responsible for bringing action against any licensee that violates those sections of the Crimes Code related to illegal gambling. Such violations can result in both administrative and criminal proceedings.

The BLCE reported conducting 975 gambling investigations and 263 gambling raids in CY 2004. These actions resulted in 30 arrests related to gambling and the seizure of 700 electronic video gambling devices. In CY 2005, the total number of gambling investigations increased slightly to 1,067. As a result of 253 raids, LEOs made 85 arrests for illegal gambling and seized 680 illegal gambling devices.

9. The BLCE's intoxicating source database program is a proactive enforcement tool but, in some cases, may be underutilized. (See pages 28 and 29.)

Under a special program initiative by the BLCE in 2004, State Troopers are required to complete an “intoxicating source report” as part of each DUI investigation. This report indicates the name of the licensed establishment that was identified as serving alcohol to the DUI violator and is entered into the BLCE’s “Intoxicating Source Database” website.

This website is an important enforcement resource that is being used by the BLCE district offices to better target their investigatory efforts. Although no specific statistics are maintained on the extent to which it is used or factors into successful enforcement actions, BLCE field personnel cite it as a valuable enforcement resource. We found, however, that, in at least some cases, district office personnel may not be accessing the website on a daily basis as is required by BLCE special order.

10. The extent to which the BLCE is monitoring special occasion permits for the sale of alcoholic beverages cannot be determined from existing reports. (See pages 44 and 45.)

A Special Occasion Permit is a permit the PLCB issues to an “eligible entity” to allow the sale of alcoholic beverages for fund-raising purposes. Examples of eligible entities include hospitals, churches, volunteer fire or ambulance companies, bona fide sportsmen’s clubs, and nationally chartered veterans’ organizations. During CY 2005, the PLCB Bureau of Licensing reported issuing 1,419 special occasion permits to such groups that were valid for a total of 3,752 days of authorized alcohol sales.

We found, however, that the BLCE does not maintain summary records of enforcement activities related to special occasion permits. According to Bureau officials, visits to locations where special occasion permit holders are operating may periodically occur, but such activity is at the discretion of the district office commanders and supervisors.

D. Relatively little detailed information is available on liquor control enforcement expenditures for legislative oversight and public information purposes. In the absence of this information, we developed the following breakdown and analysis of BLCE expenditures from accounting records obtained from the Pennsylvania State Police.

The General Assembly does not routinely receive detailed information on expenditures made by the Pennsylvania State Police for liquor control enforcement activities. Although the Legislature receives annual budget request information from the PSP during the annual Appropriations Committee hearing process, relatively little detailed information is provided on liquor control enforcement expenditures.

For legislative oversight purposes, a 2003 amendment to the Liquor Code requires that the Pennsylvania State Police provide “a copy of the most recently completed audit of expenditures of the enforcement bureau” to the House and Senate Appropriations Committees. However, no BLCE-specific audit is currently conducted. While the State Police annually submits budget and expenditure materials to the Committees, these reports do not include line-item detail of BLCE expenditures. Also, the Auditor General conducts audits of the Pennsylvania State Police as a whole but resulting reports also do not provide line-item detail on BLCE expenditures.

- 1. In FY 2004-05, the State Police expended \$17.2 million from the State Stores Fund for BLCE operations; \$2.3 million of the FY 2004-05 appropriation of \$19.9 million was lapsed. (See pages 109 to 122.)**

The Legislature makes an annual appropriation for “Liquor Control Enforcement” to the State Police for BLCE operations. This appropriation, which is made from the State Stores Fund, was \$19.9 million for FY 2004-05. During FY 2004-05, actual BLCE expenditures from this appropriation totaled \$17.2 million. The BLCE also expended \$130,000 from a federal grant for overtime associated with efforts to combat underage drinking. A total of \$2.3 million was lapsed, with the largest portion of the lapse coming from the personnel services area.

- 2. BLCE expenditures can be broken down by organization unit at both the headquarters and field operations levels. (See pages 110 to 121.)**

Expenditures related to district office operations account for nearly three-quarters of total BLCE spending. Spending by organizational unit during FY 2002-03 through FY 2004-05 is shown below.

Total BLCE Expenditures (By Organizational Unit)			
<u>Organizational Unit</u>	<u>FY</u> <u>2002-03</u> <u>(\$ Millions)</u>	<u>FY</u> <u>2003-04</u> <u>(\$ Millions)</u>	<u>FY</u> <u>2004-05</u> <u>(\$ Millions)</u>
Bureau Headquarters.....	\$3.6	\$3.2	\$3.1
Section Commanders3	.3	.4
District Offices	12.0	12.5	12.5
Office of Chief Counsel.....	1.0	1.3	1.1
Other	<u>.2</u>	<u>.3</u>	<u>.2</u>
Total Expenditures.....	\$17.1	\$17.6	\$17.3

Line-item expenditure detail is provided in Section VI of this report.

- 3. A detailed accounting of BLCE expenditures can be provided in three major categories: personnel services, operating expenses, and fixed assets. (See pages 110 to 121.)**

It is also possible to classify BLCE expenditures by “major and minor object of expenditure” as defined in the Commonwealth’s accounting system. The BLCE generally has expenditures in three major object codes: Personnel Services, Operational Expenses, and Fixed Assets. In FY 2004-05, however, the Bureau did not have any expenditures in the Fixed Assets category. The following breaks down FY 2004-05 BLCE expenditures totaling \$17.3 million according to major object.

Total BLCE Expenditures (By Major Object)				
<u>Major Object</u>	<u>FY</u>	<u>FY</u>	<u>FY 2004-05</u>	
	<u>2002-03</u>	<u>2003-04</u>	<u>Amount</u>	<u>% of Total</u>
Personnel Services	\$13.8	\$14.6	\$14.5	83.4%
Operating Expenses	3.0	2.8	2.9	16.6
Fixed Assets	<u>0.3</u>	<u>0.1</u>	<u>0.0</u>	<u>0.0</u>
Total	\$17.1	\$17.6	\$17.3	100.0%

Line-item detail on expenditures at the minor object level is provided in Section VI of this report.

- 4. Controls are in place to provide reasonable assurance that the liquor control appropriation made from the State Stores Fund to the State Police is used only for BLCE purposes.** (See pages 122 to 125.)

From time to time, questions have been raised and claims made that monies appropriated for liquor law enforcement are sometimes used instead for other State Police purposes or activities. Our study did not find any indication of such expenditures during FY 2002-03 through FY 2004-05. We also found that there are several internal control systems in place both within the Pennsylvania State Police’s Fiscal Division and the Office of the Comptroller for Public Protection and Recreation which are designed to ensure that all monies appropriated from the State Stores Fund for liquor law enforcement purposes are used only for BLCE purposes.

- 5. The BLCE is incurring substantial costs to store gambling devices, cash, and other evidence seized during raids.** (See pages 126 to 129.)

During the course of various enforcement actions such as gambling raids, border patrols, and speakeasy investigations, BLCE officers search for and seize gambling devices, alcohol, cash, and other items upon reasonable and probable cause. Upon seizure and until the hearing and appeal process is completed, the BLCE is required to retain and store those items. During this time, the seized items are considered evidence and must be maintained in the possession of the BLCE. The Bureau must also retain possession of the items

until what can become a very time-consuming Liquor Code procedure for the disposition of seized property is completed.

As of September 2005, the BLCE had a total of 1,838 seized gambling devices in storage at its nine district offices. The largest number, 943, were being housed in the Pittsburgh District, where both the district office and an off-site 10,000 square foot warehouse are used for storage. The commanders at the nine district offices also reported that they were holding cash totaling \$385,844 that was seized during various raids. Other items reported to be in storage are as follows: (1) 17,076 liters, 3,831 gallons, and 27 kegs of beer; (2) 3,571 liters of liquor; (3) 2,137 liters of wine; and (4) other miscellaneous items such as televisions, refrigerators, cash registers, and other furniture and equipment.

The current methods of handling and storing seized items is both cumbersome and costly, requiring detailed inventory and recordkeeping systems and recurring expenditures from the BLCE budget to cover the rental costs for facilities in which the seized items are stored. In addition to administrative and labor costs involved with processing these items, the BLCE spends about \$96,000 a year in rental costs for storage facilities.

E. Most states have a state agency assigned specific responsibility for enforcing liquor laws and regulations; the organizational placement and enforcement authority of these agencies varies widely.

Since 1987, various groups and individuals have questioned the transfer of the liquor control function from the PLCB to the State Police and called for consideration of other possible organizational placements and arrangements. Some members of the LEO union have, for example, suggested that the function be transferred to a “stand-alone” enforcement agency or to the Office of the Attorney General. Also, several legislative hearings held in recent years have touched on this topic, and one hearing held in 1999 dealt specifically with the possibility of a transfer to the Attorney General’s Office. We compared Pennsylvania’s organizational structure and approach to liquor law enforcement to those in use in other states. We found that:

- 1. States cannot be easily categorized in terms of their approach to and organizational placement of liquor law enforcement. Also, there is no clear relationship between a state’s approach to liquor control enforcement and whether the state is a license or a control jurisdiction. (See pages 141 to 156.)**

Most states have a state agency with primary responsibility for enforcing alcohol laws and regulations. We classified the states according to the nature of the state agency in which responsibility for liquor law enforcement is placed, as follows:

- *Liquor Control Model.* In 21 states, the enforcement function is located within a liquor control agency or agency having regulatory as well as enforcement responsibilities in relation to the alcoholic beverage industry.
 - *Traditional Law Enforcement Model.* In 15 states, including Pennsylvania, the enforcement function is found within a state police or law enforcement agency.
 - *Revenue or Finance Department Model.* In 11 states, liquor control enforcement responsibilities, and often alcohol beverage industry regulation generally, are assigned to a state revenue or finance department.
 - *Other Business/Consumer Regulatory Agency Model.* In 3 states, the liquor law enforcement function is found in an agency whose mission is to license or regulate business as to protect the consumer.
2. **Pennsylvania is one of only two states that uses civilian officers to conduct liquor law enforcement through a state police organization.** (See pages 141 to 156.)

Pennsylvania is one of 15 states in which the liquor law enforcement function is carried out by or through a state agency whose primary mission, like the Pennsylvania State Police, deals with statewide law enforcement. In a number of these states, departments of public safety have been created to serve as umbrella agencies providing administrative, financial, and technical support for core public safety functions, such as fire, emergency medical services, police, emergency communications, etc. Within state governments, a department of public safety is often the major law enforcement entity, the head of which in some cases may be the states' highest elected or appointed law enforcement official, usually the attorney general.

Pennsylvania is one of only two states that uses civilian officers to conduct liquor law enforcement through what can be called a "state police" agency. The other is Idaho in which the Idaho State Police conduct liquor control enforcement with two civilian investigative assistants who report to a state police sergeant. (The Director of the Idaho Alcohol Beverage Control Bureau stated that the Bureau "is severely understaffed for statewide enforcement.")

3. States vary considerably in the extent to which they grant full police powers to alcohol enforcement agents. (See pages 156 to 159.)

A July 2005 report done for the National Highway Traffic Safety Administration (NHTSA) concluded that while most states have a state agency with primary responsibility for enforcing alcohol laws and regulations, the enforcement capacity of these agencies varies widely. According to that study, the variation ranges from states in which enforcement agents are not sworn police or peace officers and are not permitted to carry firearms to states in which agents carry firearms and have full police powers. This report did not, however, classify each state into one of these categories.

To supplement the information available from the NHTSA study, we examined statutory provisions and other available materials pertaining to the authority of liquor enforcement officers and agents in other states. We found that direct state-to-state classifications and comparisons of the extent to which a state's liquor law enforcement officers have "full," "limited/partial," or "administrative enforcement powers only" are complicated by a number of factors.

- Although some states may statutorily grant their liquor enforcement officers full law enforcement powers, the agencies, in reality, are not currently exercising those powers. Similarly, the process of liquor law enforcement in some states appears to be undergoing modification and, in some instances, statutory language appears to be at variance with current practice.
- In other states, minimal specialized enforcement efforts appear to be occurring, due apparently to cutbacks in funding and personnel resources.
- There is no generally accepted meaning for the term "peace officer" and that particular state definitions had the effect of limiting and at other times broadening the actual powers and duties of the enforcement officers in a particular state.
- A similar problem exists with the use of the term "sworn" in reference to liquor law enforcement agents. This term generally connotes the power of arrest, yet we learned that some states have officers who were technically "sworn" but lacked the power to make physical arrests.

In assessing the relative extent of police powers granted to liquor control enforcement officers in the various states, it is also necessary to consider the qualification standards that are in effect for the position in each state. Currently, applicants interested in becoming liquor enforcement officers with the Pennsylvania BLCE must possess at least a high school diploma or a GED

Certificate. In some other states, the requirements for granting police powers are more stringent.

4. **Pennsylvania BLCE officers are responsible for fewer licensed establishments per officer than are officers in other sample states.** (See pages 159 and 160.)

Based on our update of comparative data initially developed by the National Highway Traffic Safety Administration, the number of licensed liquor establishments per liquor enforcement officer in Pennsylvania is well below the average of a sample of nine other comparable and contiguous states.

In this sample, Pennsylvania has the lowest ratio of licensed retail liquor establishments (111 per agent) and is substantially lower than the ten-state average of 260 licensed establishments per enforcement officer. In viewing these numbers, it is important to remember that the nature and placement of liquor control enforcement operations, as well as the extent to which other law enforcement agencies in the state also perform liquor law enforcement functions, varies substantially from state to state.

F. Several additional BLCE-related program and operational matters were addressed by this study. (See pages 126 to 140.)

The report also provides information and findings related to the following: the staff size of the BLCE's Compliance, Auditing and Gambling Enforcement (C.A.G.E.) Unit; statewide deployment of LEOs; the point system for Liquor Code violations by Philadelphia licensees; the *BLCE Procedures Manual*; appeals from adjudications of BLCE citations; "Beer-to-Go" Permits; and oversight of direct shipments of wine.

Recommendations

1. The General Assembly should consider amending the Liquor Code to provide that the BLCE's liquor law enforcement function be performed primarily by State Troopers. Specifically defined regulatory, compliance and administrative duties (e.g., routine inspections, bad check investigations, audits, and license suspension investigations) should be performed by a special "regulatory and compliance unit" in the BLCE staffed by civilian compliance officers.

The General Assembly should consider amending the Liquor Code to modify the civilian/paramilitary state police organizational arrangement and separation of powers and duties that is currently in place in the BLCE. Under the current system, day-to-day liquor law enforcement duties are performed by civilian enforcement officers, with overall direction and supervision provided by enlisted State Police personnel.

As discussed in the "Findings and Conclusions" section of this summary, the current arrangement is workable but is fraught with problems that hamper a full enforcement effort. While some of these issues could be dealt with administratively or through a change in the law (e.g., an amendment to eliminate required investigations of bad checks), many others are chronic and systemic operational matters that have persisted from the time civilian enforcement officers were transferred to the State Police.

Many former Liquor Control Board enforcement officers went to the PSP with career expectations that never materialized. The absence of career advancement opportunities, lack of full-police powers, the prevalence of an "us versus them" working relationship with enlisted members of the State Police, and officer burnout among some segments of the LEO workforce are just some of the factors that have contributed to morale and turnover problems in the agency. A piecemeal approach to addressing these problems appears inadequate so we recommend the General Assembly consider an alternative organizational and staffing approach by using State Troopers as the primary enforcement officers.

In addition to basic patrol activities, State Troopers are already responsible for a number of specialized functions such as vice, drug law enforcement, organized crime, fire investigations, and gaming. Many elements of these activities in some way relate to or often transpire in or near the premises of a licensed liquor establishment. In fact, some law enforcement officials estimate that as much as 65 percent of all crime originates in or near a licensed liquor establishment. Adding liquor law enforcement as an additional specialized assignment for State Troopers would

appear to be a logical extension of the other existing State Police specialties, and may afford an improved operational strength in undercover investigations.

Placing State Troopers in direct liquor law enforcement positions, while segregating strictly administrative and regulatory matters in a special civilian-staffed "compliance unit," has the potential to expand coverage and transform the focus of enforcement actions and citations. As discussed in the "Findings and Conclusions" section of this summary, "issuing bad checks" is the licensee violation most frequently cited by LEOs, and only two of the Bureau's top ten citations are issued for what are considered to be "enhanced penalty" violations.

The BLCE's current enforcement emphasis appears to be related to several factors. One of these is found in the statutory mandate that consumes a disproportionate share of LEO time and resources by requiring that LEOs investigate all referrals of bad checks issued by licensees. Other, and perhaps more significant factors, relate to the LEO position itself, including the nature of the job, the size and composition of the LEO force, and the extent of police powers granted to LEOs.

The position requires extended periods of duty in licensed liquor establishments, many hours of which are spent working alone in undercover operations. The nature of the work, the lack of career advancement possibilities, and other terms and conditions of LEO employment all appear to contribute to turnover problems. Since the transfer to the PSP occurred in 1987, the BLCE has consistently been below full complement strength. Recruiting and retaining minority LEO officers has also been a chronic problem which, in turn, affects the ability of the BLCE to fully cover all geographic areas and establishments.

Moreover, despite the expansion of their powers in 1994, LEOs are still restricted from taking action when they observe certain types of violations. Because they do not have powers and authority to deal with certain situations and violations, LEOs are frequently dependent upon back-up assistance from PSP stations and/or local police, or simply noting the violation and later reporting it to another PSP unit or local police jurisdiction.

During this study, numerous LEOs and EO3s expressed frustration with these limitations. These officers told us of various cases in which they observed crimes being committed, but were unable to make an arrest because the illegal actions were outside of their authority. One example of the absence of LEO authority, in particular, seems to have serious potential public safety implications. Given their current authority, LEOs are not empowered to make traffic stops or detain a subject when they observe a suspected DUI incident.

An LEO also cannot make an arrest for possession or trafficking of illegal drugs or for forgery, certain theft crimes, or prostitution. These are all crimes which may

frequently occur in licensed liquor establishments. (See pages 82 to 85 for a further discussion of limitations on LEO authority.)

Placing State Troopers in direct liquor law enforcement positions for defined duty periods of two to three years would enable the PSP to address these problems. Restricting LCE tours of duty to a defined period could effectively reduce or eliminate the “burnout” problem and would enable the BLCE to better preserve the undercover status of its officers. Drawing from the State Trooper force would also better enable the BLCE to maintain operations at full complement strength and would provide a larger pool of minority officers upon which the BLCE could draw.

With full police powers, Troopers could also deal with many violations that are currently outside the LEO’s scope of authority. With fewer vacancies, additional minority officers, and a full police powers presence, the extent of coverage and level and intensity of liquor control enforcement activities in licensed establishments should be improved. Moreover, having State Troopers directly responsible for liquor law enforcement would eliminate the current need to frequently dispatch State Troopers or call upon local police to deal with situations which are outside an LEO’s scope of authority. Whenever this occurs, State Troopers or local officers are drawn away from other coverage responsibilities.

Regulatory, compliance, and audit functions, all important components of a total enforcement effort, would also be improved through the creation of a specialized “regulatory and compliance unit.” This unit would continue to be organizationally located in the PSP and would work in conjunction with the State Trooper “enforcement unit.” This unit would be staffed by civilian regulatory and compliance officers with staffing of the unit initially coming from the ranks of civilian LEOs who would choose to accept assignment to the specialized regulatory and compliance unit. LEOs also have the option of applying for admission to the State Police Academy.³

The number of civilian staff and State Troopers needed in the redesigned BLCE, as well as its exact organizational configuration and cost,⁴ would need to be determined. Although no current model is available to estimate how many Troopers and civilians would be needed, the PSP’s Bureau of Research and Development has the capability to develop such projections. It is reasonable to speculate, however, that the modified BLCE staff size would not need to be greater than the current level

³LEO’s with at least two years of service with BLCE may receive a waiver of 30 college credits (of the required 60 college credits) necessary for eligibility to take the written examination for appointment to a Cadet class. If appointed to a Cadet class, the time during which an LEO served with BLCE is credited time served for calculating retirement benefits.

⁴Based on data obtained from the Pennsylvania State Police, the estimated salary and benefit costs for a first-year State Trooper are \$84,780 compared to \$54,639 for an LEO.

(181 authorized enforcement positions)⁵ and could even be lower as a result of a more efficient division of criminal, undercover, regulatory, and administrative duties between the State Troopers and proposed civilian regulatory/compliance officers.⁶ Given the BLCE's gambling-related responsibilities, there may also be an opportunity to include the PSP's new Office of Gaming Enforcement (currently being set up to cover casinos) within a new "Bureau of Gaming and Liquor Control Enforcement."

The question of the statutory cap on the size of the Trooper complement is also a consideration.⁷ We propose that if this concept is implemented, State Troopers assigned to liquor law enforcement duties not be counted against the statutory cap as they are a specialized unit that would be funded solely from the State Stores Fund. Similarly, State Troopers assigned to and funded by the Pennsylvania Turnpike (Troop T) are not counted against the cap, and State Troopers who will be assigned to duty at the slots facilities are also not going to be charged against the cap.

We recognize that before this proposal could be implemented, it would require a substantial amount of further analysis and planning, as well as amendments to the Liquor Code. We recommend that, upon request of the House Liquor Control Committee and/or the Senate Law and Justice Committee, the PSP Bureau of Research and Development, with assistance from the BLCE and input from the pertinent union groups, the Pennsylvania Liquor Control Board and the Governor's Office of Administration, conduct a further analysis of this proposal. If requested to do so, the State Police should provide a report on the feasibility, cost considerations, and implementation details of this proposal to the House Liquor Control Committee and the Senate Law and Justice Committee.

2. The General Assembly should also consider making the following amendments to the Liquor Code to further define, focus, and expedite BLCE operations.

a. Eliminate the statutory requirement that the BLCE be responsible for conducting "bad check investigations."

This required activity consumes an inordinate amount of BLCE time and resources. Elimination could be accomplished by deleting Section 493(26) and Section 496 of the Liquor Code to eliminate the issuance of worthless

⁵Includes 164 civilian enforcement officers and 17 enlisted State Trooper positions. As of January 30, 2006, 147 of the civilian enforcement officer positions and 15 of the State Trooper positions were filled. The BLCE also has an authorized complement of 71 legal and support staff.

⁶It is also significant to note that Pennsylvania has a considerably lower licensed liquor establishment per enforcement officer ratio (111) than the 260 licensed establishment per officer national average. (See also pages 159 and 160.)

⁷The statutory cap on the State Trooper complement is 4,310, not including Troopers assigned to the Pennsylvania Turnpike Commission or the newly created Office of Gaming Enforcement.

checks by licensees as a violation of the Liquor Code and to eliminate the requirement that licensees report the receipt of worthless checks to the PLCB.

- b. Expedite the forfeiture of gambling machines, cash, alcoholic beverages, and other assets seized by BLCE officers by providing for forfeiture by operation of law following the administrative hearing.**

The BLCE has more than 1,800 gambling devices as well as cash, alcoholic beverages and other items that are stored in secured facilities at considerable expense to the Bureau. Expedited forfeiture proceedings could be accomplished by amending Article VI of the Liquor Code to provide that forfeiture determination of seized property shall be made following notice and hearing on the issue as part of the administrative hearing process before the OALJ or by operation of law where a waiver of the administrative hearing process has been properly filed with the OALJ. Appeals could be taken from this determination the same as other appeals from the imposition of penalties by the OALJ. Following final determination of the matter on appeal, the property would be deemed forfeited in the court of common pleas and condemned and ordered disposed of in accordance with the provisions of the Liquor Code.

- c. Provide, under certain circumstances, for the sale of seized assets and the return of proceeds to the State Stores Fund.**

As noted above, the BLCE has a large inventory of seized items in storage at its district offices. The sale of at least some of these items could generate revenues to offset storage and other costs. This could be done by amending Article VI of the Liquor Code to provide that when seized property is adjudged forfeited and condemned, that upon conviction of any person of a violation of any of the provisions of the Liquor Code, the court shall order the sheriff either to destroy the condemned property or to deliver the condemned property to the BLCE for its use or sale or disposition by the BLCE. The property would be delivered to the BLCE for use, sale or disposition only if the property is found to be in salable condition, as determined by the BLCE. The proceeds from such sales could be paid into the State Stores Fund and re-appropriated to cover storage and other liquor law enforcement purposes.^{8, 9}

⁸While we did not survey all states on this issue, we determined that there are at least some states that have enacted legislation authorizing the sale of certain items seized and forfeited as a result of liquor law enforcement actions. This is the case, for example, in Delaware, Ohio, Minnesota, and Texas. As an example, the Texas Alcoholic Beverage Commission reported that in one recent fiscal year the sale of unopened liquor bottles and empty beer kegs generated approximately \$90,000.

⁹The question of whether illegal gambling devices, or any parts thereof, could be sold is not clear. As a matter of policy, inasmuch as the gambling devices are outlawed objects, such devices are contraband and subject to being destroyed. Whether all or parts of such devices could or should be resold would require further consideration and determination by the General Assembly.

d. Formalize the routine inspection function and provide for a regular inspection schedule for all licensed liquor establishments.

Routine inspections are a proactive enforcement tool that can create an atmosphere of enforcement omnipresence and serve as an incentive for licensees to adhere to the Liquor Code and associated regulatory requirements. To ensure that such inspections are conducted, Section 211 of the Liquor Code could be amended to define “routine inspections” and require that the BLCE conduct a routine inspection of each licensed premises at specified intervals (e.g., at least once every two years). Under the organizational structure proposed in Recommendation #1, the routine inspection function would be performed by compliance officers assigned to the BLCE’s regulatory and compliance unit.

e. Define and clarify the role of the BLCE in conducting audits of liquor licensees.

Amend Section 211 of the Liquor Code to define the term audit (in the context of liquor control enforcement) as an in-depth investigation of a licensee or business involved in the alcoholic beverage industry, usually involving extensive review of financial records and business-related documents. The amendment should also require that the BLCE conduct audits of licensees in accordance with an annual audit plan or program established by the Bureau. The specific types of audits to be conducted would be further defined by regulation and should include, but not necessarily be limited to, the audit types currently listed in the *BLCE Procedures Manual*. Under the organizational structure proposed in Recommendation #1, the audit function would be performed by “compliance officers” assigned to the BLCE’s regulatory and compliance unit. The officers assigned to perform such audits should receive necessary audit training and certification.

f. Eliminate the “de novo” standard of review on appeals of BLCE citations.

The Liquor Code currently contains provisions establishing a “de novo” standard of review on appeal of BLCE citations to the court of common pleas. A “de novo” hearing is one in which the appellate court hears the matter as if a court of original, and not appellate, jurisdiction. Generally, a new hearing is held as if for the first time. As a result, the BLCE frequently prepares and prosecutes violations twice: once for the OALJ adjudication hearing and then again on appeal for the *de novo* hearing before the court of common pleas. The double preparation creates cost inefficiencies for BLCE attorneys, and the BLCE experience is that courts of common pleas typically reduce sanctions imposed by the OALJ. Both the BLCE and the Chief Administrative Law Judge for the PLCB favor amending Section 471 of the Liquor Code to eliminate the *de novo*

standard of review and provide that appeals from BLCE Board decisions (following Administrative Law Judge adjudications) be reviewed by the court of common pleas under a standard appellate scope of review such that the court shall only reverse the decision of the Board if there is an error of law, an abuse of discretion, or the decision is not based on substantial evidence.

3. The BLCE, should take steps to redesign and improve its existing liquor control enforcement management information system and program and statistical recordkeeping methods.

Given the problems and limitations in existing BLCE statistical reports and record-keeping systems, the BLCE should develop new automated systems in the following areas:

- a. Develop and implement a new time and activity reporting system** for all Bureau personnel that is consistent, clearly defined, and reflective of the full-range of BLCE programs and activities.
- b. Design and initiate a comprehensive liquor licensee database** that will enable BLCE managers to maintain a centralized record of all liquor control enforcement activities (including the frequency of routine inspections and audits) that occur at each licensed establishment and the citation history of each licensee.
- c. Develop and operate a complaint tracking system** that provides a means by which headquarters command staff and district office commanders can track the assignment, status, outcome and final disposition of individual complaints as well as Bureau performance in meeting the timeliness standards to initiate actions or complaints as established by BLCE policy.
- d. Undertake a thorough redesign and reconfiguration of the Bureau's liquor control enforcement management information system and statistical reporting procedures.**

The BLCE's existing information system and statistical reporting formats have evolved on a piecemeal basis and include statistical measures that are remnants of systems used in the 1980s when the liquor control enforcement function was in the PLCB. A comprehensive re-examination of these data collection and reporting mechanisms is needed to address the numerous definitional issues, accuracy problems and reporting format inconsistencies we found during this study. While some improvements could be made in the short-term, the completion of a comprehensive redesign would best be made in conjunction and consistent with the overall organizational change proposed for the Bureau in Recommendation #1. In

pursuing this redesign, the BLCE should ensure that the previously cited daily time and activity reporting system and statistical reporting formats are tied to a clearly identifiable set of performance measures that are reflective of all aspects of Bureau operations.

The BLCE already receives support from the State Police's Bureau of Technology Services, and should work with staff from this Bureau in developing the new statistical tracking systems and reporting mechanisms cited above.

4. The Pennsylvania State Police, Fiscal Division, should work with the House and Senate Appropriations, House Liquor Control, and Senate Law and Justice Committees to arrive at an acceptable format through which the State Police can annually submit information to the General Assembly on BLCE expenditures as is required by the Liquor Code.

The Liquor Code requires that the State Police annually submit "a copy of the most recently completed audit of the expenditures of the BLCE." No BLCE-specific audit is currently conducted.

I. Introduction

In 1987, responsibility for liquor law enforcement in Pennsylvania was transferred from the Pennsylvania Liquor Control Board to the Bureau of Liquor Control Enforcement (BLCE) within the Pennsylvania State Police. The Legislative Budget and Finance Committee (LB&FC) directed its staff to conduct an examination of the current operation and organizational placement of this function.

Study Objectives

1. To review the current structure and operation of the liquor control enforcement function in the Pennsylvania State Police Bureau of Liquor Control Enforcement (BLCE).
2. To assess the adequacy of current BLCE liquor control enforcement staffing levels.
3. To examine the current cost and funding of liquor law enforcement and provide a detailed accounting of the purposes for which liquor law enforcement monies are expended.
4. To document the nature and level of liquor control enforcement activity, including enforcement actions related to “nuisance bars” and other identified high profile enforcement issues.
5. To survey the various organizational models for liquor law enforcement in use in other states and evaluate Pennsylvania’s approach and structure in this context.
6. To develop findings and recommendations, as appropriate.

Scope and Methodology

This study focused on the organizational placement and operation of the liquor control enforcement function in Pennsylvania. This was the first formal legislative oversight study of the programs and operations of the Pennsylvania State Police’s BLCE since the transfer of this enforcement responsibility occurred in 1987.

During the preliminary and start-up phases of the study, we examined pertinent statutes and regulations, prior LB&FC study reports related to the Pennsylvania Liquor Control Board and liquor law enforcement, and read the transcripts of a number of hearings held by the House Liquor Control Committee on topics dealing with the BLCE and liquor law enforcement. We also researched State Police file

documents pertaining to the planning and transition phases of the liquor law enforcement transfer to the PSP in 1987.

To review the current structure and operation of the BLCE, we submitted an initial information request to the State Police for various background and baseline program, policy, operational, and statistical materials. We also conducted an extensive schedule of meetings and interviews with BLCE enlisted officers and civilian staff at both the headquarters and district office levels. At the outset of the study, we also met with and received input from individuals representing the collective bargaining units for Enforcement Officer 3s (EO3s) and Liquor Enforcement Officers (LEOs).

In addition to conducting meetings and interviews with BLCE headquarters staff, we made field visits to six of the nine BLCE district offices, including those in Allentown, Harrisburg, Philadelphia, Pittsburgh, Punxsutawney, and Williamsport. During these field visits, LB&FC staff met with PSP Section Commanders, District Office Commanders, EO3s and LEOs. We also toured the district office facilities to view the on-site storage facilities that are used for seized gambling devices, alcoholic beverages, and other seized items.

We also examined copies of the *BLCE Procedures Manual* as well as all pertinent BLCE special orders, directives, and other policy documents. Through these documents, discussions with headquarters command and administrative support staff, and associated statistical reporting systems, we determined the nature and level of enforcement programs and activities in which the BLCE is engaged. We also conducted verification reviews of liquor enforcement officer time and activity reporting forms and district office monthly and quarterly summary reports.

We also examined the current cost and funding of liquor law enforcement and developed a detailed accounting of the purposes for which State Stores Fund monies are expended for BLCE operations. During this phase of the project, we worked with BLCE financial and accounting records and obtained additional detail and explanation from the PSP's Fiscal Division and the Office of the Comptroller—Public Protection and Recreation.

To assess BLCE staffing and related personnel composition, recruitment and retention issues, we examined both current and historical State Police complement control reports and met with representatives of the PSP's Bureau of Personnel. We also research and developed information on the ratio of enforcement officers to licensed retail establishments in Pennsylvania and other states.

To survey the various organizational approaches for liquor law enforcement in use in other states, we examined existing reference materials and supplemented this information with internet research and an e-mail survey. First, an internet

search was conducted of all states to obtain information from websites of liquor law enforcement agencies. Additionally, the published results of recently conducted national surveys of liquor law enforcement agencies were also obtained and examined (*NABCA Survey Book—2005 Edition*, National Alcohol Beverage Control Association; *The Role of Alcohol Beverage Control Agencies in the Enforcement and Adjudication of Alcohol Laws*, National Highway Traffic Safety Administration, July 2005). Also, using agency e-mail addresses, the LB&FC staff administered an e-mail survey questionnaire to the states (17 responded). Finally, we examined liquor enforcement statutes in other states to further determine the extent of law enforcement authority and powers granted to liquor law enforcement agencies and enforcement officers.

During the course of the project, we also met with and obtained input from staff of the Pennsylvania Liquor Control Enforcement Board including administration and licensing officials, the Office of PLCB Chief Counsel, and the Office of Administrative Law Judge.

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We also gratefully acknowledge the input and assistance provided by enforcement officer supervisors and liquor enforcement officers from the Harrisburg, Allentown, Punxsutawney, Pittsburgh, Philadelphia, and Williamsport District Offices during field visit and other meetings, and to staff from the BLCE's Report

Examination Unit; the Compliance, Auditing and Gambling Enforcement Unit (C.A.G.E.), the Legal Unit, and the Computer Services Support Unit.

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Important Note

This report was developed by Legislative Budget and Finance Committee staff. The release of this report should not be construed as an indication that the Committee or its individual members necessarily concur with the report's findings and recommendations.

Any questions or comments regarding the contents of this report should be directed to Philip R. Durgin, Executive Director, Legislative Budget and Finance Committee, P.O. Box 8737, Harrisburg, Pennsylvania 17105-8737.

II. Background Information on the Bureau of Liquor Control Enforcement (BLCE)

Legal Background

The Evolution of the Enforcement Function

In November 1933, Pennsylvania was among the 37 states that voted for the adoption of the Twenty-first Amendment to the United States Constitution, which repealed National Prohibition. By the terms of the 21st Amendment, individual states were free to adopt their own systems of alcoholic beverage control. Adoption of this amendment permitted states to restrain or regulate the sale of alcohol within their boundaries to whatever extent and through whatever administrative and regulatory means they chose. Thus, the regulation of liquor consumption, manufacture, and transportation was placed within the purview of the state governments.

According to historical accounts, the form that liquor control would take in Pennsylvania was at issue “with the Pennsylvania State Legislature and Governor Gifford Pinchot very actively engaged in debating the issues of a liquor control system for the Commonwealth.”¹ Several pieces of alcoholic beverage related legislation emerged from this process. Primary among these were the Liquor Control Act and the Beverage License Law. Also emerging from the process was the establishment of the Pennsylvania Liquor Control Board, an independent administrative board charged with carrying out the provisions of these laws and related legislation.

As created in 1933, the Board had three basic responsibilities: (1) operating stores to sell wine and liquor in the original package; (2) licensing private entities to sell wine and liquor by the drink; and (3) enforcing laws and regulations to govern traffic in alcoholic beverages. The enforcement component was set up based on a civilian model of law enforcement with agents and investigators to conduct both open and undercover investigations into violations of the Liquor Code.

Between 1933 and 1987, the responsibility for enforcing Pennsylvania’s liquor laws was vested in the Pennsylvania Liquor Control Board (PLCB). During 1985, the Liquor Control Board underwent a sunset performance audit and legislative review. The Board was subsequently reestablished by Act 1987-14. Act 14 also transferred responsibility for liquor control enforcement from the PLCB to the Pennsylvania State Police. Under this new enforcement arrangement, the State Police Commissioner was authorized to assign State Police officers to “such

¹*Pennsylvania and the Liquor Business, A Study of the Pennsylvania Liquor Control Board*, M. Nelson McGearry, Ph.D., 1948.

supervisory and other capacities in the enforcement bureau as he deems necessary” but all other enforcement personnel were to be civilians.

Personnel employed in the PLCB’s Bureau of Enforcement were given the option of remaining with the PLCB or transferring to the new State Police Bureau of Liquor Control Enforcement (BLCE). The BLCE was created effective July 1, 1987, and 144 enforcement officers, 81 clerical personnel, and 2 attorneys transferred to the new bureau from the PLCB.

From a review of the legislative record surrounding Act 14, it appears that the enforcement function was transferred to the PSP for two primary reasons. Legislative discussion indicated that the members wanted to separate the revenue generating function from the enforcement function, believing that there was an inherent conflict between the two. Also, the Legislature felt that the PLCB enforcement function was not effective, especially in dealing with nuisance bars. One argument made during the debate was that the PLCB enforcement function was “marked by a reputation for lax and uneven enforcement of the liquor laws.”

Other Pertinent Statutory Provisions

The Liquor Code also provides for the creation of the Office of Administrative Law Judge within the Liquor Control Board. The Governor is to appoint as many administrative law judges as the Board, with the approval of the Governor, deems necessary for holding hearings. The Governor is to select the ALJs from a list of qualified candidates provided by the Civil Service Commission. The Governor shall designate one of the judges as the chief administrative law judge.

Administrative law judges shall be learned in the law and shall be members in good standing of the bar of the Supreme Court of Pennsylvania. Compensation for the ALJs is required to be established by the Executive Board. As such, administrative law judges are considered to be full time employees and are to be afforded employment security as provided by the Civil Service Act.

Pursuant to the Liquor Code, administrative law judges preside at all citation and other enforcement hearings required or permitted under the code. Additionally, the board is directed to select five hearing examiners from the complement of hearing examiners, who have been appointed by the Governor and who are employed by the board, to conduct the licensing hearings required by the code. The selection of the five hearing examiners shall be at the board’s discretion.

The Office of Administrative Law Judge has promulgated rules and regulations that govern the conduct of hearings and other matters that come before the ALJs and hearing examiners. These regulations can be found at 40 Pa. Code Chapters 15 and 17.

Act 2003-15 amended the Liquor Code to require the State Police to provide to the Chair and Minority Chair of the House and Senate Appropriations Committees the following:

- A copy of the most recently completed audit of the expenditures of the BLCE.
- A report detailing the demographic characteristics of the BLCE's complement of civilian officers. This report must include information relating to workplace diversity.

This information must be submitted in addition to the information required to be submitted under the Administrative Code, which is the budget information and a listing of employees.

Act 2005-39 amended the Liquor Code in several major areas. First, Act 39 deleted the ratio requirement for Sunday sales. Prior to this, licensed establishments were required to have sales of food and nonalcoholic beverages equal to or greater than 30 percent of the combined gross sales of both food and alcoholic beverages. This deletion only applies to establishments located outside of cities of the first class. Thus, establishments in Philadelphia still need to have sales of food and nonalcoholic beverages equal to or greater than 30 percent of the combined gross sales of both food and alcoholic beverages in order to qualify for or maintain their license.

Second, Act 39 extended the hours of the general restriction on sales on Sunday, prohibiting sales between 11 p.m. Saturday through 8 a.m. Monday morning. There are now, however, some exceptions, as follows:

- Distributors and importing distributors may sell malt or brewed beverages to licensees on Sunday between the hours of noon and 5 p.m. on Sundays.
- Manufacturers, distributors, and importing distributors may sell (upon purchasing a \$100 permit) malt or brewed beverages to any non-licensee or a holder of a special occasion permit on Sundays between noon and 5 p.m.

Prior to the enactment of Act 39, §407 of the Liquor Code stated that a liquor license issued to a hotel, restaurant, club, or (railroad, Pullman, or steamship company) shall also authorize the licensee to sell malt or brewed beverages under the same restrictions and penalties as for selling liquor, except that licensees (other than clubs) can sell malt or brewed beverages for consumption off the premises in single sales quantities of not more than 192 fluid ounces. Act 39 changed the law only as it applies to a restaurant licensee and a retail dispenser licensee in cities of the first class (Philadelphia). Now, a restaurant licensee and a retail dispenser

licensee in Philadelphia who is otherwise permitted to sell “beer-to-go” under Section 407 may not do so unless it has a permit from the Board. An application for the new beer-to-go permit must be accompanied by approval from the city, which must be given by the city unless the city finds that doing so would adversely affect the welfare, health, peace and morals of the city or its residents. A decision by the city must be given within 45 days of the request or it will be deemed approved. Denials by the city may be appealed to the court of common pleas.

Additionally, the LCB can now object to the renewal of a beer-to-go permit based upon the operating history of the permittee, and the Board may refuse to renew the permit following notice and a hearing. A licensee whose beer-to-go permit was not renewed is ineligible to apply for another beer-to-go permit for two years.

Act 39 accomplished two additional changes to the Code. The first change relates to the effective duties of revocation. Now the automatic revocations under 481(c) (see below for information about the point system) go into effect immediately, instead of after 30 days. All other suspensions and revocations go into effect in 30 days following adjudication. Additionally, if the Board is reviewing an application for supersedeas (at the first level of appeal, as opposed to the court of common pleas at the second level of appeal) in conjunction with an appeal of an adjudicated citation, its decision is to be made based only on the application, answer, and documentary evidence. No hearing is held.

The second change relates to unlawful acts under the code. It is now a specific unlawful act under the Liquor Code (unless authorized by law) for any licensee, his servants, agents, or employees, to possess, furnish, sell, offer to sell, or purchase or receive, or aid or abet in the sale or purchase of any controlled substance or drug paraphernalia under The Controlled Substance, Drug, Device, and Cosmetic Act.

Act 2004-21 created a “numerical system for liquor license control”—or a point system—in the Liquor Code. The system was to be used in conjunction with other code provisions for license transfer, renewal, suspension, or revocation. Under the point system, all liquor and malt beverage licensees in any city of the 1st class (Philadelphia) cited for a violation under §471 had points assessed to the license record as of the date of final adjudication. These provisions were amended by Act 2005-39. Pursuant to Act 39, only restaurant and eating place licensees (in Philadelphia) are subject to the points system. Points for enhanced penalty violations are to be assessed for each enhanced penalty violation, even in multiple count citations. In multiple count citations, if there is no enhanced penalty violation, then points are assessed only for the violation for which the greatest number of points may be assigned. If there are both enhanced and non-enhanced violations, only points for the enhanced violations are assigned. Additionally, mandatory revocation occurs after a licensee incurs 20 or more points in more than one citation.

Agency Mission, Powers, and Duties

Section 211 of the Liquor Code creates the Bureau of Liquor Control Enforcement (BLCE) within the Pennsylvania State Police pursuant to Act 1987-14 and declares that the BLCE shall be responsible for enforcing the Liquor Code and the PLCB regulations. The BLCE's stated mission is "to maintain or improve the quality of life for the citizens of the Commonwealth through education and ensuring compliance with the provisions of the Liquor Code, Title 40, and other related statutes and applicable regulations."

The BLCE's purpose is to enforce the Commonwealth's liquor laws. To effectively support the State Police mission, the Bureau's objective is to assist individual licensees, as well as the general community, in understanding the laws and regulations governing the proper and lawful operation of a licensed liquor establishment.

Officers assigned to the Bureau conduct investigations when there is reason to believe alcoholic beverages are being sold on premises not licensed, or for any other violations of Act 1987-14. Enforcement officers may arrest on view (except in private homes), any person in violation of certain provisions of the Pennsylvania Crimes Code. Enforcement officers also investigate and issue citations to licensees for violations of the Liquor Code, other laws of the Commonwealth relating to alcoholic beverages, or any PLCB regulations adopted pursuant to the laws.

This area of enforcement responsibility includes over 18,000 licensed establishments, as well as unlicensed places of business where the illegal sales of alcoholic beverages occur. These unlicensed businesses are commonly referred to as "speakeasies."

In addition to speakeasies, there are many unlicensed places and events at which the illegal sales of alcoholic beverages occur. These activities include picnics, college fraternity parties, dances, or other similar events held by either adults or underage individuals and are often held in remote areas. The Bureau also has jurisdiction in the investigation of the illegal sale/consumption of alcoholic beverages by underage individuals at rock concerts and major sports events. Assistance from State Troopers may be requested as deemed necessary by the District Office Commander.

Organizational Structure and Staffing

Organization

The Pennsylvania State Police, Bureau of Liquor Control Enforcement is composed of Bureau Headquarters, including a Compliance, Auditing, and

Gambling Enforcement Unit (C.A.G.E.), and nine District Enforcement Offices (DEO) located throughout the state.

The BLCE table of organization shown on Exhibit 1 reflects the structure of the Bureau as established by the PSP Commissioner under the authority of the Liquor Code, 47 P.S. §211. The Bureau is directed by a State Police Major who reports to the PSP's Deputy Commissioner of Operations. The Bureau Director assists the PSP Commissioner and Deputy Commissioner of Operations in formulating Bureau policies, procedures, and programs. The Director also exercises command authority over all BLCE administrative and operational activities and acts as liaison for the PSP with the Pennsylvania Liquor Control Board and all businesses, organizations, and civic groups involved in or concerned with the alcoholic beverage industry. As shown, the BLCE consists of an Administration Division, an Operations Division, and a Legal Section.

Administration Division. The Administration Division is headed by a Pennsylvania State Police Captain and consists of the Report Examination Unit (REU) and the Computer Systems Support Unit (CSSU).

The Director of the Administration Division exercises authority over all functions of the REU involving review of investigative reports, preparation of the Enforcement Case Summary, the collection of citation historical records, and the maintenance of licensee files. The Director ensures that all training programs are developed and/or administered in accordance with Department policy and procedures, and recommends development of new training programs as needed. The Director also functions as the liaison for the Bureau Director with the PLCB and other governmental agencies regarding administrative practices and policies, and is the Labor Relations Coordinator for all Bureau personnel, representing the interests of the Department and Bureau in labor-related contract negotiations. The Director also oversees the activities of the CSSU and ensures that all generated projects and reports are consistent with the Bureau's requirements.

The Director of Administration is also responsible for several bureau-wide functions such as preparing the annual budget, ensuring adequacy of the vehicle fleet and the adequate inventory of supplies, uniforms, weapons, ammunition, communications, and other equipment. The Administration Director is also responsible for ensuring the proper conduct of and compliance with all special programs such as the Alcohol Education Program.

The Report Examination Unit's (REU) functions include the review and examination of Notice of Violation letters and related incident and administrative reports submitted by the district enforcement offices and the C.A.G.E. Unit. The Unit also prepares enforcement case summaries for presentation to the Assistant

Counsel, case narratives in the event a waiver of hearing is filed by a licensee, and compiles prior citation records and administrative citations for liquor law violations.

The Unit examines all gambling questionnaires received from the district enforcement offices and the C.A.G.E. Unit and enters information into a database. The Unit also is responsible for collecting citation history for submission to the PLCB in conjunction with the Nuisance Bar Program, upon request. The Unit monitors the Incident Number Recording System and communicates any discrepancies to the Bureau's administrative staff and takes appropriate action.

The REU generally requests, reviews, and obtains all necessary files and documents relative to licensees involved in investigations, and researches and prepares copies of licensee files when a subpoena is received for Bureau records. The Unit also aids the Assistant Counsel, Harrisburg Legal Office, in researching and determining appropriate new/revised averments.²

Computer Systems Support Unit (CSSU). Functions include the management of Bureau automation technology resources (e.g., evaluating computer needs, designing software, and installing hardware) and the analysis of routine work functions for possible automation. The Unit acts as the Bureau Terminal Agency Coordinator (TAC) with the responsibility for operator certification/recertification and training and also liaisons with the Bureau of Technology Services.

Operations Division. The Operations Division is headed by a Pennsylvania State Police Captain and is comprised of nine District Enforcement Offices and the C.A.G.E. Unit.

The Director of the Operations Division exercises command authority over (1) the conduct of investigations related to the enforcement of the Liquor Code, any regulations promulgated pursuant thereto, and (2) the Central, Eastern, and Western section commanders as well as the C.A.G.E. Unit supervisor, and their functions and activities. In this regard the Director liaisons for the Bureau Director with the PLCB, maintains communications with other law enforcement authorities, and meets with organizations and groups involved in or concerned about the alcoholic beverage industry.

The Director also ensures the proper preparation, review, and transmittal of required investigative reports and correspondence and the proper conduct of specialized audits, investigations, and activities by the C.A.G.E. Unit and the district enforcement offices. Additionally, the Operations Director ensures the proper conduct of all enforcement efforts, such as the University/College Underage Drinking Enforcement Program, Nuisance Bar Program, and electronic video gambling machine investigations.

²An averment is an assertion or allegation in a pleading.

District Offices. The nine District Enforcement Offices are divided into three sections: the Eastern Section, Central Section, and Western Section. (See map on Exhibit 2.) Each section has a Section Commander overseeing operations of three District Enforcement Offices. Section Commanders have command authority over the District Office Commanders and are to direct the management practices of the district offices to achieve maximum effectiveness of personnel and equipment. Section Commanders oversee and coordinate Liquor Code and related Crimes Code investigations and assume on-scene command of all major enforcement operations. Also, they are required to monitor all federally-funded programs in which Section personnel are actively involved, plan, coordinate, and assist District Office Commanders with the security of their facilities and, as necessary, review administrative investigations and conduct pre-disciplinary conferences when required by the Director of Operations.

The District Enforcement Offices are comprised of a District Office Commander, Operations Unit Supervisors (Liquor Enforcement Officer 3s), Operations Unit Officers (Liquor Enforcement Officers), and clerical personnel. District Office Commanders are responsible for ensuring that all administrative functions and investigative activities are properly carried out by subordinates. This may include the review and approval of cross application time sheets; Confidential Investigation Advancement Account packages; Travel Expense requests; automotive repair bills; and miscellaneous expenditures.

District Office Commanders act as Alternate Custodial Officers responsible for the integrity of their respective property management system including conducting required inspections, quarterly assessments, and annual inventory of evidence rooms. District Office Commanders oversee the orientation of new LEO Trainees, ensure that all Field Training Program Reports are accurately submitted in a timely fashion, oversee special projects using District Enforcement Office personnel, ensure proper maintenance and operation of the office automotive fleet, and ensure that monthly statistics are generated by the fifth of each month.

Enforcement Officer 3s are required, within their assigned district/section, to maintain an in-depth knowledge of and adhere to all regulations, directives, and related policies and procedures. As supervisors of Liquor Enforcement Officers, they organize, conduct, and direct undercover field investigations and field operations (e.g., Border Patrols, Minor Patrols, Speakeasy Raids, concerts, sporting events, etc.) with the approval and direction of the District Office Commander. Also, Enforcement Officer 3s receive and assign complaints by reviewing officers' workload, and make assignments with due dates in order to track the assignments and ensure the Bureau is responsive to complaints. They meet regularly with personnel under their command to monitor progress of assignments and to review and approve all reports, ensuring their completeness and accuracy.

Liquor Enforcement Officers, under supervisory direction, conduct investigations and complete reports for possible arrest and prosecution for violations of liquor laws, regulations and applicable Crimes Code statutes.

The Compliance, Auditing, and Gambling Enforcement (C.A.G.E.) Unit collects, analyzes, and disseminates intelligence information as received by the district offices, licensees, and Pennsylvania State Police. The unit also develops policy and procedure for new legislation affecting the Bureau, develops and conducts training for bureau personnel, and monitors Bureau programs and initiatives. The Unit, as necessary, assists with resource support for audits and assists the district offices with investigations, raids, etc.

The Supervisor of the C.A.G.E. Unit exercises command authority for all personnel assigned to the Unit and further acts as liaison between members assigned to the Unit and the Bureau of Criminal Investigation concerning criminal activities involving licensed establishments. The Unit Supervisor also acts as the Bureau's Alternate Intelligence Officer.

The Trooper assigned to the C.A.G.E. Unit acts as liaison between the BLCE and the Bureau of Criminal Investigation for purposes of gambling, intelligence and corrupt organization investigations. This individual also acts as the Bureau's primary Intelligence Officer.

Legal Section. This is an organizational segment comprised of four legal support offices that are included in the Bureau's authorized complement. The Office of Chief Counsel has authority over all personnel assigned to this section. The *Legal Section* consists of an Assistant Counsel serving as counsel for the Bureau at all administrative hearings before an ALJ and in forfeiture, nuisance bar, and appellate matters in the Court of Common Pleas, Commonwealth Court, the PA Supreme Court, and Federal District Court. The Assistant Counsel also ensures that Bureau management personnel are advised of related or significant legal issues and that the Office of Administrative Law Judge is informed of case status.

Staffing

As of January 30, 2006, the Bureau of Liquor Control Enforcement had a total authorized complement of 252 positions. As shown below on Table 1, the vast majority of these are civilian liquor enforcement officers (LEOs) and support staff. Seventeen State Police enlisted positions are assigned to the Bureau.

Table 1

**Authorized and Filled Positions in the
Bureau of Liquor Control Enforcement**
(As of January 30, 2006)

	<u>Authorized</u>	<u>Filled</u>	<u>Vacant</u>
<u>PSP Enlisted</u>			
Major	1	1	0
Captain	2	2	0
Lieutenant	3	3	0
Sergeant.....	9	7	2
Corporal (detached)	1	1	0
Trooper.....	<u>1</u>	<u>1</u>	<u>0</u>
Total PSP Enlisted	17	15	2
<u>Liquor Enforcement</u>			
Enforcement Officer 3s	24	23	1
Enforcement Officers	<u>140</u>	<u>124</u>	<u>16</u>
Total Liquor Enforcement.....	164	147	17
<u>Legal and Support</u>			
Attorneys	9	8	1
Clerical (Legal)	5	5	0
IT Support	2	2	0
Legal Assistants	5	5	0
Administrative.....	2	2	0
Clerical	<u>48</u>	<u>44</u>	<u>4</u>
Total Legal and Support.....	<u>71</u>	<u>66</u>	<u>5</u>
Total Civilian.....	235	213	22
Bureau Total ^a	252	228	24

^aDoes not include three forensic service positions that are funded from the State Stores Fund. These positions are organizationally located in the PSP's Bureau of Forensic Service but provide forensic services to the BLCE.

Source: Developed by LB&FC staff based on information obtained from the Bureau of Human Resources, Pennsylvania State Police, as of January 30, 2006.

Overall, the Bureau had 228 filled positions and 24 vacancies as of January 30, 2006. Sixteen of the vacancies were in the LEO complement; one EO3 position was not filled.

Liquor Enforcement Officer Salary and Benefits

LEO trainees receive a salary of \$800.00 biweekly effective the first day of their training period. The starting salary of an LEO upon successful completion of five months of employment is \$34,905, effective July 1, 2002.

LEOs receive medical/hospital coverage and dental benefits for themselves and eligible dependents. After 90 days of employment, LEOs are eligible for a state paid group life insurance policy with a benefit equivalent to the nearest \$1,000 of an officer's annual salary not to exceed \$40,000.

Commonwealth employees including liquor enforcement officers are required to join the State Employees Retirement System. As of January 2002, officers contribute 6.25 percent of their salary to their individual retirement account. The account is paid interest and the Commonwealth contributes to the account at an amount determined annually.

LEOs receive: 7 vacation days during their first three years of employment; 1 personal day during their first year, 2 personal days in their second year, and 4 personal days in their third and subsequent years of employment; 13 paid sick leave days per year; and 11 paid holidays a year.

The Fraternal Order of Police Conference of Pennsylvania Liquor Control Board Lodges is recognized as the exclusive representative for collective bargaining purposes for Liquor Enforcement Officers under Act 195, The Public Employees Relations Act, 43 P.S. §1101.101 – 1101.2301. The collectively bargained agreement between the Commonwealth and LEOs terminated as of June 30, 2003. As of May 2006, a new contract had not been agreed upon. However, the Bureau of Labor Relations within the Governor's Office indicated that negotiations are ongoing.

Liquor Enforcement Officer 3s, the first level supervisors over the LEOs, maintain a "meet and discuss"³ group that enters into a Memorandum of Understanding with the Commonwealth on labor relations issues. The EO3s' meet and discuss unit continues through June 30, 2007.

BLCE Funding

The BLCE receives funding in the form of an annual appropriation to the PSP. The appropriation is funded from the State Stores Fund, a special fund established in the Liquor Code and administered by the Pennsylvania Liquor Control Board. In FY 2004-05, the amount of this appropriation was \$19.9 million. The Bureau also receives a relatively small federal grant to be used toward enforcing underage drinking laws. BLCE expenditures totaled \$17.3 million in FY 2004-05.

³Public employers are not required to bargain with units of first level supervisors or their representatives but are required to meet and discuss with them on matters deemed to be bargainable for other public employees covered by this act. "Meet and discuss" means the obligation of a public employer upon request to meet at reasonable times and discuss recommendations submitted by representatives of public employees, provided, that any decisions or determinations on matters so discussed shall remain with the public employer and be deemed final on any issue or issues raised.

III. An Examination and Analysis of BLCE Programs and Activities

A. A Complaint-Responsive Enforcement Approach

According to BLCE officials, the Bureau's priority enforcement areas for CY 2005 and CY 2006 are: (1) detection and reduction of underage drinking through the College and University Underage Drinking Enforcement Program; (2) high school and middle school education programs; (3) nuisance bars; (4) service to licensees; (5) speakeasies; and (6) video gambling. While these are the stated enforcement objectives, the work of the BLCE is essentially driven by the complaints it receives.

Any citizen, including liquor licensees, can file an anonymous complaint with the BLCE if they believe that liquor laws are being violated at a licensed liquor establishment or other location. Individuals may place complaints with the Bureau through a number of methods, for example, through correspondence with the BLCE headquarters or district office or by placing a call to a district office or one of the Bureau's two toll-free complaint hotlines. The Bureau operates a "general complaint hotline" (1-800-932-0602) as well as an "underage drinking hotline" (1-888-UNDER21). The BLCE also receives citizen complaints in the form of referrals from the Governor's Office or members of the General Assembly, and in the form of anonymous written complaints.

As the starting point leading to an investigation and possible citation, all complaints are considered confidential. Liquor Enforcement Officers are to investigate all complaints that relate to activities taking place inside of licensed liquor establishments as well as allegations of sales of alcoholic beverages without a liquor license.

The Bureau's "general complaint hotline" (1-800-932-0602) is intended to be the public's primary access point for making complaints about liquor licensees and for reporting actions that may violate the Liquor Code. Calls are collected at BLCE Headquarters in a central answering machine system after business hours, reviewed at the beginning of each working day, and distributed, as appropriate, to the BLCE district offices. A procedural description and flowchart of the General Complaint Hotline appears in Appendix E.

The second toll-free number (1-888-UNDER21) serves as an Underage Drinking Hotline. Established in October 1998, this 24-hour hotline is a toll-free line utilized in conjunction with the federally funded Enforcing the Underage Drinking Laws Program. Pennsylvanians Against Underage Drinking (PAUD) works with the PSP to publicize this toll-free number statewide through their coalition. Calls

placed to this hotline are initially received at the Department's Consolidated Dispatch Center (CDC) located in Harrisburg. (See Appendix F for a flowchart and description of hotline procedures.)

The BLCE policy is to follow up on each complaint it receives. During CY 2004, the Bureau reported receiving 13,938 complaints. During CY 2005, the Bureau received 15,502 complaints. A breakdown of these complaints, by type, or subject of the complaint is not available. It is possible, however, to get an approximation of complaint types through the use of the PSP's Automated Information Management System (AIMS).

As used by the BLCE, AIMS appears to reflect a mix of both complaints and self-initiated work in each district. It also reflects referrals of matters that result in work being transferred to police agencies and other organizations. We examined monthly AIMS reports for each of the BLCE district offices¹ for CY 2004 and CY 2005. Based on this data, we compiled a listing of complaint/incident types handled by the BLCE. This information is provided on Table 2.

The AIMS reports show statewide totals for CY 2004 and CY 2005 of 15,271 and 16,717 respectively. As noted earlier, the BLCE reported receiving 13,938 complaints in CY 2004 and 15,502 in CY 2005. Presumably, the difference between these numbers and the totals shown on the AIMS reports for the same years consists of what the district offices are classifying on AIMS as "incidents."

In any case, BLCE officials concede that the LEOs spent the vast majority of their time investigating complaints. After allowing for training, court time and administrative paperwork requirements, there is relatively little, if any, time for LEOs to undertake proactive enforcement work. Problems in the BLCE's time and activity reporting system prevent a more precise calculation/estimation of LEO time spent on proactive versus reactive enforcement work.

B. Inventory of Programs and Activities

The BLCE engages in a variety of activities to both respond to complaints and conduct proactive, or routine, enforcement work. Portions of the Bureau's *Procedures Manual* list and define certain of the various enforcement activities and special enforcement programs. Other programs and activities are addressed in various special orders and policy directives.

¹District office breakdowns are included in Appendix H.

Table 2

BLCE Complaint/Incident Classification Summaries
(CY 2004 and CY 2005)

<u>AIMS Classification</u>	<u>Statewide Totals</u>	
	<u>2004</u>	<u>2005</u>
Liquor Law		
Licensee Violation	7,597	7,382
Insufficient Funds	1,577	2,072
Routine Inspection.....	1,606	1,937
Furnish/Sale to Minor	870	1,329
Other.....	839	1,038
Minor Patrol	815	1,027
Speakeasies	419	403
Underage Consumption.....	108	145
Border Patrol	74	69
Audit.....	121	61
Nuisance Establishment.....	57	60
Public Drunkenness.....	<u>9</u>	<u>23</u>
Total Liquor Law.....	14,092	15,546
Gambling		
Devices	282	227
Video Devices.....	102	154
Other.....	117	146
Pool Selling.....	41	37
Bookmaking.....	14	11
Lotteries.....	<u>20</u>	<u>10</u>
Total Gambling	576	585
Referred to		
PSP Station	128	126
Other Agency.....	11	17
Other Police.....	<u>10</u>	<u>11</u>
Total Referred to.....	149	154
Req. Assist		
PSP Station	28	26
Other Agency.....	12	21
Other Police.....	11	4
Other.....	<u>0</u>	<u>3</u>
Total Req. Assist	51	54
Speeches		
BLCE Choices	119	117
Community Relations	105	116
Other	43	54
BLCE All Education	23	21
BLCE Licensee.....	1	12
BLCE Nuisance Estab.....	<u>1</u>	<u>2</u>
Total Speeches	292	322
All Other	<u>111</u>	<u>56</u>
Grand Total	15,271	16,717

Source: Developed by LB&FC staff using information obtained from the Pennsylvania State Police, Bureau of Liquor Control Enforcement.

1. Age Compliance Check Program.

Description. The passage of Act 141 in 2002 amended the Pennsylvania Crimes Code to permit the BLCE to implement an Age Compliance Check Program in an effort to reduce youth access to alcohol. An age compliance check is defined as “an undercover investigation of a licensed premises during which an underage buyer purchases or attempts to purchase liquor or malt or brewed beverages under the supervision of a Bureau officer.”

Specifically, Act 141 provides an exception to the law to allow the BLCE to employ “underage buyers” to work in conjunction with LEOs to enter licensed liquor establishments and attempt to purchase alcoholic beverages. Underage buyers are permitted to purchase, attempt to purchase, possess, or transport liquor or malt or brewed beverages only if all of the following apply:

- The individual is at least 18 years of age.
- The individual is an officer, employee, or intern of BLCE or the PSP.
- The individual has completed training specified by the Bureau.
- The individual is acting within the scope of prescribed duties.
- The individual is acting under the direct control or supervision of an enforcement officer.
- The individual may not consume liquor or malt or brewed beverages.

The PSP has promulgated regulations under which the compliance checks are to be performed. These were developed over a two-year period through the regulatory review process with the input and participation of groups such as the PA Tavern Association, PLCB, Pennsylvanians Against Underage Drinking, and pertinent legislative standing committees.

According to the regulations, an “underage buyer” is an individual between 18 and 20 years of age who is an officer, employee, or intern of the BLCE and participates in an age compliance check. Prior to participation in a compliance check, the officer, employee, or intern must have undergone specified training.

Upon completion of a compliance check, a participating BLCE officer is responsible for ensuring that the manager of the licensed premises is notified of the results of the check. If not in compliance, immediate verbal notification is provided followed by written notification within ten working days. If the licensed premises is found to be in compliance, written notification of compliance is to be provided within ten working days.

The BLCE received authorization to initiate the program on November 30, 2004. A pilot program began in the Harrisburg District Office in January 2005, and

the program was expanded to all the district offices by October 2005. The BLCE reports that it has trained 80 interns and 103 LEO/EO3s to carry out the program.

Bureau headquarters does not mandate the frequency at which each district office is to conduct age compliance checks. Rather, the BLCE's policy is to allow each District Office Commander to schedule the checks as their schedules permit. For example, during field visits, we learned that one district office conducts compliance checks during two shifts a month. During each shift, five or six licensed establishments can usually be checked. Another district office reports conducting one compliance check during one shift each week.

Statutory authorization for this program is scheduled to expire on December 31, 2007, unless sooner reauthorized by the General Assembly.

Age Compliance Check Program Activity. The BLCE began conducting age compliance checks in January 2005. Based on information obtained from the BLCE Director of Operations, we determined that the Bureau conducted age compliance checks at 377 licensed establishments during CY 2005. As shown on Table 3, the Bureau reports that 166, or 44 percent of the establishments checked, were non-compliant (i.e., a sale was made to the underage buyer). Sixty-four percent of the establishments checked requested identification from the underage buyers. In 71 of the checks in which non-compliance was found (43 percent), the person employed by the licensee requested identification to determine the age of the customer, but still made the sale.

During CY 2006, the Bureau plans to conduct these checks at 1,000 additional licensed liquor establishments. LEOs will also begin making follow-up visits to all establishments found to be in violation during the 2005 checks.

Table 3

Number and Outcome of Age Compliance Checks, Conducted, by District Office (CY 2005)					
District Office	Number of Compliance Checks Conducted	Number of Licensees Found to Be Non-Compliant	Percentage of Non-Compliance	Number of Non-Compliant Establishments Shown an ID	Percentage of Non-Compliant Establishments Shown an ID
Philadelphia	12	8	66.7%	1	12.5%
Wilkes-Barre	37	14	37.8	3	21.4
Harrisburg	87	40	46.0	23	57.5
Pittsburgh.....	4	4	100.0	1	25.0
Altoona.....	49	13	26.5	9	69.2
Williamsport	28	5	17.9	3	60.0
Punxsutawney ...	75	31	41.3	11	35.5
Erie	17	13	76.5	8	61.5
Allentown	<u>68</u>	<u>38</u>	<u>55.9</u>	<u>12</u>	<u>36.4</u>
Statewide	377	166	44.0%	71	42.8%

Source: Developed by LB&FC staff using information obtained from the BLCE.

The BLCE Operations Division found that about 84 percent of the non-compliant sellers had not received training through the PLCB's "Responsible Alcohol Management Program" (RAMP).²

RAMP is administered by the PLCB for the general purpose of assisting licensees and their employees in the responsible sale of alcohol. RAMP provides training opportunities for licensees operating restaurants, hotels, clubs, distributorships, and special occasion permit holders.

The Liquor Code, at §471(d), permits a judge to impose RAMP training for an underage drinking violation but does not mandate the training. Section 481, however, states that an administrative judge shall require a license holder who has accumulated ten points or more under the Philadelphia point system to become compliant and remain compliant with the RAMP provisions of the Liquor Code.

Act 2006-26 amends the Liquor Code to mandate RAMP training for bar and restaurant owners who are cited for the first time for an underage drinking violation or for serving a visibly intoxicated person. For subsequent offenses, in addition to other penalties set forth in the Code, the administrative law judge would have the discretion to impose such training. Failure of a licensee to adhere with such an order would be considered sufficient cause for the issuance of a citation for the revocation or suspension of the license.

2. Border Patrols.

Description. Border patrols are specialized enforcement activities carried out by the BLCE in order to prevent the unlawful importation of alcoholic beverages into the state and the corresponding loss of state tax revenues. These investigations are usually conducted through undercover surveillance of liquor and beer retail outlets in neighboring states. Persons suspected of purchasing liquor, alcohol, or malt or brewed beverages in states bordering Pennsylvania and transporting the untaxed beverages into the Commonwealth may be cited under the Malt Beverage Tax Law and/or Section 491(2) of the Liquor Code.

As provided in the BLCE's *Procedures Manual*, BLCE officers are to conduct a minimum of one border patrol detail within the eastern and central section of the state per pay period, focusing on Delaware, Maryland, and New Jersey. As a result only the Philadelphia, Harrisburg, Altoona, and Allentown District Offices routinely schedule border patrol details. Additional border patrol details may be scheduled at any District Enforcement Office upon receipt of specific information that indicates the possibility of a violation.

²See Appendix G for further information on RAMP.

BLCE Section Commanders are to ensure that these details are scheduled and conducted in accordance with Bureau procedures, are operated within the parameters established by current case law, and are given appropriate supervisory oversight. Supervisors and LEOs are directed to comply with all statutes pertaining to liquor law investigations of the states and individual jurisdictions in which investigations are being conducted. All applicable provisions with respect to carrying firearms in those states must also be observed.

The BLCE is to ensure that these operations include advance arrangements, preferably with the appropriate Troop Patrol Section, or with the municipal police department having jurisdiction to affect traffic stops. The *Procedures Manual* states that “under no circumstances shall Liquor Enforcement Officers actively participate in the traffic stops.” The results of all border patrol details are to be reported via e-mail message to the designated Bureau Headquarters staff member.

Border Patrol Activity. BLCE records show that 62 border patrol details were conducted in CY 2004 resulting in 33 arrests. This is 42 fewer details than required according to the internal BLCE requirement that one border patrol be conducted each pay period for each applicable district office (i.e., Philadelphia, Harrisburg, Altoona, and Allentown). BLCE staff indicated that municipal police forces were used for border patrols in this year, and a lack of proper planning and communication resulted in the municipal police force frequently canceling, and as such, planned border patrols could not proceed. With the changes in 2005 to conducting border patrols with PSP Troopers and the added communication between Bureau staff and Troop staff, the BLCE staff expected that the number of cancelled details would decrease significantly. Statistics for CY 2005 show, however, that both the total number of border patrols conducted and the number of citations issued declined further in CY 2005. (See Table 4.)

According to the BLCE Director of Operations, border patrol operations are hindered by legislation in neighboring states, which require waiting periods between a requested border patrol and the operation. These states now reportedly also require the LEO’s personal and vehicle identification prior to the operation.

Table 4

BLCE Border Patrol Activity		
	<u>2004</u>	<u>2005</u>
# of Patrols Conducted	62	53
# of Citations Issued	33	24
Liquor Seized (lt).....	136.2	99.4
Beer Seized (gal).....	253.5	356.9
Wine Seized (lt)	505.7	103.3

Source: Developed by LB&FC staff using BLCE statistical summary.

As a note, the BLCE statistical summary for CY 2005 reports that LEOs conducted a total of 53 border patrols in 2005. As shown on Table 5 below, a different report (the “Monthly 10-Day Activity Report”) that includes detail by district office, indicates a total of 56 border patrols in CY 2005. (See also Section V.C regarding data limitations and reliability.)

Table 5

BLCE Border Patrol Activity Compared to BLCE Policy Standard			
<u>District Office</u>	<u>Patrols Conducted</u>	<u>Patrols Required^a</u>	<u>Over (+) Under (-) Requirement</u>
Philadelphia	16	26	-10
Harrisburg	12	26	-14
Altoona.....	13	26	-13
Allentown	<u>15</u>	<u>26</u>	<u>-11</u>
Statewide	56	104	-48

^aAccording to the *BLCE Procedures Manual*.

Source: Developed by LB&FC staff using BLCE activity reports.

None of the involved district offices conducted the number of border patrols required by the *Procedures Manual* in either CY 2004 or CY 2005. The Altoona District Office Commander suggested, however, that it may be necessary to assess the cost-effectiveness of border patrol activities and to revisit the inspection frequency standards. He stated that although border patrols may provide effective results in Philadelphia, this activity is a major drain on staff-hours available to the more rural areas. He reported that during CY 2004 and CY 2005, his office expended 382 staff-hours on border patrols with only two arrests.

3. “Choices” Alcohol Education Program.

Description. The Choices Program, which was initiated in 1996, is an alcohol awareness program that addresses the dangers of drinking alcohol, the destructive activities it causes, and the ramifications and consequences of underage drinking. The program goal is to encourage students to make intelligent decisions and to consider a wide range of healthy alternatives. The program presents information on the legal issues regarding underage drinking, including associated penalties.

The Choices Program is presented to students at the middle and high school level and college and university level, throughout the Commonwealth’s Catholic Dioceses, at health fairs, and during PSP’s Camp Cadet weeks. The program is presented by LEOs who have been trained to act as “alcohol educators.”

At the beginning of each school year, at their discretion, each District Office Commander contacts schools within the district to explain the Choices Program and offer the Bureau's services to meet with school officials, speak to students in a classroom setting, and provide any assistance of an investigative nature into the problem of underage drinking.

The Choices Program works cooperatively with the PLCB alcohol education program known as the "LCBee Program." The LCBee Program is directed towards elementary school children and distributes alcohol education materials, such as coloring books. According to staff at the Bureau of Education at PLCB, requests for education presentations for middle school age children or older are referred to the BLCE and the Choices Program.

Program Activity. During CY 2005, BLCE officers presented a total of 275 programs or speeches at the middle, high school, and college/university levels. A reported 9,972 persons attended these events (see Table 6). Although this is listed as a top BLCE priority, this activity level was down significantly from prior years. In CY 2000, the BLCE reported conducting 1,096 programs and speeches and including 81,569 attendees.

Table 6

Choices Program Statistics					
	<u>CY 2001</u>	<u>CY 2002</u>	<u>CY 2003</u>	<u>CY 2004</u>	<u>CY 2005</u>
Programs/Speeches	605	494	377	262	275
Attendees	25,030	24,621	17,065	9,752	9,972

Source: BLCE.

4. Gambling Investigations.

Description. Act 1994-80 amended the Liquor Code to provide the Bureau of Liquor Control Enforcement with authority to enforce those sections of Title 18, the Crimes Code, related to illegal gambling. Therefore, the BLCE was charged with primary responsibility for addressing illegal gambling occurring in all establishments licensed by the PLCB. When a PSP Troop Criminal Investigation Section or the PSP Bureau of Criminal Investigation receives a complaint regarding illegal gambling, they forward such information to the appropriate BLCE district office.

While the BLCE is responsible for detecting all forms of illegal gambling in licensed establishments, the majority of their work centers on electronic video gambling machines and small games of chance. Electronic video gambling devices include video poker machines and video slot machines and may be found in almost any type of licensed establishment. Small games of chance include punchboards,

pull-tabs, raffles (including lotteries), daily drawings, and weekly drawings and are generally found in those licensed premises that are granted a Club (C) type liquor license. LEOs are trained in the recognition and enforcement procedures for illegal video gambling machines as well as small games of chance.

The BLCE's efforts to combat illegal gambling occur at two levels. The first is directed at licensed establishments. All LEOs are responsible for proceeding against any licensee that violates those sections of the Crimes Code related to illegal gambling. Such violations can result in both administrative and criminal proceedings.

The BLCE also focuses its efforts on those organizations and operations identified through intelligence as corrupt organizations. The Bureau's C.A.G.E. Unit is responsible for gathering, maintaining, and analyzing intelligence regarding illegal gambling. Upon determining that a corrupt organization may be operating, BLCE staff must decide if they will continue with the investigation or if it is necessary to refer the investigation to the PSP's Bureau of Criminal Investigation, Organized Crime Section or other appropriate state and/or federal law enforcement agency. If the BLCE continues with the investigation, it assembles an enforcement team to proceed with the investigation. This team generally consists of C.A.G.E. Unit members as well as LEOs and EO3s from the pertinent district office.

In conducting illegal gambling investigations at a licensed establishment, it may be necessary for the LEO to play the video gambling machine or participate in small games of chance in order to establish probable cause in the investigation. Once a gambling payoff has been observed and/or received, the LEO can begin criminal proceedings. A search warrant for the illegal gambling devices and related evidence of gambling must be obtained, and then the appropriate criminal charges can be filed against the licensee for the violations.

If the undercover investigation does not result in observation or receipt of a payoff, then an open inspection can be conducted. During an open inspection, the illegal gambling devices are inspected in order to establish probable cause. The machines may be seized during an open inspection and a search warrant is not needed. An open inspection would result in administrative citations against the licensee because a payoff was not witnessed.

Gambling Investigation Activity. The number and outcome of BLCE gambling inspections in CY 2004 and CY 2005 is shown, by district office, on Table 7. As shown, the BLCE reported conducting 975 gambling investigations and 263 gambling raids in CY 2004. These actions resulted in 30 arrests related to gambling and the seizure of 700 electronic video gambling devices.

Table 7

**Number and Outcome of Gambling Investigations
Conducted, by BLCE District Office
(CY 2004 and CY 2005)**

District Office	Number of							
	Gambling Investigations		Gambling Raids		Arrests for Illegal Gambling		Illegal Gambling Devices Seized	
	2004	2005	2004	2005	2004	2005	2004	2005
Philadelphia....	75	89	22	27	0	6	35	70
Wilkes-Barre...	117	89	41	38	0	2	48	52
Harrisburg.....	88	117	16	16	1	10	30	26
Pittsburgh	307	280	50	77	20	55	200	291
Altoona	50	44	25	23	2	5	19	16
Williamsport....	123	68	14	9	2	0	19	23
Punxsutawney	51	126	22	18	1	6	38	15
Erie	29	63	17	1	0	0	1	3
Allentown.....	<u>135</u>	<u>191</u>	<u>56</u>	<u>44</u>	<u>4</u>	<u>1</u>	<u>310</u>	<u>184</u>
Statewide.....	975	1,067	263	253	30	85	700	680

Source: Developed by LB&FC staff using information obtained from the BLCE.

In CY 2005, the total number of gambling investigations increased slightly to 1,067. As a result of 253 raids, LEOs made 85 arrests for illegal gambling and seized 680 illegal gambling devices. Information is also not readily available on the number of gambling investigations and raids cited on Table 7 related to video gambling as opposed to small games of chance.

During 2005, a small games of chance auditing and investigation training session was conducted for all BLCE enforcement offices. According to the BLCE Director of Operations, the LEOs now have a better understanding of the laws and regulations pertaining to this aspect of the Bureau's gambling enforcement responsibility. In addition to this training, the development of investigative checklists and associated forms have proven to be valuable in enhancing this activity.

5. Intoxicating Source Program.

Description. Effective January 1, 2004, the PSP initiated an Intoxicating Source (Database) Program. In Bureau Special Order 2003-94, the BLCE stated that it "continues to diligently utilize available resources in an effort to reduce injuries and deaths caused by alcohol-related crashes." The Bureau recognized, however, that liquor licensed establishments that have been identified as the location at which an accused person consumed alcoholic beverages were not being reported to the BLCE. To remedy this situation, the PSP developed a database to facilitate the tracking of establishments identified during DUI investigations.

As a result of each DUI investigation, State Troopers must now complete an Intoxicating Source Report indicating the name of the licensed establishment that was identified as serving alcohol to the DUI violator. The State Police enters this information onto its "Intoxicating Source Database." The BLCE has immediate access to this database and can use it as an additional investigative tool.

The Bureau has issued a Special Order (2004-3) on the Intoxicating Source database. This order states that District Office Commanders "shall ensure supervisors review the relevant Intoxicating Source information for their respective district office on a daily basis." Those establishments that appear more than once on the database are often targeted for investigation.

Database Usage. This website is an important enforcement resource to be used by the BLCE district offices to better direct their investigatory efforts. Numerous district office personnel with whom we met cited the benefits of the database and their use of it. No specific statistics are maintained, however, on the extent to which it is used or factors into successful enforcement actions.

We did find, however, that in at least some cases, district office personnel may not be using the website to the extent required by BLCE Special Order 2004-3. During field visits to various BLCE districts in 2005, one district office commander stated that his office usually reviews the database once a week while one reported monthly reviews of this data source.

6. Audits of Liquor Licensees.

Description. The BLCE *Procedures Manual* states that LEOs are to be capable of conducting various types of audits of liquor licensees. The *Procedures Manual* defines an audit as "an in-depth investigation of a licensee or business involved in the alcoholic beverage industry, usually involving extensive review of financial records and business-related documents." As defined in the Manual, an audit differs from a routine inspection in that an audit involves a more thorough and comprehensive examination of the financial records and business matters of the licensee than typically occurs during a routine inspection.

More than 18,000 Pennsylvania licensees are potentially subject to such audits and the BLCE Manual lists and defines 19 different types of audits that are to be conducted by LEOs at these establishments. As listed on Exhibit 3, these include, for example, brewery audits, club audits, distributor audits, pecuniary interest audits, and winery audits.

The BLCE Director explained that audits are not among the Bureau's highest priorities and, when conducted, usually arise during an investigation and are related in some way to a complaint. While audit-type activities may be a part of

**Types of Enforcement Audits to Be Conducted by LEOs
(As Required in the BLCE *Procedures Manual*)**

Alcohol Permittee Audit: To determine if permittee obtains their purchases directly from manufacturer or through the State Store system, examine storage of alcohol, and if alcohol purchased is for repackaging or for resale in its original state.

Bailee for Hire Audit: To determine if licensee has physical control of all merchandise stored on the premises or does bailor have control of their own merchandise.

Beer By-Pass Audit: To determine if licensee is in compliance with distribution restrictions.

Brewery Audit: To determine if raw material purchases, production, internal transfers, bottling, sales, breakage, on-premise consumption, other receipts, other removals, and reconciliations are as required.

Club Audit: To determine if the club is operating for the mutual benefit of all its members.

Credit Purchase Audit: To determine if any licensee sold or purchased any malt or brewed beverages for cash or approved credit.

Distilled Spirits Plant Production Audit: To determine the license fee based on amount of production.

Distributor Audit: To determine if licensee's records are in compliance based on reconciliations between physical inventory and sales.

Hawking or Peddling Audit: To determine if licensee is making sales from locations other than the licensed premises.

Importer Audit: To determine if licensee owns any liquor, etc., stored "in bond" in Pennsylvania, covered by a whiskey certificate and shown as inventory on monthly reports.

Inducement Audit: To determine if licensee is offering favors or gifts to promote the sale of alcoholic beverages.

Pecuniary Interest Audit: To determine if the licensees are the only person(s) pecuniarily interested in the operation of the licensed business or to determine that the licensees are pecuniarily interested, directly or indirectly, in another licensed business.

Refilling of Liquor Bottles Audit: To determine if licensee is replacing any liquor bottle contents wholly or in part with any other liquor or substance.

Sacramental Wine License Audit: To determine if wine is being properly obtained for sacramental use.

Special Permit Audit: To determine if permittee has proper permit and if records are maintained by permittee relative to purchases, withdrawals, and inventories.

Territorial Distributing Rights Audit: To determine if all licensees are adhering to their territorial agreements.

Transporter for Hire Audit: To determine if licensee is using vehicles licensed in the business for the transport of alcoholic products.

Vendor Operation Audit: To determine if licensed vendor is eligible to register agents to promote the sale of vendor products within Pennsylvania.

Winery and Limited Winery Audit: To determine the source of supply and production restrictions.

various BLCE investigations or inspections, there is no formal audit plan or program in place. Agencies that have audit responsibilities typically develop an annual audit plan and schedule to proactively direct and focus audit resources.

In August 2005, the BLCE Director stated that there is currently no official frequency standard or schedule for visiting licensed establishments to conduct routine inspections. Rather, such inspections are conducted as officers' caseloads permit. Discretion is given to district office commanders to schedule routine inspections in an "expeditious manner," but no specific frequency standard is in place.

In the past (primarily prior to 1987), such audits were reportedly carried out by a specialized group of liquor enforcement officers who had audit and accounting training and experience. For example, a "Special Investigations Section" that included audit specialists existed in the Liquor Control Board's Bureau of Enforcement prior to the transfer of the enforcement function to the State Police.

Transition planning documents dated June 1988 show that the proposed BLCE complement upon transfer of the function to the PSP was to include a specialized audit unit. The organization chart proposed at that time included a Special Investigations Section made up of two units: a four person Special Investigations Unit and a 12-person Audit Unit. The Audit Unit was to be headed by an Audit Supervisor with a CPA degree and 11 enforcement officers.

The BLCE organization, as structured in 1988, did have a Special Investigations Section. Staffing of this Section was reduced significantly during the 1990s and, in 2003, the Section was disbanded. The Special Investigations Section was replaced by the Compliance, Auditing and Gambling Enforcement Unit (C.A.G.E.) The C.A.G.E. Unit is staffed by one Corporal, one Trooper, an EO3, and one clerical position. Although an audit function is presumably to be a part of the C.A.G.E. unit's mission, there are currently no trained auditors or accountants on the complement. Although some past LEOs had formal audit training and experience, relatively few current field officers have extensive audit experience.

Both the BLCE's current Director and Director of the Operations Division stated that they believe there is a need to have LEOs trained in basic auditing functions. They report that additional training in auditing functions will be necessary to compensate for the loss of such skills that has occurred through retirements.

Audit Activity. We found that the BLCE does not have an established capacity to regularly audit liquor licensees and that relatively little formal audit activity is presently occurring. Nothing in the LEO time and daily activity reporting system or in existing BLCE statistical reporting formats refers specifically to "licensee audits." Further, BLCE staff were unable to provide information on how many, if

any, of the types of audits listed on Exhibit 3 may have been conducted during the calendar years we examined and the results of such audits, if any were conducted.

7. Licensed and Unlicensed (Speakeasy) Investigations.

Description. The BLCE is responsible for ensuring that the provisions of the Liquor Code, pertinent sections of the Crimes Code, the PLCB regulations, and any other liquor-related laws of the Commonwealth are not violated. Investigations that LEOs carry out in liquor establishments licensed by the PLCB are referred to as “licensed investigations.” The majority of the investigations conducted by the BLCE are in licensed establishments. These inspections can be either undercover or open. The open licensed investigations may vary in form from a detailed raid to a routine inspection.

In addition to conducting investigations at licensed establishments, the BLCE is also responsible for enforcing the Commonwealth’s liquor laws at establishments that do not have a liquor license and yet engage in the sale of liquor, alcohol, or malt or brewed beverages. Such unlicensed establishments are commonly referred to as “speakeasies.” There are two types of speakeasies: traditional and non-traditional. The traditional speakeasy is a business, such as a restaurant, that serves alcohol without the benefit of a liquor license. The non-traditional speakeasy is a location, such as a private residence or college fraternity house, that sells alcohol on private property. Non-traditional speakeasy investigations are often conducted in conjunction with minor patrols. After establishing probable cause of the illegal sale of alcoholic beverages, the BLCE may initiate seizure and criminal proceedings.

Investigation Activity. BLCE statistical reports provide information on the number of investigations conducted in any given year but do not differentiate between a “licensed” and a “speakeasy” investigation.³ The measure “investigation” can be broken down by “administrative” investigations and “criminal” investigations but not licensed versus unlicensed. BLCE reporting formats do include a measure entitled “Licensed Establishments Checked” (33,047 in CY 2005) but it is not clear if this is comparable to “licensed investigations.” Although not included on published BLCE summary reports, the measure “Speakeasy Raids” conducted (75 in CY 2005) is reported on internal activity reports.

³However, as used in LEO time and activity reports, the term “investigation” refers to a specific, individual investigatory action (e.g., a phone call, a site visit, an interview). The term does not refer to a body, or group of related actions, constituting an overall investigation which is conducted over a period of time from complaint initiation through finalization. See also Section V.

8. Minor Patrols.

Description. The detection and prevention of underage drinking is a major BLCE enforcement priority.⁴ Minor patrols involve the assignment of more than one LEO within a District Enforcement Office to randomly inspect licensed establishments for the illegal sales of alcoholic beverages to minors. The program is optional and may be run at the discretion of the District Office Commander.

Minor patrols are typically conducted in an undercover capacity, and can be conducted at a liquor licensed establishment, a college campus, or any other location for which a district office has received a complaint or a report of underage drinking activity. Other locations often include the areas immediately surrounding a college campus, especially when fraternity and sorority houses are located off-campus.

When conducting minor patrols, LEOs are to observe the activities to determine if alcohol is being served or sold to minors. Depending on the circumstances, such as a one-time event and/or the size and scope of the underage drinking violations, the response to the violations can vary. In some cases, the LEO can immediately open his/her identity and issue citations. It is necessary to respond in this manner if the violations are occurring at a special event at a campus. In some of these cases, an LEO may need to call for assistance from other LEOs, if available, so that they are able to conduct the open investigation immediately.

Alternatively, the LEO may find it more prudent to return to the location at a later date. This “observe and return” response reportedly works best when investigating licensed establishments. In this case, the LEO will return with additional officers to conduct a planned raid to address underage drinking violations. A “raid” is defined as an activity where the undercover status must be sacrificed, and the identity of the LEO is revealed. A raid often involves arrests and the seizure of evidence. Typically a raid includes the LEO who has taken the lead on the case, other LEOs to provide backup support, local law enforcement personnel, and an enlisted PSP member because of his/her full arrest powers.

Minor Patrol Activity. Minor patrols are often conducted during the course of LEO patrols of licensed establishments, at establishments with a history of serving minors, or in conjunction with large public sporting events or concerts. BLCE statistical reports do not, however, include a specific category entitled “minor patrols,” nor does information reported under the headings “investigations” or “licensed establishment checks” indicate the number of such activities that are directed to detecting underage drinking and/or serving minors. Activities of a “minor patrol” nature are also associated with the Bureau’s University/College Underage Drinking Enforcement Program (see #12) and Age Compliance Check Program (see #1).

⁴The University/College Underage Drinking Enforcement Program, and the Age Compliance Check Program are also primary enforcement tools used by the Bureau to both prevent and detect underage sales and consumption.

Table 8 presents data on selected measures of minor or underage enforcement. Under the current reporting structure, these are the only measures that are specific to this enforcement area.

Table 8

Measures of Minor Patrol Activity, by BLCE District Office
(CY 2004 and CY 2005)

<u>District Office</u>	Open Inspections for Minors		Arrests for Drinking/ Possession 6308A Arrests		Arrests for Furnishing/Sales to Minors		College Campus Raids	
	<u>2004</u>	<u>2005</u>	<u>2004</u>	<u>2005</u>	<u>2004</u>	<u>2005</u>	<u>2004</u>	<u>2005</u>
Philadelphia	176	140	561	563	6	6	0	17
Wilkes-Barre	57	87	246	108	1	2	20	16
Harrisburg	19	41	137	144	9	8	23	50
Pittsburgh	126	128	154	259	16	24	6	14
Altoona	17	34	86	195	23	18	6	12
Williamsport	23	32	10	55	2	5	3	6
Punxsutawney ..	6	6	47	123	12	8	7	11
Erie	8	8	21	3	3	0	1	14
Allentown	<u>141</u>	<u>162</u>	<u>114</u>	<u>159</u>	<u>6</u>	<u>18</u>	<u>19</u>	<u>22</u>
Statewide	573	638	1,376	1,609	78	89	85	162

Source: Developed by LB&FC staff using information obtained from the BLCE.

Open Inspections for Minors. While LEOs may have conducted considerably more undercover investigations related to underage drinking, they opened their identity on 573 occasions in CY 2004. Because of the limits of current BLCE statistical reports, we could not determine how many of these inspections were at licensed establishments and how many were at nonlicensed establishments, such as concerts and other special events.

Number of Arrests for Underage Drinking/Possession (6308A Arrests). This measure indicates the number of non-traffic citations issued for drinking and/or possession of alcoholic beverages by a minor. In some BLCE documents and reports, this arrest is referred to as a “6308A Arrest” referring to the applicable section of the Crimes Code. In CY 2004, the BLCE reported 1,376 arrests for underage drinking and/or possession of alcoholic beverages.

These arrests often occur in conjunction with coordinated raids. Not all raids, however, result in large numbers of arrests. Notwithstanding the number of arrests made on any given occasion, the BLCE believes the raids send an appropriate message to the community and licensees and provide a sense of “omnipresence” that can act as a deterrent. The administrative action taken to bring a licensee into compliance with the liquor laws is a primary goal of the program, and arrests are viewed as a by-product of the raids.

Number of Arrests for Furnishing/Sales to Minors. This statistic represents the number of arrests made for providing alcohol to a minor in any fashion regardless of the setting. In CY 2004, BLCE officers made 78 arrests for furnishing/selling alcohol to minors.

However, it is important to note that arresting those persons who furnish and/or sell alcohol to minors is not the only action taken by the LEOs. In addition to making any necessary arrests, administrative charges are brought against the licensee for the applicable Liquor Code violations. In CY 2005, BLCE issued 395 administrative citations to licensees for permitting the sale of liquor and/or malt beverages to a minor. In CY 2004, BLCE issued 267 administrative citations. Permitting sales to minors rated 2nd and 3rd respectively in the Bureau's top ten violations for CY 2004 and CY 2005.

Number of College Campus Raids. This measure indicates the number of raids conducted under the University/College Underage Drinking Enforcement Program specifically on college campuses. The BLCE conducted 85 such raids in CY 2004, with the highest number, 23, being conducted out of the Harrisburg District Office.

It is important to note that the total number of raids reported may be understated since the figure includes only those raids made on a college campus. In the case of some district offices, relatively few raids are reported (or in the case of Philadelphia with none reported). This may be because the statistics do not include raids conducted at off-campus locations such as apartments and fraternity houses.

9. The Nuisance Bar Program.

Description. The BLCE identifies a licensed liquor establishment as a potential "problem establishment" based on one or more allegations of a violation of the Liquor Code or other statutes or local ordinances that materially affect the quality of life in the surrounding neighborhood. The following is a list of some of these violations.

- Narcotics Trafficking
- Sales/Service to Visibly Intoxicated Persons
- Sales/Service to Minors
- Lewd and Immoral Entertainment
- Gambling
- Public Urination
- Engaging in Sexual Activity in Public View
- Fighting/Disorderly Operations
- Excessive Noise/Loud Music
- Littering
- Vandalism
- Removing Open Containers of Alcoholic Beverages From Establishments

- Consuming Alcoholic Beverages Outside the Establishment
- Sales After Hours

Once one or more of these violations are found, and even though the establishment may not yet legally be defined as a “nuisance bar,” the BLCE converts its activities from a general investigation to a nuisance bar investigation. At a minimum, the nuisance bar investigation includes the steps outlined in Exhibit 4.

This investigation seeks to establish if the licensed premises is a nuisance bar pursuant to the Liquor Code, 47 P.S. §611. The BLCE *Procedures Manual* provides a statement of policy regarding this enforcement activity:

The Bureau of Liquor Control Enforcement recognizes the degradation of community life that results from the irresponsible and unlawful operation of some businesses licensed by the PLCB. In order to fulfill the Department’s mission to provide for safe and peaceful communities within the Commonwealth, the Bureau shall vigorously enforce the provisions of the Liquor Code with particular emphasis on those licensed establishments that contribute to the decay and degradation of the surrounding neighborhood.

Each BLCE district office is to assume a “proactive posture” with respect to identifying licensed establishments that are contributing to the degradation of their surrounding neighborhood. According to BLCE guidelines, this involves a continuous review of incoming complaints and licensee files to ensure that potential problem establishments are identified. The BLCE begins a general investigation when complaints arise referring to a licensee as a “nuisance.” Initially, the investigation centers on allegations such as excessive noise or serving minors.

To be a true nuisance establishment, certain specific criteria must be met. While a bar or other establishment may be a nuisance to individuals in a particular neighborhood because of excessive noise or other disruptive behaviors, it is not officially a “nuisance bar” until declared as such under Section 611 of the Liquor Code. In order to classify a licensed establishment as a “nuisance,” an “action to enjoin” must be filed in the court of common pleas in accordance with Section 611.

To accomplish this, the BLCE contacts the district attorney to solicit assistance in initiating litigation to formally declare the establishment a “nuisance bar” pursuant to Section 611. If applicable, the district attorney will also initiate forfeiture proceedings under 42 Pa. C.S.A. §6802.

If the court establishes that the licensed premise is a nuisance, it may issue a temporary injunction, which can serve as a restraining order to keep the licensee from conducting business until a hearing before the court can be held. The court can then order that the establishment be closed for one year.

Steps in the BLCE Nuisance Bar Process

Once a licensed establishment has been identified as a potential nuisance problem, an LEO is to be assigned to conduct a thorough investigation into the operation of the offending establishment. At a minimum, the investigation is to consist of the following steps:

1. A review of licensee files.
2. An undercover investigation into all aspects of alleged violations with appropriate action taken.^a
3. Where appropriate, coordinate with municipal police departments and pertinent State Police stations for any complaints/investigations regarding the establishment. Troop personnel are encouraged to notify the District Office when drug-related investigations have been conducted on or in connection with a licensed premises.
4. Determination of the extent to which any community groups are concerned with the operation of the establishment. If such community group concerns exist, the DOC/designee arranges to attend a meeting of the group to explain the assistance available from the Bureau to address the problems being experienced by the community.
5. The DOC/designee arranges a meeting with the licensee to discuss the future of the establishment. Also, a letter summarizing the meeting and listing those conditions that placed the business in the category of a nuisance bar is to be sent to the licensee.
6. Bureau representatives meet with affected community members for additional information regarding the establishment.
7. The DOC/designee contacts all agencies with regulatory or law enforcement responsibilities related to licensed establishments to ensure full compliance with all laws related to the operation of the business. These agencies are to include, but not be limited to, the PLCB, municipal police, local State Police Troops, county drug task forces, municipal codes enforcement, and health inspectors.
8. Contact the District Attorney to solicit assistance in initiating litigation to declare the establishment a nuisance pursuant to Section 611 of the Liquor Code.
9. If applicable, contact the District Attorney to explore forfeiture proceedings under Section 6802 of the Controlled Substance Forfeiture Act.
10. Upon completion of the action under Section 611, all relevant material developed during the investigation is forwarded to the PLCB for consideration during license renewal hearings for the offending establishment.

^aUndercover investigator(s) are to continue to visit the establishment until an injunction is issued under Article VI of the Liquor Code or the District Office Commander determines the investigation should be terminated.

Source: *BLCE Procedures Manual*.

Nuisance Bar Program Activity. While the courts can order a nuisance bar closed for up to one year, common practice at the hearing is that the licensee will enter into an agreement to continue operations under a series of conditions stipulated by the court. Generally, they are then able to continue operating until their license comes up for renewal before the PLCB.

In such cases, the BLCE is tasked with monitoring the licensed establishment to ensure that it maintains compliance with the court order. Upon completion of the action under Section 611, the BLCE also forwards all relevant material developed during the investigation to the PLCB for consideration during the license renewal process. Since CY 2000, a total of 52 problem liquor licensees were closed as a result of BLCE-initiated Section 611 actions. (See Table 9.)

Table 9

BLCE Nuisance Bar Enforcement						
	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
# of Complaints.....	70	57	55	54	51	66
# of 611 Investigations Initiated.....	24	23	32	25	27	23
# of Citations Issued.....	34	35	34	24	12	14
# of Prosecutions/Act 14, §611.....	2	8	6	4	7	3
# of Licensees Closed.....	7	7	6	16	7	9

Source: Developed by LB&FC staff using BLCE activity reports.

Through its license renewal process, the PLCB also operates a Nuisance Bar Program. The PLCB's program was established in 1990 and utilizes a non-renewal process of the establishment's liquor license, causing the licensee to forfeit its ability to operate as a licensed establishment. Under this program, the PLCB identifies licensees who are multiple offenders or ones that could adversely impact upon the public welfare, peace, and morals and closely reviews their records at the time of their biennial liquor license renewal.

This program consists of an administrative review at each renewal period of all licenses to determine if a licensed business has abused the license privilege. If the licensee has by its conduct or record of violation, demonstrated a pattern of activities that is in conflict with the health and safety of the local community during its license term, the PLCB can then refuse to renew that license.

Approximately four months prior to a license renewal period, the PLCB's Bureau of Licensing seeks to identify potential candidates for non-renewal. In addition to the BLCE, the PLCB also seeks input from the Office of Attorney General, members of the General Assembly, the county district attorneys, municipal police, and PSP Troops. If any of these parties object to the renewal of a particular licensed establishment, a hearing is scheduled to consider the objections.

Based on the overall record and criteria set by the PLCB, a decision is then made to:

- renew the license with no formal action;
- renew the license and warn the licensee that continued improper conduct could jeopardize future license renewal;
- conditionally approve the renewal of the license pending disposition of arrest and/or citations pursuant to the Liquor Code; or
- object to license renewal based on allegations of abuse of the licensing privilege.

Since 1990, the PLCB has refused to renew the licenses of 897 nuisance bars, or an average of about 60 a year.

It is important to note that only the PLCB can take action to prevent a license renewal. The BLCE cannot deny a license renewal for a nuisance bar; rather it must establish the nuisance status of a licensed premises pursuant to Section 611 of the Liquor Code. The BLCE can and does, however, provide evidence to the PLCB to be considered during the license renewal review phase of its nuisance bar process.

10. Routine Inspections of Liquor Licensees.

Definition. Chapter 6 of the *BLCE Procedures Manual* lists routine inspections as one of the Bureau’s primary enforcement activities. According to the *BLCE’s Procedures Manual*, a “Routine Inspection” is defined as “a comprehensive and thorough examination of a licensed establishment and its operation to determine compliance with the Liquor Code and associated regulations promulgated under Title 40.” The Manual states the following regarding these inspections:

Inspections of licensed establishments are conducted to ensure compliance with all requirements for holding a liquor license. District Office Commanders, at their discretion, may create and assign LEOs to a District Routine Inspection Team.

The Routine Inspection Report is to be used to document routine inspections that are conducted at licensed establishments other than distributors and importing distributors. The Distributor/Importing Distributor Routine Inspection Report is to be used to document routine inspections conducted at licensed distributors and importing distributors.

A routine inspection is “open” in nature; that is, the LEO is not working in an undercover capacity when engaged in this enforcement activity. The licensee is aware of the LEO’s identity and provides information to the LEO during the

inspection. The LEO provides a copy of the relevant form to the licensee upon completion of the routine inspection, regardless of whether violations were found.

The basic intent of a routine inspection is to provide a comprehensive examination of licensee operations with respect to the Liquor Code and all associated regulations. The concept is that routine inspections are a proactive enforcement tool and are done on a regular basis, at some specified frequency. A regular routine inspection presence can create an atmosphere of “enforcement omnipresence” and serve as an incentive for licensees to maintain strict adherence to the Code and regulatory requirements. The *BLCE Procedures Manual* is silent, however, on the question of the frequency at which routine inspections should be conducted.

The BLCE also sometimes conducts “routine inspections” as part of an ongoing investigation. In such cases, the routine inspection is done at the end of an investigation to gather further information and evidence before a notice of violation letter is issued.

Routine Inspection Activity.

CY 2003 to CY 2005 Activity. Table 10 shows the number of routine inspections reported by each BLCE district office during Calendar Years 2003, 2004, and 2005. As shown, the districts reported conducting a total of 2,567 routine inspections in CY 2004 but increased that number by 19 percent, to 3,058, in CY 2005.

With the exception of the Pittsburgh and Erie District Offices, all districts reported increased inspection activity in CY 2005. The largest increase occurred in Allentown, where routine inspection activity rose by 154 percent, from 268 inspections in 2004 to 682 inspections in CY 2005. The Wilkes-Barre office increased routine inspections by 88 percent. In the Pittsburgh District Office, routine inspections declined from 655 in 2004 to 279 in 2005, a 57 percent reduction.

Table 10

**Number of Routine Inspections Conducted, by BLCE District Office
(Calendar Years 2003-2005)**

<u>District Office</u>	<u>Number of Inspections Reported in:</u>		
	<u>2003</u>	<u>2004</u>	<u>2005</u>
Philadelphia	848	809	878
Wilkes-Barre	202	274	516
Harrisburg	270	241	285
Pittsburgh	451	655	279
Altoona	133	75	109
Williamsport	194	54	123
Punxsutawney	158	89	95
Erie	329	102	91
Allentown	<u>333</u>	<u>268</u>	<u>682</u>
Statewide	2,918	2,567	3,058

Source: Developed by LB&FC staff using information obtained from the BLCE.

While the BLCE's daily activity reporting system records numbers of routine, or open, inspections conducted, this provides only a raw indicator of inspection activity. No centralized information is available on the number of these inspections that were proactive and scheduled as opposed to being conducted at the conclusion of an undercover investigation. Also, it is not possible to determine the names and types of licensees involved (e.g., retail liquor licensees, retail malt beverage licensees, or wholesale licensees) without manually examining thousands of paper records on file at each of the BLCE district offices.

Inspection Frequency. As noted previously, the *BLCE Procedures Manual* does not specify the frequency at which routine inspections of the Bureau's 18,000 plus licensees are to be conducted. When the enforcement function was located in the PLCB, the stated objective was to conduct a routine inspection of every licensee on an annual basis. On this subject, a transition and planning document done for the BLCE transfer (dated FY 1986-87) stated that "to ensure proper compliance with the Liquor Code, licensed establishments should be visited on an annual basis at the minimum." We could not, however, find any current written BLCE guidelines or directives on routine inspection frequency.

Various references to routine inspection frequency have been made since the enforcement function was transferred to the PSP. For example, during the late 1980s, transition documents suggested that the goal would continue to be routine inspections of licensees on an annual basis. However, in a 2001 hearing before the House Liquor Control Committee, the then BLCE Director told Committee members that BLCE's goal was to visit every licensee in the state at least once every three years.

In August 2005, the BLCE Director stated that there is currently no official frequency standard or schedule for visiting licensed establishments to conduct routine inspections. Rather, such inspections are reportedly to be conducted "as officers' caseloads permit." Discretion is given to District Office Commanders to schedule routine inspections in an "expeditious manner," but no specific frequency standard is currently in place.

We discussed the frequency of routine inspection work with BLCE District Office Commanders, LEOs, and EO3s. They told us that while attempts are made to regularly schedule routine inspections, this is often difficult because of the volume of complaints received and the need to assign available LEOs to investigate them. Consequently, some believe there are "many licensees that may never see an LEO."

One District Office Commander stated that he attempts to schedule routine inspections so that each licensee is inspected once every five years. This office has one LEO who focuses on routine inspections. The District's policy is to initiate

routine inspections at newly licensed establishments or licensee transfers so that they may use the routine inspection as a means of educating the licensees about the state's liquor laws and thereby increase voluntary compliance.

At another district office we visited, the Commander initiated a proactive effort to conduct routine inspections beginning during the second half of CY 2005. In this district, a newly instituted district policy is to conduct routine inspections every Wednesday between noon and 8:00 p.m. at licensed establishments that are not currently subject to an ongoing administrative or criminal investigation. The Commander estimates that, on average, an LEO can conduct three to four routine inspections during an eight-hour shift, if no problems are encountered. In another district, the Commander reported that his officers were beginning to conduct routine inspections during two eight-hour shifts each month.

From current BLCE centralized reports and records, it is not possible to determine when each of the state's 18,000 plus licensees received their last routine inspection. The BLCE does not have an automated system that records routine inspection activity for each licensee. Bureau officials concede that it is possible that some licensees may not have received a routine inspection visit from an LEO in many years or, possibly, not since the enforcement function was transferred to the BLCE.

A time- and labor-intensive manual examination of paper files maintained at each BLCE district office would be required to determine when each liquor licensee last received a routine inspection. As an alternative to this method, we estimated how long it would take to conduct a proactive schedule of routine inspections among all current licensees (based on the number of routine inspections the BLCE reported it conducted in CY 2004 and CY 2005).

During CY 2004, BLCE officers conducted 2,567 routine inspections, or 13.9 percent of all licensees. The percentage of total licensees receiving a routine inspection varied from a high of 24.9 percent in Philadelphia to a low of 6.0 percent in Williamsport. In CY 2005, BLCE officers conducted 3,058 routine inspections, or 16.6 percent of all licenses.

As shown on Table 11, the 2,567 licensees who received a routine inspection in CY 2004 represent 13.9 percent of the total licensee population of 18,493. At this rate, if a regular implementation schedule was maintained statewide, each licensee would receive a routine inspection once every 7.2 years.

Table 11

**An Estimate of the Number of Years That Would Be Required for the
BLCE to Do a Routine Inspection of All Licensees**

(Based on the Number of Routine Inspections in CY 2004 and CY 2005)

District Office	Number of Routine Inspections Conducted		Total Licensees	% of Licensees Inspected		Est. Time (Yrs.) to Inspect All Licensees	
	2004	2005		2004	2005	2004	2005 ^a
Philadelphia	809	878	3,248	24.9%	27.0%	4.0 Years	3.7 Years
Wilkes-Barre ...	274	516	2,155	12.7	23.9	7.9	4.2
Harrisburg	241	285	1,672	14.4	17.0	6.9	5.9
Pittsburgh	655	279	4,241	15.4	6.6	6.5	15.2
Altoona	75	109	1,095	6.8	10.0	14.7	10.0
Williamsport	54	123	894	6.0	13.8	16.7	7.2
Punxsutawney.	89	95	888	10.0	10.9	10.0	9.3
Erie	102	91	1,176	8.7	7.7	11.5	13.0
Allentown	<u>268</u>	<u>682</u>	<u>3,070</u>	8.7	22.2	11.5	4.5
Statewide	2,567	3,058	18,439	13.9%	16.6%	7.2 Years	6.0 Years

^aCalculated based on the number of licensees in 2004. The total number of licensees in 2004 was 18,374.

Source: Developed by LB&FC staff using information obtained from the BLCE.

Routine Inspection Frequency in Selected Other States. The routine inspection is a standard regulatory and enforcement tool that is common to most, if not all, state liquor enforcement agencies. We obtained information on this subject for a sample of three other states.

Texas. In April 2002, an audit report on licensing and enforcement at the Texas Alcohol Beverage Commission was released. The audit found that the Texas Enforcement Division had an adequate system for ensuring that the majority of licensed establishments are inspected annually. The auditors reviewed the method used to assign and document routine inspections and found that these methods were sufficient to ensure that licensees are inspected regularly. In Texas, the goal is that 70 percent of all licensed liquor establishments receive a routine inspection each year. The audit found that about 68 percent of the licensed establishments in Texas received a routine inspection in FY 2001.

Colorado. An August 2003 performance audit of the Colorado Liquor Enforcement Division found that the division was investigating approximately 1,900 licensees, or about 16 percent of all license holders each year. The audit also found that the division did not have a method for selecting those licensees that undergo a routine inspection. As part of the Colorado audit, 11 states were contacted to determine their inspection selection method. The survey found that three states use random sampling methods, four states report inspecting all licensees each year, and three use a "risk-based method" that targets those licensees considered at the

highest risk to violate the law and those about whom they receive a high number of complaints.

Because the number of officers in Colorado did not allow for each licensee to have a routine inspection each year, the Office of the State Auditor recommended that the division target its routine inspections towards those licensees most likely to violate liquor laws as well as look at existing records to target those licensees who have previous violations or have never received an inspection. They also recommended that they develop a system that would ensure that all licenses receive an inspection during a set time frame.

North Carolina. A 2005 audit of the North Carolina Division of Alcohol Law Enforcement found that limited staff resources had reduced the frequency at which routine inspections of licensees were being conducted. The audit report noted that the decrease in inspection frequency increases the likelihood that establishments are not complying with alcohol laws.

To better balance the workload, division management altered its policy on how often each licensed establishment must receive a routine inspection to once every two years instead of annually. This change was effective in November 2004. North Carolina officials also report, however, that establishments that generate numerous complaints are to be visited and inspected on a more frequent basis by the field agents as necessary.

11. Special Occasion Permits.

Description. A Special Occasion Permit is a permit the PLCB may issue to an “eligible entity” to allow the sales of alcoholic beverages for fund-raising purposes. Examples of eligible entities include hospitals, churches, volunteer fire or ambulance companies, bona fide sportsmen’s clubs in existence for at least ten years, and nationally chartered veterans’ organizations.⁵

Any eligible entity that wishes to acquire a Special Occasion Permit must submit a written application to the PLCB. Only one permit shall be issued to each eligible entity per calendar year; each permit may only be used for six consecutive or non-consecutive days.

Special Occasion Permit holders may sell alcoholic beverages during the same hours as restaurant liquor license holders and may sell any type of alcohol for consumption on or off the licensed premises. Holders of a Special Occasion permit are required to give notice to the police department within the jurisdiction where the permit will be used. Such notice is to be given at least 48 hours prior to each use of the permit and include the date, time, and place of the impending sale of alcoholic beverages. The permit may be used in conjunction with activities and

⁵Section 102 of the Liquor Code (definition of “eligible entity”) contains a complete listing of eligible entities.

events involving other entities; however, no one other than the holder of the Special Occasion permit may acquire a pecuniary interest in the permit.

In December 2003, the House Liquor Control Committee held a hearing on fraud and abuse related to the use of Special Occasion Permits. During that hearing, the BLCE Director told Committee members that LEOs “occasionally spot-check events associated with these (special occasion) permits.”

Committee members, in turn, asked the BLCE Director to translate the “occasionally spot-check” procedure to the number of special occasion permits actually checked in the most recent calendar year. In responding, the BLCE stated that this information was not available without an exhaustive search of all BLCE records for that year and an examination of the files on every investigation and incident. The Committee subsequently suggested that the BLCE develop a guideline on the number of spot-checks to be conducted and a means of recording and reporting the frequency and outcome of such checks.

During CY 2005, the PLCB Bureau of Licensing reported issuing 1,419 special occasion permits valid for a total of 3,752 days of authorized alcohol sales. The Bureau is to inform the pertinent BLCE district office whenever any special occasion permits are issued so that LEOs may be scheduled to monitor such events. The decision on whether or not a spot-check will be conducted is reportedly based on the licensee’s history, location, notoriety of the event, and staff availability. BLCE staff contend, however, that timeliness of notification of special occasion permits from the PLCB is sometimes problematic.

Special Occasion Permit Monitoring Activity. The BLCE does not maintain summary records of enforcement activities related to special occasion permits. According to Bureau officials, visits to locations where special occasion permit holders are operating may periodically occur, but such activity is at the discretion of the District Office Commanders and EO3s.

Under the Bureau’s current recordkeeping system, such actions would probably be recorded under “licensed investigations,” or “administrative investigations.” As such, a time-consuming search of paper files would be required to identify the number and outcome of any special occasion permit checks that may have occurred in a given time period.

12. University/College Underage Drinking Enforcement Program.

Description. The University/College Underage Drinking Enforcement Program was initiated to increase the enforcement of underage drinking laws. Its purpose is to target large, planned gatherings of minors consuming alcoholic beverages

that coincide with social events on university/college campuses. As a specific type of “minor patrol,” the program’s intent is to curtail the purchase and consumption of alcoholic beverages by minors.

BLCE efforts concentrate on university/college-related activities during the entire fall semester and from mid-March to the end of the academic year. Special attention is given to homecoming events, sports events, fraternity parties, “Greek Week,” “Spring Fling,” and weekends prior to scheduled breaks. Additionally, warm weather events, such as concerts and annual regional/local events, are monitored for their potential to attract minors.

Under this program, District Office Commanders communicate with the colleges and universities within their districts at the start of each academic year to relay the BLCE policy on underage drinking and request assistance and cooperation from university officials in combating underage drinking. To target enforcement efforts, the District Office Commanders obtain academic calendars and concert and special event schedules.

In targeting specific institutions and functions for enforcement activity on specific dates, the District Office Commander schedules as many LEOs as necessary for the planned enforcement detail. Because the majority of these events warrant a raid, assistance is needed from the college/university institutional police force, local law enforcement, and pertinent PSP stations.

Table 12 below presents statistical data on this program for the period 2001 through 2005. In some cases, the data presented on the table is a subset of data contained in Table 8 in the “Minor Patrols” section.

Table 12

College/University Underage Drinking Enforcement Program

	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
# of Raids	139	152	172	85	162
# of Arrests – 6308.....	663	355	428	366	833
# of Arrests-Furnishings.....	47	24	29	38	28
# of Other Arrests.....	66	190	85	49	139

Source: Developed by LB&FC staff using BLCE activity reports.

13. Worthless Check Investigations.

Description. Although they have no relationship to public health and safety, BLCE efforts to investigate bad checks⁶ written by liquor licensees consume an inordinate amount of the Bureau's enforcement time and resources. Two sections added to the Liquor Code in 1961 mandate the Bureau's involvement in what is essentially an administrative "collection agency-type" function.

Section 493(26)⁷ provides that it is unlawful for any retail liquor licensee, retail dispenser, distributor, or importing distributor to issue a worthless check. Any licensee who receives a worthless check in payment must notify (by certified mail) the person who wrote the worthless check that it is in fact worthless. This notification must occur within five days of receiving notification from the bank that it is worthless.

Section 496 provides that any licensee who receives a worthless check must notify the LCB within 20 days of receiving notice that the check didn't clear the bank. The notification process for reporting "dishonored instruments" (i.e., worthless checks) must be done in the manner that the Board directs in regulation. The regulation provides that notification must be made to the Board by letter through the U.S. mail, addressed to the Investigative Unit of the LCB. A separate letter must be submitted for each dishonored instrument.

The PLCB, in turn, informs the BLCE when such "NSF" notifications are received. For example, the BLCE would be notified when a "Restaurant" licensee (Type R) writes a bad check to a "Distributor" licensee (Type D) for the purchase of beer to be sold at the restaurant. Because the issuance of a worthless check is a violation of the Liquor Code, the BLCE is required to investigate. BLCE officers are to use the Dishonored Instrument Schedule (Form LCE-4) to investigate all instances of checks being written by a licensee for the purchase of liquor, alcohol, or malt or brewed beverages that are returned by the financial institution due to insufficient or unavailable funds.

Worthless Check Investigation Activity. Although it is a primary BLCE activity, daily activity logs and statistical reports do not routinely record information on the number of "not sufficient funds" (NSF) or worthless check investigations that are conducted. The assumption is that these activities are recorded under the general heading "investigations."

⁶In BLCE operations, bad checks are also referred to as "not sufficient funds (NSF)" checks, worthless checks, and dishonored instruments.

⁷Section 493(2) currently provides that it is unlawful for an importing distributor or distributor to accept cash for payment of any malt or brewed beverages from any licensee. However, such licensees may accept money orders, cashiers' checks, or other forms of payment that are authorized by the Board. This clause was added by Act 2004-239.

Data is available from other bureau sources, however. This information shows that the PLCB made a total of 1,667 worthless check referrals to BLCE in CY 2004. The BLCE subsequently issued 429 citations⁸ for the issuance of worthless checks, more than any other violation cited during CY 2004. During CY 2005, the BLCE issued a total of 601 citations for bad checks again making this the number one violation cited by the BLCE.

Many BLCE officers with whom we spoke question having LEOs function as “bill collectors.” One officer stated as follows regarding this function in his district office:

We process hundreds of these a year, and approximately 70 or 80 wind up being violations. Numerous man-hours are expended processing these, and the net result is usually a \$50 fine. The community at large will most likely never hear about these cases. I think the Commonwealth would be better served to allow these cases to be solved through the civil system, and free up enforcement officers’ valuable time for more serious matters.

While the Bureau’s time and activity reporting system does not account for LEO hours spent on worthless check investigations, both the management staff as well as the Liquor Enforcement Officers believe that this activity consumes considerable time and resources that could be better spent on more serious violations and investigations.

14. Other Activities and Involvement With Related Agencies and Stakeholder Groups

There are a number of additional miscellaneous enforcement related activities and services in which the BLCE is engaged.

Licensee Seminars. Licensee seminars are sessions the PLCB and BLCE jointly present for liquor licensees. Their purpose is to provide information and updates on laws and regulations to liquor licensees in order to assist them in operating their business in a more effective manner.

The BLCE does not maintain a record of the number of seminars in which they are involved with the PLCB, and there is no provision in the Daily Activity Report process for LEOs to record their participation.

⁸If the violation is a first time violation by the purchaser, and if the check is subsequently honored by the bank within ten days from the date it was issued, the BLCE is required to issue an administrative warning in lieu of a citation.

Representatives of both organizations typically hold a general session with remarks at these seminars. Workshops are then held on such topics as: Club Operation, Operating Problems and Violations and Preventing Illegal Sales. An enlisted member of the Bureau, an LEO, an Enforcement Officer 3 (usually from the nearest district office) and a representative of the Pennsylvania Liquor Control Board sit on the panel at each workshop. The PLCB's Director of Alcohol Education schedules and coordinates these sessions.

Local Police Departments. The BLCE interacts and works with local police agencies during the course of minor patrols, border patrols, and the University/College Underage Drinking Enforcement Program. They also work with local police in regard to any illegal activities for which local police department assistance is needed.

Nuisance Bar Task Forces. Nuisance bar task forces remain very active as prime enforcement coordination entities in Philadelphia and Pittsburgh. Additional task forces are variably spread across the state. These task forces serve as intelligence gathering/sharing and targeted enforcement entities. The task forces facilitate the gathering of information that may eventually lead to an establishment being classified as a "nuisance"; although such a determination requires an excessive amount of accumulated violations and complaints. The process is expedited by presenting and sharing information and intelligence with the local district attorney's office. However, the BLCE Director of Operations cautioned that the process of actually closing an establishment under section 611 of the Liquor Code can take many years.

BLCE personnel are assigned to both the Philadelphia and Pittsburgh task forces. BLCE does not direct these task forces, but is an equal partner with other agencies and groups that participate. BLCE's expertise and services are provided when needed and useful, but BLCE does not dictate the process. Both task forces are very active. The Philadelphia District Office Commander and an LEO are assigned to the Philadelphia Task Force; an experienced LEO is assigned to the Pittsburgh Task Force.

When successful, nuisance bar task forces work cooperatively with other law enforcement entities to gather undercover intelligence, work with the district attorney's office to procure a search warrant, and execute raids on suspected speakeasies. Much of the time, close contacts are made with local law enforcement; so that upon learning of potential speakeasies, BLCE is among the first to be contacted. A recent raid on a 'speakeasy' in Lancaster is an example of a successful cooperative approach in which the plan was initiated by the local police department and the BLCE was brought in to help implement the execution of the raid. As a result of this experience, continued cooperative efforts with the Lancaster Police Department

will be enhanced. Similar arrangements are also in effect with the cities of Reading, York, and Allentown/Bethlehem.

Membership in the nuisance bar task force is reportedly open to all who have an interest in nuisance bar abatement. The BLCE Director of Operations indicated that many “local issues” such as local law enforcement not being familiar with BLCE’s functions or politicians in disagreement may potentially slow down the nuisance bar identification and adjudication process. There is also somewhat of a split between the PLCB and BLCE’s definitions and approach to dealing with nuisance bars. The PLCB approaches nuisance bars from the perspective of potential license revocation. In the past there was reportedly some disconnect between PLCB and BLCE concerning their separate approaches to the nuisance bar issue. BLCE officials believe that more deliberate and frequent communication between the agencies on this issue has improved their respective efforts.

Pennsylvania Liquor Control Board. The BLCE also interacts with the PLCB. For example:

1. Nuisance Bar Program – See “Nuisance Establishment/Bar Program” (#9).
2. Alcohol Education – see “Choices Program” (#3).
3. Monthly Meetings – The Director of the BLCE as well as the two BLCE Division Directors meet monthly with PLCB staff, including the Chief Counsel and legal staff, the Director of Licensing, and the Director of Education to discuss all pertinent issues. BLCE also meets with pertinent PLCB staff when specific issues or events necessitate. The Director of Licensing at the PLCB stated that the two agencies have a very good relationship and that they maintain open lines of communication.

Stakeholder Groups. Pennsylvania Against Underage Drinking (PAUD) is a coalition comprised of a number of organizations, including the BLCE. It was developed through a grant from the Robert Wood Johnson Foundation and has representatives from more than 450 businesses, community groups, and state organizations, as well as many youth members.

The Director of the BLCE serves as a member of the PAUD Steering Committee. The Director of the BLCE Division of Operations is a member of the Public Policy and Enforcement Committee, and the Director of the BLCE Division of Administration is a member of the Public Information and Media Committee.

Among PAUD’s projects are: pending legislation to require key tagging (formerly known as key registration) and compliance checks for licensees, creation of a newsletter to report on general underage drinking issues, and research and statistics. PAUD also participates in the Enforcing the Underage Drinking Laws Program and assists in various projects and conferences.

The BLCE has similar types of involvement with Mothers Against Drunk Driving (MADD) and Students Against Drunk Driving (SADD).

Stills. Investigations of the unlawful manufacture, production, or distillation of liquor or alcohol are commonly referred to as “still” investigations. Upon sufficient probable cause, seizure and criminal proceedings may be initiated. Most commonly, when conducting these types of investigations, the following charges would also apply: (1) possession or transportation of alcohol or liquor unlawfully acquired; and (2) keeping and exposing liquor for sale or sale without a license. While LEOs are reportedly trained in the detection of alcohol stills, this is a low priority enforcement activity with relatively few cases.

C. Violations Most Frequently Cited by the BLCE

BLCE Liquor Enforcement Officers issue both administrative and criminal citations. Violations of the Liquor Code (Title 47), PLCB Regulations (Title 40), and the Pennsylvania Crimes Code (Title 18) are primarily handled as administrative violations by BLCE. Although the Bureau handles most violations encountered administratively, the Bureau can proceed criminally against an individual for violations of the Crimes Code and certain sections (Article 4) of the Liquor Code. Exhibit 5 provides a comprehensive listing of more than 80 violations for which LEOs can issue citations (either administrative or criminal).

Administrative violations involve the issuance of a citation against the liquor licensee for a violation of the Liquor Code or Title 40. Administrative violations are prosecuted by an attorney representing the State Police in an administrative hearing held before an Administrative Law Judge who decides if there is enough evidence to prove that the violations charged did occur.

Criminal violations involve the arrest of an individual for a violation of criminal law. Criminal prosecutions are prosecuted in the court of common pleas by the district attorney of the appropriate county for a violation of the Crimes Code and certain sections of the Liquor Code. If the State Police initiates criminal prosecution against the violator in the court of common pleas, the penalties imposed may be Accelerated Rehabilitative Disposition (ARD), fines, incarceration, or a combination thereof, if convicted. Such conviction could also lead to an administrative citation and the removal or revocation of the involved liquor license.

Licensees can be held accountable for any actions of their employees, management, or persons acting as their agents. Violations do not have to be physically committed by the licensee or corporate officers. In most situations, the act of one of the mentioned persons is enough to warrant citation, arrest, and prosecution for the alleged violation.

**Common Violations of the Pennsylvania Liquor Code (Title 47),
PLCB Regulations (Title 40), and Crimes Code (Title 18)**

Violation	Possible Action		Law/Code Violation		
	Administrative	Criminal	Title 47 Liquor Code	Title 40 PLCB Regs.	Title 18 Crimes Code
Supplying false information to PLCB for licenses, permits, or documents	X		X		
Mislabeling beer taps	X		X		
Cashing payroll, public assistance, or unemployment checks	X		X		
Failing by a club to adhere to bylaws	X			X	
Failing by a club to have a copy of its charter (if incorporated), constitution, and bylaws on the premises	X			X	
Failing by a club to fulfill the purposes of its charter	X		X		
Failing by a club to collect dues according to its bylaws	X		X		
Failing by a club to hold regular meetings and conduct business through properly elected officers	X		X		
Operating a club not for the mutual benefit of the entire membership	X		X		
Selling by a club any alcoholic beverages for off-premises consumption	X		X		
Permitting sales to nonmembers of a licensed club	X		X		
Failing to clean beer taps every seven days and maintain an accurate up-to-date record of the cleanings	X			X	
Failing to break empty liquor bottles within 24 hours, unless recycling under an approved plan	X		X		
Holding contests not sponsored solely by the licensee	X			X	
Giving alcohol as a prize	X	X			
Selling alcoholic beverages on credit	X		X		
Purchasing/selling alcoholic beverages on credit other than credit card sales or purchases	X		X		
Issuing worthless checks as payment for beer products	X		X		
Allowing on premises consumption of alcoholic beverages by a distributorship, except as part of conducting a tasting	X		X		
Having an interest in a retail license by a distributorship	X		X		
Selling less than 24, 7-ounce container or 12, 24-ounce container cases of beer products by a distributorship	X		X		

Exhibit 5 (Continued)

Violation	Possible Action		Law/Code Violation		
	Administrative	Criminal	Liquor Code Title 47	PLCB Regs. Title 40	Crimes Code Title 18
Failing to prepare sales invoices for sales over 288 ounces or 4 cases of beer products by a distributorship	X		X		
Selling to any person operating a speakeasy by a distributorship	X	X			
Selling malt or brewed beverages between 12:00 midnight Saturday and 2:00 a.m. Monday by a distributorship	X	X	X		
Selling beverages by a distributorship in containers other than the original container prepared by the manufacturer	X		X		
Failing to collect cash deposits on refundable containers	X		X		
Permitting entertainment without an amusement permit	X		X		
Permitting entertainment and/or dancing after 2:00 a.m.	X		X		
Permitting entertainment to be visible from outside of the premises	X		X		
Permitting lewd, immoral, or improper entertainment (including television, videos, and amusement devices)	X	X	X		X
Permitting entertainers to contact patrons for a lewd, immoral, or unlawful purpose (includes lap dances)	X	X		X	X
Allowing entertainment while the license/amusement permit is suspended or revoked	X		X	X	
Permitting amplified music to be heard outside the premises	X			X	
Operating in a noisy and/or disorderly manner	X		X		
Allowing gambling, gambling devices, or gambling paraphernalia (video/slot machines, drawings, sports pools, strip tickets, etc.)	X	X	X		X
Failing to maintain proper small games of chance records for two years	X		X		X
Selling lottery tickets without a license	X	X	X		X
Conducting "happy hour" for more than two consecutive hours	X			X	
Conducting "happy hour" after midnight	X			X	
Serving more than one drink for the price of one (two for one specials, etc.)	X			X	
Serving unlimited alcohol for one price	X			X	
Conducting "daily drink specials" after midnight	X			X	
Providing more than one free drink per day per person	X		X		

Exhibit 5 (Continued)

Violation	Possible Action		Law/Code Violation		
	Administrative	Criminal	Liquor Code Title 47	PLCB Regs. Title 40	Crimes Code Title 18
Operating without a valid health certificate	X		X	X	
Operating not as a bona fide restaurant (insufficient food, seating, etc.)	X		X		
Operating a hotel license without the required number of bedrooms available	X		X		
Operating a hotel license without a separate kitchen	X		X		
Offering inducements to purchase alcoholic beverages	X		X	X	
Employing persons to solicit the purchase of alcoholic beverages	X		X		
Receiving credit or loans from another licensee	X		X		
Interfering with a liquor enforcement officer or police officer performing their duties	X	X	X		X
Refusing a liquor enforcement officer the right to inspect during business hours or when patrons are present	X	X	X		
Selling liquor or wine for consumption off premises. Partially consumed and sealed bottles of wine purchased with a meal may be removed	X	X	X		
Possessing liquor obtained from a source other than a Pennsylvania State Store	X	X	X		
Refilling liquor bottles and/or allowing liquor to be contaminated	X		X		
Failing to devote full time to the operation of the licensed premises by the manager	X			X	
Failing to appoint a PLCB-approved manager or using an unapproved manager	X			X	
Permitting the manager to be employed by another licensee without PLCB approval	X			X	
Failing to notify PLCB of a change of manager within 15 days (does not apply to clubs)	X			X	
Permitting minors to frequent the establishment	X	X	X		
Furnishing and/or serving alcoholic beverages to minors	X	X	X		
Serving alcoholic beverages in a bowling alley when unsupervised minors are present	X	X	X		
Permitting minors on the licensed premises without removing or locking up all alcoholic beverages (underage parties, etc.)	X	X	X		
Holding a social gathering for minors and not providing 48 hours notice to BLCE	X	X	X		
Permitting minors under 18 years of age to act as bartenders, waiters, waitresses, or entertainers	X	X	X	X	
Employing minors under 16 years of age, except at ski resorts, amusement parks, and golf courses	X	X	X		
Failing to post suspension notices or posting signs claiming closure for a reason other than the suspension	X			X	

Exhibit 5 (Continued)

Violation	Possible Action		Law/Code Violation		
	Administrative	Criminal	Title 47 Liquor Code	Title 40 PLCB Regs.	Title 18 Crimes Code
Selling alcoholic beverages during a period of suspension	X	X	X		
Operating another business without PLCB approval	X			X	
Having a connection to another business without PLCB approval	X		X	X	
Having an inside passage to the residence of a person other than the licensee, corporate office, or manager	X			X	
Permitting another person to operate a business on the licensed premises	X			X	
Permitting another person or entity to own and/or operate the licensed premise without notifying PLCB	X		X		
Refusing the general public entry into restaurant, hotel, and eating place licensed premises (operating as a private club)	X		X		
Selling alcoholic beverages during prohibited hours and/or days	X	X	X		
Failing to require patrons to vacate not later than one-half hour after the required time	X	X	X		
Permitting a patron to possess and/or remove alcoholic beverages after hours	X	X	X		
Failing to maintain complete records covering the operation of the business for a period of two years on the licensed premises	X		X		
Failing to return a license for safekeeping when the establishment is closed for 15 or more consecutive days	X			X	
Selling alcoholic beverages after the license is submitted for "safekeeping"	X	X	X	X	
Selling alcoholic beverages after the license expires	X	X	X		
Selling beer products for take out in excess of 192 fluid ounces, unless you are a distributorship	X		X		
Selling alcohol to visibly intoxicated persons	X	X	X		
Having a licensee visibly intoxicated on the premises	X	X	X		
Having a licensee and/or employee consuming alcoholic beverages while tending bar	X		X		
Discriminating against patrons based on race, color, creed, gender, or national origin regarding entry and/or pricing (ladies' night, etc.)	X		X	X	
Selling untaxed cigarettes	X	X	X	X	

Source: Developed by LB&FC staff using information obtained from the Pennsylvania State Police's Bureau of Liquor Control Enforcement's pamphlet *Guide to Pennsylvania Liquor Laws*.

Enhanced Penalty Violations

The Liquor Code creates two categories of administrative violations sometimes referred to as “enhanced” and “non-enhanced” penalty violations. The concept of “enhanced violations” refers to those violations carved out by Section 471(b) of the Liquor Code for the imposition of higher fines. Section 471 does not use the term “enhanced penalty violation” but simply imposes higher penalties for certain violations. Non-enhanced violations receive a potential fine of \$50 to \$1,000. Enhanced violations receive potential fines of \$1,000 to \$5,000. Also under Section 471, there is no automatic supersedeas for those same “enhanced” violations. Exhibit 6 lists violations of the Liquor Code which have enhanced penalties attached to them.

Exhibit 6

“Enhanced Penalty Violations” as Established in the PA Liquor Code

Sections 471 of the Liquor Code imposes higher penalties for violations of the following sections related to:

1. sales to minors and visibly intoxicated individuals, section 493(1);
2. lewd, immoral, or improper entertainment, section 493(10);
3. permitting undesirable persons or minors to frequent premises, section 493(14);
4. furnishing liquor at unlawful hours, section 493(16);
5. refusing inspection, section 493(21);
6. public nuisances, section 611;
7. the sale or purchase of a controlled substance or drug paraphernalia, section 493(31);
8. prostitution and related offenses committed by the owner or operator of the licensed premises or an agent thereof if the violation occurs at the licensed premises, 18 Pa. C.S. § 5902; and
9. corruption of minors committed by the owner or operator of the licensed premises or an agent thereof if the violation occurs at the licenses premises, 18 Pa. C.S § 6301; and crimes and offenses if the violation is graded as a felony, 18 Pa. C.S.

Source: Pennsylvania Liquor Code.

Processing Administrative Violations

The process for enforcing administrative violations is set forth in the Liquor Code and the BLCE’s *Procedures Manual*.

Once there is an alleged violation of the Liquor Code for which an administrative citation can be issued, an LEO investigation into the matter begins and the one year statute of limitations begins. Within 30 days of the completion of the investigation, a notice of violation (NOV) is prepared and sent by the LEO if warranted (or a letter of warning may be issued). The BLCE’s Report Examination Unit then checks the content of the NOV and prepares the administrative citation, which must be issued within one year of the date of the alleged violation. The original citation is sent by certified mail to the licensee who then has the option of filing a “waiver” of the administrative hearing process, which amounts to an

admission of guilt on the alleged violations. If no waiver is filed, the case proceeds to the hearing process, which results in adjudication on the matter by the Office of Administrative Law Judge (OALJ).

Once either a waiver has been filed by the licensee or the OALJ issues an adjudication, a penalty is imposed against the licensee by the OALJ. A licensee or the BLCE then may have further review of the matter through the processes of reconsideration by the OALJ and then appeal to the PLCB. A final decision by the PLCB on an administrative violation may then be appealed to the court of common pleas, where the matter receives a *de novo*⁹ hearing and decision. The case is eventually closed after options are exhausted for appeals to the Commonwealth and Supreme Courts.

Statistical Data on Violations

Based on BLCE statistical data, the largest single violation category for which liquor licensees were cited in CY 2004 was for issuing bad checks (referred to as “issued bad checks in payment for purchase of malt or brewed beverages.” (See Table 13.) This is considered to be a minor, or “de minimus violation.” Only two of the top ten 2004 citations are in the enhanced penalty category. These are permitting the sale of liquor and/or malt or brewed beverages to a minor and permitting minors to frequent a licensed establishment.

In CY 2005, “issuing bad checks in payment for the purchase of malt or brewed beverages” was again the citation most frequently issued by the BLCE. As shown in Table 13, again only two of the top ten violations cited in 2005 were for enhanced penalty violations.

Tables 14 and 15 provide breakdowns of the most frequently cited violations by individual BLCE District Office.

⁹A “de novo” hearing is one in which the court hears the matter as a court of original, and not appellate, jurisdiction. Generally, a new hearing, or heard as if for the first time.

Table 13

**Classification of the Top Ten BLCE Citations,
by Enhanced and Non-Enhanced Penalty Status
(CY 2004)**

Top Ten BLCE Violations in 2004	Enhanced Penalty Violation	Non-Enhanced Penalty Violation
1. Issued bad checks in payment for purchase of malt or brewed beverages		Code Sec. 493(26)
2. Possessed or operated gambling devices or allowed gambling or lottery on premises		Code Sec. 471
3. Permitted sale of liquor and/or malt or brewed beverages to a minor	Code Sec. 493(1)	
4. Used a loudspeaker (in/out) whereby the sound could be heard outside		Regs Sec. 5.32(a)
5. Failed to have patrons vacate premises ½ hour after closing time		Code Sec. 499(a)
6. Sales to nonmembers		Code Secs. 401(b); 406(a)(1); and 442(a)
7. Operated a license establishment without a valid health permit or license		Code Sec 437 and Reg Sec. 5.41(a)
8. Permitted patrons to remove alcoholic beverages ½ hour after closing time		Code Sec. 499(a)
9. Permitted minors to frequent	Code Sec. 493(14)	
10. Not a bona fide restaurant, insufficient food, utensils, seating		Code Sec. 102

(CY 2005)

Top Ten BLCE Violations in 2005	Enhanced Penalty Violation	Non-Enhanced Penalty Violation
1. Issued bad checks in payment for purchase of malt or brewed beverages		Code Sec. 493(26)
2. Permitted sale of liquor and/or malt or brewed beverages to a minor	Code Sec. 493(1)	
3. Possessed or operated gambling devices or allowed gambling or lottery on premises		Code Sec. 471
4. Used a loudspeaker (in/out) whereby the sound could be heard outside		Regs Sec. 5.32(a)
5. Failed to have patrons vacate premises ½ hour after closing time		Code Sec. 499(a)
6. Sold, furnished, gave, or permitted sale, furnishing giving of alcoholic beverages to visibly intoxicated persons	Sec. 493(1)	
7. Permitted patrons to remove alcoholic beverages ½ hour after closing time		Code Sec. 499(a)
8. Operated a license establishment without a valid health permit or license		Code Sec 437 and Reg Sec. 5.41(a)
9. Not a bona fide restaurant, insufficient food, utensils, seating		Code Sec. 102
10. Sales to nonmembers		Code Secs. 401(b); 406(a)(1); and 442(a)

Source: Developed by LB&FC staff based on PA Liquor Code definitions and statistical data obtained from the PA State Police.

Table 14

The Ten Violations Most Frequently Cited by the BLCE in CY 2004

Rank	Description	Breakdown by BLCE District Office									
		State Totals	Philadelphia	Wilkes-Barre	Harrisburg	Pittsburgh	Altoona	Williamsport	Punxsutawney	Erie	Allentown
1.	Issued bad checks in payment for purchase of malt or brewed beverages.....	429	94	89	64	33	4	14	1	40	90
2.	Possessed or operated gambling devices or allowed gambling or lottery on premises	298	41	45	26	47	22	11	26	25	55
3.	Permitted sale of liquor and/or malt or brewed beverages to a minor	267	55	28	28	66	8	11	10	9	52
4.	Used a loudspeaker (in/out) whereby the sound could be heard outside.....	206	50	40	23	12	25	10	5	17	24
5.	Failed to have patrons vacate premises ½ hour after closing time	138	15	29	15	39	10	3	9	4	14
6.	Sales to nonmembers.....	134	16	a/	26	35	12	3	8	12	23
6.	Operated a licensed establishment without a valid health permit or license....	134	42	17	a/	53	a/	1	3	2	a/
7.	Sold, furnished, gave, or permitted sale, furnishing giving of alcoholic beverages to visibly intoxicated persons	123	a/	16	48	a/	16	9	6	6	13
8.	Permitted patrons to remove alcoholic beverages ½ hour after closing time.....	120	15	23	13	35	6	3	7	a/	17
9.	Permitted minors to frequent	103	26	15	15	27	4	1	3	a/	12
10.	Not a bona fide restaurant, insufficient food, utensils, seating	87	46	a/	a/	19	a/	a/	2	2	a/

^aNot in the district's top ten violations.

Source: Developed by LB&FC staff using information obtained from the Pennsylvania State Police, BLCE.

Table 15

The Ten Violations Most Frequently Cited by the BLCE in CY 2005

Rank	Description	Breakdown by BLCE District Office									
		State Totals	Philadelphia	Wilkes-Barre	Harrisburg	Pittsburgh	Altoona	Williamsport	Punxsutawney	Erie	Allentown
1.	Issued bad checks in payment for purchase of malt or brewed beverages.....	601	122	134	92	40	21	29	15	48	100
2.	Permitted sale of liquor and/or malt or brewed beverages to a minor.....	395	75	39	65	70	28	5	28	12	73
3.	Possessed or operated gambling devices or allowed gambling or lottery on premises.....	350	49	64	37	80	19	13	23	1	64
4.	Used a loudspeaker (in/out) whereby the sound could be heard outside.....	301	83	53	29	13	51	8	13	14	37
5.	Failed to have patrons vacate premises ½ hour after closing time	193	29	17	14	56	22	18	13	6	18
6.	Sold, furnished, gave, or permitted sale, furnishing giving of alcoholic beverages to VIPs	158	11 ^a	19	48	6 ^a	18	23	7	10	16
7.	Permitted patrons to remove alcoholic beverages ½ hour after closing time.....	157	29	17	12	43	15	11	12	4	14
8.	Operated a licensed establishment without a valid health permit or license....	142	62	31	3 ^a	36	3 ^a	3	1 ^a	2	1 ^a
9.	Not a bona fide restaurant, insufficient food, utensils, seating	120	82	13 ^a	4 ^a	6 ^a	5 ^a	0 ^a	1 ^a	1	8
10.	Sales to nonmembers.....	117	15 ^a	9 ^a	18	32	17	8	4	3	11

^aNot in the district's top ten violations.

Source: Developed by LB&FC staff using information obtained from the Pennsylvania State Police, BLCE.

IV. The Liquor Enforcement Officer (LEO) Position

A. The Composition of the LEO Workforce

The data on Table 16 below shows there is a significant under-representation of minorities and women in the LEO workforce.

Table 16

Racial and Gender Composition of the LEO Workforce
(As of January 2006)

	EO3		LEO	
	Male	Female	Male	Female
Black	0	0	8	3
White	21	2	91	21
Hispanic	0	0	1	0
Other	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total	21	2	100	24

Source: Developed by LB&FC staff using information obtained from the Bureau of Human Resources, Pennsylvania State Police, as of January 30, 2006.

Overall, the 124 person LEO workforce is about 90 percent white and 81 percent male. The workforce, as of January 2006, included only 11 African-American LEOs and one Hispanic officer. Of the 11 African-American LEOs, 6 were located in one district enforcement office, while 1 African-American LEO was located in each of five other district enforcement offices. Three offices did not have a minority officer.

Impact on BLCE Operations

The lack of diversity in the LEO workforce very likely means that many licensed establishments are being “under-patrolled” and many minority neighborhoods are being “under-served.” During the course of the LB&FC audit, LEOs frequently expressed concerns regarding the degree of gender and racial diversity within the organization as it pertains to full enforcement of the Liquor Code.

Many current LEOs indicated that the lack of minority LEOs may hamper or even prevent operations in establishments which are frequented primarily by African-Americans or Hispanics. This may be of particular concern in district offices with few minority LEOs. In such cases, some LEOs have reportedly encountered difficulty in preserving their undercover status following repeated visits to licensed establishments under investigation. The lack of bilingual LEOs has also been a particular concern.

For example, investigations involving speakeasies may be compromised by the lack of minority LEOs to serve in an undercover capacity. In district offices in which a small number of LEOs consist of minorities and/or females, some LEOs told us they feel as if they receive an exceptionally high number of assignments due to their ability to function in an undercover capacity in certain licensed establishments.

However, one BLCE official explained that he does not feel that liquor law enforcement work is being compromised by the lack of minority officers. If a minority LEO is needed to complete an investigation and no minority officers are available in the district office, a minority LEO from an adjacent district office may be used for these investigations. Additionally, minority officers from local law enforcement agencies may occasionally be contacted to assist in speakeasy patrols at times when a sufficient number of minority LEOs are not available. On occasions in which a minority LEO is not available to conduct undercover investigations, the Bureau may choose to conduct open inspections in an attempt to identify violations at a particular establishment.

Minority Recruitment Efforts

The BLCE is aware of the need to diversify its workforce and has teamed with the PSP's Bureau of Human Resources in this effort. BLCE minority recruitment initiatives provide some LEOs with an opportunity to shadow recruitment coordinators. PSP currently uses a targeted recruitment approach for areas of the state in which greater employee diversity is needed. This may involve civilian officers within BLCE or other PSP officials engaged in recruitment efforts at job fairs, career centers, schools, and churches to attract applicants to the LEO position. Occasionally, a "mentoring process" is initiated, whereby efforts are made to provide further information and encouragement to interested individuals.

Minority recruitment efforts are particularly concentrated in neighborhood facilities, including churches and community centers in urban areas. PSP officials indicated that recruitment efforts are not conducted in high schools primarily due to the desire to avoid the appearance of advertising a position in which alcohol is consumed as a prime component of the position. BLCE has also been in consultation with state legislators and community leaders in areas with high concentration of minorities to increase community awareness of employment opportunities with BLCE.

BLCE personnel report that minority candidates for the PSP Trooper position are occasionally contacted in an attempt to attract these individuals to the LEO position. BLCE personnel also stated that increased attempts are being made to work with the PSP Bureau of Human Resources to increase minority recruitment efforts. In 2004, BLCE adopted a goal of formalizing protocols with the Bureau of Human

Resources with respect to recruiting qualified minorities and females in “target areas.” The principal objective of this goal was to participate in at least one recruiting activity per quarter.

The BLCE is also involved in the PSP’s Minority Community Officer (MCO) Program. Through this program, efforts are made to identify eligible LEO candidates who may possess abilities conducive to working in areas which are highly diverse culturally, ethnically, and racially. Twice between 2001 and 2005, PSP’s Bureau of Human Resources has developed MCO exams.

When BLCE determines the need for an MCO exam, every individual listed on the current LEO eligibility list is invited to take the exam. Those on the LEO eligibility list have satisfactorily completed both the written and oral qualifying examinations administered by BLCE. The MCO exam is open to both eligible minority and non-minority LEO candidates.

The MCO exam has three components:

1. Oral Examination: Test-takers are presented with six questions involving “real world” scenarios representative of common situations encountered by LEOs serving in predominantly-minority communities. The evaluation is based on the adequacy of the test-takers’ response to the scenarios.
2. Written Examination: This component gauges test-takers’ ability to identify common “street slang.”
3. Spanish Fluency Exam: This is an optional, oral component testing a candidate’s degree of Spanish language fluency.

Candidates with the top 25 scores are invited to the physical fitness phase of the LEO qualification process. Candidates with the top five scores who complete the remainder of the application process successfully are offered appointments to the next LEO trainee class.

Despite these special efforts, the BLCE has not been successful in making an appreciable gain in the number of minority and female officers on the force. Minority representation in LEO trainee classes has varied between the eighth and fourteenth trainee classes. Generally, minority representation has remained very low. The highest number of minorities in an LEO trainee class was 10 in the eleventh trainee class which commenced in October 2002.

The current LEO trainee class commenced on January 3, 2006, with a total of 12 appointments. This class included two minority male appointments and no minority female appointments.

The Director of the BLCE frequently consults with the PSP's Bureau of Human Resources to determine the need to hold an MCO exam. Following the most recent MCO exam administered in 2005, BLCE officials indicated that only two of the 25 trainees who passed the MCO exam successfully completed the background check process. These two individuals were then offered appointments in the LEO training class which commenced on January 3, 2006.¹

B. LEO Separations and Length of Service

The Liquor Enforcement Office (LEO) Complement

January 2006 Complement Level. The Bureau of Liquor Control Enforcement (BLCE) has an authorized complement of 164 enforcement officer positions, of which 24 are supervisory Enforcement Officer 3 (EO3) classifications. As shown on Table 17, as of January 30, 2006, all but one of the EO3 positions were filled, but there were 16 vacancies in the Law Enforcement Officer (LEO) ranks: five vacancies in the Allentown District Office, three vacancies each in the Philadelphia and Williamsport District Enforcement Offices and one each in the Altoona, Erie, Harrisburg, Punxsutawney, and Wilkes-Barre District Offices.

Table 17

**Filled and Vacant Liquor
Enforcement Officer Positions, by BLCE District**
(As of January 30, 2006)

District Office	EO3 Positions		LEO Positions	
	Filled	Vacant	Filled	Vacant
Philadelphia.....	4	0	24	3
Wilkes-Barre.....	2	0	14	1
Harrisburg.....	2	0	12	1
Pittsburgh.....	4	0	32	0
Altoona.....	2	0	7	1
Williamsport.....	2	0	4	3
Punxsutawney.....	2	0	6	1
Erie.....	2	0	8	1
Allentown.....	<u>2</u>	<u>1</u>	<u>17</u>	<u>5</u>
Total ^a	23	1	124	16

^aIncludes one filled EO3 position in the Compliance, Auditing and Gambling Unit (C.A.G.E.) at the BLCE Headquarters in Harrisburg.

Source: Developed by LB&FC staff based on information obtained from the Bureau of Human Resources, Pennsylvania State Police, as of January 30, 2006.

¹Note: This class graduated in April 2006 with ten LEO trainee graduates, two of whom are minorities. Because additional LEO vacancies have occurred and other vacancies were not filled with the most recent graduates, the State Police plans to begin another training class in July 2006.

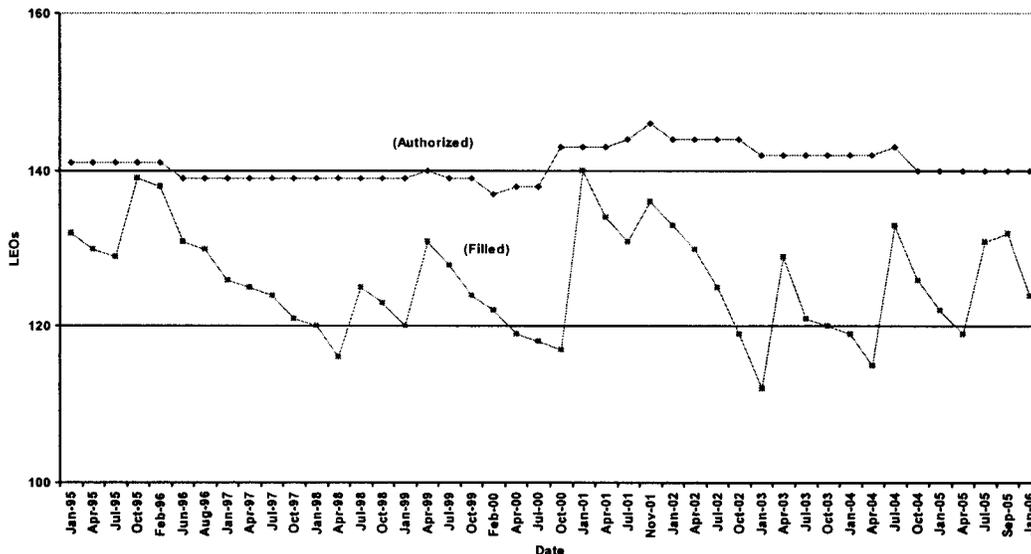
Liquor Enforcement Officer Separations. Historically, the BLCE has had difficulty maintaining its LEO force at full authorized strength. For example, as Table 18 shows, between January 1995 and January 2006, the number of vacancies in the LEO position varied substantially from as low as two to as high as 30.

The measures of employee length-of-service and employee separations are closely related. Both concepts are measures of a work group's employment stability. Turnover, or separation rates in particular, are also often used as relative indicators of employee morale.

Employee turnover among the LEOs has been problematic. We examined the number of LEOs employed and the number of LEO vacancies from January 1995 through January 2006, based on periodic (generally quarterly) complement reports available for each of the years. Exhibit 7 displays the employment trend in LEOs. The exhibit shows that the overall employee authorized complement for LEOs was relatively stable throughout the period, generally ranging from about 139 to 144 during most of the period. However, the number of LEOs actually employed during this period ranged from as low as 112 (in January 2003) to as high as 140 (January 2001). The fewest number of vacancies in the LEO position was two, as recorded in October 1995. However, the number of vacancies was as high as 30 in January 2003. The average number of reported LEO vacancies during this entire period is calculated to be about 15, or about 11 percent of the authorized complement. The rate of employee attrition during some years is noteworthy. For example, 138 LEOs were employed by BLCE in February 1996. By August, the number dropped to 130, and continued to decline each quarter until reaching 116 in April 1998.

Exhibit 7

LEO Authorized and Filled Positions
(January 1995 Through January 1996)



Source: Developed by LB&FC staff using information obtained from the Bureau of Human Resources, PA State Police.

Table 18

The Pattern of Filled and Vacant Liquor Enforcement Officer Positions
(January 1995 Through January 2006)

		Liquor Enforcement Officers			Enforcement Officers 3s		
		Authorized	Filled	Vacant	Authorized	Filled	Vacant
1995	January	141	132	9	18	18	0
	April	141	130	11	18	18	0
	July	141	129	12	18	18	0
	October	141	139	2	18	18	0
1996	February	141	138	3	18	18	0
	June	139	131	8	20	20	0
	August	139	130	9	20	20	0
1997	January	139	126	13	20	20	0
	April	139	125	14	20	20	0
	July	139	124	15	20	20	0
	October	139	121	18	20	20	0
1998	January	139	120	19	20	20	0
	April	139	116	23	20	20	0
	July	139	125	14	20	20	0
	October	139	123	16	20	20	0
1999	January	139	120	19	20	20	0
	April	140	131	9	20	20	0
	July	139	128	11	20	19	1
	October	139	124	15	20	20	0
2000	February	137	122	15	21	21	0
	April	138	119	19	21	21	0
	July	138	118	20	21	21	0
	October	143	117	26	21	20	1
2001	January	143	140	3	21	20	1
	April	143	134	9	21	20	1
	July	144	131	13	21	21	0
	November	146	136	10	21	20	1
2002	January	144	133	11	21	21	0
	April	144	130	14	21	21	0
	July	144	125	19	21	21	0
	October	144	119	25	21	20	1
2003	January	142	112	30	24	24	0
	April	142	129	13	24	23	1
	July	142	121	21	24	24	0
	October	142	120	22	24	24	0
2004	January	142	119	23	24	23	1
	April	142	115	27	24	24	0
	July	143	133	10	24	21	3
	October	140	126	14	24	24	0
2005	January	140	122	18	24	24	0
	April	140	119	21	24	24	0
	July	140	131	9	24	24	0
	September	140	132	8	24	24	0
2006	January	140	124	16	24	23	1

Source: Developed by LB&FC staff based on periodic (generally quarterly) BLCE personnel complement reports obtained from the Bureau of Human Resources, PA State Police.

An analysis of separations between FY 1998-99 through FY 2004-05 shows that a total of 92 LEOs terminated employment from BLCE. During this period, 114 LEOs were hired following graduation from an LEO training class. As of September 2005, 132 LEOs were employed and 8 vacancies existed; however, within four months the number of vacancies doubled to 16 with only 124 LEO positions filled.

We examined LEO “separation” rates as presented in the *Governor’s Annual Work Force Report* from FY 2000-01 through FY 2004-05. The *Work Force Report* defines a separation as “the ending of a person’s Commonwealth employment; does not refer to transfers to other state agencies.” The Office of Administration defines the three types of “turnover” as voluntary, involuntary, and retirement. This roughly corresponds to the separation rate classifications of retirement, resignations, and other separations shown on the table below. The Office of Administration does not provide an explicit definition of “turnover” in the *Work Force* report or in its statement of “HR metrics.”

Table 19 shows the actual number of separations from employment that took place in the LEO workforce from FY 2000-01 through FY 2004-05. As shown, the majority of the separations occurred as a result of retirement.

Table 19

Separation Rates of Liquor Enforcement Officers
(FY 2000-01 Through FY 2004-05)

Fiscal Year	Retirements		Resignations		Other Separations		Total Separations		Commonwealth Total Percent
	Number	Percent	Number	Percent	Number	Percent	Number	Percent ^a	
2000-01..	11	5.6%	4	2.0%	2	1.0%	17	8.7%	4.9%
2001-02..	6	5.0	4	3.3	3	2.5	13	10.8	7.1
2002-03..	10	8.8	4	3.5	2	1.8	16	14.0	8.1
2003-04..	10	7.6	2	1.5	2	1.5	14	10.7	10.6
2004-05..	4	3.1	5	3.9	1	0.8	10	7.8	8.5

^aThe separation rate is defined as the proportion that terminations are to overall employment. The total number of yearly terminations is divided by the total number of employees.

Source: Developed by LB&FC staff based on Governor’s *Annual Work Force Report*, Table 26, 2002 through 2006.

LEO Length of Service

Using personnel information from the month of April 2005, we reviewed the length of service of the 121 LEOs employed during that month and found that almost half had less than five years of service with the agency. In fact, more than one in five LEOs (20.7 percent) had been with the agency for only 15 months as of that date.

Table 20 below shows a breakdown of the 121 LEOs by years of service. As shown, 14 LEOs (11.6 percent) had 20 or more years with BLCE and 50 LEOs (41.3 percent) had service with the agency ranging from five to 19 years. However, 57 LEOs (47.1 percent) had less than five years. A further breakdown of the length of service for the 57 LEOs (see Table 21) shows that 25 (20.7 percent of the total) had been with the agency for one year.

Since April 2005, a new class of LEOs had entered the complement, increasing the number of LEOs to 132. Consequently, the relative percentage of LEOs with less than five years of service would also have necessarily increased.

Table 20

Length of Service Distribution for Liquor Enforcement Officers
(As of April 2005)

<u>Length of Service</u>	<u>No. of LEOs</u>	<u>Percent Total</u>
40 or more years	1	0.8%
35-39	0	0.0
30-34	3	2.5
25-29	7	5.8
20-24	3	2.5
15-19	12	9.9
10-14	20	16.5
5-9	18	14.9
0-4	<u>57</u>	<u>47.1</u>
Total.....	121	100.0%

Source: Developed by LB&FC staff using information obtained from the *Seniority Report for Liquor Enforcement Officers*, dated April 19, 2005, Pennsylvania State Police, BLCE.

Table 21

The Number of LEOs With Less Than Five Years of Service
(As of April 2005)

<u>Length of Service</u>	<u>No. of LEOs</u>	<u>Percent Total</u>
Four Years	13	22.8%
Three Years	7	12.2
Two Years	12	21.1
One Year	<u>25</u>	<u>43.9</u>
Total	57	100.0%

Source: Developed by LB&FC staff using information obtained from the *Seniority Report for Liquor Enforcement Officers*, dated April 19, 2005, Pennsylvania State Police, BLCE.

We also examined the length of service for EO3s employed with the BLCE. In this case, we found that over 54 percent of the EO3s had been with the agency between 10 and 20 years and that 27 percent ranged from between 20 and 30 years of service. This breakdown is shown on Table 22.

Table 22

Length of Service Distribution for Enforcement Officer 3s
(As of April 2005)

<u>Length of Service</u>	<u>No. of EO3s</u>	<u>Percent Total</u>
40 or more years	0	0.0%
35-39.....	0	0.0
30-34.....	2	0.9
25-29.....	3	13.6
20-24.....	3	13.6
15-19.....	7	31.8
10-14.....	5	22.7
5-9.....	2	0.9
0-4.....	<u>0</u>	<u>0.0</u>
Total.....	22	100.0%

Source: Developed by LB&FC staff using information obtained from the *Seniority Report for Enforcement Officer 3s*, dated April 19, 2005, Pennsylvania State Police, BLCE.

The Pennsylvania State Police (PSP) Enlisted Complement

January 2006 Complement Level. State law authorizes the State Police Commissioner to assign State Police officers to “such supervisory and other capacities in the enforcement bureau as he deems necessary.”² As of January 30, 2006, the BLCE complement included a total of 17 enlisted State Police personnel. (See Table 23.)

A major heads the bureau and is assisted by two captains who serve as the Director of Operations and Director of Administration at the BLCE headquarters in Harrisburg. In the field, three lieutenants function as central, eastern, and western section commanders, and nine sergeants act as district office commanders. At the headquarters, two additional State Troopers, a corporal and a trooper, staff the Compliance, Auditing, and Gambling Enforcement (C.A.G.E.) unit.

²These positions are counted against the 4,310 member statutory cap on the size of the State Trooper force.

Table 23

State Police Enlisted Positions in the BLCE

<u>Position</u>	<u>Rank</u>	<u>Number</u>
Bureau Director	Major	1
Director of Operations	Captain	1
Director of Administration.....	Captain	1
Section Commanders	Lieutenant	3
District Office Commanders	Sergeant	9
C.A.G.E. Unit.....	Corporal/Trooper	<u>2</u>
Total		17

Source: Developed by LB&FC staff using information obtained from the Pennsylvania State Police.

Enlisted Turnover. When considering employee turnover, it is also appropriate to examine the movement of State Police enlisted personnel in and out of the BLCE. As discussed previously, PSP enlisted members hold managerial and supervisory positions in the Bureau. Some Bureau enforcement officers contend that the extent and frequency of personnel change in these positions has, in some cases, had an adverse effect on district office operations and the morale of the enforcement officers. (See also Section IV.D.)

Table 24 represents the number of individual PSP members by rank who have entered into assignments with the BLCE and subsequently left the Bureau. This information pertains to the period from January 1987, or from the inception of the BLCE, through September 2005.

Table 24

**Attrition of PSP Members Assigned to the
Bureau of Liquor Control Enforcement
(1987 Through September 2005)**

<u>Rank</u>	<u>Transferred</u>	<u>Promoted</u>	<u>Retired</u>	<u>Total</u>
Majors	3	2	2	7
Captains.....	6	2	5	13
Lieutenants	9	1	3	13
Sergeants.....	14	5	7	26
Corporals	4	0	3	7
Troopers.....	<u>2</u>	<u>3</u>	<u>1</u>	<u>6</u>
Total	38	13	21	72

Source: Developed by LB&FC staff using information obtained from the Bureau of Human Resources, Pennsylvania State Police.

At the Bureau Director level, the Bureau has had 7 majors lead the organization over an 18-year span. This translates to an average tenure of about 2.6 years.

Legal and Support Staff

January 2006 Complement Level. The BLCE has an authorized complement of 71 civilian legal and support staff positions. As of January 30, 2006, this staff included 8 attorneys, 5 legal assistants, 2 information technology generalists, 2 administrative personnel, and 49 clerical positions. One attorney and four clerical positions were vacant at that time. (See Table 25.)

Table 25

Filled and Vacant BLCE Legal and Support Staff Positions
(As of January 30, 2006)

<u>Legal and Support</u>	<u>Filled</u>	<u>Vacant</u>
Attorneys.....	8	1
Clerical (Legal).....	5	0
IT Support.....	2	0
Legal Assistants.....	5	0
Administrative	2	0
Clerical.....	<u>44</u>	<u>4</u>
Total.....	66	5

Source: Developed by LB&FC staff using information obtained from the Bureau of Human Resources, Pennsylvania State Police.

Legal and Support Staff Turnovers. The turnover of legal and support positions within the BLCE was not identified as an issue that currently impacts BLCE operations.

C. LEO Enforcement Powers

This section traces the evolution of the powers and authority of the LEO position and documents the current job functions and police powers of these enforcement officers.

The Evolution of Liquor Enforcement Officer Powers

As created in 1933, the Pennsylvania Liquor Control Board (PLCB) had three basic responsibilities: (1) operating stores to sell wine and liquor in the original package; (2) licensing private entities to sell wine and liquor by the drink; and (3) enforcing laws and regulations to govern traffic in alcoholic beverages. Several subsequent statutes have shaped and defined the powers and authority held by BLCE Liquor Enforcement Officers.

Act 399 of 1935. In 1935, Act 399 reenacted and amended the state's Liquor Control Act (the "LCA"). The original LCA language, at Section 201(f), authorized

the Liquor Control Board “to appoint, fix the compensation, and define the powers and duties of such managers, officers, inspectors, clerks, and other employees as shall be required for the operation of this act” In Act 399, specifics regarding enforcement officers were added to this provision as follows:

Such employees of the [Liquor Control Board] as are designated, “enforcement officers,” or “investigators,” are hereby declared to be peace officers, and are hereby given police power and authority, throughout the Commonwealth, to arrest on view, except in private homes, without warrant, any person actually engaged in the manufacture or transportation of, or having illegal possession of, liquor, alcohol, or malt or brewed beverages, contrary to the provisions of this act, or any other law of this Commonwealth. Such officers and investigators shall have power to seize and confiscate without warrant or process, except in private homes, any liquor, alcohol, and malt or brewed beverages so illegally possessed, manufactured or transported, and any still, equipment, materials, utensils, vehicles, boats, vessels, aircraft, or any of them, which are being used in the manufacture or transportation of the same. Such liquor, alcohol, malt or brewed beverages, stills, equipment, materials, utensils, vehicles, boats, vessels or aircraft, so seized or confiscated, shall be disposed of as hereinafter provided. (Section 201(f) later to become Section 209)

Act 14 of 1987. Act 14 amended the LCA and created the BLCE within the PSP and transferred enforcement functions there. In transferring enforcement power to the BLCE, Act 14 repealed the language of Section 209 (formerly Section 201(f) quoted above) and replaced it with Section 211, which created the BLCE and set forth the new Bureau’s and LEOs’ powers. Some concern has been raised during this study because Act 14 no longer contained an express reference to LEOs as “peace officers.” In reviewing the language used, the power to make arrests (within the liquor enforcement context) and the power to seize and confiscate illegal beverages as well as the related equipment, etc., was carried over into Act 14 substantially unchanged. Exhibit 8 gives a brief comparison of the language used in 1935 and then in 1987. Act 14 appears to even expressly set forth additional authority that was not included in the 1935 Act, such as to investigate and institute criminal proceedings and to investigate and issue citations under certain circumstances. While the express designation as a “peace officer” was removed from the statute in 1987, the actual express power and authority of the LEOs appears to be substantially unchanged and even arguably increased.³

³Both prior to and after the 1987 transfer of enforcement functions to the PSP, the Pennsylvania Commonwealth Court has found LEOs to have only limited law enforcement authority (for purposes of being deemed “police” under Act 111.) Moreover, an official opinion from the Pennsylvania Attorney General dated July 5, 1983, concluded, based on the pre-1987 language, that liquor enforcement officers do not possess general powers of arrest and are, therefore, peace officers with limited police power. See, PA Attorney General, Official Opinion No. 83-6.

Comparison of 1935 and 1987 Acts Regarding Enforcement Officers Powers

1935 Language	1987 Language	Change
<p>Such employees of the [Liquor Control Board] as are designated, "enforcement officers," or "investigators," are hereby declared to be peace officers, and are hereby given police power and authority, throughout the Commonwealth.</p>	<p>No comparable provision.</p>	<p>Elimination of express "peace officer" status.</p>
<p>To arrest on view, except in private homes, without warrant, any person actually engaged in the manufacture or transportation of, or having illegal possession of, liquor, alcohol, or malt or brewed beverages, contrary to the provisions of the LC, or any other law of this Commonwealth.</p>	<p>To arrest on view, except in private homes, without warrant any person actually engaged in unlawful sale, importation, manufacture or transportation of or having unlawful possession of liquor, alcohol or malt or brewed beverages contrary to the provisions of the LC or any other law of this Commonwealth.</p>	<p>Substantially unchanged. (1987 language expands authority to expressly deal with unlawful sale and importation)</p>
<p>To seize and confiscate without warrant or process, except in private homes, any liquor, alcohol, and malt or brewed beverages so illegally possessed, manufactured or transported, and any still, equipment, materials, utensils, vehicles, boats, vessels, aircraft, or any of them, which are being used in the manufacture or transportation of the same.</p>	<p>To search for and to seize (upon reasonable and probable cause without warrant or process, except in private homes) liquor, alcohol, malt, or brewed beverages unlawfully possessed, manufactured, sold, imported, or transported and any of the following which are or have been used in the unlawful manufacture, sale, importation or transportation of the above stills, equipment, materials, utensils, vehicles, boats, vessels, animals, aircraft, or any of them.</p>	<p>Substantially unchanged. (The 1987 language provides somewhat more expansive authority by adding to the lists of items that can be seized but also tempers the authority by incorporating constitutional requirements of reasonable and probable cause, which, of course, was already required by case law, but simply not expressly stated in statute.)</p>

Source: Developed by LB&FC staff based on an examination of pertinent statutory provisions.

In August 1993, the House Liquor Control Committee held hearings to consider expanding LEO authority to make arrests under the Crimes Code (Title 18). During the Legislative hearings, representatives of the LEO unions addressed what was seen as the inadequacy of proposed expansions of police power to BLCE agents by the PSP. The LEO representative argued that LEOs should be given the same powers under Title 18 as had been given to Game Commission and Fish and Boat Commission WCOs.⁴ At the time, the LEO representative saw the expansion of LEO authority as a potential solution to the nuisance bar situation because it would allow LEOs to effect drug arrests. Some, however, continued to question the motive for wanting expanded powers, suggesting that the true motive was to obtain Act 111 coverage for the LEOs. Moreover, questions were raised as to constitutional issues that may exist by giving LEOs full police powers when they currently are allowed to undertake warrantless administrative searches.⁵

Act 80 of 1994. Adopted on October 4, 1994, Act 80 expanded the arrest powers of LEOs beyond violations relating to liquor laws. Under Act 80, LEOs were given the power and authority to arrest for certain crimes observed by an LEO in the performance of his or her duties under the Liquor Code. Additionally, LEOs were given the power to arrest any person engaging in certain crimes committed against the LEO or any person accompanying or assisting the LEO in the performance of duties under the Liquor Code. Act 80 also gave LEOs the power to serve and execute warrants and to arrange for the administration of BAC tests. Act 80, however, specifically provided that none of these new powers were to be construed to change the status of LEOs as civilian enforcement agents for purposes of collective bargaining and the applicability of the Policemen and Firemen Collective Bargaining Act, Act 1968-111.

In addition to the 1993 hearings held in deliberation over Act 80, other legislative hearings have periodically been held looking at different issues pertaining to the BLCE, including issues regarding the powers and duties of the BLCE Liquor Enforcement Officers. The House Committee held hearings in April 1999 in response to HB 1282's proposed transfer of BLCE functions to the Office of Attorney General and altering the employment status of enforcement agents from civilians to uniformed officers with full police powers (as may be limited by the Attorney General.) During the 1999 hearings, the PSP stressed the need to maintain a wall of separation between BLCE and other PSP enforcement duties, feeling that granting full police powers to LEOs would possibly hinder full enforcement of the Liquor

⁴Both Game Commission WCOs and Fish & Boat Commission WCOs are given broader statutory authority to enforce Title 18 (Crimes Code.) The Game Commission administratively limits the WCO's exercise of police powers through regulation, at 58 Pa. Code §131.6.

⁵A concern raised during the 1993 hearing was whether giving LEOs increased police powers would result in a potential for abuse of power in that LEOs can already perform warrantless administrative searches, which could be misused to acquire evidence of criminal violations. Generally, however, discovery of evidence of crimes in the course of an otherwise proper administrative inspection does not render that search illegal or the administrative scheme suspect. Commonwealth v. Hudak, 710 A.2d 1213 (Pa Super. 1998).

Code and could greatly increase time commitments needed, for example to provide testimony in court.

In 2001, an additional hearing was held by the House Liquor Control Committee on the management and enforcement practices of the BLCE. The 2001 hearings involved testimony on BLCE staffing issues and procedures, addressing in part low morale due to a perceived lack of policy input solicited from BLCE civilian personnel. Other testimony during the 2001 hearing addressed the promotion ceiling to first-line supervisors for civilian personnel, lack of minority representation among LEOs, lack of binding arbitration under the union contract, and pressure to produce minimum levels of arrests and citations.

Peace Officer Designation. During the course of this study, some persons raised concerns over the status of LEOs as “peace officers” throughout the evolution of the LEO position. Many LEOs believe they lost a number of powers because they are no longer expressly designated as “peace officers.” While the Liquor Code of 1935 used the term “peace officer,” it did not define or reference another definition of what a “peace officer” was. Black’s Law Dictionary defines a “peace officer” as “a civil officer (such as a sheriff or police officer) appointed to maintain public tranquility and order. This term may also include a judge who hears criminal cases or another public official (such as a mayor) who may be statutorily designated as a peace officer for limited purposes.” The Pennsylvania’s Crimes Code defines a “peace officer” as follows:

Any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses, or any person on active State duty pursuant to Section 311 of [the Military Code of 1949]. The term “peace officer” shall also include any member of any park police department of any county of the third class. (See, Crimes Code provisions dealing with general principles of justification for the use of deadly force, 18 Pa. C.S.A. §501) (emphasis added)

Pennsylvania’s General Municipal Law defines a “law enforcement officer” to include a “peace officer,” as defined under §501 of the Crimes Code, in paying out death benefits for officers killed in the line of duty. In interpreting the scope of this provision of the Municipal Law, the Pennsylvania Commonwealth Court held that a county park police member, even though confined to a specialized law enforcement task and limited to making sight arrests for minor offenses, is a “peace officer” for purposes of §892 death benefits. See, Lang v. County of Delaware 490 A.2d 20 (Pa. Cmwlth. Ct. 1985). The Commonwealth Court made clear that the question in that case was not whether the officer came within the class of “policeman” under Act 111

“which is interpreted to embrace police officers in the strictest sense and to exclude those confined to making arrests for minor matters.”

Therefore, a “peace officer,” according to Pennsylvania’s Crimes Code, includes “any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses.” LEOs, accordingly, appear to meet this test both with or without an express designation as a “peace officer” in their enabling legislation because they have the limited authority to make arrests. This was unchanged from 1935 through the amendments of 1987. The specific police power and authority granted to the LEOs in 1935 continued substantially unchanged with the amendments of 1987. It is helpful also to see that the Pennsylvania Commonwealth Court has never—neither before the 1987 transfer to the PSP nor after—viewed LEOs as having anything other than a limited law enforcement authority for purposes of being deemed “police” under Act 111. The Commonwealth Court held that “in light of the statutorily limited powers of the LCB enforcement officers, such persons are not ‘police’ for purposes of Act 111.” Fraternal Order of Police v. Com. of Pa., Pa. Labor Relations Bd. 454 A.2d 686 (Pa. Cmwlth. Ct. 1983); and *see also*, Fraternal Order of Police v. Pa Labor Relations Bd. 751 A.2d 726 (Pa. Cmwlth. Ct. 2000).

Finally, Pennsylvania statutory law gives no general grant of powers and authority to “peace officers” as a group that might justify such an express designation. The term “peace officer” seems to be a general term encompassing specific officials, such as municipal police, sheriffs, constables, etc., each of which has specific powers and duties set forth.

LEO Job Functions and Duties

A Liquor Enforcement Officer (LEO) is a civilian employee of the BLCE.⁶ As previously described, LEOs are responsible for conducting investigations performed through undercover operations or open inspections of licensed or unlicensed establishments. Investigations are initiated for the purpose of observing and prosecuting administrative and criminal violations.

LEOs are required to maintain an in-depth knowledge of and adhere to (1) all regulations, directives, policies, and procedures established by the PSP; and (2) the Liquor Code (47 P.S.), liquor regulations (Title 40) and selected portions of the Crimes Code (18 Pa.C.S.). Accordingly, LEOs are authorized to arrest and prosecute for violations of liquor laws, regulations, and applicable Crimes Code provisions.

⁶As used within the BLCE, the reference to “enforcement officer” (EO) is a generic term which encompasses the positions of Liquor Enforcement Officer Trainee, Liquor Enforcement Officer, and Enforcement Officer 3. The positions’ qualifications and training requirements are summarized in Appendix D.

LEOs are also to accept complaints, initiate investigations, conduct audits and undercover field examinations, participate in raids, serve search warrants, make seizures and testify at judicial proceedings and related appeals. They also conduct border patrol investigations, participate in minor patrols, and assist the PSP and other agencies in cooperative investigations.

As stated in the *BLCE Procedures Manual*, the essential job functions for the LEO position can be categorized as follows:

- investigation of establishments;
- patrol;
- development of action plans;
- apprehension and arrest;
- seizure; and
- prosecution.

The specific duties and activities within each of these functional areas are shown below:

Investigation of Establishments

- Read complaint sheet related to assignment received from supervisor in order to obtain relevant information.
- Review establishment files located in the district office to obtain relevant information in planning an investigation.
- Conduct both undercover and open enforcement investigations at retail and wholesale licensed establishments.
- Mingle with patrons in a licensed establishment under investigation.
- Observe activities occurring within a licensed establishment for varying periods to detect possible violations of liquor-related laws.

Patrol

- Conduct regular minor patrol details at both retail and wholesale licensed establishments with the emphasis placed on violations of sales to minors and visibly intoxicated persons.
- Conduct routine inspections of licensed establishments and private clubs including checking food, basic physical requirements, etc., and for violations of liquor-related laws.
- Notify local authorities in an adjoining state that the Liquor Enforcement Officer is working a border patrol in the area.
- During border patrol, maintains surveillance of liquor stores in adjoining states for persons with Pennsylvania licensed vehicles making purchases.

- During border patrol, maintains chain of evidence by following vehicle and stopping it after it returns to Pennsylvania in order to arrest the occupants if they have in their possession out-of-state purchased alcohol and/or malt or brewed beverages.⁷

Development of Action Plans

- Draw layouts of the establishment including location of exits, bar, restrooms, pool table, jukebox, and shape of bar to aid in planning raids or open inspections.
- Plan, coordinate, and direct raids or open inspections of establishments or premises suspected of being in violation of liquor-related laws.
- Determine the number of persons required, and assign each person's duties.
- Store, label, and record evidence.

Apprehension and Arrest

- Participate in open inspections of establishments or premises suspected of being in violation of liquor-related laws.
- Lead raids or open inspections of establishments or premises suspected of being in violation of liquor-related laws.
- Arrest on view suspects for violation of liquor-related laws.
- Apprehend violators.
- Carry and operate, with strong and weak hand, a weapon issued by the Department.
- Subdue violators by necessary physical force.
- Arrest and take into custody armed violators.

Seizure

- Seize beer, liquor, and other contraband including electronic poker machines, gambling paraphernalia, furniture, refrigerators, bars, and other items used in conducting violations of liquor-related laws.
- Carry seized goods up and down as many as two flights of stairs.
- Carry seized goods from site of seizure to trucks.
- Load and unload trucks with seized goods.
- Store seized goods in secure facilities.
- Search vehicles for contraband.
- Search buildings for contraband.

⁷LEOs do not have authority to make traffic stops and must rely on a PSP Trooper or a municipal police officer to stop a vehicle.

Prosecution

- Take statements from witnesses and suspects related to violations of liquor-related laws.
- Prepare non-traffic citations, criminal complaints, warrants, etc., using printed forms for magisterial district judge's signature.
- Serve subpoenas to witnesses, usually minors, required to testify at hearings.
- Testify before administrative law judge in citation proceedings against licensee to present finding of investigation.
- Testify before magisterial district judges and other courts to present findings of investigations involving violations of liquor-related laws.

Current LEO Powers and Authority

LEOs have powers and authority specifically related to liquor enforcement and also certain powers and authority related to general law enforcement. The *BLCE Procedures Manual* defines LEO "powers of arrest" as follows:

The police power and authority of the EOs is limited to offenses relating to the manufacture, possession, sale, consumption, importation, use, storage, transportation, and delivery of liquor, alcohol, or malt or brewed beverages. In addition, the power and authority of EOs includes specified sections of the Crimes Code, 18 Pa.C.S., delineated in the Liquor Code, 47 P.S., which involve offenses committed against an EO; or which are observed during the performance of duty. Therefore, EOs shall restrict their enforcement action to only those designated crimes and any regulations promulgated pursuant to the Liquor Code.

Specifically Related to Liquor Law Enforcement. LEO powers and authority specifically related to liquor law enforcement are discussed below.

LEOs have the power and duty to investigate whenever there are reasonable grounds to believe liquor, alcohol, or malt or brewed beverages are being sold on premises not licensed under the act. If that investigation produces evidence of the unlawful sale of liquor, malt, or brewed beverages; or any other violation of the act, the LEO is empowered to institute criminal proceedings.⁸

⁸Certain provisions of the Liquor Code contain criminal penalties. For example, Section 4-491 through 4-493 set forth unlawful acts relative to liquor, alcohol, and liquor licensees; malt or brewed beverages and licensees; and liquor, malt, and brewed beverages and licensees. Section 4-494 states that "any person who shall violate any of the provisions of this article, except as otherwise specifically provided, shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred dollars (\$100), nor more than five hundred dollars (\$500), and on failure to pay such fine, to imprisonment for not less than one month, nor more than three months."

LEOs also can arrest on view, except in private homes, without a warrant (1) any person actually engaged in the unlawful sale, importation, manufacture, or transportation of liquor, alcohol, or malt or brewed beverages contrary to the Liquor Code or other law; or (2) any person having unlawful possession of liquor, alcohol, or malt or brewed beverages contrary to the Liquor Code or other law.

Pursuant to the Liquor Code, an LEO has the power to search for and to seize (upon reasonable and probable cause without warrant or process, except in private homes) (1) liquor, alcohol, malt, or brewed beverage unlawfully possessed, manufactured, sold, imported, or transported, and (2) any of the following which are or have been used in the unlawful manufacture, sale, importation or transportation of the above beverages: stills, equipment, materials, utensils, vehicles, boats, vessels, animals, aircraft, or any of them.

In the course of their duties, LEOs can also investigate and issue citations for Liquor Code violations, laws regarding liquor, alcohol, malt, or brewed beverages, LCB regulations, state or federal tax laws regarding liquor, alcohol, malt, or brewed beverages committed by the licensee, his officers, servants, agents, or employees.

LEOs can serve and execute warrants and subpoenas for any of the above offenses. LEOs have the power to arrange for administration of chemical tests of breath, blood, or urine (including preliminary breath tests) to determine blood alcohol content or presence of controlled substances. The testing is to be done by qualified personnel of a state or local police department or qualified personnel of a clinical lab license and approved by the Department of Health. LEOs can confiscate any equipment or appurtenances actually used in the commission of unlawful acts.

LEOs can also issue administrative citations against Liquor Code licensees upon learning of any of the following situations:

- any violation of the Liquor Code;
- any violation of any state laws relating to liquor, alcohol, or malt or brewed beverages;
- any violation of any PLCB regulations; and
- any violation of State laws or Federal laws relating to the payment of taxes on liquor, alcohol, or malt or brewed beverages.

The above-listed situations for which administrative citations may be issued must be perpetrated by a licensee within the scope of the Liquor Code, his officers, servants, agents, or employees.

Specifically Related to Crimes Code Enforcement. In addition to the specific liquor law enforcement powers and authority given to the BLCE, state law also gives LEOs certain general law enforcement authority. For example, LEOs can arrest on view, except in private homes, without a warrant, any person observed (by

the LEO while in performance of assigned duties under and pursuant to the Liquor Code) to be in violation of the following provisions of Title 18, the Crimes Code:

- Causing or risking a catastrophe (§3302)
- Criminal mischief (§3304)
- Forgery (§4101)
- Disorderly conduct (§5503)
- Public drunkenness (§5505)
- Lotteries, etc. (§5512)
- Gambling devices, gambling, etc. (§5513)
- Pool selling and bookmaking (§5514)
- Misrepresentation of age to secure liquor, malt, or brewed beverage (§6307)
- Purchase, consumption, possession, or transportation of liquor, malt, or brewed beverage (§6308)
- Representing that minor is of age (§6309)
- Selling or furnishing liquor, malt, or brewed beverage to minors (§6310.1)
- Carrying a false ID (§6310.3)

LEOs also have authority to arrest any person engaged in the criminal offenses listed below when those offenses are (1) committed against the enforcement officer/investigator, or (2) committed against any person accompanying the officer/investigator while performing assigned duties under and pursuant to the Liquor Code and its regulations.

- Simple assault (Crimes Code §2701)
- Aggravated assault (Crimes Code §2702)
- Reckless endangering (Crimes Code §2705)
- Terroristic threats (Crimes Code §2706)
- Harassment and stalking (Crimes Code §2709)
- Resisting arrest (Crimes Code §5104)
- Riot (Crimes Code §5501)

LEOs have the authority to serve and execute warrants and subpoenas for any of the above offenses.

Other Basis of Enforcement. LEOs have authority to issue an administrative citation for “any other sufficient cause shown.” The courts have interpreted this to mean that violations of other statutes can provide a basis for administrative action. These statutes include, but are not limited to, the following:

- Crimes Code (Title 18): The most common offenses include illegal gambling; licensees or employees interfering with an officer in the performance of their duties; patrons or entertainers involved in lewd, immoral, or improper entertainment or conduct; and disorderly conduct.

- Malt Beverage Tax Law (Title 72): provides that it is unlawful for any person to transport into the state containers of malt or brewed beverages without the payment of tax.
- The Controlled Substance, Drug, Device and Cosmetic Act (Title 35): Trafficking in controlled substances or possession or use of controlled substances in a licensed establishment by a licensee, employees, and or patrons will subject the licensee to administrative action.
- Local Option Small Games of Chance Act (Title 10): Qualifying club licensees, as defined by §102 of the Liquor Code, are permitted to operate small games of chance on the licensed premises upon obtaining a permit from the county treasurer. Club licensees who violate any of the provisions of this act are subject to administrative action by the BLCE.
- Pennsylvania Human Relations Act (Title 43): Discriminatory practices by liquor licensees, such as conducting ladies' night or refusing admission of an individual due to race or gender can be the basis for administrative action.

Areas in Which LEOs Do Not Have Specific Authority to Enforce

There are a number of areas in which LEOs do not have specific enforcement authority. For example, while a licensee's violation of the Controlled Substance, Drug, Device and Cosmetic Act is a violation of the Liquor Code and can be the basis for an administrative citation, LEOs do not have authority to pursue criminal actions for such drug violations. The same holds true for violations of the Local Option Small Games of Chance Act. A licensee's violation of the act can be the basis for an administrative citation under the Liquor Code but cannot be pursued criminally by the LEOs. In such situations, enlisted personnel within the State Police's Compliance Auditing and Gambling Enforcement Unit, within the nine District Enforcement Offices, or within local law enforcement agencies would need to be brought in to facilitate an arrest on these violations. Additional areas of the law under which LEOs do not currently have authority include:

- Drug Code violations
- DUI
- Illegal Sale of Cigarettes
- Forgery
- Falsification to Authorities
- Prostitution
- Small Games of Chance
- Indecent exposure
- Tampering with public records
- False identification to law enforcement authorities
- Dealing in proceeds of unlawful activities
- Open lewdness
- Certain theft crimes
- Fraudulent destruction, removal or concealment of recordable instruments
- Identity theft
- Threats and other improper influence in official and political matters
- Retaliation for past official action
- False swearing
- False reports
- Intimidation of witnesses or victims
- Hindering apprehension or prosecution

District Enforcement Office Personnel Perspectives on the Need for Additional Powers and Authority for LEOs

Section Commanders, District Office Commanders, Enforcement Officers 3 staff, and Liquor Enforcement Officers from six of the BLCE district offices were asked regarding the issue of LEO authority. Most saw a need to increase the authority with which LEOs can operate in the field and gave constructive insight into the specific areas in which LEO authority could and should be expanded.

- *Section Commander, District Office Commander and Enforcement Officer-3 Staff* - Section Commanders, District Office Commanders and the EO3s from the six BLCE district offices that were interviewed appeared in agreement that LEOs could benefit from some level of additional powers to more effectively serve in their liquor enforcement function, although no command staff advocated granting LEOs full police powers.⁹ Section Commanders, District Office Commanders, and EO3 staff thought LEOs need additional powers for activities they encounter in the course of their work. Most Section Commanders, District Office Commanders, and EO3 staff identified certain areas in which additional powers would be beneficial, such as in dealing with:

- Illegal drugs
- DUI
- Falsification to authorities
- Prostitution
- Illegal sale of cigarettes
- Forgery
- Small games of chance

⁹When the term "full police powers" is used in this report, it is referring to the authority of an officer to enforce all the laws of the Commonwealth.

Two District Office Commanders compiled a more detailed listing of other areas in which additional powers could be of benefit to LEOs. These include areas such as:

- Indecent exposure
- Tampering with public records
- False identification to law enforcement authority
- Obstructing administration of law
- Dealing in proceeds of unlawful activities
- Open lewdness
- Certain theft crimes
- Fraudulent destruction, removal or concealment of recordable instruments
- Identity theft
- Threats and other improper influence in official and political matters
- Retaliation for past official action
- False swearing
- False reports
- Intimidation of witnesses or victims
- Hindering apprehension or prosecution

Most Section Commanders and District Office Commanders thought limited additional powers would not dilute the LEOs' focus on liquor enforcement but the EO3s did not specifically address the issue of dilution. Most did see a need for guidance to be given through policy guidelines as to how additional powers would be used so as not to take away from the LEOs focus on liquor enforcement. In the Philadelphia District, the Section Commanders and District Office Commanders preferred keeping the LEOs authority fairly restricted (with some additional powers needed in the area of drug enforcement) because they believe the LEOs have a valuable job to do in enforcing the liquor laws and should remain focused on that and specialized in the liquor enforcement area. In one region, the EO3 staff indicated that some LEOs currently choose not to use their Act 80 authority (relating to arrest for certain Crimes Code violations) and do not want any additional powers.

Moreover, certain Section Commanders, District Office Commanders, and EO3 staff thought that giving the LEOs additional powers could both increase LEO morale and LEO retention and result in higher LEO pay because they would have more responsibility. Some Section Commanders and District Office Commanders stated there currently is less than ideal cooperation between the LEOs and the PSP in handling some of these matters for which additional powers are sought and view the adding of powers to the LEOs as reducing the LEOs need to coordinate the handling of these matters with the Troopers.

- Liquor Enforcement Officers – All LEO representatives thought additional powers would be useful in performing their jobs. While most LEO representatives thought that LEOs could benefit from some level of additional powers to more effectively serve in their liquor enforcement function, representatives from two district offices thought that LEOs should be given full police powers. A few LEOs claimed to remember having been

classified as peace officers with full police powers when the enforcement function was conducted by the PLCB. Most advocated for the addition of distinct powers to help address issues that come up in the field. LEOs from a couple district offices expressed concern that additional LEO authority could dilute their role in liquor enforcement.

Most thought the expansion of arrest powers would be useful in handling certain issues but at some district offices LEOs varied on their opinions on more powers. Some LEOs did not want more powers at all. In those instances, they preferred focusing only on liquor enforcement and are content to call other law enforcement to address non-liquor enforcement issues. Some LEOs, however, advocated for more police powers in certain areas, such as follows:

- Drug enforcement
- DUI
- Prostitution
- Small Games of Chance
- Falsification to authorities

Some LEOs connected their push for more police powers to frustrations in dealing with other law enforcement personnel. Some said that the need to contact cognate law enforcement agencies to enforce all non-Liquor Code violations is quite burdensome at times and that LEOs become extremely frustrated with breakdowns in coordinating traffic stops with other law enforcement agencies. Others said that they believe if given more arrest powers they would not have to rely on the Troopers so much and perhaps avoid a lack of cooperation. Furthermore, if they had more powers, they feel they might be respected more. Another issue for them is how hard it is to get their cell phones and radios to work, and how there are not local police, so they need more of their own powers since they often cannot reach the Troopers for assistance.

Certain LEOs identified specific areas of the law in which they do not want additional powers, such as in the areas of drug work, riot control, and traffic stops. On the other end of the spectrum, certain LEOs believed additional police powers would answer their problems, believing that if they get full police powers, then they would then be able to get binding arbitration, and higher salaries. Others expressed regret over accepting the Act 80 amendment, claiming that additional powers were promised at that time but were never provided.

D. LEO Concerns and Morale Issues

The transfer of the liquor control enforcement function from the PLCB to the PSP in 1987 was made to separate the liquor licensing and revenue-generating functions from the liquor law enforcement function. The change was also made to

address what had become widespread public perceptions of corruption and lax and uneven enforcement of the liquor laws.

While transferring liquor law enforcement to the State Police has addressed these concerns and proven to be very workable, the transition of a contingent of civilian enforcement officers to a special bureau within a paramilitary police organization has not been without problems. In many cases, these involve issues related to both the terms and conditions of the civilian LEOs' employment within the State Police organization. Whether actual or perceived, these concerns impact agency morale. And, while not easily quantifiable, morale issues can directly impact individual job performance and overall agency operations.

During the course of this study, we met with representatives of the LEO and EO3 unions and made field visits to six of the nine BLCE district offices. During these meetings and visits, we had the opportunity to extensively interview LEOs and EO3s. The following represents a comprehensive listing of issues and concerns that we observed and were raised by the enforcement officers during the course of this study. It is important to recognize that these were not expressed as issues and concerns by all BLCE personnel with whom we spoke. They are, nevertheless, indicative of attitudes and perspectives that are held by union representatives and a substantial number of enforcement officers. At the same time, we met and spoke with some officers who reported they are very satisfied with their position and working conditions and assignments.

1. *Opportunities for Upward Mobility.*

- The EO3 position is the top civilian position within the BLCE. As such, some LEOs have described this position as a terminal "first-line supervisor" position. Some LEOs expressed frustration that EO3 positions effectively become "locked up" for many years upon being filled; thereby eliminating the only promotion opportunity available to LEOs within BLCE. Such limited opportunity for advancement within BLCE has been identified by some LEOs as a primary contributing factor to turnover among LEOs.

2. *Lateral Transfer Opportunities.*

- Also cited was the lack of lateral transfer opportunities for LEOs to other law enforcement positions within the PSP given the education, qualifications, and training possessed by many LEOs. Some LEOs also cited a perceived lack of transfer opportunities among district offices. When in training, LEOs complete a "wish list" of three preferred district office assignments. Persons who commented on this feel that the Philadelphia and Allentown District Offices are often used as "proving grounds" for transfers to a preferred district office.

Related to the concern of lack of lateral transfer opportunities is the desire to earn credits or other credentials that would expedite transfers to municipal police forces or as PSP Troopers.¹⁰ Some LEOs have cited training received in BLCE as possibly being counted towards becoming municipal police officers.

3. LEO Working Relationship With Enlisted Personnel.

- A general “us” (civilians) versus “them” (enlisted) mentality was communicated by several EO3s and LEOs who perceive a rift between the priorities, needs, and concerns of civilian personnel as viewed by enlisted BLCE personnel. Specifically, many EO3s and LEOs expressed concern that, despite their knowledge of administrative and enforcement issues, their input and concerns may not be fully considered by District Office Commanders. Some EO3s and LEOs have indicated that transfer to another agency or full civilianization of the liquor control enforcement function may be the only way to eliminate this “us versus them” mindset.
- Some EO3s also indicated that some District Office Commanders may be primarily focused on advancement within PSP rather than concentrating fully on the concerns of EO3s and LEOs. Some LEOs also indicated that District Office Commanders may have less overall knowledge and understanding of the roles and practical aspects of liquor control enforcement than is needed. Additionally, some LEOs expressed frustration that sergeants may only occasionally participate in enforcement activities and raids.
- Given their limited arrest powers, some EO3s and LEOs reported a constant reliance on PSP Troopers, which may occasionally cultivate feelings of inferiority. Some say they sometimes feel discouraged from contacting PSP Troops and local law enforcement when needed due to their possible unavailability or lack of timely response. This was identified as a particular concern when requesting Troop assistance for the purpose of pursuing vehicles for suspected DUI offenses, as well as the potential sale of alcoholic beverages to minors.
- Some EO3s also stated that the unavailability of Troopers when requested has been a constraint on conducting an adequate number of border patrols. Some LEOs expressed frustration when compelled to inform local law enforcement officials of their limited arrest powers when requesting assistance in certain situations.

¹⁰Currently, the minimum educational requirement for the LEO position is a high school diploma or equivalent. Exemptions from a portion of the college credit requirements for application to become a PSP Trooper also exist for LEOs. Currently, an LEO with two years of experience in BLCE may have 30 credits of the required 60 credits of college coursework waived.

- Some LEOs expressed a general feeling of disconnect between policy decisions emanating from BLCE Headquarters and practical enforcement concerns of LEOs statewide. LEOs have expressed frustration that some official PSP communications received are often addressed to all “members”; which often reinforces to LEOs that while they must comply with all provisions of the communication, they are civilian employees with limited powers. Additionally, some LEOs expressed concern that Troopers may not receive adequate training on coordinating assignments with LEOs.
- Some LEOs expressed the perception that enlisted BLCE personnel expect fast completion of investigations in a manner similar to traditional law enforcement functions. However, these LEOs indicated that their job has become more administrative and regulatory in nature, with quick completion of investigations not always possible.

4. *LEO Working Conditions.*

- The requirement to work shifts late at night in potentially dangerous establishments was cited both as a major safety concern and a potential impediment to LEO retention. The demand of constant undercover investigation assignments with associated drinking¹¹ and second-hand smoke are also often seen as significant threats to an LEO’s health. Also cited were the obligation to travel long distances in some districts to visit licensed establishments, limiting the number of investigative actions that may be completed during a standard shift.
- Many LEOs indicated that the job responsibilities and compensation of the LEO position may be a contributing factor to turnover among LEOs. This leads to a lack of seniority within some district offices. General concern was expressed by some EO3s and LEOs regarding the adequacy of the 140 authorized LEO and 24 authorized EO3 positions (as of September 2005). Given the current complement, some LEOs have expressed concern that while it may be sufficient for processing many administrative citations, it may also limit the ability to conduct comprehensive investigations.
- Some LEOs have indicated that working alone on field investigations somewhat contradicts an impression given during training that they would be primarily working with partners.¹² Some LEOs report that a very persuasive case must be made to be granted permission to work with a partner on field investigations. Additionally, some LEOs indicated that cellular phones and radio equipment may be their only form of notifying

¹¹An LEO is required to feign consumption of alcoholic and non-alcoholic beverages and, if appropriate, exercises the option of consuming such beverages during the course of performing official duties.

¹²The LEO contract dictates the circumstances in which a partner may be assigned and requires that due consideration be given to the safety of the officers when determining such assignment.

needed backup. Their concerns relate to cellular phone reception occasionally being unavailable and radio equipment potentially malfunctioning.

- District offices covering primarily rural areas may be more dangerous to undercover LEOs due to patrons at some establishments quickly identifying an “outsider” thereby leading to an increased likelihood of assaults on LEOs. This has been a particular concern expressed by some female and minority LEOs.
- Another area of concern is the lower compensation afforded to LEOs upon completion of training. LEOs are classified as trainees with a lower compensation rate for a period of 3 months following completion of training. This was cited as a particular concern when combined with not always receiving a preferred district office assignment during the initial training period. Some LEOs are also very concerned about gaining binding arbitration rights, as well as their position not having state civil service status.
- Also of concern is the unavailability of cellular phone reception in certain areas of the state or malfunctioning radios which may potentially endanger LEOs who wish to request backup support for certain enforcement functions for which they possess no authority to effect. This concern is increased by the prevalence of LEOs working alone during field investigations. Some LEOs have cited such instances as reasons to increase LEOs’ powers and authority under the Crimes Code.
- Some LEOs indicated that, with the exception of scheduled raids, investigations are conducted by one LEO. Some LEOs have cited safety concerns of working individually on investigations. They indicate that a very strong case must be made before authorization is granted to work in tandem.

5. Limited Arrest Powers. (See also Part III-C.)

- LEOs are vested with statutory authority to enforce the provisions of the Liquor Code and some provisions of the Crimes Code. Given current powers and duties, some LEOs believe that their enforcement efforts are restricted. During LB&FC staff visits to BLCE district offices, a number of EO3s and LEOs reported having much broader arrest powers when under the Pennsylvania Liquor Control Board. Some EO3s and LEOs cited this model as preferential to their current arrest powers.

6. Individual LEO Assignments and Workload.

- Variations exist among district offices regarding the workload and specific duties assumed by both EO3s and LEOs. Certain LEOs may be assigned to complete the majority of NSF checks in the district office, while others

may primarily be assigned to completing various undercover investigations. Similarly, EO3s in some district offices may spend more official time completing administrative paperwork in district office headquarters, while others may assist LEOs in field investigations as needed. Certain EO3s may sometimes make the majority of assignments to LEOs within certain district offices.

- These variations were reported largely based on EO3/LEO experience, district office complement, areas of expertise, and needs specific to district offices. Some LEOs have expressed concern that being consistently assigned to undercover investigations in licensed establishments may increase the possibility of alcoholism among LEOs.
- Given the report completion requirements placed on LEOs, some have expressed a desire to increase the amount of time spent training LEOs on proper completion of administrative paperwork. Some LEOs have indicated that this may reduce the amount of on-the-job training required in the first few months of the position.
- Occasionally, LEOs will assist PSP Troops with DUI enforcement and other activities that, when combined with other administrative requirements, may significantly reduce time spent on field investigations. Some LEOs indicated that many district offices appear to be understaffed given the volume of cases, number of licensed establishments per LEO, and paperwork requirements that take time away from field investigations. This may result in certain establishments not being visited by an LEO for an extended period of time. This has also led some LEOs to indicate that prioritization of job functions is sometimes not possible given that every complaint received must be investigated.

7. Gambling Investigations.

- LEOs additionally conduct investigations and may issue administrative citations related to small games of chance in licensed establishments. Typically, this consists of audits of licensee record keeping for raffles and small lotteries. Some LEOs have expressed concern, however, that a licensee's ability to "profiteer" by operating small games of chance may be amplified by the LEOs' lack of arrest powers for theft. Some LEOs also expressed frustration over the need to first secure District Office Commanders' approval for pursuing administrative action against licensed establishments illegally conducting small games of chance.
- While the presence of illegal electronic gambling (mainly slot and video poker machines) varies by district office, some EO3s have identified the perceived slowness of elimination of gambling machines from district office evidence facilities as a possible hindrance on expedited seizure and citation of establishments possessing such devices. Additionally, some

EO3s commented that some district justices may not view illegal gambling in licensed establishments as a top enforcement priority.

- Some expressed concerns that gambling investigations may not be aggressively prosecuted despite great efforts of district offices. This may have an effect on the attitudes within district offices regarding the investigation of illegal gambling in licensed establishments.
- Some EO3s and LEOs have also expressed disappointment over not being involved in enforcement functions in facilities under the purview of the Pennsylvania Gaming Control Board (PGCB). Some LEOs viewed the possibility of enforcement functions in these facilities as a possible alternative to working exclusively in bars that may have negatively impacted morale. A related concern was expressed that some LEOs may be lost to the PGCB due to potentially better compensation and promotion opportunities.

8. Drug Law Enforcement.

- During the course of many undercover investigations and raids on nuisance bars, many LEOs have reported frustration over observing illegal drugs but lacking arrest powers for these individuals under the Crimes Code. LEOs currently may only issue administrative citations to licensees for allowing drugs and/or drug dealing in the establishment under the Controlled Substance, Drug, Device and Cosmetic Act. When such activity is observed by an LEO during the course of an investigation, a PSP Trooper or local law enforcement agency must be contacted to effect arrest.
- Some EO3s indicated that additional arrest powers pertaining to drug law enforcement would allow for arrests when such instances arise during the course of an investigation; not proactively initiated by an LEO independent of the liquor control enforcement function. This represented an area of conflicting opinion among LEOs, with some feeling that added drug arrest powers may complement their current powers and duties, while others felt that it may distract them from or place an added burden upon their current powers and duties. Some felt that citing individuals possessing small amounts of illegal substances is most practicable as such activity has been observed on many occasions in licensed establishments by some LEOs.

9. Worthless Check Investigations.

- Many LEOs have expressed concern over the amount of time required to perform worthless check investigations (“NSF” checks), in which checks written by a licensee for the purchase of liquor, alcohol, or malt or brewed beverages are returned by a financial institution due to insufficient or

unavailable funds. All claims of worthless checks are investigated by BLCE once reported. All such investigations are first reported to the PLCB before district office investigation. It is felt by some LEOs that performing these checks may decrease needed time on field enforcement activities. Some LEOs have expressed dissatisfaction with the burden of performing NSF checks, with some feeling the activity mirrors that of a "collection agency."

- In some district offices, certain LEOs are responsible for conducting most of the NSF checks for the office. As an alternative, it was suggested by some that trained auditors (possibly in a designated auditing unit) conduct NSF checks, thereby allowing LEOs to spend additional time on other enforcement activities. Several LEOs advocated the model of a Special Investigations Section for completion of NSF checks.

10. Statistical Measures and Reporting.

- A number of LEOs expressed concern that too much emphasis may be placed upon increasing the quantity of reported enforcement activities rather than focusing on the significance, impact, and outcome of these activities. This may prompt some EO3s and LEOs to possess an attitude of "get the statistic and move on."
- Some EO3s noted that while LEOs are required to report activities both on a daily basis and in 10-day activity reports, there may exist some confusion on the proper classification of a particular action by an LEO on the activity reports. Further, concern was expressed as to the degree of Bureau understanding and use of activity reports.
- Some EO3s also indicated that they primarily compare LEOs' hours and activities for variance among officers. This may prompt EO3s to place differing levels of emphasis on statistical reporting as an indicator of individual LEO performance. Some LEOs have also indicated that these comparisons may not necessarily capture the amount of work necessary to complete certain enforcement activities. The sum of these factors, as indicated by some LEOs, is the possibility of an increased emphasis on the quantity of statistical reporting as a primary concern.

11. Nuisance Bars.

- There is general concern among some LEOs regarding the inability of the BLCE to unilaterally close nuisance bars. Their perception is that at least some other states authorize their respective liquor control bodies to do this. Some LEOs have indicated that a very strong case, with much accompanying paperwork, must be made to District Office Commanders prior to aggressively pursuing potential nuisance bar status. Concern was also expressed by both EO3s and LEOs that insufficient powers,

resources, and force complement may exist to identify all pecuniary interests of an establishment under investigation.

12. Lack of Needed Equipment.

- Concern has been expressed by some LEOs over the perceived lack of adequate equipment. Examples include a perceived lack of sufficient identification verification devices for underage compliance checks and inadequate vest quality. Some LEOs indicated that BLCE administration is not readily responsive to LEO requests for equipment needed immediately, and that equipment provided may be of second-rate quality and inadequate for intended purposes. This has been identified as a potential strain on LEO morale.¹³

13. Administrative Paperwork.

- Some EO3s have estimated that approximately 2 hours in an 8-hour work shift for an LEO is spent completing paperwork in the district office. Some EO3s have also stated that many administrative requirements have frequently prevented them from accompanying LEOs in field investigations. Indeed, some EO3s have reported that they feel “overwhelmed” with administrative paperwork requirements. This has led to a division of labor among EO3s in some district offices. In some cases, the duties of equipment procurement and assignment, assigning cases to LEOs, reading reports, overseeing evidence retrieval and storage, and preparing statistical information are delegated to specific EO3s as areas of primary responsibility. Some LEOs have suggested that administrative paperwork preparation and interpretation should receive a larger emphasis in training thereby reducing the necessary on-the-job training for new LEOs.

14. LEO Expenditures.

- Some LEOs have indicated a general sentiment that additional expenditures on food or soda in attempts to avoid imbibing alcohol may be monitored excessively by District Office Commanders. LEOs feel they are often encouraged to avoid alcohol consumption when possible during the course of an investigation, yet have been reprimanded for taking such action when an increase in expenditures was required.

¹³During the course of reviewing the BLCE’s budget and expenditure records, we noted that equipment requests from the field are often included in proposed budgets by BLCE headquarters command staff but are then deleted following subsequent reviews by departmental and Budget Office analysts.

V. BLCE Statistical Data and Management Information Systems

A. Time and Activity Reporting

A primary study objective was to determine both the priority areas of BLCE enforcement emphasis and how available LEO on-duty work hours are expended. To do this, we examined the time and activity recordkeeping and reporting systems used by the BLCE to account for its enforcement officers' work hours.

The compilation and reporting of statistical data is a function performed by the BLCE's Administration Division, with primary involvement of the Computer Service Support Unit and input from each of the district offices.

The BLCE uses a time and activity recordkeeping system that relies on LEOs and EO3s manually completing two separate report forms. These are the "Activity Log," and the "LCE Daily Activity Report." An "LCE Daily Activity System Individual Quarterly Report" is prepared using the daily records. Clerical staff in the district offices also maintain hand-generated reports, or logs on activity levels in specific enforcement activity areas (e.g., college underage drinking raids and gambling investigations), for purposes of the "Monthly Statistical Report."

The Daily Activity Log. Each enforcement officer is to use this report to record his/her actual daily activities. The report is handwritten and is to "accurately and completely reflect all activity of the submitting officer" for every shift they work. The forms are to be submitted the next reporting day for review by the officer's supervisor. The forms are maintained at the district office and are retained for one year. The Activity Log records the following:

Bureau of Liquor Control Enforcement ACTIVITY LOG				1. Date of Report	2. District Office Location Code
3. Shift:	4. Activity Date:	5. Day	6. Mobile Unit No.	7. Beginning Mileage	8. Ending Mileage
9. Time Arrived	10. Time Departed	11. Location	12. Incident No.	13. Activity:	

The "Ten-Day" Daily Activity Report. This is intended to document the number and kind of tasks performed by all enforcement officers as well as the number of hours spent accomplishing them. It is also to be used to record the amount and type of leave taken.

For reporting purposes, each month is divided into three ten-day periods (with the third reporting period covering 11 days in months with 31 days). At the end of each ten-day time period, each LEO is to use his/her ten individual daily activity log reports to complete the "Ten-Day Daily Activity Report." The LEO records his/her hours for the past ten days totaling 80 hours, plus any overtime worked.

For each day, LEOs are required to use their Daily Activity Logs to insert information on the number of hours spent and the number of various activities carried out during each of the workdays in the ten-day reporting period. In terms of hours, LEOs are to categorize their work time into one of the categories shown in Part A of Exhibit 9 below.

Exhibit 9

Information Recorded on the LCE Daily Activity Report

A. Hours

Leave
 Administrative Investigations
 Criminal Investigations
 Border Patrol
 Minor Patrol
 Preparation of Reports
 Supervision
 Court Attendance
 Training
 Choices/Community Relations
 Special Assignment
 Raid Details – Assists

Gambling Raids Conducted
 After Hours Raids Conducted
 Notice of Violation Letters Sent
 Warning Letters Sent
 Choices/Community Relations

C. Criminal Arrests by Age

6308A Arrests
 Furnishing/Sales to Minors
 Border Patrol Arrests
 Act 80 Arrests
 Gambling Arrests
 Sales Without License Arrests
 Other Liquor Code Arrests

B. Activities

Administrative Investigations
 Criminal Investigations
 Border Patrol Details
 Licensee Establishment Check
 Routine Inspection Conducted
 Open Inspection for Minors
 Speakeasy Raids Conducted

D. Miscellaneous

Gambling Devices Seized
 Total Money Seized
 Liters of Liquor Seized
 Liters of Wine Seized
 Gallons of Beer Seized
 Vehicle Miles

Source: BLCE *Procedures Manual*.

To record and report the types of activities in which they were involved, LEOs are to indicate on the Daily Activity Report, for each of the ten days, an accounting of the number of activities and arrests listed in parts B, C, and D, on Exhibit 9.

The Daily Activity Report also includes a section for LEOs to use to record various information related to beer, wine, and liquor seizures, gambling-related seizures, and the number of vehicle miles the LEO traveled.

EO3s are to check the entries made and initial each form prior to forwarding a copy to BLCE headquarters and having district office clerical staff enter the statistical information from the form into the “Enforcement Officer’s Daily Activity

Computer Program.” One copy of the Daily Activity Report is filed at the district office level along with copies of the Daily Activity Logs as support.

An additional report, the LCE Daily Activity System Individual Quarterly Report, is to be used as a supervisory tool for the evaluation of an LEO’s monthly work statistics. The report consists of a printout of statistics on an LEO’s work activities in the format described above from the Daily Activity Report. The report compares the LEO’s activities to a quarterly and year-to-date office average. The LEO’s supervisor is to append to this report information on leave usage and any supervisory comments. Supervisors are to periodically review these reports with the LEOs.

We found several problems with the Bureau’s time and activity-reporting systems:

- 1. Time and activity reporting by BLCE Enforcement Officers is based on manual systems that are prone to data entry errors and inconsistent interpretation.***

We examined BLCE procedures relating to the completion of LEO time and activity reporting forms and discussed the content and internal use of these reports with LEOs and EO3s. We found that much of the data used to prepare the BLCE statistical reports (as discussed later in this section) comes from the “Ten-Day Daily Activity Reports” as filled out by each LEO and EO3.

At the end of the 10-day period, the handwritten record of individual daily activities is transferred to the “Ten-Day Daily Activity Report.” There are prescribed categories on this form, and the LEOs are instructed to make a “best fit” in filling out this report. In some cases, officers are not sure what category to use to record their activities and seek advice from their EO3s resulting in an activity described as “fitting a square peg in a round hole.”

Transferring this data and making these entries often requires a considerable degree of interpretation by individual LEOs and EO3s. Under such circumstances, consistency in recording and reporting enforcement activities from district to district is not possible. Further, when an activity can be placed into more than one category, there are opportunities, if one is so inclined, to subjectively increase certain reporting categories.

- 2. The categories currently used to record LEO hours and activities are not consistent, clearly defined, or reflective of the full range of BLCE operations.***

To be meaningful and useful for management information purposes, a time and activity reporting system must be reflective of an agency's mission and full-range of day-to-day activities. Activity categories must be clearly defined and uniformly understood by all enforcement personnel and must correspond exactly to time reporting categories. This is currently not the case in the BLCE's system.

Rather, in the existing BLCE system, the activity categories tend to be general in nature and do not identify many major BLCE activities (e.g., time spent on nuisance bar investigations, worthless check investigations, gambling investigations, or the Age Compliance Check Program). The existing system, as shown on Exhibit 10 below, also lacks a parallel structure between "activity categories" and "time reporting categories."

Exhibit 10

Time and Activity Reporting Categories Used by the BLCE

Activities	Hours
----	Leave
Administrative Investigations	Administrative Investigations
Criminal Investigations	Criminal Investigations
Border Patrol Details	Border Patrol Details
Choices/Community Relations	Choices/Community Relations
Licensee Establishment Check	----
Routine Inspection Conducted	----
Open Inspection for Minors	----
Speakeasy Raids Conducted	----
Gambling Raids Conducted	----
After Hours Raids Conducted	----
Notice of Violation Letters Sent	----
Warning Letters Sent	----
Administrative Investigations	----
----	Minor Patrol
----	Preparation of Reports
----	Supervisor
----	Court Attendance
----	Training
----	Special Assignment
----	Raid Details - Assists

Source: BLCE time and activity reports.

3. The manner in which LEOs record leave usage and non-duty hours is problematic.

We also attempted to make calculations of LEO work-duty hours, by the type of activity in which they reported being engaged. However, the manner in which LEOs record leave time and include non-duty hours in the same category would distort the results of this analysis.

B. CY 2001 Through CY 2005 Statistical Data Summaries

We examined the existing formats through which the BLCE reports statistical data on the monthly and annual enforcement activities carried out by its enforcement officers. These include monthly and annual reports developed for internal PSP use, statistical reports provided on the BLCE website, and statistical summaries used for various other public information purposes.

Using the various daily activity reports and special activity reports described earlier in this section, the BLCE prepares the Monthly Statistical Report. This is described in the BLCE *Procedures Manual* as “a compilation of various statistics garnered by the District Enforcement Officers and the Special Investigations Section.”¹

The collection of monthly statistical data required for the Monthly Statistical Report is facilitated, in part, by the use of the Monthly Statistics Program, which is accessed via personal computer at each district office. Additional information is obtained from other computer and hand-generated reports. The district offices are to provide all statistics to Bureau Headquarters by the 5th of each month where it is consolidated with information from other sources into a final report.

When all data for the Monthly Statistics Program is received along with the individually submitted hard copy reports, personnel from the BLCE headquarters Computer Service Support Unit consolidate all information into a monthly summary report. The completed monthly summary is distributed internally within the PSP for information and management purposes.

From these reports, the BLCE also compiles and formats a “Statistical Summary Report” and statewide statistics in several broad categories. The “Statistical Summary Report” and “Program/Activity Statistical Summaries” provide data in the categories listed on Table 26 and Table 27 which follow.

For purposes of analysis, we examined BLCE statistical data as reported for the five-year period CY 2001 through CY 2005. Our examination and analysis focused on the BLCE’s “Statistical Summary Report” (see Table 26).

¹Now the Compliance, Auditing and Gambling Enforcement Unit (C.A.G.E.).

Table 26

BLCE Annual Statistical Summary Report
(CY 2001 Through CY 2005)

**(Note: Statistical data shown on this table should be viewed in light of the
"Data Problems and Limitations" discussion included on pages 101 to 108.)**

	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
Total Complaints Received.....	14,307	14,109	13,922	13,938	15,502
Number of Investigations	53,508	50,370	51,503	50,856	N/A ^a
Open (Routine) Inspections Conducted.....	1,719	2,167	2,918	2,567	3,058
Licensed Establishments Checked....	34,845	35,374	32,296	32,473	33,047
Notice of Violation Letters Sent to Establishments.....	2,613	2,272	2,142	2,379	2,919
Warning Notice Letters Sent to Establishments.....	2,159	2,293	2,542	2,297	2,571
Persons Under 21 Arrests	2,108	1,698	1,759	1,549	1,820
Persons 21 and Older Arrests	470	368	287	239	364
Sales Without License Arrests.....	94	71	59	62	64
6308A Arrests	1,811	1,471	1,552	1,376	1,609
Furnishing/Sales to Minors Arrests....	124	78	82	78	89
Total Liquor Seized (liters).....	1,658	1,332	943	2,011	1,249
Total Beer Seized (gallons)	5,111	3,371	2,603	6,030	4,173
Total Wine Seized (liters).....	575	366	528	818	4,821

^aThe BLCE discontinued reporting statistics for this measure in its "Annual Statistical Summary Report" in CY 2005. Another internal BLCE report, the "Ten Day Daily Bureau Totals" lists total investigations of 50,963.

Source: Developed by LB&FC staff using information obtained from BLCE statistical reports.

We also examined program or activity-specific statistical summaries compiled from district office reports and as posted on the BLCE's website. As shown on Table 27, these include general enforcement, campus enforcement, nuisance establishment enforcement, gambling enforcement, Choices Program, and border patrols.

In addition to these summary reporting formats, we examined individual statistical reports and data compiled and submitted from each district office. During this examination, we found numerous definitional issues and problems related to data accuracy and consistency. *The reader of this report should, therefore, recognize that although the statistical data shown on Tables 26 and 27 is as reported by the BLCE, it must be viewed in the context of the discussion in Part C entitled "Data Problems and Limitations," which follows.*

Table 27

BLCE Program/Activity Statistical Summaries
(CY 2001 Through CY 2005)

**(Note: Statistical data shown on this table should be viewed in light of the
"Data Problems and Limitations" discussion included on pages 101 to 108.)**

	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
General Enforcement Report:					
Investigations.....	53,508	50,370	51,503	50,856	N/A ^a
Citations Issued	2,613	2,272	2,142	2,379	2,919
Minor Arrests	2,108	1,698	1,759	1,549	1,820
Adult Arrests	470	368	287	239	364
Warnings Issued	2,159	2,293	2,542	2,297	2,571
Liquor Seized (liters).....	1,658	1,332	943	2,011	1,249
Beer Seized (gallons)	5,111	3,371	2,603	6,030	4,173
Wine Seized (liters)	575	366	524	818	4,821
College/University Underage Drinking Enforcement Program:					
# of Raids.....	139	152	172	85 ^b	162
# of Arrests – 6308	663	355	428	366 ^b	833
# of Arrests – Furnishing	47	24	29	38 ^b	28
# of Other Arrests	66	190	85	49 ^b	139
Nuisance Establishment Enforcement:					
# of Complaints.....	57	55	54	51	66
# of 611 Invest. Initiated	23	32	25	27	23
# of Citations Issued	35	34	24	12	14
# of Prosecutions/Act 14, §611..	8	6	4	7	3
# of Licensees Closed	7	6	16	7	9
Gambling Enforcement:					
# of Investigations Conducted ...	1,050	991	823	911	1,067
# of Citations Issued	379	376	323	295 ^b	363
# of Criminal Arrests	137	137	86	31	76
# of Machines Seized	656	676	515	700	680
Amount of Money Seized	\$277,989	\$201,846	\$112,021	\$135,275 ^b	\$171,451
Choices Program:					
Programs/Speeches	605	494	377	262	275
Attendees.....	25,030	24,621	17,065	9,752	9,972
Border Patrols:					
# of Patrols Conducted	63	48	50	62	53
# of Citations Issued	44	25	19	33	24
Liquor Seized (liters).....	263.5	97.3	146.9	136.2	99.4
Beer Seized (gallons)	154.0	200.1	113.6	253.5	356.9
Wine Seized (liters)	260.7	69.5	318.1	505.7	103.2

^aThe BLCE discontinued reporting statistics for this measure in CY 2005.

^bFigures taken from CY 2005 BLCE Statistical Summary Report differ from CY 2004 report.

Source: Developed by LB&FC staff using information obtained from BLCE statistical reports.

C. An Assessment of Existing Statistical Reporting Formats and Data

We found a number of data problems and limitations in the BLCE's statistical reporting and management information systems.

Inaccuracies and Inconsistencies Exist in Data Reported by the BLCE

- 1. The basic summary statistical data obtained from the BLCE at the outset of the study (as presented on Tables 26 and 27) contained inaccuracies and inconsistencies.***

For example, figures on the initial version of the 2004 "Statistical Summary Report" differed from comparable report categories as reported on the BLCE website (even though they were intended to present the same information). We subsequently determined that the 2004 summary report included only 11 months of data (October data was missing). Further, statistics on the website were not accurate due to data entry errors.

When advised of these problems by the LB&FC staff, BLCE's Computer Service Support Unit staff inserted statistics for October and corrected the data entry mistakes on the website. BLCE subsequently provided adjusted statistical information for CY 2003 and CY 2004. During further examination of this data we encountered additional mathematical and data entry problems.

- 2. Separate reports generated by BLCE district offices for the same time period often contained inconsistent and contradictory data.***

- a. Complaints/Cases Assigned:* We examined the "Supplemental Statistical Report" to obtain "the number of complaints" and a second internal management report which provides statistics on "cases assigned." In the case of both reports, this number should be comparable to the total number of complaints received at the district offices.

We compared the figures reported on total complaints received for each district office for both CYs 2003 and 2004. While both purport to represent the same information, the number on these reports often did not match. For example, for the Philadelphia District Office in 2004, one report stated that the number of complaints received was 2,672 while the other report had a figure of 2,594. For the same year, Punxsutawney had 749 complaints according to one report and 632 according to the other report. It is important to note, however, that for some district offices, the numbers were the same on both reports.

- b. *Number of Investigations:* In examining the reports generated at the district office level, we also observed inconsistencies in the figures some district offices report for the workload measure “investigations.” At the district offices, the “number of investigations” is recorded on two statistical reports, one is the internal manager’s report cited in #1 above, and the second is the “Ten-Day Daily Activity Report.” We compared the number of investigations figures each district office reported for both calendar years. Again, while both should represent the same information, the numbers on these reports did not match for certain districts. For example, in 2004, one report stated that the number of investigations conducted in the Erie District Office was 4,108 while the other report had the number at 4,315, a difference of 207. In 2003, for the Philadelphia District Office, one report stated that the number of investigations was 8,769 while the other report had that number at 8,572.
- c. *Total Money Seized and Amount of Money Seized:* We noted similar discrepancies in the statistics reported on the various district office reports in the categories “total money seized” and “amount of money seized” (as a result of gambling investigations).

The category “amount of money seized” (as a result of gambling investigations) is to be a subset of the category “total money seized.” We found, however, that in the case of some district offices, the reported dollar amount seized from gambling investigations was actually higher than the total amount reported for cash seizures from all sources. For example, in May 2004, for the Punxsutawney District Office, total money seized was reported at \$1,470, but money seized from gambling was reported at \$1,620. In June 2004, for the Philadelphia District Office, total money seized was reported at \$777, while money seized from gambling was recorded at \$1,669.

We concluded that the reported data for cash seizures (both total and from gambling investigations) was not reliable. As was the case in other data sets, the CSSU staff reported that they did not independently verify or reconcile the submitted figures.

3. ***Staff in the BLCE’s Computer Service Support Unit (CSSU) were not doing verification checks to reconcile the statistical data that the district offices report to them.***

It appears that many of the data errors and inconsistencies we encountered were related to the absence of a verification check process in the CSSU. In discussing internal inconsistencies of the type described in point #2 above, CSSU staff explained that both sets of numbers are

prepared at each district office and are then forwarded to the CSSU for input into the reporting system.

At both the district and headquarters levels, statistical data is manually entered and transferred by clerical staff using multiple forms and reporting formats. While the current system has significant potential for error, CSSU staff noted that they do not independently reconcile and verify the submitted data that is ultimately published and posted on the BLCE website.

Definitional Issues

In examining BLCE reporting formats, we found a number of data elements to be unclear, insufficiently defined, or in some cases (e.g., investigations) misleading. Also, the terminology used to refer to enforcement activities in BLCE statistical reporting is frequently not consistent from one report to another. In many cases, the report terminology is also inconsistent with the manner in which the same terms are used by LEOs and EO3s in the field.

To assess the extent of these definitional issues, we analyzed each of the statistical data categories included on the BLCE's "Annual Statistical Summary Report" and noted where problems are apparent. (See Table 26.)

1. *Total Complaints Received*. The statistical category is relatively self-explanatory, given that the BLCE's work is predominantly complaint driven. Information is not routinely reported, however, on the nature or types of complaints received.

The total number of complaints comes closest to representing the number of new "cases" the BLCE receives during a given reporting period since each complaint is to be investigated. Complicating the use of the term "case," however, is the absence of a standard Bureau-wide definition of the term. Some staff use the term to mean just one violation while others use the term to refer to one establishment with multiple violations. For example, one LEO may open a new "case" for each violation while another officer may put all violations for one establishment into one case file.

2. *Number of Investigations*. LEOs often refer to an investigation from the perspective of a "case" or a broad examination of a particular licensee. In this context, the term encompasses a number of different types of investigatory actions, all of which are part of a broader, presumably, single investigation. In our meeting discussions with LEOs and EO3s, the term investigation was frequently used in this manner. However, none of the LEO time and activity reports or the statistical reports use the term in this way. Rather, the line-item called "investigations," as used on the BLCE reports, refers to the number of single, individual activities (e.g., a phone call, a visit to the establishment, an inspection, etc.) in which an LEO

engages in investigating a particular complaint. Each discrete action is counted as an “investigation.” This significantly overstates the number of investigations actually conducted when the term is viewed as a series or body of actions on a single case.

When an LEO works on a complaint, whether it is a visit or a phone call and whether it is all day or just 15 minutes, the activity in question is recorded as an investigation. The LEO could then work on the same file the next day and again mark it as an investigation. He/she could work on that same file all ten days of the reporting period and mark it on the activity log as an investigation every day.

Thus, at the end of the ten-day period, he/she would have recorded working on ten investigations, even though all activity could have been at the same licensed establishment dealing with the same complaint. Once the annual tallies are done, there is no way to know how many individual establishments were “investigated” when one looks at the reported number of investigations. The number of investigations simply counts the number of interactions with licensees for the year.

Within the classification “investigations” are both administrative and criminal investigations. There is, however, no delineation of specific actions or activities that fall into each category. The BLCE staff explained that, in some cases, an administrative investigation may turn into a criminal investigation, and in others, such as furnishing and/or selling alcohol to minors and gambling, can be both administrative and criminal in nature.

In discussions of this subject, LEOs and EO3s identified the following as being what would be classified as an “administrative” investigation: all activities related to issuing worthless checks, no health permit, loudspeaker violations, selling after the license expires, and not a bona fide restaurant. Specific examples of “criminal investigations” include all activities related to speakeasies (sales without a liquor license), underage drinking, border patrol, disorderly conduct, public drunkenness, and false identification.

3. Open (Routine) Inspections Conducted. Routine inspections are inspections of licensed establishments that are conducted to ensure compliance with all requirements for holding a liquor license. As discussed in Section III, the concept is that the routine investigation is a proactive enforcement tool that is “open” in nature (i.e., the LEO is not working in an undercover capacity). In theory, all licensees are to be subject to a routine inspection at regular intervals. The BLCE also conducts routine inspections as part of an ongoing investigation, usually near the end of the process.

Using the current BLCE reporting format, it is not possible to determine how many of the routine inspections reported in a given year are “proactive routine

inspections” as opposed to inspections that are done as part of an ongoing administrative or criminal investigation. Given the meaning attributed to the term “investigations” on BLCE reports, it is also conceivable that double-counting is involved when a routine inspection is carried out as part of an investigation. Based on the statistical reporting practices we observed, an instance of this type would result in the routine inspection being counted as an inspection (i.e., a single, discrete activity) as well as being counted in the routine inspection column.

4. Licensed Establishment Checks. Any time an LEO conducts any activity for any reason in a licensed establishment, it is counted and reported as a “Licensed Establishment Check” on the statistical summary. This includes all visits related to a case regardless of the nature or duration of the activity, and whether it is carried out in an undercover or open capacity. In one instance, this was defined as “less involved than a routine inspection, more like a drop-in.”

This measure does not appear to be particularly meaningful because it does not represent an unduplicated number of licensed establishments that were visited during a particular reporting period. It is also not clear as to what constitutes an “establishment check” and how this activity differs, for example, from an “inspection” or other visit made to the establishment. According to BLCE field personnel, each LEO can determine what constitutes a “license check.”

5. Notice of Violation Letters Sent to Establishments. The statistical summary simply provides a count of the number of letters of this type the BLCE sent during the reporting period. Each LEO may initiate such letters when they find violations that can be substantiated and the decision is made to initiate a citation.

Nothing in the statistical report format enables the user to determine the number of violations contained in the letter, the nature of the violations cited, or the total number of licensees who received a violation letter. Because of the possibility of repeat offenses, it cannot be assumed that each violation letter was sent to a different licensee.

6. Warning Notice Letters Sent to Establishments. See above comments regarding violation letters.

7. Persons Under 21 Arrests. This represents a tally of all BLCE arrests of persons under 21 years of age. This includes drinking by a minor, furnishing/selling to a minor, border patrol, gambling, sales without licenses, other Liquor Code arrests, and Act 80 arrests. Act 80 arrests include certain violations under the PA Crimes Code such as: risking a catastrophe, criminal mischief, forgery, disorderly conduct, public drunkenness, misrepresentation of age to obtain alcohol, representing a minor to be 21, and carrying a false ID.

8. Persons 21 and Older Arrests. This represents a tally of all BLCE arrests of persons 21 years of age and older in the violation categories cited in the “under 21” category above.

9. Drinking/Possession (6308A) Arrests. This represents the number of non-traffic related arrests for underage drinking/possession of alcohol. The numbers reported here are also included in the “Persons Under 21 Arrests” listed above.

10. Furnishing/Sales to Minors Arrests. This is an individual count of arrests for furnishing/selling to a minor regardless of age. Arrests reported in this category would also be included in the counts for under 21 and 21 and over arrests cited above.

11. Seizure Data (Liquor, Beer, Wine). These categories represent LEO physical counts of items seized during the course of BLCE investigations and raids.

Other Data Deficiencies

Absence of a Standardized Caseload/Workload Measure. Although primarily a complaint-driven operation in which LEOs are routinely assigned work on a “case” basis, the BLCE does not define or have a method of calculating a standardized “caseload” or workload measure. In the absence of such management information, we attempted to calculate caseload figures for each BLCE district office. We sought data to do this from two separate reports, one a report known as the “Supplemental Statistics Report” for “the number of complaints” and a second internal management report that provides statistics on “cases assigned.” We were not able, however, to calculate caseload because of the absence of a standard definition and the imprecision and unreliability of available data.

The BLCE report titled “Supplemental Statistical Report” refers to “caseload” as the number of complaints received or assigned; other reports refer only to “cases assigned.” While the BLCE does not routinely measure individual officer caseload, several EO3s described various informal systems they individually use to track the number and status of cases assigned to LEOs under their supervision.

The perception of BLCE officers in the field is that general “caseloads” vary significantly among district offices, based largely on enforcement priorities, district office complement, and areas of available LEO expertise. Additional contributing factors to the assignment of cases to LEOs include past interaction with a particular licensee or location; the LEO’s gender, race, age, or ethnicity; and the integrity of an LEO’s undercover status in an establishment. Although not documentable through existing reports, some LEOs believe rural districts may have much larger caseloads due to fewer assigned LEOs. As a result of these factors, some LEOs cited the

potential of being assigned many more cases than colleagues in their own or other district offices.

Budgetary Performance Measures Are Deficient. The BLCE daily reporting system and statistical reporting formats are not tied to a clearly identifiable set of performance measures. Specific and meaningful measures are important for both internal management and public information purposes. Such measures are also to be reviewed and considered during the budgetary process.

The measures the State Police reports to the Governor's Budget Office and which appear in the Governor's Budget Document for liquor law enforcement include the following:

- enforcement investigations;
- inspections of open liquor establishments; and
- warning notices issued due to Liquor Code violations.

These three measures are not reflective of the overall operation of the BLCE or current enforcement priorities and are not effective as measures of agency performance for either budgetary or legislative oversight purposes. The measure "enforcement investigations" is misleading and overstates the number of "full investigations" actually conducted (see pp. 103-104). The BLCE discontinued publicly reporting this data beginning in January 2006.

The measure "inspections of open liquor establishments" is also problematic in that the measure is misstated in the budget materials. The activity to which this measure applies is referred to by the BLCE as "open inspections of liquor establishments." When used in this way, this term encompasses various different activities. While it can be understood to mean a routine, or "open," inspection, it could also include a "licensed establishment check" or one of several other actions that could be coded by an LEO as an open inspection during the course of an "investigation." In itself, this measure is not informative or useful for management, public information, or budgetary review purposes.

Likewise, the measure "warning notices issued due to Liquor Code violations" is not in itself a useful measure. Information on warning notices issued in the absence of accompanying information on total violations/citations issued or, for example, the nature of the violation from which warnings were issued has limited usefulness.

Absence of a Complaint Tracking System. As discussed in Section III, the work of the BLCE is almost entirely complaint driven. The Bureau receives complaints through its two hotlines and in the form of direct contacts and written information submitted to the headquarters or a district office. BLCE headquarters

staff assign an “incident number” to all complaints received through the hotlines before e-mailing the information to the appropriate BLCE district office or offices. (See Section III for a full explanation of this process.)

We were unable to obtain a listing of all complaints, by type and district office. While the BLCE uses the AIMS (Automated Information Management System) to record incidents, this system reflects a mix of both complaints and self-initiated work in each district. It also reflects referrals of matters that result in work being transferred to other agencies.

We found that the BLCE does not have a method by which Bureau managers are able to track the status and disposition of individual complaints and incidents assigned to LEOs. At the end of each calendar quarter, BLCE headquarters staff does generate a list of all complaint referrals (by incident number) made to each district office. This list, which is referred as the “verification of incidents report,” is faxed to each office to verify that the incidents listed were received and assignment was made to district personnel for investigative action.

Beyond this notification, however, existing BLCE systems do not provide for a means by which headquarters command staff can track the assignment, status, outcome, and final disposition of individual complaints. BLCE managers are also not able to monitor district office compliance with the timeliness standards for actions on complaints that are specified in the Bureau’s *Procedures Manual*. These standards require that action be initiated to investigate a complaint within 20 days of receipt by the district office.

VI. BLCE Expenditures

In the absence of a BLCE-specific audit or expenditure summary, LB&FC staff examined PSP expenditure reports and accounting records for the period FY 2002-03 through FY 2004-05. The purpose of this activity was to determine the total costs of BLCE operations and develop a detailed breakdown and accounting of Bureau expenditures for FY 2004-05. The examination we conducted, however, does not constitute a financial audit of BLCE expenditures.

A. BLCE Budget and Funding

The amount the General Assembly appropriates for BLCE operations is based upon the BLCE portion of the PSP's annual budget request. Each year, the BLCE's Division of Administration coordinates the development of an annual bureau budget request, with input from the district offices, various headquarters units, and the Office of Chief Counsel. This budget request is then presented to the BLCE Director for review. The Bureau Director finalizes the budget request for BLCE and forwards it to the PSP Fiscal Division within the Bureau of Staff Services for review. The Fiscal Division further adjusts the BLCE request and incorporates it into the departmental budget request, which is then forwarded to the Governor's Office of the Budget for consideration.

Based on the budget request and the subsequent Department-wide budget hearing, the Legislature makes an annual Liquor Control Enforcement appropriation to the PSP for BLCE operations. The appropriation is intended to fund a coordinated effort to enforce the Pennsylvania Liquor Code and related Crimes Code provisions. This appropriation is funded from the State Stores Fund, a special fund established in the Liquor Code and administered by the PLCB.¹

Overall, since being transferred to the PSP in 1987, the appropriation from the State Stores Fund has increased from \$10.1 million in FY 1987-88 to \$21.0 million in FY 2005-06. The amounts the General Assembly appropriated in each of the past three fiscal years are as follows: FY 2002-03 - \$18,738,000; FY 2003-04 - \$19,113,000; and FY 2004-05 - \$19,884,000. The amount available in FY 2005-06 is \$20,958,000. Augmentations were also credited to BLCE's annual appropriation in the years examined.

The vast majority of revenue credited to the State Stores Fund is derived from State Liquor Store sales. All bottle sales of wines and spirits in Pennsylvania, with the exception of sales by licensed limited wineries, are made through these

¹Each year the PLCB also distributes monies to Pennsylvania municipalities from the Liquor License Fund for liquor law enforcement purposes. In FY 2003-04, \$4.6 million was returned to municipalities.

PLCB-operated outlets, also known as Wine and Spirit Shoppes. This includes both retail sales to individual consumers and wholesale sales to those private establishments that make retail sales of alcoholic beverages by the drink. Other revenues deposited into the State Stores Fund includes fees the PLCB charges for such things as hotel, restaurant, and club license application and transfer fees; distributors' application, permit, and transfer fees; and other miscellaneous fees.

In addition to the annual appropriation from the State Stores Fund, the BLCE receives supplemental funding through a federal grant for the payment of overtime associated with efforts to combat underage drinking. Specifically, the BLCE receives federal grant monies from the Office of Juvenile Justice and Delinquency Prevention (OJJDP). The OJJDP, a component of the U.S. Department of Justice, administers an "Enforcing the Underage Drinking Laws (EUDL) Program." This program supports and enhances efforts by states to prohibit the sale of alcoholic beverages to minors and the purchase and consumption of alcoholic beverages by minors.

Each year since FY 1998-99 the Bureau has received EUDL Program grant funds. Prior to FY 2004-05, the PSP received approximately \$350,000 each year through the Pennsylvania Commission on Crime and Delinquency. Beginning in FY 2004-05, these grant funds were awarded to the PLCB. The PLCB then administered a sub-grant to the PSP for \$100,000.

The Bureau uses this grant money to support and expand the underage drinking programs they have developed, especially utilizing EUDL funds for the University/College Underage Drinking Enforcement Program. Additionally, the EUDL Program allows the bureau to schedule overtime activities for underage drinking efforts, such as conducting additional age compliance checks.

B. Expenditure Breakdowns

During 2004-05, expenditures for BLCE operations totaled \$17,326,851. This was a 1.6 percent reduction from the prior year spending level of \$17,600,242. We examined Commonwealth financial reports and records maintained by the PSP Fiscal Division in order to develop expenditure summaries for the BLCE for FY 2002-03 through FY 2004-05. Table 28 provides an overall expenditure summary for each of the BLCE's organizational units and for other miscellaneous categories.

By Organizational Unit

Table 28 and the following discussion provide a detailed accounting of FY 2004-05 spending, by BLCE organizational unit.

Table 28

Total BLCE Expenditures
(By Organizational Unit)

<u>Organizational Unit:</u>	<u>FY</u> <u>2002-03</u>	<u>FY</u> <u>2003-04</u>	<u>FY</u> <u>2004-05</u>
<u>Bureau Headquarters:</u>			
Director's Office	\$ 1,986,747	\$ 1,428,928	\$ 1,226,250
Operations Division	120,690	298,711	477,195
C.A.G.E. Unit	337,496	286,857	253,783
Administrative Division	690,670	793,468	755,655
Report Exam Unit	<u>442,694</u>	<u>413,948</u>	<u>409,673</u>
Total Bureau Headquarters	\$ 3,578,297	\$ 3,221,912	\$ 3,122,556
<u>Section Commanders:</u>			
Operations East	\$ 96,741	\$ 106,443	\$ 194,920
Operations Central	93,256	101,785	111,043
Operations West	<u>96,839</u>	<u>104,459</u>	<u>110,124</u>
Total Section Commanders	\$ 286,836	\$ 312,687	\$ 416,087
<u>District Offices:</u>			
Philadelphia	\$ 1,947,510	\$1,981,726	\$ 2,007,953
Wilkes Barre	1,596,166	1,308,609	1,467,265
Harrisburg	983,065	1,052,600	1,131,460
Pittsburgh	2,416,786	2,862,738	2,844,144
Altoona	751,048	692,979	889,824
Williamsport	833,826	894,128	686,420
Punxsutawney	809,928	946,588	809,523
Erie	950,567	1,029,929	901,431
Allentown	1,705,143	1,644,146	1,645,149
LCE Confidential ^a	<u>24,470</u>	<u>60,213</u>	<u>76,404</u>
Total District Offices	\$12,018,509	\$12,473,656	\$12,459,573
<u>Other:</u>			
Office of Chief Counsel	\$ 1,044,922	\$ 1,300,950	\$ 1,110,627
Detachment From York Station ..	16,340	82,434	42,165
Harrisburg Regional Lab	<u>196,060</u>	<u>208,605</u>	<u>175,843</u>
Total Other Units	\$ 1,257,322	\$ 1,591,989	\$ 1,328,635
Total Expenditures ^{b,c}	<u>\$17,140,960</u>	<u>\$17,600,242</u>	<u>\$17,326,851</u>

^aThis includes monies paid to LEOs as reimbursement for out-of-pocket expenses incurred during the course of undercover investigations.

^bMay not add due to rounding.

^cTotal reflect only commitments and expenditures made during each fiscal year for the actual year. Totals do not reflect expenditures finalized in a subsequent fiscal year for a prior fiscal year. Totals also reflect a federal grant for the payment of overtime associated with efforts to combat underage drinking.

Source: Developed by LB&FC staff using information obtained from the Pennsylvania State Police, Fiscal Division.

Bureau Headquarters Expenditures. Table 29 shows that total expenditures for the BLCE headquarters operation amounted to \$3,122,556 in FY 2004-05. This represents 18.0 percent of total Bureau spending.

Table 29

Expenditures by the BLCE Headquarters in FY 2004-05

<u>Bureau Headquarters</u>	<u>FY 2004-05</u>	<u>% of BLCE Total</u>
Director's Office	\$1,226,250	7.1%
Administrative Division.....	755,655	4.4
Operations Division.....	477,195	2.8
C.A.G.E. Unit	253,783	1.5
Report Exam Unit	<u>409,673</u>	<u>2.4</u>
Total	\$3,122,556	18.0%

Source: Developed by LB&FC staff from information obtained from the PSP Fiscal Division.

The following is a breakdown of spending for the various headquarters functions:

Director's Office. Expenditures by the BLCE Director's Office totaled \$1,226,250 in FY 2004-05 in personnel costs and operational expenses. The operating expenses include telecommunication and utility charges for the Bureau headquarters building, which also houses the Harrisburg District Enforcement Office. Specialized services used by personnel throughout the Bureau are also charged to the "Director's Office." These include janitorial services, agricultural (e.g., grounds keeping) services, photographic service, video service, and security guard services. Additionally, miscellaneous supplies and equipment used by all Bureau personnel are recorded here.

All vehicles, whether purchased or leased by the BLCE, are also charged to this organizational unit as are all fuel charges incurred by bureau personnel in purchasing gasoline for their assigned vehicles.

Administrative Division. The Administration Division's expenditures totaled \$755,655 in FY 2004-05. This includes personnel expenditures for a PSP Captain who serves as the Director of the Administrative Division and an Administrative Officer, an Administrative Assistant, three Clerk Typists, and two Information Technology Generalists assigned to the Computer Service Support Unit.

During each of the three years we examined, the PSP Fiscal Division also charged the rental expense for the bureau headquarters building to the "Administration Division." Additionally, travel expenses incurred by the division staff in traveling to the district offices as well as miscellaneous office expenses are recorded here.

Operations Division. Division expenditures in FY 2004-05 were \$477,195. In addition to the salary and benefits of the PSP Captain who serves as the Director of the Operations Division, the PSP Fiscal Division also records expenditures for bureau-wide purposes under the "Operations Division." This includes, for example, postage in FY 2002-03; contracted maintenance expenses for buildings and grounds and automotive expenses, postage, and new uniforms in FY 2003-04; and contracted maintenance expenses and postage in FY 2004-05.

Report Examination Unit. Expenditures for the Report Examination Unit in FY 2004-05 were \$409,693. While the Report Examination Unit is part of the Administration Division, the PSP Fiscal Division records this unit's expenditures separately from those of the rest of the division. The Report Examination Unit consists of a Legal Assistant Supervisor, four Legal Assistants, a Clerical Supervisor, two Clerk Typists, and a Clerk. Expenditures for the salary and benefits costs for these employees are recorded here. In FY 2002-03, miscellaneous office equipment was also purchased for this unit.

C.A.G.E. Unit. Expenditures for the Compliance, Auditing, and Gambling Enforcement (C.A.G.E.) Unit amounted to \$253,783 in FY 2004-05. This includes the salaries and benefits of Unit staff including a Corporal, a Trooper, an Enforcement Officer 3, and a Clerk Typist 2. Travel expenses for C.A.G.E. Unit personnel to travel to the district offices as well as miscellaneous office equipment and supplies expenses are also part of the Unit's expenditures.

Expenditures for BLCE Section Commanders. In FY 2004-05, the BLCE expended a total of \$416,087 for Operations East, Operations Central, and Operations West Section Commanders (see Table 30). The salaries and benefits for the three Lieutenants assigned as Section Commanders are recorded here as well as the travel costs they incur as they travel among their assigned district offices.

Table 30

Expenditures for Section Command Operations in FY 2004-05

<u>Section Command</u>	<u>FY 2004-05</u>	<u>% of BLCE Total</u>
Operations East.....	\$194,920	1.1%
Operations Central.....	111,043	0.6
Operations West.....	<u>110,124</u>	<u>0.6</u>
Total.....	\$416,087	2.4%

Source: Developed by LB&FC staff using information obtained from the PSP Fiscal Division.

Expenditures by BLCE District Offices. Expenditures for the nine district enforcement offices totaled \$12,459,573 in FY 2004-05. As shown on Table 31, district expenditures in FY 2004-05 ranged from a low of \$686,420 in Williamsport to a high of \$2,844,144 in the Pittsburgh District Office.

“District office expenditures” include the costs of salaries and benefits for the Liquor Enforcement Officers, the Enforcement Officer 3s, the clerical staff, and the District Office Commanders. All operational expenses necessary to maintain the offices, such as rental of real estate, rental of storage facilities, utility expenses, and equipment and supplies purchases are also included.

Table 31

Expenditures by the BLCE District Offices in FY 2004-05

<u>District Office</u>	<u>Amount</u>	<u>% of BLCE Total</u>
Philadelphia	\$ 2,007,953	11.6%
Wilkes-Barre	1,467,265	8.5
Harrisburg	1,131,460	6.5
Pittsburgh.....	2,844,144	16.4
Altoona.....	889,824	5.1
Williamsport	686,420	4.0
Punxsutawney.....	809,523	4.7
Erie.....	901,431	5.2
Allentown	1,645,149	9.5
LCE Confidential.....	76,404	0.4
Total District Offices.....	\$12,459,573	71.9%

Source: Developed by LB&FC staff from information obtained from the PSP Fiscal Division.

District office expenses also include a category referred to as “LCE Confidential.” Monies paid to the LEOs as reimbursement for certain costs they incur in conducting undercover investigations are reported under this classification. In these cases, LEOs submit expense reimbursement forms to recover out-of-pocket expenses they incur when working undercover and purchasing beverages and/or playing video gambling machines during the course of their work at licensed liquor establishments.

Other BLCE Expenditures.

Office of Chief Counsel. The Office of Chief Counsel represents the PSP in cases against liquor licensees. The BLCE’s authorized complement includes a legal section comprised of staff from the PSP’s Office of Chief Counsel. Expenditures for

this section were \$1,110,627² in FY 2004-05, including the personnel costs of nine attorneys, one legal assistant, four clerk typists, and three law clerks who perform full-time BLCE functions. Although they do legal work for other district offices, the nine attorneys are assigned to the Philadelphia District Office (2), the Harrisburg District Office (2), the Allentown District Office (2), and the Pittsburgh District Office (3). The legal assistant is assigned to the Harrisburg District Office. The four clerk typists are assigned as follows: one in Philadelphia, one in Allentown, and two in Pittsburgh. One law clerk each is assigned to the Harrisburg, Allentown, and Philadelphia District Offices.

Harrisburg Regional Laboratory. The BLCE expended \$175,843 in FY 2004-05 for services provided by the PSP's Harrisburg Regional Laboratory. This amount is based on the cost of the salaries and benefits of two forensic scientist positions and one clerk typist position at the Harrisburg Laboratory. These positions are fully funded from the Liquor Control Enforcement appropriation.

We questioned the usage of State Stores Fund monies to fully fund these positions and the relationship of laboratory services to BLCE operations. We found that the Bureau receives analysis services (e.g., for alcohol content) from the laboratory during the course of various investigations. We also found that the State Stores Fund pays for the three positions in question pursuant to a 1993 memorandum of understanding (MOU) between the Liquor Control Board and the State Police.

Effective March 1, 1993, a laboratory analysis function housed in the PLCB was transferred to the PSP. As part of this transfer, certain equipment was transferred from the PLCB to the PSP laboratory. The MOU also provided for the transfer of three PLCB laboratory positions, two chemists, and a clerical position, to the PSP and that these positions were to thereafter be funded from the State Stores Fund.

Since this transfer occurred, the volume of laboratory analysis services provided to the BLCE has grown and the operation was integrated into the general operation of the Harrisburg Regional Laboratory. Staff of the PSP's Bureau of Human Resources also note that more than three laboratory staff persons are now involved in processing beverage alcohol evidence for the BLCE. Thus, the annual cost of providing beverage alcohol services would appear to exceed the amount provided from the State Stores Fund for the three positions in question.

Questions regarding these expenditures prompted a meeting between BLCE officials and laboratory personnel. As a result of this meeting, the two parties

²Additionally, in some cases, the BLCE retains outside legal counsel for certain matters. Accordingly, there are some additional legal representation expenditures paid from the Liquor Control Enforcement appropriation for the three fiscal years we examined and these are recorded in the minor object "Legal Services and Fees" under operating increases.

clarified their working relationship and discussed the purchase of additional equipment that will enable the BLCE to enhance its use of laboratory services.

Detachment From York Station. The Liquor Control Enforcement appropriation paid the salary and benefit costs of a Corporal serving in the BLCE's C.A.G.E. Unit on detachment from the PSP's York Station. In FY 2004-05, these costs were \$42,165.

We questioned this expenditure and found that a Corporal assigned to the York Station, Troop H, was detached to the Bureau's C.A.G.E. Unit beginning in late fiscal year 2002-03. This assignment was made because the Corporal working in the C.A.G.E. Unit at that time was transferred to the PSP's Integrated Information Management System (IIMS) Project Team. The new Corporal's status remained detached while serving in the Unit. This person returned to the York Station when a permanent employee was assigned to the C.A.G.E. Unit in FY 2004-05. The PSP's practice is to charge the personnel costs for a detached employee to the bureau to which an enlisted member is assigned.

By Major Expenditure Object

From PSP expenditure and accounting records, it is also possible to classify BLCE expenditures by "major and minor object of expenditure" as defined in the Commonwealth's accounting system. All expenditures of Commonwealth funds are classified on the accounting records by minor object within a major object. Major objects describe expenditures in general terms while minor objects provide more detail.

As set forth in the Governor's Office Manual, M310.2 (Revision No. 1), the following major object expenditure codes are used in the Commonwealth system:

- Personnel Services
- Transfers From State to Federal Appropriations
- Operational Expenses
- Fixed Assets
- Special Purpose Expenses
- Subsidies and Grants
- Debt Service and Fixed Charges
- Nonexpense Items

The BLCE generally has expenditures in three major object codes: Personnel Services, Operational Expenses, and Fixed Assets. In FY 2004-05, however, the Bureau did not have any expenditures in the Fixed Assets category. The following breaks down FY 2004-05 BLCE expenditures totaling \$17,326,851, according to major and minor object. Table 32 provides detail by District Office.

Table 32

BLCE District Office Expenditures in FY 2004-05

(By Major and Minor Object)

Expenditure Object	DO 1 Phil.	DO 2 WB	DO 3 Hbg.	DO 4 Pgh.	DO 5 Altoona	DO 6 Wmsport	DO 7 Punxy	DO 8 Erie	DO 9 Atownl.	DO Total
Personnel Services:										
Salaries--Regular Hours.....	\$ 1,170,252	\$ 921,518	\$ 693,928	\$ 1,659,348	\$ 551,534	\$ 410,526	\$ 498,668	\$ 482,596	\$ 1,049,383	\$ 7,437,752
Salaries--Shift Differential ...	22,672	21,395	13,266	41,120	10,065	6,253	9,078	9,582	26,972	160,403
Salaries--Higher Class. Pay	2,230	210	1,366	3,263	180	304	291	401	2,320	10,564
Gen. Pay Incr.-Cash Pay ...	1,356	4,681	978	4,681	861	861	0	1,356	2,582	17,356
Repay Salary Overpay	(1,951)	(1,577)	(555)	(1,695)	(430)	(663)	178	(1,351)	(863)	(8,908)
Overtime Hrs. St. Time Rate	4,121	4,521	1,782	8,913	3,745	1,637	2,107	2,144	5,074	34,044
Hospitalization Insurance ...	176,447	112,859	93,290	219,620	71,272	56,322	64,909	62,668	153,571	1,010,958
SS Contributions	73,271	57,973	39,286	104,187	29,779	21,330	26,369	26,656	66,033	444,884
Medicare--State Share	17,831	14,650	9,188	25,398	6,965	4,989	7,215	6,234	15,783	108,252
Retirement Contributions ...	32,659	28,258	22,380	44,942	19,477	17,585	18,611	19,099	27,292	230,305
State Workmen's Ins. Pr. ...	24,465	20,434	13,964	34,376	11,161	8,417	10,593	11,072	21,386	155,869
Employees Group Life Ins...	3,306	2,537	1,923	4,746	1,451	1,174	1,413	1,299	2,948	20,796
Health Bens.--State Share .	189,636	121,415	103,198	231,494	80,606	67,237	75,089	70,370	160,297	1,099,341
Unemployment Comp.	0	0	0	0	1,714	0	0	0	0	1,714
Leave Payout.....	41,837	49,914	0	32,726	375	8,901	0	69,254	1,017	204,024
Allowances.....	5,365	500	500	8,575	(125)	6,281	500	4,161	531	26,288
Total Personnel Exps.....	\$ 1,763,498	\$ 1,359,287	\$ 994,491	\$ 2,421,694	\$ 788,629	\$ 611,154	\$ 715,020	\$ 765,542	\$ 1,534,327	\$ 10,953,642
Operating Expenses:										
Travel.....	\$ 986	\$ 2,302	\$ 95	\$ 8,309	\$ 300	\$ 164	\$ 2,618	\$ 3,681	\$ 466	\$ 18,921
Telecommunications--Rec	13,247	6,570	198	12,192	5,519	25	354	4,169	86	42,360
Telecommunications	0	0	0	13,793	0	0	240	0	0	14,033
Telephone Equipment	0	0	0	0	0	0	0	0	31	31
Heating Fuel.....	0	10,422	0	6,555	1,372	1,188	2,934	1,855	0	24,325
Water and Sewerage	0	497	0	0	0	0	789	0	0	1,286
Electricity.....	21,952	0	126	11,677	4,202	4,702	5,407	5,433	0	53,498
Legal Services and Fees.....	183	0	0	0	0	0	0	0	0	183
Specialized Services	71	900	0	8,877	0	495	27	1,344	37	11,751
Advertising	293	0	0	0	0	0	0	0	0	293
Contracted Mtnc--Non EDP	16,210	1,535	436	10,233	1,299	6,202	1,860	6,135	1,759	45,669

Table 32 (Continued)

Expenditure Object	DO 1 Phil.	DO 2 WB.	DO 3 Hbg.	DO 4 Pgh.	DO 5 Altoona	DO 6 Wmsport	DO 7 Punxy	DO 8 Erie	DO 9 Atown.	DO Total
<u>Operating Expenses (Continued):</u>										
Contracted Reprs--Non EDP..	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 6	\$ 0	\$ 0	\$ 0	\$ 6
Contracted Reprs--Mot. Eqp..	3,440	3,641	501	0	0	0	0	0	0	7,582
Rent of Real Estate.....	160,372	67,505	129,177	334,534	79,001	57,491	72,519	110,120	77,402	1,088,120
Vehicles--Leasing	0	0	0	320	1,346	0	0	0	672	2,337
Office Equipment--Leased	955	0	198	0	0	0	0	0	552	1,705
Other Rentals/Leases	1,715	0	0	0	0	0	0	0	0	1,715
Office Supplies.....	7,443	1,203	(2,282)	6,187	3,990	683	784	1,561	2,085	21,655
Educational Supplies.....	0	0	0	0	160	0	0	0	0	160
Miscellaneous Supplies.....	118	50	27	353	91	0	22	258	0	918
Medical Supplies	0	0	95	0	33	96	0	50	0	274
Drug Supplies	0	0	136	0	0	0	0	0	0	136
Other Computer Equipment ...	0	0	125	0	0	0	1,665	0	0	1,790
Furniture and Fixtures	0	0	1,408	30	99	3,004	0	0	515	5,057
Other Equipment.....	0	0	0	0	0	0	0	25	0	25
Materials and Supplies.....	0	0	0	918	0	0	0	0	0	918
Fuels	9	0	0	0	0	10	0	0	12	32
Motorized Equipment	2,664	11,994	3,862	2,840	2,483	601	2,156	733	5,382	32,714
Miscellaneous Equipment	0	0	53	350	0	0	0	0	0	403
Postage.....	0	0	0	0	0	0	130	0	0	130
Printing.....	1,320	0	0	0	0	0	0	0	0	1,320
Wearing Apparel	25	310	5	16	0	24	0	0	12	392
Food.....	0	76	0	288	8	0	24	0	0	396
Purchasing Card Purchases ..	13,733	1,052	164	4,753	1,301	366	3,059	620	22,263 ^a	47,310
Intst Chge--Late Vend Pmt....	1	0	0	0	0	0	0	0	0	1
Other Operating Costs	(281)	(80)	2,646	227	(9)	210	(86)	(95)	(452)	2,081
Total Operating Costs	\$ 244,455	\$ 107,977	\$ 136,969	\$ 422,450	\$ 101,195	\$ 75,266	\$ 94,503	\$ 135,889	\$ 110,822	\$ 1,429,527
Total District Office Expenditures	\$ 2,007,953	\$ 1,467,265	\$ 1,131,460	\$ 2,844,144	\$ 889,824	\$ 686,420	\$ 809,523	\$ 901,431	\$ 1,645,149	\$ 12,459,573 ^b

^aDuring this period, the Allentown District Office had authorization to use its purchasing card to pay rental costs for storage facilities.

^bIncludes \$76,404 in "LCE Confidential" monies paid to the LEOs as reimbursement for out-of-pocket expenses incurred during the course of undercover investigations. A breakdown of these expenditures by district office was not available.

Personnel Services. BLCE expenditures in the major object “Personnel Services” totaled \$14,456,662, or about 83 percent of total spending. As shown on Table 33, personnel services costs include salaries, wages, overtime, benefits, leave payouts, and uniform maintenance allowances. The largest minor object categories are salaries, hospitalization-insurance charges, and the state share of health benefits.

Table 33

**BLCE Personnel Services Expenditures in FY 2004-05
(By Minor Object Classification)**

<u>Minor Object</u>	<u>FY 2004-05</u>
Salaries--Regular Hours	\$ 9,538,801
Health Benefits--State Share	1,448,027
Hospitalization Insurance.....	1,263,355
Social Security Contributions	544,783
Leave Payout	450,743
Retirement Contributions	319,262
State Workmen's Insurance Pr	204,868
Salaries--Shift Differential	160,837
Medicare--State Share	133,896
Overtime--Federal Underage	130,435
Wages--Regular Hours	126,510
Overtime Hours St. Time Rate.....	47,482
Allowances	30,038
Gen. Pay Increase-Cash Pay	26,276
Employees Group Life Ins.....	25,966
Salaries--Higher Classif. Pay	15,215
Unemployment Compensation.....	1,714
Litigation/Arbitration Payout	0
Repay Wage Overpay.....	0
Rewards/Bonuses	0
Wages--Shift Differential	0
Repay Salary Overpay	<u>(11,548)</u>
Total Personnel Expenses^a	<u>\$14,456,662</u>

^aMay not add due to rounding.

Source: Developed by LB&FC staff using information obtained from the PSP Fiscal Division.

Operational Expenses. Operational expenses, the day-to-day costs required to maintain the nine district enforcement offices and the Bureau headquarters, totaled \$2,870,189 (see Table 34). The three highest minor expenditure objects among all operating expenses are: “Rent of Real Estate,” “Vehicles-Leasing,” and “Contracted Maintenance-NonEDP.”

Table 34

BLCE Expenditures for Operational Expenses in FY 2004-05
(By Minor Object Classification)

<u>Minor Object</u>	<u>FY 2004-05</u>	<u>Minor Object</u>	<u>FY 2004-05</u>
Rent of Real Estate	\$1,217,297	Educational Supplies	\$ 2,666
Vehicles—Leasing.....	518,691	Office Equipment—Leased.....	1,933
Contracted Mtncce--Non EDP.....	260,147	Advertising	1,758
Fuels	146,476	Miscellaneous Supplies	1,488
Specialized Services	121,440	Membership Dues.....	1,396
Electricity	81,039	Water and Sewerage	1,286
Telecommunications—Rec	79,031	Materials and Supplies.....	918
Other Operating Costs	78,703	Subscriptions	905
Motorized Equipment	67,245	Miscellaneous Equipment.....	588
Purchasing Card Purchases.....	59,361	Food	396
Office Supplies	42,015	Medical Supplies.....	274
Travel.....	36,535	EDP Software	263
Postage	31,651	Contracted Services--Non EDP .	175
Legal Services and Fees.....	25,576	Drug Supplies	136
Heating Fuel	24,325	Other Equipment.....	131
Telecommunications—NR.....	14,370	Interest Charge--Late Vend Pmt	8
Printing	12,957	Contracted Repairs—Non EDP .	6
Contracted Repairs--Mot. Equip.....	9,646	Contracted EDP Svcs-Vendor ...	0
Furniture and Fixtures	8,824	Freight.....	0
Other Rentals/Leases(Off-site).....	6,401	Graphic Services.....	0
Wearing Apparel.....	6,012	Insur/Sur/Fid Bonds	0
Telephone Equipment	4,399	Interest Charge—Other.....	<u>0</u>
Other Computer Equipment	3,721		
		Total Operating Costs ^a	<u>\$ 2,870,189</u>

^aMay not add due to rounding.

Source: Developed by LB&FC staff using information obtained from the PSP Fiscal Division.

Rent of Real Estate. Expenditures shown in this category, \$1,217,297, include the payments made for the nine district office facilities as well as the Bureau headquarters. In the case of some leases, utility costs are included in the payments. This varies by lease. Real estate rental costs for each district office are shown on Table 32.

Vehicles—Leasing. BLCE expenditures for leased vehicles amounted to \$518,691 in FY 2004-05. Under BLCE policy a vehicle is assigned to each Liquor Enforcement Officer, Enforcement Officer 3, District Office Commander, Section Commander, Division Director, and the Bureau Director. The Bureau also maintains a vehicle pool.

As of November 2005, the BLCE's vehicle fleet totaled 217 (192 automobiles, 16 trucks, and 9 vans). Of this number, 158 were leased vehicles. The BLCE follows DGS guidelines with respect to replacing vehicles. Leased vehicles are replaced when they reach 100,000 miles.

Contracted Maintenance-Non EDP. In FY 2004-05, the BLCE expended a total of \$260,147 for non-EDP related contracted services. These involve contracted maintenance services for buildings and grounds, telephone equipment, office equipment, and other service contracts.

Fixed Assets. Expenditures for fixed assets involve the costs for items that generally cost more than \$5,000 and are expected to have a useful life of more than one year. The BLCE had fixed asset costs for machinery and equipment, automobiles, and office equipment in FY 2002-03, and furniture and fixtures in FY 2003-04 but did not incur any fixed asset costs in FY 2004-05.

In FY 2002-03, BLCE incurred \$227,753 in automobile costs. Consistent with DGS guidelines, owned vehicles are replaced when they reach 80,000 miles. In FY 2002-03, the BLCE replaced ten automobiles and five trucks. In FY 2003-04, the BLCE incurred fixed asset costs of \$146,101 for furniture and fixtures for the Office of Chief Counsel staff. These purchases included mailroom equipment, filing equipment, and office furniture.

C. Appropriation Lapses

The BLCE did not spend the full amount of its appropriation from the State Stores Fund in any of the three fiscal years we examined. The differences between the amounts appropriated and the amounts actually expended in FY 2002-03, FY 2003-04, and FY 2004-05 are due to end-of-fiscal-year lapses of unencumbered and unexpended monies. Table 35 provides detail on appropriation amounts returned to the State Stores Fund for FY 2002-03 through FY 2004-05, by major object.

Table 35

Amounts Lapsed to the State Stores Fund
(FY 2002-03 Through FY 2004-05)

Major Object	FY 2002-03	% of Total Lapse ^a	FY 2003-04 ^a	% of Total Lapse ^a	FY 2004-05 ^a	% of Total Lapse ^a
Personnel Services	\$ 608,189	50.5%	\$ 528,783	33.8%	\$1,437,589	62.3%
Operating Expenses.....	455,957	37.8	833,700	53.1	558,773	24.2
Fixed Assets	<u>140,742</u>	<u>11.7</u>	<u>206,244</u>	<u>13.1</u>	<u>312,000</u>	<u>13.5</u>
Total Lapses.....	\$1,204,888 ^b	100.0%	\$1,568,727 ^c	100.0%	\$2,308,362	100.0%
Lapse as % of Total Appropriation.....	6.4% of \$18,738,000 appropriation		8.2% of \$19,113,000 appropriation		11.6% of \$19,884,000 appropriation	

^aMay not add due to rounding.

^bIncludes lapses for Operating Expenses that were finalized in FY 2004-05.

^cIncludes lapses for Operating Expenses that were finalized in FY 2005-06.

Source: Developed by LB&FC staff using information obtained from the Comptroller for Public Protection and Recreation.

As shown, the largest lapse as a percentage of the total appropriation occurred in FY 2004-05; with a total lapse of \$2,308,362. The major object classification personnel services accounted for the largest lapse amounts in FY 2002-03 and FY 2004-05. In FY 2003-04, operating expenses accounted for the largest percentage of lapsed funds at 53.1 percent of total.

According to PSP Bureau of Staff Services, Fiscal Division staff, projections for required funding are based on total costs of funding the authorized Bureau complement, conducting planned operations for the Bureau, and completing budgeted purchases during each fiscal year.

Fiscal Division staff indicated that large lapses in the major object of personnel services may be due to unexpected vacancies in the Bureau complement or less compensation required for overtime payments. Fiscal Division staff also indicated that BLCE views lapsing funds as a positive indicator of accomplishing the Bureau's mission under-budget.

D. Expenditure Controls

Both prior to and during the early stages of this study, questions were raised and claims made that monies appropriated for liquor law enforcement are sometimes used instead for other PSP purposes. Our study did not find any indication of such expenditures during FY 2002-03 through FY 2004-05.

In conjunction with developing a line-item accounting of BLCE expenditures, we checked on the existence and nature of accounting controls designed to ensure that BLCE funds that are appropriated from the State Stores Fund are not misdirected to other State Police organizational units or purposes. Controls exist at two levels: one internal to the PSP and the other through the Comptroller's Office.

Internal PSP Controls

The initial step in expending funds against the State Stores Fund is generated through the PSP chain of command within the BLCE (i.e., Bureau Director, Director of Administration, and Director of Operations). PSP officials also note that a departmental special order places expenditure controls over the entire agency including the BLCE. This is an internal document that specifies cost containment measures and is considered before an expenditure is made.

Also, at the Department level, the PSP's Bureau of Staff Services, Fiscal Division, is responsible for ensuring that the proper authority to incur expenses for BLCE is approved and expenditures are coded to the correct funds before the request goes to the Comptroller.

Comptroller's Office Controls

In their capacity as the chief financial accounting officers for the agencies they serve, all the Commonwealth comptrollers have explicit authority through the Fiscal Code to approve or disapprove requisitions for payments drawn on the State Treasury. The Comptroller for Public Protection and Recreation (PP&R) has a number of established controls that diminish the possibility of misapplied expenditures by the BLCE.

For example, all BLCE expenditures are reviewed by the Comptroller's Contract Review Unit which determines that the correct organizational and accounting codes are used in the requisition for funds drawn against the State Stores Fund. Special scrutiny is exercised in any instance where expenditures are coded against the General Fund or in some cases against both the General Fund and State Stores Fund (called "split codes"). Similarly, requisitions drawn on the State Stores Fund using an organizational code outside of the BLCE (e.g., a different PSP bureau) would trigger the need for further inquiry and justification.

Other standard accounting control measures employed by the Comptroller include the monthly purchasing post-audit function. This program concludes any investigations of items identified in the initial review of expenditures which were identified as possibly inappropriate or miscoded. A further quality control activity undertaken by the Comptroller's Office on a monthly basis is a random sample of

Bureau invoices. Through this on-site review, suspicious transactions can be questioned and resolved in a timely manner.

Another area discussed with the Comptroller dealt with the BLCE Purchasing Card Program. According to the BLCE, the BLCE possesses 16 VISA Procurement Cards. BLCE Headquarters possesses two purchasing cards, and district offices variably possess either one or two cards based on need. Purchases made through the use of these cards are subject to the same Comptroller processes as discussed above. Monthly statements are reviewed by Comptroller staff, and questionable expenditures are identified and resolved between the Comptroller staff and the BLCE.

Internal BLCE accounting controls are also outlined with respect to the Purchasing Card Program in BLCE policies and procedures. These documents contain instructions for the BLCE Director to designate and maintain a listing of persons authorized to use the card, as well as the purposes for which the card may be used and not used. Also, no purchases are to be made using the card without first obtaining approval from the Director of the BLCE, the Director of the Administration Division, or the Director of the Operations Division prior to purchase. No unauthorized purchases or any purchase of goods and/or services exceeding \$3,000 are to be made with the card. Receipts for purchases are maintained and reconciled monthly upon receiving a statement from the PNC Bank.

In November 2000, the Comptroller for PP&R conducted an audit of BLCE accounts in which two findings pertained to the VISA Purchasing Card and to the Confidential Investigation Advancement Account. The audit report suggested needed improvements in these two areas.

The BLCE has policies and procedures regarding their Confidential Investigation Advancement Account and the Confidential Petty Cash Fund. According to the Comptroller, the State Police maintain a number of confidential accounts, necessary for investigative assignments including undercover operations.

The purpose of the Confidential Investigation Advancement Account is to provide necessary monetary resources for liquor enforcement officers to conduct field operations (e.g., purchase of alcoholic beverages and use of video gambling devices). The Confidential Petty Cash Fund is used only for expenditures approved for payment from the Confidential Investigation Advancement Account, but reimbursements are limited to less than \$25 and are paid in cash. Reimbursements for \$25 or greater must be made from the Confidential Investigation Advancement Account and are issued by check. Both accounts are administered by separate account custodians.

Further, the 2005 special order issued by the PSP on the subject of cost containment establishes that all agency discretionary spending (including from the

VISA Purchasing Cards and Advancement Accounts) be strictly limited to “as needed” expenditures. All other purchases shall be reviewed based upon operational needs, and shall be subject to prior approval if the purchases exceed \$100. The PSP Bureau of Staff Services, Fiscal Division, enforces the special order and ensures that proper authority to incur expenses is approved/or disapproved before the request goes to the Comptroller.

Summary financial information on confidential accounts (including those administered by the BLCE) is provided to the Comptroller’s Office, which has the authority to examine further detail on such accounts when necessary. As indicated above, the Confidential Investigation Advancement Account was the subject of a Comptroller audit released in 2000.

VII. Other Pertinent BLCE-Related Issues

A. The Storage of Gambling Devices, Cash, and Other Evidence Seized During Raids

During the course of various enforcement actions such as gambling raids, border patrols, and speakeasy investigations, BLCE officers search for and seize gambling devices, alcohol, cash, and other items upon reasonable and probable cause. Specifically, the Liquor Code gives LEOs the power to seize: (1) liquor, alcohol, malt, or brewed beverage unlawfully possessed, manufactured, sold, imported, or transported; and (2) any of the following which are or have been used in the unlawful manufacture, sale, importation, or transportation of the above beverages: stills, equipment, materials, utensils, vehicles, boats, vessels, animals, and aircraft. LEOs can also confiscate “any equipment or appurtenances” actually used in the commission of unlawful acts, including gambling devices.

Upon seizure and until the hearing and appeal process is completed, the BLCE is required to retain and store those items. During this time, the seized items are considered evidence and must be maintained in the possession of the BLCE. The Bureau must also retain possession of the items until the Liquor Code procedure for the disposition of seized property is completed. The current methods of handling and storing seized items is both cumbersome and costly.

Seizures and Items in Storage

BLCE records show that LEOs seized a total of 1,380 gambling machines and \$306,726 in cash during CY 2004 and CY 2005 (see Table 36). During the course of other raids and investigations in 2004 and 2005, LEOs took possession of 235.6 liters of liquor, 610.4 gallons of beer, and 608.9 liters of wine. The handling, storage, and disposition of such items is problematic for the BLCE.

Table 36

Gambling Machines, Cash, and Alcoholic Beverages Seized by the BLCE (During CY 2004 and CY 2005)

	<u>CY</u> <u>2004</u>	<u>CY</u> <u>2005</u>
Number of Gambling Machines Seized	700	680
Amount of Money Seized	\$135,275	\$171,451
Liquor Seized (liters)	2,011	1,249
Beer Seized (gallons)	6,030	4,173
Wine Seized (liters)	818	4,821

Source: Developed by LB&FC staff using information obtained from the Bureau of Liquor Control Enforcement.

We found that machines, cash, and other items seized by LEOs are being held in storage at each district office location. Based on a survey of BLCE districts conducted in September 2005, a total of 1,838 gambling devices were in storage at the nine district offices. The largest number, 943 machines, were being housed in the Pittsburgh District, at both the district office and at an off-site 10,000 square foot warehouse. (See Table 37.) While some of the 1,838 machines have reportedly been in storage for 3 years or less, others have been held for up to 8 to 10 years.

The District Office Commanders also reported that they were holding cash totaling \$385,844 that had been seized during various raids. Other items reported to be in storage are as follows: (1) 17,076 liters, 3,831 gallons, and 27 kegs of beer; (2) 3,571 liters of liquor; and (3) 2,137 liters of wine.

Based on inventory records and observations, numerous other miscellaneous items seized by BLCE officers are also in storage. These items include televisions, stereo equipment, karaoke equipment, cash registers, refrigeration and dispensing systems for keg beer, bar chairs, pinball machines, bathroom fixtures, coolers, refrigerators, jukeboxes, and a bar from a speakeasy.

Table 37

**Seized Alcohol, Gambling Devices, Cash, and Other Assets
in Storage at BLCE Facilities
(As of September 2005)**

<u>District Office</u>	<u>Gambling Devices</u>	<u>Beer Liters</u>	<u>Liquor Liters</u>	<u>Wine Liters</u>	<u>Cash</u>	<u>Other Items of Value^a</u>	<u>Stored at DO Office</u>	<u>Rental Space Cost Per Year^b</u>
Philadelphia	299	992	1,571	791	\$123,140	X	X	\$14,898
Wilkes-Barre	33	678	155	135	13,212	X	X	0
Harrisburg	83	1,993	670	550	29,876	X	X	0
Pittsburgh ^c	943	6,132	360	360	40,055	X	X	65,000
Altoona	79	852	78	59	20,882	X	X	0
Williamsport ^c	22	1,817	43	43	6,521	X	X	0
Punxsutawney ^c	48	674	16	16	21,896	--	X	0
Erie	3	1,384	220	105	8,717	--	X	0
Allentown	<u>328</u>	<u>2,555</u>	<u>459</u>	<u>79</u>	<u>121,547</u>	--	X	<u>16,296</u>
Total	1,838	17,076	3,571	2,137	\$385,844	X	X	\$96,194

^aOther miscellaneous assets not specified on the table include such items as bar chairs, refrigerators, pinball machines, and televisions.

^bRepresents the costs of two rented storage spaces and bank safe deposit boxes.

^cWine and Liquor reported together in this district office—half is in each category.

Source: Developed by LB&FC staff using information obtained from a September 2005 BLCE survey.

In some cases, the items listed on Table 37 are being stored in district office facilities, but in four offices, items are also stored in rented facilities. In one district office, Philadelphia, cash is stored in six safe deposit boxes in a local bank. The annual rental for the safe deposit boxes is \$1,470. The annual rental costs for the storage facilities is \$96,194.

Current Disposition Procedures

Once the hearing and appeal process is completed on the violation, the BLCE must begin a second process in order to dispose of the seized property/machine(s) under the forfeiture provisions of the Liquor Code.

Under Article VI of the Liquor Code, a verified forfeiture¹ petition must be filed by the BLCE in the court of common pleas containing the following information: (1) a description of the seized property; (2) a statement of the time and place where the property was seized; (3) the property owner, if known; (4) the person in possession of the property if known; (5) a statement of the illegal activity in which the property was involved; and (6) a request for an order of forfeiture.

The petition must then be served on the owner of the property if known, or upon the person in possession of the property at the time of the seizure. If the property owner is not known and no one was in possession of the property at the time of seizure, a notice of the petition must be placed in the newspaper once a week for two weeks in the county where the property was seized.

If anyone files a claim for the property, a hearing must be held. At that hearing, (even though, in the case of gambling devices, the machine has already been found to be an illegal gambling device during the administrative hearing before the ALJ) the Commonwealth must again prove that the property was unlawfully possessed or used,—i.e. that it was an illegal gambling device—at which time the burden of proof shifts to the claimant to show that he is the lawful owner of the property and that it was not unlawfully used or possessed. If, at the hearing, the claimant proves that the property was acquired lawfully, the court may order the property to be returned to the claimant. But if it appears that the property was unlawfully acquired and/or used, the court is to order the property be adjudged forfeited and condemned.

Upon having the property condemned by the court, the court is to order the sheriff to destroy all alcohol and other property, including illegal gambling

¹Seizure of property pertains to the authority to take possession of property. Forfeiture, on the other hand, deals with the deprivation or destruction of a right in the property as a consequence or penalty for some act. In fact, the Liquor Code provides that no property rights exist in any alcohol illegally manufactured or possessed, or in any device, equipment, aircraft, boat, or vehicle used in illegal activities.

machines.² The court may order that the alcohol can be delivered to a hospital for its use. In the case of boats, vehicles, containers, animals, and aircraft, the court shall order that these items are to be delivered to the BLCE for its use or sale or disposition in its discretion. Any proceeds of the sale of boats, vehicles, containers, animals, and aircraft is to be deposited into the State Stores Fund.

B. Staff Size of the Compliance, Auditing, and Gambling Enforcement (C.A.G.E.) Unit

An examination of subsequent personnel reports of the PSP Bureau of Liquor Control Enforcement indicates that the staff of the Special Investigations Section was greatly reduced during the 1990s. For example, the authorized complement of the Section as of January 1995 provided for one Sergeant, one Trooper, two auditors, one accountant, and one clerical position. However, auditor positions were also placed in the staffing of some but not all of the district offices. This general arrangement was in place until January 2003 when the designation of Auditor or LEO Auditor was dropped and these positions were incorporated into the Liquor Enforcement Officer position (additionally, it appears that the number of authorized and allotted LEO positions in the Bureau was reduced by two positions from 143 to 141).

The configuration of the personnel in the Special Investigations Section was modified several times in the subsequent years. For example, the complement report for January 1998 shows one Corporal, one Trooper, one EO3, one accountant, two auditors, and one clerical. The January 2001 complement report shows one Corporal, one Trooper, two EO3s (one for the east and the other for the west), one LEO Auditor, and one clerical. Beginning in 2003, no LEOs have been assigned to the Special Investigations Section and in the spring of 2003, the name of the organization was changed to the Compliance, Auditing, and Gambling Enforcement Unit (C.A.G.E.). This unit continues to be staffed by one Corporal, one Trooper, one EO3, and one clerical position. There are currently no trained auditors or accountants on the C.A.G.E. complement.

While the "Special Investigations Section" was considered the auditing arm of the BLCE, its successor, the C.A.G.E. Unit, is considered by BLCE officials to be more of a policy and compliance unit than an auditing section. With the retirement since 1987 of many LEOs who had audit training and experience, relatively little formal audit activity is presently occurring.

²The Liquor Code provides no authority for condemned gambling devices to be dismantled to allow for the sale of component parts.

C. Statewide Deployment of LEOs

The *BLCE Procedures Manual* describes a general methodology for assigning BLCE personnel to the various district offices. For Liquor Enforcement Officers, the primary criterion to be used in determining the number of LEOs allocated to each district office is the number of establishments licensed by the Pennsylvania Liquor Control Board in each district office's geographic area. The Manual qualifies this by stating that other local factors (such as number of speakeasies, frequency of special events occurring in the district office area, etc.) shall be examined on a case-by-case basis to determine their impact on the general methodology.

As indicated in Table 38, the distribution and deployment of LEOs (i.e., authorized complement) to the districts is generally proportional to the number and proportion of the licenses in those districts to the statewide total. In all cases the difference is less than plus or minus 2 percent. The widest divergence occurs in the Philadelphia District Office, where the number of LEOs deployed is 1.6 percent higher than the percentage of licensees in that district.

Table 38

Deployment of LEOs to District Enforcement Offices*					
District Enforcement Office	No. of Licensees ^a	% of State Total	No. of LEOs	% of State Total	LEOs to Licensees (+ or -)
Philadelphia	3,244	17.7%	27	19.3%	+1.6%
Wilkes-Barre	2,138	11.6	15	10.7	-0.9%
Harrisburg	1,678	9.1	13	9.3	+0.2%
Pittsburgh	4,225	23.0	32	22.9	-0.1%
Altoona	1,077	5.9	8	5.7	-0.2%
Williamsport	887	4.8	7	5.0	+0.2%
Punxsutawney.....	886	4.8	7	5.0	+0.2%
Erie.....	1,164	6.3	9	6.4	+0.1%
Allentown	<u>3,075</u>	<u>16.7</u>	<u>22</u>	<u>15.7</u>	-1.0%
Total	18,374	100.0%	140	100.0%	

*Based on licensee data as of January 30, 2006, and the LEO authorized complement level for each district office as of January 2006.

^aSee Appendix C for a breakdown of liquor licensees, by county.

Source: Developed by LB&FC staff using information obtained from the Pennsylvania State Police and the PLCB.

In the case of supervisory staff, Enforcement Officer 3s are to be allocated to the district offices based on the following guidelines:

- up to 8 officers (LEOs) justifies 1 EO3;
- 8-14 officers justifies 2 EO3s;
- 15-21 officers justifies 3 EO3s;
- 22-28 officers justifies 4 EO3s; and
- 29-35 officers justifies 5 EO3s.

An examination of the assignment of EO3s among the districts indicates compliance with these guidelines for the districts of Philadelphia, Harrisburg, Altoona, and Erie. The following five districts show EO3 assignment that is at variance from the guideline:

- Wilkes-Barre – 2 EO3s (one less than recommended);
- Pittsburgh – 4 EO3s (one less than recommended);
- Williamsport – 2 EO3s (one more than recommended);
- Punxsutawney – 2 EO3s (one more than recommended); and
- Allentown – 3 EO3s (one more than recommended).

The Manual also provides, however, that the Director of the Bureau of Liquor Control Enforcement has discretionary authority to modify the assignment criteria or allocation of personnel on an as-needed basis. According to the BLCE Director of Operations, allocations in effect, as of January 30, 2006, were based on the application of the allocation methodology plus consideration of operational needs. For example, the addition of an extra EO3 in Williamsport and Punxsutawney was deemed necessary on the basis of operational effectiveness.

D. Point System for Liquor Code Violations by Philadelphia Licensees

On February 6, 2005, legislative changes took effect establishing a point system for violations by liquor licensees in all cities of the first class (i.e., Philadelphia).³ Act 2005-39 subsequently limited the point system to restaurant and eating place licensees in cities of the first class. Upon the accumulation of certain numbers of points, such licensees are subject to various consequences, including at the highest levels, license revocation. (See Exhibit 11 for a description of the basis upon which points are assessed.)

Consequences for the accumulation of points range from mandated compliance with the Responsible Alcohol Management Program (for 10 or more points), to placing the license in safekeeping (for 15 or more points), to license revocation (for accumulation of 20 points or more in more than one citation).

Points assigned to any license record are removed at the rate of three points for each twelve consecutive months of operation in which the license has not been assessed points. Points assigned to a license record transfer with the license to a new owner.

³The point system in Philadelphia has been made a part of a court challenge before the federal district court. See Asian-American Beverage Association, et al. v. Commonwealth of Pennsylvania, et al. Counsel for the Office of the Attorney General told us the primary challenge raised by the case involves the beer-to-go permitting requirement in Philadelphia, but that a secondary challenge is being made against the point system. (See also Section VII.G.)

**The Statutory Basis of Point Assessment for
Liquor Code Violations in Philadelphia**

1. For enhanced penalty violations, an ALJ is to assign five to ten points for each of the following violations, depending on the circumstances surrounding the violations:
 - section 493(1) as relates to sales to minors and visibly intoxicated individuals;
 - section 493(10) as relates to lewd, immoral, or improper entertainment;
 - section 493(14) as relates to permitting undesirable persons or minors to frequent premises;
 - section 493(16) as relates to furnishing liquor at unlawful hours;
 - section 493(21) as relates to refusing inspection;
 - section 611 as relates to public nuisances;
 - section 493(31) as relates to sale or purchase of a controlled substance or drug paraphernalia;
 - 18 Pa C.S. §5902 (relating to prostitution and related offenses) committed by the owner or operator of the licensed premises or an agent thereof if the violation occurs at the licensed premises;
 - 18 Pa C.S. §6301 (relating to corruption of minors) committed by the owner or operator of the licensed premises or an agent thereof if the violation occurs at the licensed premises; and
 - 18 Pa C.S. (relating to crimes and offenses) if the violation is graded as a felony.

2. For the following violations, an ALJ is to assign two points:
 - section 467 as relates to failure to display license under transparent material;
 - section 491(5) as relates to failure to properly dispose of empty liquor containers;
 - section 493(6) as relates to brand or trade name on spigot;
 - section 493(12) as relates to failure to have records on premises;
 - section 493(20) as relates to unlawful advertising;
 - 40 Pa. Code §3.51 (relating to liquor) as relates to inside passages and connections to residence;
 - 40 Pa. Code §5.42 (relating to lighting) as relates to adequate lighting;
 - 40 Pa. Code §§5.51(a) (relating to cleaning of coils, tap rods, and connections) and 5.52 (relating to certificate or record required) as relates to cleaning of coils and maintenance of records on the cleaning of coils; or
 - a violation of any requirement of the board or the city to obtain or maintain the license issued by the board.

3. Regulations detail points to be assessed for what are termed “non-enhanced violations.” As established in regulation, the following violations are to be assessed between three to five points:
 - Supplying false information on applications or notices.
 - Verification of an application by an unauthorized person.
 - Offering, conferring, or agreeing to confer upon an enforcement officer of the Bureau of Liquor Control Enforcement or offering to pay or paying a commission, profit, or remuneration to a member or employee of the Board or other employee of the Commonwealth.

Exhibit 11 (Continued)

- Cashing, receiving, handling, or negotiating payroll and other checks.
- Holding an event, contest, or tournament on the licensed premises involving the consumption of alcoholic beverages.
- Failure to be a bona fide restaurant by not providing sufficient food items, eating utensils, dishes, and seating in a location with a total area of four hundred (400) square feet available to the public in one (1) or more rooms.
- Failure to be a bona fide eating place by not providing sufficient food items, eating utensils, dishes, and seating; in a location with a total area of three hundred (300) square feet available to the public in one (1) or more rooms.
- Failure to maintain a permanent partition at least four (4) feet high between the licensed eating place and other business.
- Permitting entertainment outside of lawful service hours or on Sunday before 11:00 a.m. or after 2:00 a.m. on the following Monday.
- Permitting entertainment to occur without an amusement permit.
- Permitting entertainment while the license or amusement permit was suspended by order of an ALJ.
- Furnishing false information concerning sales of food and beverages when applying for a Sunday sales permit; or concealing the pecuniary interest of others; or concealing the source of funds when applying for a license.
- Possessing or operating gambling devices or paraphernalia or permitting gambling or lotteries, poolselling, and/or bookmaking on the licensed premises.
- Interference with a liquor control enforcement officer, police officer, or Board employee in the administration of the law or other governmental function.
- Altering an expired liquor license to show it as current and valid.
- Consumption of liquor or malt or brewed beverages by licensee or its agents while tending bar or otherwise serving alcoholic beverages.
- Selling alcoholic beverages during a period of license or permit suspension.
- Permitting another person to operate a business on the licensed premises.
- Permitting another person or entity to own and/or operate the licensed premises.
- Selling alcoholic beverages after the license is submitted for safekeeping.
- Selling alcoholic beverages after the license has expired.
- Selling beer products for takeout in excess of one hundred ninety-two (192) fluid ounces in a single sale (except for distributors, importing distributors, and manufacturers).
- Selling untaxed cigarettes.

Source: Developed by LB&FC staff using information obtained from the Pennsylvania Liquor Code.

According to PLCB staff, no license revocations had yet occurred (as of April 2006) as a result of a licensee accumulating the specified number of points under this system.

E. The BLCE Procedures Manual

The BLCE's *Bureau Procedures Manual* is outdated and does not include the full range of activities and programs for which the Bureau is responsible. Although portions of the manual were revised in 2004 and 2005, much of the document dates to June 2002 and before.

An itemization here of specific examples of current gaps or deficiencies in the manual does not appear necessary or useful. We have discussed the manual with BLCE headquarters officials and the Director of the Operations Division acknowledges there are problems in the existing manual. He has advised us that work is underway on a new, revised manual. Further changes and additions to the manual will be necessary in accordance with actions that may be taken on the recommendations contained in this report.

F. Appeals From Adjudications of BLCE Citations

The BLCE frequently prepares and prosecutes violations twice: once for the OALJ adjudication hearing and then again on appeal for the *de novo* hearing before the court of common pleas. The double preparation creates cost inefficiencies for BLCE attorneys, and the BLCE experience is that courts of common pleas typically reduce sanctions imposed by the OALJ.

Generally, judicial review of state agency administrative actions and determinations is limited in scope, determining whether constitutional rights have been violated, whether an error of law has been committed, and whether the findings of fact were supported by substantial evidence. However, due to provisions in the Liquor Code, liquor enforcement cases do not follow the general administrative process set forth in Pennsylvania administrative law for the judicial review of Commonwealth agency actions.

The typical role of a court reviewing administrative action is to examine the record and the agency's decision, to interpret the law, and to ensure that such decision was made within the parameters of the law. Beyond this, an agency's decisions and orders are generally entitled to deference by a reviewing court.

Under Pennsylvania law, appeals from final orders of Commonwealth agencies generally go directly to the Commonwealth Court where the court would hear the appeal on the record certified by the Commonwealth agency. See 42 Pa. C.S.A. §763 and 2 Pa. C.S.A. §704. After this hearing, the Commonwealth Court is

required to affirm the adjudication of the agency unless it finds that that adjudication was in violation of the appellant's constitutional rights or is not in accordance with law or that a finding of fact is not supported by substantial evidence.

Appeals from Administrative Law Judge adjudications of BLCE citations are appealed first to the Liquor Control Board, but then, however, are not appealed to the Commonwealth Court but instead are appealed to a court of common pleas.⁴ Under the Liquor Code, the court of common pleas is required to conduct a *de novo* review of the decision of the Liquor Control Board. A *de novo* hearing is a *new* hearing on the matter, conducted as if the original hearing had not taken place. As such, the court has the authority, in its discretion, to make new findings of fact and conclusions of law in the case before it.

The Commonwealth Court has held that it is improper for a court of common pleas to conduct a review of a liquor case only to determine whether the determination of the Board was supported by substantial evidence, whether an error of law was committed or whether there was an abuse of discretion and not conducting a *de novo* review.⁵ The BLCE is not, however, required to retry its case in its entirety and may rely on the record created before the OALJ. The court has the duty to receive the record from the OALJ hearing, together with any other evidence properly submitted, and to then make its own findings of fact and conclusions of law.⁶

While the BLCE can simply rely on the record from the OALJ adjudication, the reality, according to BLCE counsel, is that in many cases, where the credibility of witnesses and the weight to be given to particular testimony and evidence are key, the BLCE must prepare and prosecute matters twice: once for the OALJ adjudication hearing and then again on appeal for the *de novo* hearing before the court of common pleas.

The BLCE favors conforming the Liquor Code administrative trials and appeals to the general administrative practice, or at a minimum, to eliminate the *de novo* scope of review of the courts of common pleas.⁷ The Chief Administrative Law

⁴This is also the process for several other types of Commonwealth agency adjudications in addition to BLCE appeals, as set forth in 42 Pa. C.S.A. §933, such as (a) Department of Health birth record determinations; (b) certain Vehicle Code cases of the Department of Transportation; (c) Worker's Compensation Appeals Board determinations under the Pennsylvania Occupational Disease Act; (d) Department of Revenue estate administration tax determinations; (e) PLRB determinations under Act 195 (relating to non-Commonwealth employee cases); and (f) Building Energy Conservation Act determinations of the Department of Labor & Industry or DCED.

⁵*PSP Bureau of Liquor Enforcement v. R-Lounge, Ltd.*, 646 A.2d 609 (Pa. Commw. Ct. 1994).

⁶*PSP Bureau of Liquor Enforcement v. Kelly's Bar, Inc.*, 639 A.2d 440 (Pa. Supreme Ct. 1994).

⁷For example, appeals of determinations of the Pennsylvania Labor Relations Board in cases not involving Commonwealth employees are appealed first to a court of common pleas. The role of a court in review of a determination of the PLRB is limited to determining whether or not the findings of the PLRB are supported by substantial and legally credible evidence, and whether the conclusions deduced therefrom are reasonable and not capricious, arbitrary, or illegal; the court may not substitute judgment for that of the PLRB where no such errors were committed by the Board. See, Standard Pa. Practice §§166:774-166:778.

Judge for the PLCB commented that courts of common pleas generally do not issue consistent rulings in Liquor Code appeals from one court to the other.⁸ This creates a local judge issue in that how the Liquor Code is applied to licensees differs depending on where a licensee is located and what common pleas judge hears the appeal.

G. “Beer-to-Go” Permits

Act 39 of 2005 amended the Liquor Code to create a new permit for the sale of malt or brewed beverages off the premises (“beer-to-go”) which applies only to restaurant and retail dispenser licensees in cities of the first class, hotel and restaurant liquor licensees, airport restaurant liquor licensees, municipal golf course restaurant liquor licensees and privately-owned public golf course restaurant licensees. Specifically, all restaurant and retail dispenser licensees in a city of the first class who are otherwise permitted to sell malt or brewed beverages on a take-out basis to patrons may not do so unless granted a special permit from the PLCB. An application for the “beer-to-go” permit must be accompanied by approval from the governing body of a city of the first class in which a licensed premises is located. The fee for this special permit is \$300.

According to Act 39 of 2005, “The governing body of the city must render a decision by ordinance or resolution within 45 days of receipt of the licensee’s request for off-premises consumption. The governing body must approve the request unless it finds that doing so would adversely affect the welfare, health, peace and morals of the city or its residents. A decision by the city to deny a request may be appealed to the court of common pleas in the county in which the city is located. The failure to render a decision by the governing body of a city of the first class within the 45-day period shall be deemed approval of the permit.”

The creation of this new permit occurred, at least in part, to deal with enforcement issues at establishments referred to as “Stop-and-Gos” operating mainly, but not exclusively, in Philadelphia County.⁹

⁸According to the Chief Administrative Law Judge, not only are licensees treated differently in the imposition of penalties based on the location of the common pleas court hearing the case, but there have been instances where the common pleas courts make legal conclusions and interpretations that are inconsistent from one jurisdiction to another.

⁹To address problem establishments, a “Stop-and-Go” task force is also currently operational in Philadelphia. According to the BLCE Eastern Section Commander and Philadelphia District Office Commander, intelligence gathered and shared within the task force has led to the identification and investigation of particularly troublesome establishments. The Director of the Division of Operations indicated that BLCE will continue to work with the Philadelphia Police Department and members of the Philadelphia “Stop-and-Go” task force to more effectively enforce the Liquor Code in such establishments.

The term "Stop-and-Go" is not an identification of a class of liquor licensee, but rather a colloquial term used to describe the nature of operation of a number of licensed establishments. Typically, such establishments possess either an Eating Place (E) or Restaurant (R) license. Class E licensed establishments are commonly referred to as a delicatessen or corner store. Much of the alcohol sold in "Stop-and-Go" establishments are take-out sales of malt or brewed beverages in "six-pack" or 40-ounce containers.

The Director of BLCE indicated that many "Stop-and-Go" establishments possess Class E licenses. Some EO3s identified the primary purpose of the Class E license as the elimination of saloon atmospheres in which the sale of alcohol was the sole intent of an establishment.

Class E licenses mandate that the primary purpose of the licensed establishment is the regular preparation and service of food. Class E licenses require the interior dimensions of the establishment to be no less than 300 square feet, equipped with at least 30 chairs, or the equivalent seating, at tables for public use. Moreover, Class E licensees may only sell beer or its variants; liquor and wine sales are forbidden.

The licensee can sell up to 192 fluid ounces of beer products, in original containers, for take-out purposes. Class E licensees may not sell any single, open container of alcoholic beverage for consumption outside the establishment. This license is also restricted by the county-quota law.

Through meetings with the BLCE Eastern Section Commander, the Philadelphia District Office Commander, and EO3s in the Philadelphia District Office, we identified several characteristics of a typical "Stop-and-Go." The three main products typically sold at such establishments are general food products, beer, and devices (such as pipes) intended for tobacco use that often are used for smoking illegal drugs.

The owner of a "Stop-and-Go" establishment occasionally owns an adjoined business that does not possess a liquor license. A Plexiglas partition is sometimes found between the licensed establishment and the stand-alone business. As a result, a "co-mingling of clientele" usually occurs between the licensed establishment and the adjacent business, which may include a number of minors.

The ease of movement between the licensed establishment and the business not possessing a liquor license has been identified as contributing to socially detrimental behavior occurring within both the licensed establishment and stand-alone business, as well as the surrounding neighborhood. Examples of such behavior may include customers consuming purchased malt or brewed beverages directly outside of the establishment or the furnishing of malt or brewed beverages to minors either on the premises or in the area nearby "Stop-and-Go" establishments.

The House Liquor Control Committee conducted a hearing on September 14, 2004, concerning the nature and operations of “Stop-and-Go” establishments in Philadelphia. In this hearing, Philadelphia residents who testified identified the following observed activities in “Stop-and-Go” establishments:

- The sale of individual cigarettes.
- The sale of pipes or other devices intended for tobacco use; but commonly used to smoke illegal drugs.
- Failure to provide adequate and available seating.
- Complicity, through ignoring, the sale of illegal drugs on or around the licensed premises.
- Failure to provide trash containers; resulting in the scattering of rubbish in and around the licensed establishment.
- Sale of South Eastern Pennsylvania Transit Authority (SEPTA) tokens for personal profit.

Since November 1, 2005, the effective date of Act 39’s “beer-to-go” provisions, Philadelphia County Council has approved 822 off-premises sales applications (OPS) with about 50 other applications pending appeal in the Court of Common Pleas. According to the PLCB, it had approved approximately 642 applications for “beer-to-go” permits (i.e., off premises sales) as of mid-April 2006. The discrepancy between the number of PLCB-granted permits and City Council approvals may be partially explained by licensees who did not forward the approved application to PLCB or those which, due to the volume of approved applications by Council, have not yet been acted upon by the PLCB.

Beer-to-go permits must be renewed annually. Act 39 authorizes the PLCB to object to the renewal of a “beer-to-go” permit based upon the operating history of the permit-holding licensee, and the Board may refuse to renew the permit following notice and a hearing. A licensee whose “beer-to-go” permit is not renewed is ineligible to receive the permit for an additional two years.

The beer-to-go permit requirements of Act 39, however, are being challenged in court.¹⁰ Several retail operators of “stop and go” establishments in Philadelphia originally brought suit in Commonwealth Court alleging that the permitting requirements of Act 39 were in conflict with other provisions of the Liquor Code and violated the Pennsylvania Constitution and the Fourteenth Amendment of the U.S. Constitution. Upon request from the plaintiffs, following an expedited hearing, the Commonwealth Court temporarily enjoined the enforcement of Act 39. The case was then removed to federal court where the injunction was vacated. Counsel for the Pennsylvania Office of Attorney General indicated that, as of early May 2006, the case was in a procedural holding pattern. The plaintiffs have removed the

¹⁰Asian-American Beverage Association, et al. v. Commonwealth of Pennsylvania, et al., Civil Action No. 1:05-CV-2135, in the federal U.S. District Court for the Middle District of Pennsylvania.

federal claims and the question being decided is whether the case should remain in federal court or be returned to state court.

H. Oversight of Direct Shipments of Wine

The outcome of currently pending court actions holds potentially significant implications for the BLCE. Specifically, how the issue of the internet/direct shipment of wine issue is handled could involve the BLCE in enforcing the detection and interdiction of illegally shipped wine. BLCE representatives have serious concerns about the potential impact this issue may have on the BLCE's enforcement staff resources and current enforcement responsibilities.

On May 16, 2005, the U.S. Supreme Court struck down direct shipping laws in Michigan and New York.¹¹ Both Michigan and New York allowed in-state wineries to sell wine directly to consumers but either prohibited or made it economically impractical for out-of-state wineries to do so. Similarly, the Pennsylvania Liquor Code prohibits shipment of wine from out-of-state wineries to Pennsylvania residents except where certain requirements are met by the out-of-state wineries that are not applicable to in-state wineries. For example, in order for an out-of-state winery to sell and ship directly to a Pennsylvania resident, it must comply with the following requirements:

- obtain a direct wine shipper license;
- limit shipment to up to nine liters per month;
- only ship wines not included on a list of wines available for sale in Pennsylvania liquor stores; and
- ship only to a Pennsylvania liquor store, where the product will not be released until all monies due, including taxes and fees are paid by the consumer.

In June 2005, suit was filed in federal court alleging the unconstitutionality of Pennsylvania's direct shipping law.¹² The Pennsylvania Office of Attorney General has advised the PLCB the direct shipping provisions of the Liquor Code are unconstitutional under the U.S. Supreme Court's recent decision. The PLCB issued Advisory Notice No. 21, which made in-state limited winery licensees eligible to apply for direct shipper licenses the same as out-of-state direct wine shippers.

On November 9, 2005, the federal Eastern District Court issued an injunction against the PLCB preventing them from enforcing the direct shipping provisions of

¹¹Granholm, Governor of Michigan, et al. v. Heald, et al., 125 S. Ct. 1885 (2005). The Court held (1) that both state laws discriminated against interstate commerce in violation of the U.S. Constitution's Commerce Clause and (2) that the states' discrimination was neither authorized nor permitted by the Twenty-first Amendment.

¹²Clyde H. Cutner, et al. v. Jonathan H. Newman, et al., Case No. 05-03007-JF. Similar cases are also currently pending in Florida, Ohio, New Jersey, Massachusetts, Kentucky, Indiana, and Arkansas.

the Liquor Code. The Pennsylvania Commonwealth Court enjoined the PLCB from enforcing the provisions of Advisory Notice No. 21, thereby removing the direct shipping requirements that had been imposed on Pennsylvania wineries.¹³ Senate Bill 996 has been introduced that proposes to reconstruct the direct shipping provisions of the Liquor Code to create requirements for wineries interested in shipping wine directly to consumers. These new requirements would be equally applicable to both in-state and out-of-state wineries. As of early 2006, no action had been taken on this bill. Pending legislative resolution of the direct shipping issue, the LCB is permitting anyone with a Limited Winery License to engage in direct shipment, which will ultimately require the licensing of out-of-state wineries.

The BLCE's Director of Operations told us that BLCE continues to monitor developments regarding the highly uncertain role of BLCE in Internet wine sales. Following the injunction issued by the Commonwealth Court restricting PLCB from prohibiting in-state direct shipments and the federal Eastern District Court prohibiting PLCB from enforcing the Liquor Code provisions restricting direct shipment of wine, direct out-of-state wine shipments became temporarily possible.

At that time, the BLCE conducted a pilot program in the Harrisburg area in conjunction with UPS, to interdict out-of-state shipments of wine prior to the November 11, 2005, Commonwealth Court injunction. The Director of Operations reported that a significant amount of wine was interdicted as a result, with the intent of returning the wine to the seller at the seller's expense. Alternatively, the wine would be considered to be contraband and destroyed.

The Director further described the potential assignment of interdicting out-of-state wine shipments as "almost unenforceable" given the current BLCE complement.

¹³See, Pa. Wine Assn. v. Comm. of Pa., No 564 MD 2005 (Pa. Commw. Ct.)

VIII. Liquor Control Enforcement in Other States

A. State Organizational Approaches

State Regulatory and Enforcement Systems

State alcoholic beverage regulatory systems are traditionally placed into one of two categories: “control” systems and “license” systems. In the control state systems, the state is involved in the sale of alcoholic beverages at the wholesale and/or retail level. Currently, Pennsylvania and 17 other control states operate as the sole wholesalers of distilled spirits within their borders. Retail distribution, however, is conducted differently in each control state through state-operated retail stores, contract agency retail outlets, private retailers, or a combination of state, agency, and/or private stores. Control states, like license states, regulate the activities of other persons engaged in the sale of alcoholic beverages through licensure.

States in which the wholesale and retail off-premises sale of alcoholic beverages is conducted exclusively by privately-owned outlets are considered license states. Under this system, the state exercises its regulatory control of alcoholic beverage sales by licensing the private entities operating the sales outlets. A total of 32 states operate under a license system of alcoholic beverage distribution.

Both control states and license states regulate alcohol industry members through licensure. Under the licensing function, alcoholic beverage licenses are treated as a privilege rather than a right, and their issuance is conditioned upon a set of restrictions and qualifications (including the agreement of licensees to abide by the laws and regulations governing such establishments in their respective jurisdictions).

Although licensing is a key function of the alcoholic beverage regulatory systems of all states, whether they be control states or license states, the function of alcoholic beverage law enforcement must be considered as a separate and distinct responsibility. Under the enforcement function, the assurances provided under the established licensing systems are examined and tested, and when violations are observed, penalties (ranging from fines up to and including license revocation and imprisonment) may be invoked.

Every state exercises its statutory, police, and administrative powers to regulate the distribution of and accessibility to beverage alcohol. The extent of that regulation and the placement of the enforcement function varies from state to state, but the essential point remains that all Americans experience some degree of governmental control over beverage alcohol.

This section of the report addresses the study objective which was to examine the organizational placement of the liquor law enforcement function in other states and the different liquor law enforcement models in use in the states. We conducted this review and analysis in order to place Pennsylvania's approach and structure in the national context. Further explanation of the methodology used in this examination of liquor law enforcement in other states is provided in Section I, the report introduction.

An Inventory and Typology of State Liquor Law Enforcement Agencies

States cannot be easily categorized in terms of their approach to and organizational placement of liquor law enforcement. Also, there is no clear relationship between a state's approach to liquor control enforcement and whether the state is a license or a control jurisdiction.

Most states have a state agency with primary responsibility for enforcing alcohol laws and regulations. Exhibit 12 provides information about the state agency and subsection of that agency (e.g., bureau, division, etc.) that is authorized to perform liquor law enforcement. It also indicates the job title of the position involved in liquor law enforcement work.

For example, in Pennsylvania, the State Police is the state agency, the Bureau of Liquor Control Enforcement is the responsible bureau, and Liquor Enforcement Officer is the title of the enforcement position. In five states, Maine, Nevada, North Dakota, Rhode Island, and South Dakota, we were unable to determine whether liquor law enforcement positions currently exist.

In addition to identifying and naming the agency in each state that is responsible for liquor law enforcement, we also attempted to group the states by the type of agency (based on primary function or agency mission) that houses the liquor law enforcement function. The category headings include: liquor control, law enforcement, revenue/finance, and other business/consumer regulatory agency.

Using this typology, Exhibit 13 presents a listing of each state according to the nature of the state agency in which responsibility for liquor law enforcement is placed. As shown, the largest category (21 states) includes enforcement sections located within a liquor control agency or agency having regulatory as well as enforcement responsibilities in relation to the alcoholic beverage industry. The next largest category (15 states including Pennsylvania) is based on the traditional law enforcement model. Third, a smaller number of states (11) have placed the responsibility for liquor law enforcement, and often alcoholic beverage industry regulation generally, within a revenue or finance department. Finally, liquor law enforcement in three remaining states (Connecticut, Florida, and Rhode Island) has been placed in an agency whose mission is to license or regulate business to protect the consumer.

Exhibit 12

The Organizational Placement of the Liquor Law Enforcement Function in the States

States	State Agency	Bureau/Division	Title of Enforcement Position	Number of Agents Including Supervisors
Alabama	Alcoholic Beverage Control Board	Enforcement Division	Enforcement Agent	94
Alaska	Dept. of Public Safety	Alcoholic Beverage Control Board	Enforcement Officer	3 ^a
Arizona	Dept. of Liquor Licenses and Control	Investigations Division	Special Investigator	19
Arkansas	Dept. of Finance and Administration	Alcoholic Beverage Control Div.— Enforcement	Agent	19
California	Dept. of Alcoholic Beverage Control	----	Investigator	260
Colorado	Dept. of Revenue	Liquor Enforcement Division	Investigator	16
Connecticut	Dept. of Consumer Protection	Liquor Control Division	Agent	34 ^b
Delaware	Dept. of Safety & Homeland Security	Div. of Alcoholic Beverage Control and Tobacco Enforcement	Agent	16
Florida	Dept. of Business and Professional Regulation	Div. of Alcoholic Beverages and Tobacco	Investigator	145
Georgia	Dept. of Revenue	Alcohol and Tobacco Division	Special Agent	35
Hawaii ^c	Honolulu Liquor Commission	Enforcement Section	Investigator	16
Idaho	State Police	Alcohol Beverage Control Bureau	Investigative Assistant	4 ^d
Illinois	Liquor Control Commission	Investigations Division	Special Agent	35 ^e
Indiana	Alcohol and Tobacco Commission	Excise Police	Enforcement Officer	64
Iowa	Dept. of Public Safety	Div. of Criminal Investigation	Special Agent	170 ^f
Kansas	Dept. of Revenue	Div. of Alcoholic Beverage Control	Enforcement Agent	21
Kentucky	Environmental and Public Protection Cabinet	Office of Alcoholic Beverage Control	Investigator	41

Exhibit 12 (Continued)

States	State Agency	Bureau/Division	Title of Enforcement Position	Number of Agents Including Supervisors
Louisiana	Dept. of Revenue	Office of Alcohol & Tobacco Control	Agent/Special Agent	46
Maine	Department of Public Safety ^g	----	----	0
Maryland	Comptroller of Maryland ^h	Field Enforcement Bureau	Agent	25
Massachusetts	Alcoholic Beverages Control Commission	Investigative Division	Investigator	14
Michigan	Dept. of Labor and Economic Growth	Liquor Control Commission, Enforcement Division	Regulation Agent	52 ⁱ
Minnesota	Dept. of Public Safety	Div. of Alcohol & Gambling Enforcement, Alcohol Enforcement Section	Investigator Special Agent	4 ^j
Mississippi	State Tax Commission	Office of Alcoholic Beverage Control	Agent	25
Missouri	Dept. of Public Safety	Div. of Alcohol & Tobacco Control	Agent/Special Agent	55
Montana	Dept. of Justice	Gambling Control Div., Investigation Bureau	Criminal Investigator	16 ^k
Nebraska	State Patrol	Alcohol-Tobacco Enforcement Division	Investigator/Inspector	12
Nevada	Department of Taxation	----	----	? ^l
New Hampshire	State Liquor Commission	Bureau of Enforcement	Investigator	23
New Jersey	Dept. of Law and Public Safety	Division of ABC, Enforcement Bureau	Investigator	20
New Mexico	Dept. of Public Safety	Special Investigations Division	Special Agent	20
New York	Div. of ABC-State Liquor Authority	Enforcement Bureau	Investigator	29 ^m
North Carolina	Dept. of Crime Control and Public Safety	Alcohol Law Enforcement Division	Agent	105
North Dakota	Office of Attorney General	Bureau of Criminal Investigation	----	? ⁿ
Ohio	Dept. of Public Safety	Investigative Unit	Agent	107
Oklahoma	Alcoholic Beverage Laws Enforcement Commission	Enforcement Division	Agent	34

Exhibit 12 (Continued)

States	State Agency	Bureau/Division	Title of Enforcement Position	Number of Agents Including Supervisors
Oregon	Liquor Control Commission	Enforcement and Field Operations	Liquor Regulatory Specialist	43 ^o
Pennsylvania	State Police	Bureau of Liquor Control Enforcement	Liquor Enforcement Officer	147 ^p
Rhode Island	Dept. of Business Regulation	Div. of Commercial Licensing and Regulation	----	? ^q
South Carolina	State Law Enforcement Division	----	Law Enforcement Officer	54
South Dakota	Dept. of Revenue & Regulation	--	----	? ^r
Tennessee	Alcoholic Beverage Commission	Law Enforcement Section	Special Agent	37
Texas	Alcoholic Beverage Commission	Enforcement Division	Agent/Investigator	300
Utah	Dept. of Public Safety	State Bureau of Investigation, Liquor Enforcement Section	Agent	12
Vermont	Dept. of Liquor Control	Enforcement Section	Investigator	18
Virginia	Dept. of Alcoholic Beverage Control	Bureau of Law Enforcement	Special Agent	129
Washington	Liquor Control Board	Enforcement and Education Division	Liquor Enforcement Officer	79
West Virginia	Alcohol Beverage Control Administration	Enforcement Division	Inspector	50
Wisconsin	Dept. of Revenue	Alcohol and Tobacco Enforcement	Special Agent	12
Wyoming	Department of Revenue	Liquor Division	Staff Investigator	1 ^s

(See footnotes on next page.)

Source: Developed by LB&FC staff using information obtained from the *National Alcohol Beverage Control Association (NABCA) Survey Book, 2005 Edition; The Role of Alcohol Beverage Control Agencies in the Enforcement and Adjudication of Alcohol Laws*, the National Highway Traffic Safety Administration, Appendix B, July 2005; a review of state liquor enforcement agency websites; and responses to an LB&FC staff-administered survey conducted in the fall of 2005.

Footnotes to Exhibit 12

^aAccording to one source, the Commissioner of the Department of Public Safety has not granted the ABC Board enforcement officers the authority to carry firearms or to make arrests. It also appears that the Board may be assisted in enforcement by the Alaska State Police, also located in the Department of Safety.

^bThe Liquor Control Division is assisted by local and state police officers who have arrest authority.

^cThere is no statewide liquor enforcement in Hawaii; liquor enforcement is done at the county level. The Honolulu Liquor Commission serves the county with the largest population.

^dAs of November 2005, the ABC Bureau had one lieutenant and one sergeant (with administrative and supervisory responsibilities) and two investigative assistants with no arrest authority. The agency receives assistance from local law enforcement.

^eLCC agents carry out inspections and investigative activities, but their authority is regulatory/administrative in nature. They function as liaisons to local liquor commissions and local law enforcement agencies.

^fAs of November 2005, the Division had 160 officers/special agents, and 10 supervisors. However, no officers were assigned to liquor enforcement duties. Three officers (assigned to enforce the amusement device and social and charitable gaming statutes) monitor, as a secondary activity, licensed liquor establishments.

^gIn 2003, the Bureau of Liquor Enforcement was eliminated for budgetary reasons. The Commissioner of Public Safety continues to have statutory responsibility for liquor law enforcement, but local law enforcement agencies have been charged with enforcing all alcohol laws previously handled by the Bureau.

^hThe Bureau's statewide jurisdiction for liquor law enforcement does not include Montgomery County which is a "control" jurisdiction and has its own liquor enforcement staff. The 25 agents of the Comptroller's Field Enforcement Bureau are sworn law enforcement officers enforcing the state's revenue laws pertaining to alcoholic beverages, tobacco, motor fuels, business licenses, and the sale and use tax. However, local and state law enforcement officials work cooperatively with the Bureau's agents for liquor law enforcement.

ⁱMichigan LCC regulation agents have administrative powers, but no arrest authority and do not carry weapons. Enforcement is provided primarily at the local level.

^jThe Division has three Investigator Special Agents and one supervisor. The agents have no arrest authority and do not carry weapons. However, Minnesota statutes, at 626.84, include agents of the Division within the definition of "peace officer" as being "charged with the prevention and detection of crime and the enforcement of the general criminal laws of the state and who has the full power of arrest. . . ."

^kThe 16 Criminal Investigators are sworn law enforcement officers and do carry weapons. However, statutorily, the Gambling Control Division's role with respect to liquor law is primarily administrative enforcement and it is to liaison with local law enforcement authorities in matters relating to alcoholic beverage law enforcement. Further, the Department of Revenue is statutorily responsible for administering the Montana Alcoholic Beverage Code while the Department of Justice, Gambling Control Division, is responsible for conducting investigations related to the same Code. A memorandum of understanding is in effect to better coordinate their efforts.

^lEnforcement of liquor laws provided at local level, although Nevada Department of Taxation is charged with administration of state liquor law, including enforcement.

^mAlthough New York ABC investigators are "sworn police officers," they do not have arrest powers and do not carry firearms. Local police are required for the making of arrests.

ⁿEnforcement of liquor law provided at the local level.

^oLiquor Regulatory Specialists are sworn police officers but do not carry weapons. The State Police, sheriffs, constables, and all other police officers in the state are charged by law with enforcing all provisions of the Liquor Control Act and assisting the Oregon Liquor Commission in detecting violators of that statute and apprehending offenders.

^pAs of January 2006, the BLCE had 124 LEOs and 23 Enforcement Officer 3s (supervisors). There were 16 LEO and one EO3 vacancies. The total authorized complement is 164.

^qLocal and state police enforce the Alcoholic Beverages Act.

^rEnforcement provided at local level.

^sOne Liquor Division Investigator for state with no arrest powers. Enforcement is provided by local law enforcement authorities.

Based on statutory research, we were able to locate in almost every state an agency with jurisdiction over liquor law enforcement (Hawaii is the only state having a county-based rather than a state-based structure). However, in a number of cases, the state agency relies to a large extent on the efforts of local law enforcement agencies, with state efforts directed toward administrative enforcement or oversight of local enforcement efforts. Typically, in these situations, the state agency employs few or no enforcement agents or officers. A total of 11 states with agencies that essentially provide administrative enforcement only are identified on Exhibit 13 by footnote b/.

Exhibit 13

An Organizational Typology for State Liquor Law Enforcement Agencies
(By Agency Type)

<u>Liquor Control</u>	<u>Law Enforcement</u>	<u>Revenue</u>	<u>Other Business/Consumer Regulatory Agency</u>
Alabama	Delaware	Arkansas	Connecticut ^b
Alaska ^a	Idaho ^a	Colorado	Florida
Arizona	Iowa ^a	Georgia	Rhode Island ^b
California	Maine ^a	Kansas	
Hawaii	Minnesota	Louisiana	
Illinois ^b	Montana ^b	Maryland	
Indiana	Nebraska	Mississippi	
Kentucky	New Mexico	Nevada ^b	
Massachusetts ^b	North Carolina	South Dakota ^b	
Michigan ^b	North Dakota ^b	Wisconsin	
Missouri	Ohio	Wyoming ^b	
New Hampshire	Oklahoma		
New Jersey	Pennsylvania		
New York ^b	South Carolina		
Oregon	Utah		
Tennessee			
Texas			
Vermont			
Virginia			
Washington			
West Virginia			

^aState agency forced to rely on local authorities for law enforcement due to limited resources or agency policy.

^bState agency provides administrative enforcement only.

Source: Developed by LB&FC staff using information obtained from liquor industry publications and contacts with agency officials in other states.

Further, at least four more agencies rely on either other state agencies or on local law enforcement authorities to provide liquor law enforcement due to insufficient resources resulting from budget cut backs or for other policy related reasons. These states (Alaska, Idaho, Iowa, and Maine) are identified by footnote a/ on Exhibit 13.

States in Which the Liquor Law Enforcement Function Is in an Alcoholic Beverage or Liquor Control Agency

We identified 21 states where liquor law enforcement is incorporated in a traditional liquor control agency. The mission and philosophy of these agencies generally centers on the dual principles of industry regulation and public protection. For example, the mission of the Arizona Department of Liquor Licenses and Control is “to protect the health, safety and welfare of Arizona citizens by licensing the liquor industry and assuring compliance with state liquor laws through enforcement, training and adjudication.”

Generally speaking, alcoholic beverage administration, licensing, and enforcement are all housed within the same agency. This organizational placement also applied to Pennsylvania through 1987 when the enforcement responsibility was carried out by employees of the PLCB. Among the 21 “liquor control” agencies are 16 that are essentially stand-alone entities, governed by boards or commissions.

However, at least five are agencies or offices that are administratively housed in state departments with multiple mandates. These include the Alaska Alcoholic Beverage Control Board (located in the Department of Public Safety), the Kentucky Office of Alcoholic Beverage Control (in the Environmental and Public Protection Cabinet), the Michigan Liquor Control Commission (in the Department of Labor and Economic Growth), the Missouri Division of Alcohol and Tobacco Control (in the Department of Public Safety), and the New Jersey Division of Alcoholic Beverage Control (in the Department of Law and Public Safety).

Although these are civilian organizations, in many cases the enforcement staff consists of sworn law enforcement agents with arrest powers. This is the case in at least 12 of these states. Brief descriptions of several selected states from this category follow:

The Enforcement Division of the **Alabama** Alcoholic Beverage Control Board is staffed by about 94 sworn state law enforcement officers and is tasked with the enforcement of Alabama law, particularly those related to alcoholic beverages, tobacco products, and illegal drugs.

The **California** Department of Alcoholic Beverage Control maintains a contingent of about 235 sworn investigators plus supervisors who have full police powers to investigate and make arrests for violations of the Business and Professions Code that occur on or about licensed premises. Investigators are further empowered to enforce any penal provisions of the law any place in the state.

Alabama.....	Alcoholic Beverage Control Board
Alaska	Department of Public Safety, Alcoholic Beverage Control Board
Arizona.....	Department of Liquor Licenses and Control
California.....	Department of Alcoholic Beverage Control
Hawaii	Honolulu Liquor Commission
Illinois.....	Liquor Control Commission
Indiana	Alcohol and Tobacco Commission
Kentucky.....	Environmental and Public Protection Cabinet, Office of Alcoholic Beverage Control
Massachusetts.....	Alcoholic Beverages Control Commission
Michigan	Department of Labor and Economic Growth, Liquor Control Commission
Missouri	Department of Public Safety, Division of Alcohol & Tobacco Control
New Hampshire	State Liquor Commission
New Jersey	Department of Law and Public Safety, Division of Alcoholic Beverage Control
New York	Division of ABC-State Liquor Authority
Oregon.....	Liquor Control Commission
Tennessee.....	Alcoholic Beverages Commission
Texas	Alcoholic Beverage Commission
Vermont	Department of Liquor Control
Virginia.....	Department of Alcoholic Beverage Control
Washington.....	Liquor Control Board
West Virginia.....	Alcohol Beverage Control Administration

In **Indiana**, liquor or alcoholic beverage law enforcement is provided by the Indiana State Excise Police, which is the law enforcement division of the Alcohol and Tobacco Commission (ATC). State Excise police officers are empowered by statute to enforce the laws and rules of the ATC as well as the laws of the State of Indiana.

The Enforcement Division of the **Texas** Alcoholic Beverage Commission (TABC) is the largest and most visible division of the agency with 244 Agents/ Investigators and 56 supervisors. It is responsible for all activities related to the actual enforcement of the alcoholic beverage laws. Individuals in this division are commissioned peace officers charged with enforcing the Alcoholic Beverage Code and other laws of the state. Activities include investigations for minors in possession, public intoxication, bootlegging, prostitution, gambling, narcotics, weapons, and organized criminal activities. Enforcement agents also provide regular

instruction to school children, licensees and their employees, and to members of civic groups to promote a better understanding of the law and voluntary compliance.

In the **State of Washington**, alcoholic beverage law enforcement is provided at the state level by the Enforcement and Education Division of the Washington State Liquor Control Board (SLCB). According to a division official, there were 64 liquor enforcement officers and 13 supervisors, as of late 2005. The LEOs, under a limited law enforcement commission, enforce state liquor and tobacco laws by conducting criminal and administrative investigations, financial investigations, and on-premises inspections of liquor and tobacco licensed businesses and citing and arresting violators.

States in Which the Liquor Law Enforcement Function Is in a Law Enforcement-Type Agency

We identified 15 states (including Pennsylvania) in which the liquor law enforcement function is carried out by or through a state agency whose primary mission (like the Pennsylvania State Police) deals with statewide law enforcement. With the exception of two states (Minnesota and Oklahoma), the enforcement and licensing functions were separate, with licensing handled by a different state agency. Minnesota and Oklahoma were included among the 15 “law enforcement states” because their mission statements (as well as agency name) emphasized a law enforcement concentration. These states, and the liquor law enforcement agencies so identified, are as follows:

Delaware	Department of Safety & Homeland Security, Division of Alcoholic Beverage Control and Tobacco Enforcement
Idaho	State Police, Alcohol Beverage Control Division
Iowa.....	Department of Public Safety, Division of Criminal Investigation
Maine.....	Department of Public Safety, Bureau of Liquor Enforcement
Minnesota.....	Department of Public Safety, Division of Alcohol and Gambling Enforcement
Montana	Department of Justice, Gambling Control Division, Investigation Bureau
Nebraska.....	State Patrol, Alcohol-Tobacco Enforcement Division
New Mexico.....	Department of Public Safety, Special Investigations Division
North Carolina ...	Department of Crime Control and Public Safety, Division of Alcohol Law Enforcement
North Dakota	Office of Attorney General, Bureau of Criminal Investigation
Ohio.....	Department of Public Safety, Investigative Unit
Oklahoma.....	Alcoholic Beverage Laws Enforcement Commission, Enforcement Division
Pennsylvania ...	State Police, Bureau of Liquor Control Enforcement
South Carolina ..	State Law Enforcement Division
Utah.....	Department of Public Safety, State Bureau of Investigation, Liquor Enforcement Section

The states of **Idaho** (State Police) and **Nebraska** (State Patrol) each have units within their organizations dealing with alcoholic beverage enforcement. In Idaho, 2 Investigative Assistants (civilian employees) are supervised by a Sergeant. The Director of the Idaho Alcohol Beverage Control Bureau informed us that the Bureau is "severely understaffed for statewide enforcement." Nebraska has ten investigator/inspector positions which are filled by individuals which have met the minimum requirements to be a Trooper and have had at least two years' experience as a trooper prior to assignment to the Alcohol-Tobacco Enforcement Division. By statute, the investigators/inspectors of both agencies are authorized the same powers as peace officers of their respective states. In actual practice, however, the two civilian investigative assistants in Idaho are not permitted to carry weapons or make physical arrests.

It is interesting to note that, in eight of these fifteen states, liquor law enforcement is provided through an organizational division located within a department of public safety. In many state and local governments, departments of public safety have been created to serve as umbrella agencies providing administrative, financial, and technical support for core public safety functions, such as fire, emergency medical services, police, emergency communications, etc. Within state governments, a DPS is often the major law enforcement entity, the head of which in some cases may be the states' highest elected or appointed law enforcement official, usually the attorney general.

The **Delaware** Division of Alcohol and Tobacco Enforcement, which is located in the Department of Safety and Homeland Security, investigates violations of the Liquor Control Act and the Rules of the Office of the Alcoholic Beverage Control Commissioner (the agency responsible for alcoholic beverage regulation). The Division's agents are sworn police officers and are authorized to enforce all Delaware state laws.

The **Iowa** Division of Criminal Investigation (in the Department of Public Safety) is a local assistance agency to whom all law enforcement may come for help in difficult criminal investigations. The unit may also conduct investigations at the direction of the Commissioner of Public Safety, the Attorney General, or the Governor. One area of responsibility is investigations into vice related crimes of gambling and liquor. The Division has 160 special agents plus 10 supervisors with full law enforcement authority. However, according to a Division official, no officers were specifically assigned to liquor enforcement (as of November 2005). Consequently, liquor law enforcement is done primarily at the local level.

The **Maine** Bureau of Liquor Enforcement (in the Department of Public Safety) was abolished by statute in 2003 and since that time the burden of liquor law enforcement has reportedly fallen on local law enforcement authorities. However, the Commissioner of the Department of Public Safety continues to have the

responsibility to “designate a division to enforce the law relating to the manufacture, importation, storage, transportation and sale of all liquor”

The **Minnesota** Division of Alcohol and Gambling Enforcement (in the Department of Public Safety) has an Alcohol Enforcement Section with three civilian investigator special agents who are not sworn law enforcement officers and, according to information provided by the agency, are not authorized to carry firearms. However, Minnesota statutes, at section 626.84, includes agents of this division within the definition of “peace officer,” and charges such employees and officials with “the prevention and detection of crime and the enforcement of the general criminal laws of the state and who has the full power of arrest”

The **New Mexico** Special Investigations Division (in the Department of Public Safety) is an agency specifically created to enforce and investigate criminal and administrative alcohol, tobacco, and gambling violations, and for administration of concealed firearm licensing and related investigations. The special agents of the division are state commissioned police officers/criminal investigators with power to enforce all the laws of the state.

The **North Carolina** Division of Alcohol Law Enforcement (in the Department of Crime Control and Public Safety) is primarily responsible for enforcing the state’s Alcoholic Beverage Control Laws and Controlled Substances Act. The division’s agents have broad authority as peace officers to arrest and take other investigatory and enforcement actions for any criminal offense.

In **Ohio**, an Investigative Unit within the Department of Public Safety has the responsibility for enforcement of the state’s liquor laws and regulations (including regulations of the Liquor Control Commission). The unit consists of agents who are fully-certified, undercover, plain-clothed peace officers who investigate violations of liquor and tobacco laws, as well as food stamp fraud. The agents have criminal jurisdiction and serve as the sole law enforcement agency in the state with the power to administratively cite a liquor permit premises before the Liquor Control Commission.

In **Utah**, a Liquor Enforcement Section of the State Bureau of Investigation (in the Department of Public Safety) is responsible for liquor law enforcement, as well as laws pertaining to vice and gambling. The agents are sworn and certified as peace officers with general law enforcement authority.

Two states have independent (i.e., stand-alone) organizations that are somewhat unique in their role as law enforcement agencies. One is the **Oklahoma** Alcoholic Beverage Laws Enforcement (ABLE) Commission. Although this agency carries out other alcohol beverage regulation activities, its primary function is law enforcement, especially of the laws pertaining to alcoholic beverages, charity games, and youth access to tobacco. The agents of the Commission have all the powers and

authority of peace officers of the state. The second organization is the **South Carolina** Law Enforcement Division (SLED). This agency was created in 1947 by executive order of the governor to solve crime and promote public order in the state. Its primary mission is to provide quality manpower and technical assistance to all law enforcement agencies and to conduct professional investigations on behalf of the state as directed by the Governor or the Attorney General. SLED agents have statewide authority as peace officers.

Finally, in two states where liquor law enforcement is housed under the attorney general, the state agencies' roles are primarily administrative, as they are substantially assisted by local law enforcement agencies. These agencies are the **Montana** Department of Justice, Gambling Control Division, and the **North Dakota** Office of Attorney General.

States in Which the Liquor Law Enforcement Function Is in a State Revenue Agency

We identified 11 agencies where liquor law enforcement is located in a state agency whose primary function involved revenue, taxation, or financial administration. Placement of liquor enforcement in these organizations would seem logical based on the revenue enhancing role played by the alcoholic beverage industry. Several of these states tended to either rely substantially on local law enforcement authorities for liquor law enforcement or share that responsibility with local agencies.

Arkansas	Department of Finance and Administration, Alcoholic Beverage Control Division
Colorado	Department of Revenue, Liquor Enforcement Division
Georgia	Department of Revenue, Alcohol and Tobacco Division
Kansas	Department of Revenue, Division of Alcoholic Beverage Control
Louisiana.....	Department of Revenue, Office of Alcohol & Tobacco Control
Maryland	Comptroller of Maryland, Field Enforcement Bureau
Mississippi.....	State Tax Commission, Office of Alcoholic Beverage Control
Nevada.....	Department of Taxation
South Dakota	Department of Revenue and Regulations
Wisconsin.....	Department of Revenue, Alcohol and Tobacco Enforcement
Wyoming	Department of Revenue, Liquor Division

The states of Arkansas, Colorado, Georgia, Kansas, and Louisiana all employ agents or inspectors with general law enforcement powers. Some of these organizations enforce a variety of liquor related and other functions that differ to some extent from the LEOs duties in Pennsylvania. For example, agents of the **Arkansas Alcoholic Beverage Division** (in the Department of Finance and Administration), in addition to normal liquor enforcement duties, also inspect damaged shipments of controlled beverages that have been involved in fire or vehicle accident, to certify the extent and amount of damage for the purpose of refunding any taxes that have been paid to the state.

Investigators of the **Colorado** Division of Liquor and Tobacco Enforcement (in the Department of Revenue) investigate a wide range of complaints including regulatory compliances, food service, alcohol purchases source, etc., sales to minors, wholesale trade practices, hidden ownership, and conduct of establishment.

The Enforcement Section of the **Georgia** Alcohol and Tobacco Division (Department of Revenue) is charged with preventing the illegal production, importation, transportation, possession, and sale of alcoholic beverage products, the transportation and sale of untaxed cigars and cigarettes, the use of unlicensed and unstamped coin operated amusement machines, and the sale and furnishing of alcoholic beverages to underage persons.

In **Louisiana** the enforcement agents of the Office of Alcohol and Tobacco Control (in the Department of Revenue) perform a wide range of duties including permit application investigations and compliance monitoring (including compliance with state regulations for server training).

Maryland's Regulatory and Enforcement Division (in the Department of the Comptroller) is staffed with enforcement agents who are sworn police officers who work jointly with inspectors assigned to the Division. They are charged with investigating violations of state revenue laws pertaining to tobacco, trader's and transient vendors license, sales and use tax, alcoholic beverage violations, and international fuel tax agreement (IFTA) and motor fuel violations.

The **Wyoming** Liquor Division, located in the Department of Revenue, is charged with being the exclusive wholesaler of alcoholic beverages in the state and monitoring alcohol control laws. The Division is also charged with the duty of certifying to the local licensing authorities that applicants for liquor licenses meet statutory requirements.

States in Which the Liquor Law Enforcement Function Is in a State Business or Consumer Regulatory Agency

Finally, in three states liquor law enforcement is located within an agency having a business regulation and/or consumer protection orientation.

Connecticut.....	Department of Consumer Protection, Liquor Control Division
Florida	Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco
Rhode Island.....	Department of Business Regulation, Division of Commercial Licensing and Regulation

The **Connecticut** Department of Consumer Protection is responsible for protecting citizens from marketplace fraud and physical injury. This protection is achieved through licensure, inspection, investigation, enforcement, and public education activities in six major areas: food and standards; drugs, cosmetics and medical devices; alcoholic liquor; occupational and professional licensing; trade practices; and management services.

The Connecticut Liquor Control Division is the primary state agency responsible for enforcing the Connecticut Liquor Control Act, and its corresponding regulations, and serves as the primary investigative arm of the Connecticut Liquor Control Commission. Because Division agents do not have arrest powers, the Division is assisted by local and state police officers (the Division trains local and state police officers regarding the enforcement of the Liquor Control Act).

The **Florida** Department of Business and Professional Regulation is an agency regulating businesses and professionals across hundreds of license categories. Its mission is to ensure that professions and businesses provide quality services for the health, safety, and welfare of citizens and visitors to Florida.

The Florida Division of Alcoholic Beverages and Tobacco has the mission to supervise the distribution of alcoholic beverages and tobacco products to consumers in a free enterprise system; to collect and deposit all taxes and fees authorized by law; and to provide a safe, drug free, and responsible hospitality industry to residents and tourists of Florida.

Approximately 145 sworn personnel carry out the enforcement functions in Florida. They conduct criminal, administrative, and civil investigations, and have the power of arrest, to serve warrants, and inspect businesses licensed to sell alcoholic beverages and tobacco.

The **Rhode Island** Department of Business and Regulation is responsible for implementing state laws mandating the regulation and licensing of designated

businesses, professions, and occupations and other specified activities. Liquor enforcement is located in the Division of Commercial Licensing and Regulation, which is also responsible for licensing and regulation of real estate agents, travel agencies and agents, upholsterers, and various other professions and businesses.

The Division holds administrative hearings to consider revocations and suspensions of licenses, including appeals from the decisions of local licensing boards that issue retail liquor licenses. While the Division engages in what might be described as administrative enforcement, local law enforcement authorities are often relied upon to enforce the state's Alcoholic Beverage Act.

B. Police Powers Granted to Enforcement Agents

Since the transfer of the liquor law enforcement function occurred in 1987, there has been ongoing discussion and debate concerning the extent of arrest and police powers that are vested in BLCE enforcement officers. This issue is discussed in Section IV, and the specific powers granted to LEOs are outlined there.

A July 2005 report done for the National Highway Traffic Safety Administration (NHTSA) concluded that while most states have a state agency with primary responsibility for enforcing alcohol laws and regulations, the enforcement capacity of these agencies varies widely. According to that study, the variation ranges from states in which enforcement agents are not sworn police or peace officers and are not permitted to carry firearms to states in which agents carry firearms and have full police powers. This report did not, however, classify each state into one of these categories.

The NHTSA report cited Florida, Missouri, Ohio, Oregon, Pennsylvania, Tennessee, Washington, and Wisconsin as examples of states with statutes that limit the types of violations for which agents may make arrests. For example, in many cases, agents may only make arrests in or around licensed premises. Citing Pennsylvania, the report provides another example. "In Pennsylvania, agents may arrest someone for possessing false identification, but not for the manufacture of false IDs, which is outside their jurisdiction."

The NHTSA study survey found that although this is an area of debate, many agency representatives believe that the lack of arrest powers hampers alcohol enforcement agents' effectiveness:

They (the enforcement agents) may observe certain violations but they are unable to take action without requesting assistance from other law enforcement agencies. This may be time consuming or infeasible and can result in the absence of enforcement action. Restrictions on firearm possession pose a similar problem.

To supplement the information available from the NHTSA study, we examined statutory provisions and other available materials pertaining to the authority of liquor enforcement officers and agents in other states. We also found that, as is the case with the organizational placement of liquor law enforcement agencies, there is wide variation in the nature and extent of police powers given to liquor officers.

For example, the laws in some states provide liquor enforcement officers the power and authority to enforce any state law (both civil and criminal). In other cases, the law appears to specifically limit the use of law enforcement powers to the enforcement of certain statutes only (e.g., an alcoholic beverage control act either alone or in combination with other specified state laws and/or tobacco or gambling statutes, etc.). Liquor enforcement officers operating in these states can be classified as having limited law enforcement authority.

Also, at least five states (Maine, Nevada, North and South Dakota, and Rhode Island) appear to have no state-level liquor law enforcement staff, relying instead on local law enforcement authorities or a combination of local and state law enforcement agencies. The agencies in these states might be characterized as providing administrative enforcement only of their liquor control statutes.

We found, however, that direct state-to-state classifications and comparisons of the extent to which a state's liquor law enforcement officers have "full," "limited/partial," or "administrative enforcement powers only" are complicated by a number of factors. Among these factors are the following:

- Although some states may statutorily grant their liquor enforcement officers full law enforcement powers, the agencies, in reality, are not currently exercising those powers. Similarly, the process of liquor law enforcement in some states appears to be undergoing modification and, in some instances, statutory language appears to be at variance with current practice. In other states, minimal specialized enforcement efforts appear to be occurring, due apparently to cutbacks in funding and personnel resources.
- Another difficulty involves certain ambiguities of statutory language. This difficulty often relates to the use of the phrase "peace officer" found in many laws that give liquor enforcement officers "peace officer" status. Further research of the states' definitions of "peace officer" led us to conclude that there is no generally accepted meaning for this designation and that particular state definitions had the effect of limiting and at other times broadening the actual powers and duties of the enforcement officers in a particular state.
- We encountered a similar problem with the use of the term "sworn" in reference to liquor law enforcement agents. This term generally connotes the power of arrest, yet we learned that some states have officers who were

technically “sworn” but lacked the power to make physical arrests. We found, for example, that the Pennsylvania BLCE in one recent national resource document was listed as using sworn agents for liquor control enforcement and in another recent publication was listed as not using sworn agents.

In assessing the relative extent of police powers granted to liquor control enforcement officers in the various states, it is also necessary to consider the qualification standards that are in effect for the position in each state. Currently, applicants interested in becoming liquor enforcement officers with the Pennsylvania BLCE must possess at least a high school diploma or a GED Certificate.

In some other states, the requirements for granting police powers are more stringent. For example, an applicant for Investigator with the Florida Division of Alcoholic Beverages and Tobacco must possess a current law enforcement certification in accordance with state statutes, have at least one year of sworn law enforcement experience, but a college degree can be substituted for one year of required experience. Agent qualifications for the Delaware Division of Alcoholic Beverage Control and Tobacco Enforcement include, in addition to a high school diploma or GED certificate, the possession of, or eligibility for, a State of Delaware Council on Police Training Certificate. Applicants for the position of agent with the Mississippi Office of Alcoholic Beverage Control must possess a Bachelor of Science degree in Criminal Justice or related field and must complete the Mississippi Law Enforcement Training Academy and be able to meet law enforcement officer standards.

In Nebraska, the State Patrol requires that individuals assuming the position of Investigator or Inspector with the Alcohol-Tobacco Enforcement Division have at least 2 years experience as a Trooper with the State Patrol. In New Mexico, Special Agents with the Special Investigations Division of the Department of Public Safety must first be certified law enforcement officers with 5 years of law enforcement experience, or substitution of education for a portion of experience, and must be able to complete the State Law Enforcement Academy and become certified as a police officer within one year from date of hire.

In North Carolina, where liquor law enforcement officers have full police powers, agents of the Alcohol Law Enforcement (ALE) Division are required to possess, in addition to a high school diploma or GED certificate, two full years of full-time sworn law enforcement experience, or a two-year or four-year degree in any field. Applicants must also be certified as law enforcement officers by the North Carolina Criminal Justice Education and Training Standards Division of the NC Department of Justice and successfully complete the ALE Basic School and field training and evaluation program. If an applicant is not certified, he or she must attend the Basic Law Enforcement Training program and pass the state certification

examination prior to attending the ALE Basic School or being sworn as a law enforcement agent.

C. Comparative Data on the Number of Liquor Law Enforcement Officers Assigned to State Agencies

States also vary widely in the number of enforcement officers assigned primarily to alcohol enforcement duties. This is particularly evident when comparing the ratio of officers to the number of licensed establishments in the field.

A July 2005 research report done for the National Highway Traffic Safety Administration (NHTSA)¹ concluded that, nationally, liquor enforcement resources “are inadequate and declining.” According to the NHTSA report, there are more than 600,000 licensed retail alcohol outlets in the United States, excluding producers, wholesalers, and distributors, who also need licenses to conduct business in each state.

According to this report, the number of specialized liquor law enforcement agents per state ranged from 3 to 260, with a median of 34 (based on 2001-2002 data). Using these figures, the study concluded that, as an average national ratio, each state alcohol law enforcement agent is responsible for monitoring the activities of approximately 268 licensed establishments. The report concluded that with only slightly more than 2,000 enforcement agents nationwide who are specifically charged with regulating and enforcing alcohol laws, there is a large disparity between the level of resources that enforcement agencies currently possess and the level needed to ensure compliance with alcohol laws.

For Pennsylvania, however, the NHTSA report cited a licensed establishment per officer ratio of about 99. This is considerably lower than the 268 license establishment per officer national average. In making this calculation, the 2005 NHTSA report used the following data for Pennsylvania: the number of enforcement officers primarily enforcing liquor laws as 178 (which includes the full authorized complement of 164 LEOs and EO3s and 14 enlisted State Police personnel) and the number of licensed retail outlets at 17,649.

To compare and put the Pennsylvania figure in perspective, we selected a sample of nine comparable and contiguous states. We then supplemented and updated the NHTSA data by searching state agency websites and conducting a survey of liquor law enforcement agencies in other states.

The updated data on number of licensed establishments per liquor enforcement agent is shown on Table 39. As shown, the number of licensed establishments per Pennsylvania liquor enforcement officer is well below the average of the other states in the sample. The number of enforcement agents in the sample states

¹*The Role of Alcohol Beverage Control Agencies in the Enforcement and Adjudication of Alcohol Laws*, Research Report, the National Highway Traffic Safety Administration, July 2005.

ranged from 20 in New Jersey to 300 in Texas; the number of licensed retail establishments ranged from 10,000 in New Jersey to 72,000 in California.

Table 39

The Number of Licensed Liquor Establishments per Enforcement Officer in Pennsylvania and a Sample of Other States

<u>State</u>	<u>Number of Enforcement Officers</u>	<u>Number of Licensed Retail Establishments</u>	<u>Number of Licensed Retail Establishments Per Enforcement Officer</u>
California	260	72,000	277
Florida	145	68,000	469
Michigan	52	16,000	308
New Jersey.....	20	10,000	500
New York.....	29	58,000	2,000
North Carolina	105	17,000	162
Ohio.....	107	24,000	224
PENNSYLVANIA.....	147	16,304	111
Texas.....	300	39,000	130
Virginia	129	15,000	116
Average.....	129	33,530	260

Source: Developed by LB&FC staff using information obtained from the *National Alcohol Beverage Control Association (NABCA) Survey Book*, 2005 Edition; *The Role of Alcohol Beverage Control Agencies in the Enforcement and Adjudication of Alcohol Laws*, the National Highway Traffic Safety Administration, Appendix B, July 2005; a review of state liquor enforcement agency websites; and responses to an LB&FC staff-administered survey conducted in the fall of 2005.

In this sample, Pennsylvania has the lowest ratio of agents to licensed retail liquor establishments (111) and is substantially lower than the ten-state average of 260. The number of enforcement agents shown for Pennsylvania (147) is based on 124 LEOs and 23 EO3s employed with the BLCE, as of January 2006. Obviously, if BLCE were at full complement (164), the ratio would be even lower (i.e., 99 establishments per LEO). The number of licensed retail establishments for Pennsylvania is based on the number of retail liquor and malt beverage licenses in effect as of December 2004.

In viewing these numbers, it is important to remember that the nature and placement of liquor control enforcement operations as well as the extent to which other law enforcement agencies also perform liquor law enforcement functions varies substantially from state-to-state. For example, in New York, where the ratio of licensed establishments per state enforcement agent is 2,000, the 29 Alcoholic Beverage Control investigators provide mostly “administrative” enforcement, with local law enforcement authorities having enforcement and arrest responsibilities. A similar situation exists in Michigan.

IX. Appendices

APPENDIX A

Glossary of Common Terms Related to Liquor Law Enforcement in Pennsylvania

Adjudication: The determination of judgment (revocation, suspension, fine, dismissal) made by the Office of Administrative Law Judge (OALJ) against a licensee based on the evidence presented by the Bureau.

Administrative Citation: A legal document notifying a licensee they have committed a violation of the Liquor Code or regulations and instructing the licensee to appear before an Administrative Law Judge to show cause why their license should not be suspended or revoked or a fine imposed. All administrative citations must be issued within one year from the date the alleged violation occurred.

Administrative Investigation Report: A form used to record the results of an investigation involving an establishment licensed by the Pennsylvania Liquor Control Board (PLCB).

Administrative Law Judge (ALJ): A public official appointed by the Governor to preside at all citation and other enforcement hearings required or permitted by the Liquor Code. Administrative Law Judges must be learned in the law and must be members in good standing of the Bar of the Supreme Court of Pennsylvania. The judges are appointed to the OALJ which is an autonomous office within the PLCB.

Advisory Opinions: Letters issued by the PLCB pursuant to the authority found in Section 2-211.1 of the Liquor Code to licensees or their attorneys regarding interpretations of the Liquor Code or regulations. These opinions are binding upon the Bureau of Liquor Control Enforcement.

Assistant Counsel: An attorney authorized to practice law in Pennsylvania and employed by the Office of General Counsel who is specifically assigned to provide legal services to the Bureau.

Assistant Counsel File: A file consisting of the Enforcement Case Summary, Form LCE-2, notice of violation, investigative reports with attachments, and other material related to the case prepared by the Report Examination Unit (REU) and forwarded to the Assistant Counsel upon issuance of the citation.

Audit: An in-depth investigation of a licensee or business involved in the alcoholic beverage industry, usually involving extensive review of financial records and business-related documents.

Averment: The formal language used by the Bureau to charge a licensee with a violation of the Liquor Code and/or related regulations.

Blue Sheet: A worksheet created by the REU, that is reproduced on blue paper detailing an investigation and utilized to prepare the administrative citation.

Border Patrol: A specialized enforcement activity involving the surveillance and apprehension of any person purchasing alcoholic beverages in states bordering Pennsylvania and transporting the untaxed beverages into Pennsylvania.

Bureau of Liquor Control Enforcement (BLCE): A Bureau created within the Pennsylvania State Police by Act 14 of 1987 that has the responsibility to enforce the Liquor Code, any regulations promulgated pursuant thereto, and related sections of the Crimes Code.

Case Narrative (Form LCE-7): A detailed discussion of the evidence as it relates to the charges set forth in the citation. This narrative is prepared by the REU in cases that are waived. It is directed to the Assistant Counsel as an attachment to the original "Blue Sheet" for use by the ALJ in determining an appropriate penalty.

Certifications: An official certified copy of a document maintained by a governmental agency to be used at hearings in administrative cases.

Command Staff: A term encompassing the positions of the Bureau Director; the Director, Administration Division; the Director, Operations Division; the Eastern Section Commander; the Central Section Commander; the Western Section Commander; nine District Office Commanders; and the Supervisor of the Compliance, Auditing and Gambling Enforcement (C.A.G.E.) Unit.

Appendix A (Continued)

District Enforcement Office (DEO): One of nine regional offices of the Bureau of Liquor Control Enforcement having jurisdiction to enforce the liquor laws and related regulations in a designated area encompassing a number of counties.

District Office Commander (DOC): An enlisted member of the Pennsylvania State Police assigned to direct and oversee the administrative and operational functions of a District Enforcement Office.

Enforcement Case Summary (Form LCE-5): A document prepared for presentation to the Assistant Counsel for their consideration in processing citations. These "Blue Sheets" show pertinent license information, alleged violations with references to sections of the law, date of occurrence, the officers involved, and the licensee's records of prior citations.

Enforcement Officer (EO): A generic term which encompasses the positions of Liquor Enforcement Officer Trainee, Liquor Enforcement Officer, and Enforcement Officer 3.

Enforcement Officer 3 (EO3): A first-level supervisory employee responsible for assigning and supervising the work of subordinate LEOs and for assisting in the enforcement of the Liquor Code, any regulations promulgated pursuant thereto, and related sections of the Crimes Code within an assigned DEO or the Special Investigations Section.

Enhanced Penalty: Increased civil penalty (fine) mandated by law for certain defined violations of the Liquor Code.

Happy Hour: A term commonly used to describe the lawful practice of discounting drinks for a time period of two consecutive hours or less not to extent beyond 12:00 midnight.

Letter of Warning: A letter issued for the purpose of advising a licensee that an alleged violation of the liquor laws or regulations has been uncovered and that further violations could result in the issuance of an Administrative Citation.

Licensee: An individual, partnership, corporation, or other legal entity issued a license by the PLCB to sell/transport alcoholic beverages in Pennsylvania.

Liquor: Any alcoholic, spirituous, vinous, fermented, or other alcoholic beverage, or combination of liquors and mixed liquor a part which is spirituous, vinous, fermented, or otherwise alcoholic, including all drinks or drinkable liquids, preparations, or mixtures, and reused, recovered, or redistilled denatured alcohol usable or taxable for beverage purposes which contain more than one-half of one percent of alcohol by volume, except pure ethyl alcohol and malt or brewed beverages.

Liquor Code: Act 21 of April 12, 1951, P.L. 90; as reenacted by Act 14 of June 29, 1987, P.L. 32, and amended where indicated. An act relating to alcoholic liquors, alcohol, and malt, and brewed beverages; amending, revising, consolidating, and changing the laws relating thereto; regulating and restricting the manufacture, purchase, sale, possession, consumption, importation, transportation, furnishing, holding in bond, holding in storage, traffic in, and use of alcoholic liquors, alcohol, and malt, and brewed beverages, and the persons engaged or employed therein; defining the powers and duties of the PLCB; providing for the establishment and operation of state liquor stores, for the payment of certain license fees to the respective municipalities and townships, for the abatement of certain nuisances and, in certain cases, for search and seizure without warrant; prescribing penalties and forfeitures; providing for local option; and repealing existing laws.

Liquor Enforcement Officer (LEO): A civilian employee of the Bureau who is authorized by law to enforce the applicable provisions of the Liquor Code, any regulations promulgated thereto and related sections of the Crimes Code.

Liquor Enforcement Officer Trainee: A civilian employee of the Bureau undergoing training at a State Police training site or at an assigned District Enforcement Office.

Appendix A (Continued)

Malt Beverage Tax Law: A statute imposing a state tax, payable by manufacturers and others, on malt or brewed beverages used, sold, transported, or delivered within the Commonwealth, prescribing the method of payment and collection of the tax by the Department of Revenue, as well as civil and criminal penalties for violation of the act.

Malt or Brewed Beverages: Any beer, lager beer, ale, porter, or similar fermented malt beverages containing one-half of one percent or more of alcohol by volume, by whatever name such beverage may be called.

Non-Alcoholic Beverage: Any beverage containing less than one-half of one percent of alcohol by volume.

Notice of Violation (NOV): A letter notifying a licensee of the nature of an alleged violation issued within 30 days of the completion of an investigation.

Nuisance Bar: A licensed establishment that is operated in such a manner that a disregard for the sensitivities of a surrounding area is manifested. Further, such operation continually endangers the life and health of patrons and residents, offends the senses, violates the laws of decency, and obstructs the reasonable and comfortable use of property in its vicinity.

Pecuniary Interest: A monetary and controlling interest in a licensed establishment held by a person, partnership, or corporation not reported and approved by the PLCB.

Pennsylvania Liquor Control Board (PLCB): An independent administrative agency empowered to buy, import, and sell liquor and alcohol; to control the manufacture, possession, sale, consumption, importation, use, storage, transportation, and delivery of liquor, alcohol, and malt or brewed beverages; to grant and issue licenses and permits; and to propose regulations consistent with the Liquor Code.

Prior Citation Record (Form LCE-6): A collection of historical information regarding a licensee's prior citations.

Safekeeping: The temporary holding of a license by the PLCB during a period of time when a licensed business is not operational.

Speakeasy: An unlicensed place or establishment where unlawful sales of alcoholic beverages are made.

Still: An apparatus used to distill liquids into alcohol.

Visibly Intoxicated Person (VIP): A person who, by demeanor, actions, behavior, speech, and/or gait, appears to be under the influence of alcohol or drugs.

Source: Pennsylvania State Police, BLCE.

APPENDIX B

Location of BLCE Headquarters and District Offices*

BLCE Headquarters
3655 Vartan Way
Harrisburg PA 17110

Compliance, Auditing and Gambling Enforcement Unit
3655 Vartan Way
Harrisburg PA 17110

BLCE Philadelphia Office
6901 Woodland Avenue
Philadelphia PA 19142

BLCE Wilkes-Barre Office
1095 Hanover Street
Wilkes-Barre PA 18706-2028

BLCE Harrisburg Office
3655 Vartan Way
Harrisburg PA 17110

BLCE Pittsburgh Office
313 Mt. Nebo Road
Pittsburgh PA 15237-1305

BLCE Altoona Office
930 Route 22 East
Duncansville PA 16635

BLCE Williamsport Office
150 Choate Circle
Montoursville PA 17754

BLCE Punxsutawney Office
PO Box 497
305 Sutton Street
Punxsutawney PA 15767

BLCE Erie Office
8349 Perry Highway
Erie PA 16509

BLCE Allentown Office
8320 Schantz Road
Breinigsville PA 18031

*All BLCE District Offices are open Monday through Friday from 8:15 a.m. to 4:15 p.m. All District Offices have telephone answering machines for calls/complaints made after the office has closed. Answering machines are reviewed each morning.

Source: Pennsylvania State Police.

APPENDIX C

Pennsylvania Liquor Licenses and Permits

The Pennsylvania Liquor Control Board issues various types of licenses and licensee permits in accordance with the Liquor Code and Title 40, Pennsylvania Code. The PLCB's Bureau of Licensing analyzes and applies the appropriate statutory and regulatory criteria to all applications for licenses and permits the Board issues. The Bureau of Licensing also maintains an ongoing liaison with the State Police and refers enforcement complaints and reports of potential violations to the BLCE.

Liquor Licenses

There are three basic license categories:

- retail licenses include hotels, restaurants, eating places, clubs, catering clubs, various golf courses, airport restaurants, and performing arts and public venues;
- wholesale licenses include distributor and importing distributor licenses; and
- calendar year licenses and permits include importers, transporters, manufacturers, alcohol permits, wineries, sales permits, direct wine shippers, and other assorted groups.

As of December 2004, the PLCB's Bureau of Licensing had issued a total of 63,270 beverage alcohol licenses and permits relating to the manufacture, transportation, storage, and sale of alcoholic beverages (16,304 retail liquor and malt beverage licenses; 1,898 wholesale licenses; and 45,068 permits). The vast majority of these consist of either on-premises retail licenses for the sale of wine, liquor, or beer, or off-premises wholesale licenses for the sale of malt beverages by the case and keg. These two groups, along with the PLCB Wine and Spirits Stores and limited wineries, represent the direct consumer distribution network for the sale of beverage alcohol products in Pennsylvania.¹

In total, the PLCB issues more than 70 different types of licenses and permits. Some types are limited in number based on the "quota" of the county in which a proposed premises is located. A legislatively mandated quota system limits the number of licensed on and off premises beverage alcohol businesses. This quota is based on a ratio of one retail license for every 3,000 inhabitants within any county and one wholesale license for every 30,000 inhabitants of a county.

The following are among the most frequently issued license types: Club and Catering Club (CC); Distributor (D); Eating Place (E); Hotel (H); and Restaurant (R). Descriptive information on each of these license types follows.

Club (C) and Catering Club (CC) Liquor License. "C" and "CC" licensed establishments must operate for the good of the club membership and in a fraternal sense. The sale of alcoholic beverages must be secondary to the actual reason for the club's existence. Incorporated clubs must exist for a minimum of one year prior to applying for a liquor license.

Unincorporated clubs must exist for a minimum of ten years prior to a liquor license being granted.

Appendix C (Continued)

Number of Retail and Wholesale Liquor Licenses, by Type* (As of December 31, 2004)

Retail Liquor Licenses:

Restaurant	10,688
Club	1,636
Catering Club.....	1,599
Hotel	1,396
Privately-Owned Public Golf Course Restaurant	183
Public Venue Restaurant.....	52
Airport Restaurant	37
Performing Arts Facility	31
Public Service.....	25
Municipal Golf Course Restaurant	22
Off Track Wagering Restaurant.....	22
Privately-Owned Private Golf Course Catering Club	22
Privately-Owned Private Golf Course Club	8
Continuing Care Retirement Community.....	6
Economic Development Restaurant Liquor.....	<u>2</u>
Total Retail Liquor Licenses	15,729

Retail Malt Beverage Licenses:

Eating Place	518
Club	41
Municipal Golf Course	9
Privately-Owned Public Golf Course Eating Place.....	5
Hotel	<u>2</u>
Total Retail Malt Beverage Licenses.....	575

Wholesale Licenses:

Distributor	1,092
Importing Distributor	211
Transporter for Hire "A"	192
Transporter for Hire "B"	120
Limited Winery	97
Brewery.....	61
Importer	60
Sacramental Wine	19
Bailee for Hire	14
Brewery Pub	11
Alternate Brewery	6
Winery.....	5
Bonded Warehouse.....	3
Transporter for Hire "C"	3
Distillery	2
Importer's Warehouse	<u>2</u>
Total Wholesale Licenses.....	1,898

*Section 461 of the Liquor Code restricts the number of Restaurant Liquor, Eating Place, and Distributor licenses to be issued within each county. No additional restaurant or eating place licenses shall be issued in any county where the total number of Restaurant Liquor and Eating Place licenses exceeds one license per 3,000 county inhabitants. One Distributor license is issued per 30,000 residents of any county.

Appendix C (Continued)

The club must possess an original charter and must hold regular meetings open to its members; conduct legitimate business through elected officers; admit members by written application, investigation, and ballot; charge and collect dues; and maintain required records. A club is not an organization used to accommodate a private bar operation. Additionally, no individual is allowed to own a club.

“CC” licensees may allow groups in the establishment for weddings or private affairs with prior arrangement. Private clubs are forbidden to sell alcoholic beverages for take-out purposes.

Club and Catering Club Operational Hours:

- Sales and giving/furnishing of alcohol may begin at 7:00 a.m.
- Sales and giving/furnishing of alcohol must cease at 3:00 a.m.
- All unfinished alcoholic beverages must be collected and all patrons must depart the premises by 3:30 a.m.
- Clubs (C) and Catering Clubs (CC) may be open 7 days a week. Clubs (C) and Catering Clubs (CC) may be open on Election Day.

Distributor (D) Liquor License. These licenses concern neighborhood beer distributors. Sales are for off-premises consumption only and these sales must be made in original containers of no less than one case of 24 containers or seven ounces. “Twelve packers” are acceptable, but the single containers of beer products must be at least 24 ounces. Single containers holding more than 128 ounces are acceptable. In most cases, single container sales involve kegs of beer or beer products.

An Importing Distributor is a variation of this type of license. These generally are very large operations which maintain large amounts of beer products and usually sell only to other smaller “D” licensees and not to the public. This license is restricted by the County-Quota Law.

Distributor Operational Hours:

- These licensees may open at 2:00 a.m. Monday and remain open continuously, 24 hours a day, until midnight Saturday.
- They must remain closed from 12:01 a.m. Sunday through 2:00 a.m. Monday.
- These licensees may be open on Election Day.

Eating Place (E) Liquor License. The primary purpose of the “E” licensed establishment is the regular preparation and service of food. The interior dimensions of the establishment must be no less than 300 square feet, equipped with at least 30 chairs, or the equivalent seating, at tables for public use.

“E” licensees may only sell beer or its variants; liquor and wine sales are forbidden. The licensee can sell up to 192 fluid ounces of beer products, in original containers, for take-out purposes. “E” licensees may not sell any single, open container of alcoholic beverage for consumption outside the establishment.

The “E” licensed establishment is commonly referred to as a delicatessen or corner store. This license is restricted by the County-Quota Law.

Appendix C (Continued)

Eating Place Operational Hours:

- Open for business and alcohol sales Monday – Saturday from 7:00 a.m. until 2:00 a.m. the following morning.
- No sales of alcoholic, malt, or brewed beverages can take place after 2:00 a.m.
- All unfinished alcoholic beverages must be collected and all patrons must depart the premises by 2:30 a.m.
- All entertainment (i.e., live bands) must cease at 2:00 a.m. Establishments with a Sunday Sales Permit (SS) may begin serving alcoholic beverages on Sundays at 11:00 a.m. and remain open until 2:30 a.m. Monday.
- If December 31 falls on a Sunday, establishments without a Sunday Sales Permit (SS) may serve alcoholic beverages beginning at 1:00 p.m.
- May open during regular hours on Election Day.
- Establishments without a Sunday Sales Permit (SS) may not be open Super Bowl Sunday or St. Patrick's Day if it falls on a Sunday.

Hotel (H) Liquor License. An "H" licensee must operate the dining and alcohol service areas in the same manner as an "R" licensee. In addition, the "H" licensed establishment, depending on population, must have 12 to 50 permanent bedrooms for public use, a separate dining room(s) for at least 30 people and a separate kitchen. This type of licensed establishment can encompass anything from a recognizable hotel operation to a corner bar. Mandatory sleeping accommodations and a kitchen on the premises are the differences between the "R" and "H" licenses.

Hotel Operational Hours:

- Open for business and alcohol sales Monday – Saturday from 7:00 a.m. until 2:00 a.m. the following morning.
- No sales of alcoholic, malt, or brewed beverages can take place after 2:00 a.m. All unfinished alcoholic beverages must be collected and all patrons must depart the premises by 2:30 a.m.
- All entertainment (i.e., live bands) must cease at 2:00 a.m. Establishments with a Sunday Sales Permit (SS) may begin serving alcoholic beverages on Sundays at 11:00 a.m. and remain open until 2:30 a.m. Monday.
- Establishments without a Sunday Sales Permit (SS) may serve alcoholic beverages beginning at 1:00 p.m. on Super Bowl Sunday, and St. Patrick's Day and December 31 if occurring on a Sunday.
- Open regular hours on Election Day.

Restaurant (R) Liquor License. The primary purpose of the "R" licensed establishment is to habitually and principally provide food service to the public. The service of liquor, wine, or beer products is secondary. The interior dimensions must be no less than 400 square feet, equipped with at least 30 chairs, or the equivalent seating, at tables for public use.

Even though "R" licensees may serve liquor, wine, and beer products, they are under the same restrictions as "E" licensees regarding the sale of these products for take-out purposes.

"R" licensees may not sell any single, open container of alcoholic beverage for consumption outside the establishment.

Appendix C (Continued)

The “R” licensed establishment is commonly referred to as a bar or tavern. This type of licensed establishment can encompass anything from an elegant, family dining operation to a small corner bar. This license is restricted by the County-Quota Law.

Restaurant Operational Hours:

- Open for business and alcohol sales Monday – Saturday from 7:00 a.m. until 2:00 a.m. the following morning.
- No sales of alcoholic, malt, or brewed beverages can take place after 2:00 a.m. All unfinished alcoholic beverages must be collected and all patrons must depart the premises by 2:30 a.m.
- All entertainment (i.e., live bands) must cease at 2:00 a.m.
- Establishments with a Sunday Sales Permit (SS) may begin serving alcoholic beverages on Sundays at 11:00 a.m. and remain open until 2:30 a.m. Monday.
- Establishments without a Sunday Sales Permit (SS) may serve alcoholic beverages beginning at 1:00 p.m. on Super Bowl Sunday, and St. Patrick’s Day and December 31 if occurring on a Sunday.
- Open regular hours on Election Day.

Liquor Permits

Among the most frequently issued by the PLCB during 2004 were vehicle insignia permits, amusement (liquor) permits, Sunday Sales (liquor) permits, special occasion permits, and extended hours (food) permits. The following is a brief description of these permit types.

Number of PLCB-Issued Permits, by Type (As of December 31, 2004)

Permits:

Vehicle Insignia	24,882
Amusement (Liquor).....	8,258
Sunday Sales (Liquor).....	7,880
Special Occasion.....	1,517
Extended Hours Food	1,160
Alcohol Permits	597
Sunday Sales (Malt).....	399
Vendor’s Permit.....	129
Amusement (Malt)	101
Sales Permit.....	55
Hospital Permit.....	41
Bulk Liquor Purchase	19
Direct Wine Shipper	16
Wine Auction Permit.....	7
Broker Company	3
Brandy Permit.....	2
Department of Defense	1
Manufacturing Pharmacists & Chemists	1
Total Permits	45,068

Appendix C (Continued)

Vehicle Insignia Permit. The PLCB provides identification numbers to persons who transport alcoholic beverages in the Commonwealth. This may include haulers authorized to engage in commercial transportation of liquor, malt, or brewed beverages or alcohol, distributors and importing distributors, and any licensee of the Board whose licenses or permits authorize the transportation of such beverages in the regular operation of their licensed business. Until recently, the PLCB annually issued vehicle identification insignias, emblems, or identification cards that displayed the appropriate numbers. These insignias were to be placed in prominent places on the vehicles; a fee of \$10.00 was required to obtain each insignia. Effective November 13, 2004, amendments to the PLCB regulations eliminated the requirements for such emblems to be displayed and they were no longer provided by the Board. However, licensees of the Board whose licenses authorize the transportation of alcoholic beverages in the regular operation of their licensed business are now required to display on each side of each vehicle used in the operation of the business their name, address including the street name and number as shown on the license, and the license number as shown on the license in letters no smaller than 4 inches in height. As a result of this regulatory amendment, the category of PLCB permit called 'Vehicle Insignia' no longer exists, further resulting in the elimination of the nearly 25,000 such permits for 2005 and thereafter.

Amusement Permit. This permit allows for live entertainment, dancing by patrons/entertainers, shows, etc., within the premises. Without an "AP" permit, the licensee is restricted to television, jukebox, and non-amplified instrumental music. No vocal entertainment is permitted. These permits have several restrictions. Among them, entertainment or dancing which is lewd or immoral is not permissible, entertainment which is visible outside of the premises is not allowed, and noise is not permitted to be heard outside the licensed premises. An Amusement Permit is not valid after 2:00 a.m. Clubs are not required to hold PLCB-issued amusement permits.

Sunday Sales Permit. No licensee holding a Restaurant Liquor, Eating Place, or Hotel Liquor license may open for the sale of alcoholic beverages on a Sunday unless the licensee has been granted a permit. Holders of a Sunday Sales Permit may open at 11:00 a.m. Sunday and remain open until 2:00 a.m. Monday. To qualify for this permit, the licensee must certify that the establishment sells a minimum of 30 percent food and nonalcoholic beverages on an annual basis. A common misconception is that the licensed establishment must sell at least 30 percent food and nonalcoholic beverages on Sunday.

Special Occasion Permit. PLCB may issue a Special Occasion permit to an eligible entity to allow the sales of alcoholic beverages as a means of raising funds for the entity. Examples of eligible entities include hospitals, churches, volunteer fire or ambulance companies, bona fide sportsmen's clubs in existence for at least ten years, and nationally chartered veterans' organizations. Refer to section 102 of the Liquor Code (definition of "Eligible Entity") for a complete listing of eligible entities. Any eligible entity that wishes to acquire a Special Occasion permit must submit a written application to PLCB. Only one permit shall be issued to each eligible entity per calendar year. Each permit may only be used for six consecutive or nonconsecutive days. Special Occasion permit holders may sell alcoholic beverages during the same hours as restaurant liquor license holders and may sell any type of alcohol for consumption on or off the licensed premises. Holders of a Special Occasion permit are required to give notice to the police department within the jurisdiction where the permit will be used. Such notice shall be given at least 48 hours prior to each use of the permit and shall include the date, time, and place of the impending sale of alcoholic beverages. The permit may be used in conjunction with

Appendix C (Continued)

activities and events involving other entities; however, no one other than the holder of the special occasion permit may acquire a pecuniary interest in the permit.

Extended Hours Food Permit. This permit allows a licensed establishment to remain open after 2:30 a.m. for the purpose of maintaining a restaurant business. To qualify for this permit, the licensee must qualify for, or hold, a Sunday Sales Permit. Even with an Extended Hours Food permit, the licensee must cease the sales of alcoholic beverages by 2:30 a.m. No patron can legally possess alcoholic beverages on the premises after 2:30 a.m. Clubs can obtain an Extended Hours Food Permit for a period of 6 days during the term of its license.

Appendix C (Continued)

**Number of Licensees by BLCE District Enforcement Office and County
(Both Wholesale and Retail as of January 3, 2005)**

	<u>Number of Licensees</u>
<u>Philadelphia District Office</u>	
Chester.....	341
Delaware.....	562
Philadelphia.....	<u>2,341</u>
Total – Philadelphia District Office.....	3,244
<u>Wilkes-Barre District Office</u>	
Carbon.....	165
Lackawanna.....	550
Luzerne.....	859
Monroe.....	252
Pike.....	92
Susquehanna.....	69
Wayne.....	102
Wyoming.....	<u>49</u>
Total – Wilkes-Barre District Office.....	2,138
<u>Allentown District Office</u>	
Berks.....	552
Bucks.....	527
Lehigh.....	401
Montgomery.....	756
Northampton.....	411
Schuylkill.....	<u>428</u>
Total – Allentown District Office.....	3,075
<u>Williamsport District Office</u>	
Bradford.....	80
Clinton.....	76
Columbia.....	97
Lycoming.....	193
Montour.....	33
Northumberland.....	206
Potter.....	43
Snyder.....	41
Sullivan.....	24
Tioga.....	62
Union.....	<u>32</u>
Total – Williamsport District Office.....	887
<u>Harrisburg District Office</u>	
Adams.....	110
Cumberland.....	164
Dauphin.....	387
Franklin.....	98
Juniata.....	14
Lancaster.....	391

Appendix C (Continued)

	<u>Number of Licensees</u>
<u>Harrisburg District Office (Continued)</u>	
Lebanon	143
Perry.....	46
York.....	<u>325</u>
Total – Harrisburg District Office	1,678
<u>Altoona District Office</u>	
Bedford.....	61
Blair	186
Cambria.....	406
Centre.....	140
Fulton	16
Huntington	57
Mifflin	58
Somerset.....	<u>153</u>
Total – Altoona District Office	1,077
<u>Pittsburgh District Office</u>	
Allegheny.....	2,335
Beaver	312
Fayette	323
Greene	67
Washington	430
Westmoreland	<u>758</u>
Total – Pittsburgh District Office	4,225
<u>Punxsutawney District Office</u>	
Armstrong.....	138
Butler	182
Cameron.....	18
Clarion.....	70
Clearfield	160
Elk	92
Forest	18
Indiana.....	123
Jefferson.....	<u>85</u>
Total - Punxsutawney District Office.....	886
<u>Erie District Office</u>	
Crawford.....	162
Erie.....	447
Lawrence.....	125
McKean	105
Mercer	181
Venango.....	65
Warren.....	<u>79</u>
Total – Erie District Office.....	<u>1,164</u>
Grand Total	18,374

¹In addition to this consumer network of licensed businesses, there are approximately 1,900 licensees who are involved in the manufacture, purchase, storage, and transportation of beverage alcohol products.

Source: Developed by LB&FC staff from the PA Liquor Code and information obtained from the Pennsylvania Liquor Control Board.

APPENDIX D

Summary of LEO Position Qualifications and Training Requirements

Qualifications

Applicants for the Liquor Enforcement Officer position must (1) be at least 20 years of age to apply and 21 years of age upon appointment; (2) be a resident of Pennsylvania at time of application and appointment; and (3) possess a high school diploma or GED Certificate. Additionally, upon appointment as a Liquor Enforcement Officer Trainee, the applicant must also possess a valid Pennsylvania driver's license.

In addition to meeting these general requirements, the applicant must undergo a selection process that includes:

- both a written and oral examination;
- physical fitness test;
- urinalysis drug screening;
- polygraph examination;
- background investigation; and
- medical and psychological evaluations.

Applicants who have successfully completed the Liquor Enforcement Officer training selection procedures are eligible for appointment to the next available training class.

Training

The resident training period is approximately 13-15 weeks and is designed to eliminate any applicant who does not possess the necessary intelligence, emotional stability, or physical stamina to meet the requirements. Most training classes are conducted at the PSP's Southwest Training Center. A passing grade of 70 percent or higher must be achieved in all academic courses.

Following instruction in the care and use of the issued service revolver, Liquor Enforcement Officer Trainees must qualify with that weapon by scoring 75 percent or higher of the total possible score. Failure to qualify during the training period is cause for dismissal.

LEO Trainees must also undergo a training program which includes physical conditioning, weight training, fighting techniques, hand-to-hand combatives, and defensive tactics, a progressive aerobics program, and instruction on proper driving techniques.

Liquor Enforcement Officer Trainees immediately begin an approximate 11-month probationary period the day they report for induction to the Training Academy. Liquor Enforcement Officer Trainees are subject to dismissal, by the Commissioner, during the probationary period for incompetence, inefficiency, or violations of rules and regulations. LEOs are required to maintain, in accordance with established rules and regulations, their personal appearance, rooms, issued equipment, and personal belongings, all of which are subject to periodic inspections by the Academy staff.

Source: Pennsylvania State Police, BLCE.

APPENDIX E

BLCE General Complaint Hotline Procedures

The Bureau operates a "general complaint hotline" (1-800-932-0602). This 800 number is intended to be the public's primary access point for making complaints about liquor licensees and for reporting actions that may violate the Liquor Code.

1. Calls are collected at BLCE Headquarters in a central answering machine system after business hours and reviewed at the beginning of each work day.
2. The calls received are transcribed daily into the Automated Incident Memo System (AIMS). Each relevant call is assigned a unique Incident Number. Calls that are deemed to be frivolous or to be referred to other law enforcement agencies are not assigned an Incident Number. For non-complaint calls or requested callbacks, a separate referral form is completed and forwarded to the Administrative Officer for further action.
3. An official record of the call, referred to as the Incident Memo, is generated and maintained on AIMS. Specific information from the call is transcribed and formatted into the computer by a clerk. The Incident Memo includes information such as the caller's name, address, and phone number if given, the name and address of the involved establishment, and the district office number to which the complaint is being referred. All information that would be useful to an investigation, such as dates and times of alleged violations and persons involved, is entered into a remarks section.
4. For referral identification purposes, the initial Incident Number is expanded to include a District number in a specific format. If no location can be determined, a designation of "All Districts" is assigned to the complaint. If a town is given (without a county stated) that is common to several counties, the location is designated as "Multiple Districts."
5. For repeat callers that offer no new information on a complaint, only the number of calls by the same individual is included in the "remarks" section. If additional information is provided in subsequent calls about the same complaint, this information is added to the "remarks" section of the original memo. If more than one individual calls regarding the same establishment, a separate memo is created.
6. Following completion of the Incident Memo, the Incident Number (with date) is e-mailed to the appropriate district office for the purpose of being queried as needed for informational and investigatory purposes. If an Incident Number is assigned to "All Districts" or "Multiple Districts," the Incident Number must be sent to all such district offices. A copy of all sent e-mails is printed and filed in the appropriate district office file as confirmation that the incident number was provided to the District.
7. While many complaints relate solely to Liquor Code violations, sometimes complaints are filed that allege violations of the Crimes Code as well as the Liquor Code. These cases involve a different procedure. Specifically, the complaint is forwarded to the district and also referred to the appropriate Troop headquarters. A hard copy of the Incident Memo is generated and forwarded to the District Office Commander via memorandum. One copy of the memo is initialed by the Operations Director, then scanned and e-mailed to the District.
8. Incident numbers or incident memos are transmitted within 24 hours from the time the incident message was recorded on the hotline during normal business days. Complaints received during a weekend, however, are transmitted the next business day.

Appendix E (Continued)

9. An Incident Memo is sent only to a District in which an alleged offense was noted. Incidents that involve alleged crimes other than of the Liquor Laws are referred to the Troop which covers the location of the call. In such cases, an Incident Memo is completed with all necessary information, and a cover memo is prepared from the Operations Director to the appropriate Troop Commander with the Incident Memo as an Enclosure.

10. If the call details non-Liquor Code alleged crimes but involves a licensed establishment, a copy of the Incident Memo is provided to the affected Troop Commander. A cover letter is prepared from the Operations Director to the District Office Commander as well as a carbon copy to, for example, the C.A.G.E. Unit director. A memo applicable to the type of complaint is then initialed by the Operations Director, scanned, and e-mailed to the district office and C.A.G.E. All Incident Memos are scanned and e-mailed to the appropriate Troop.

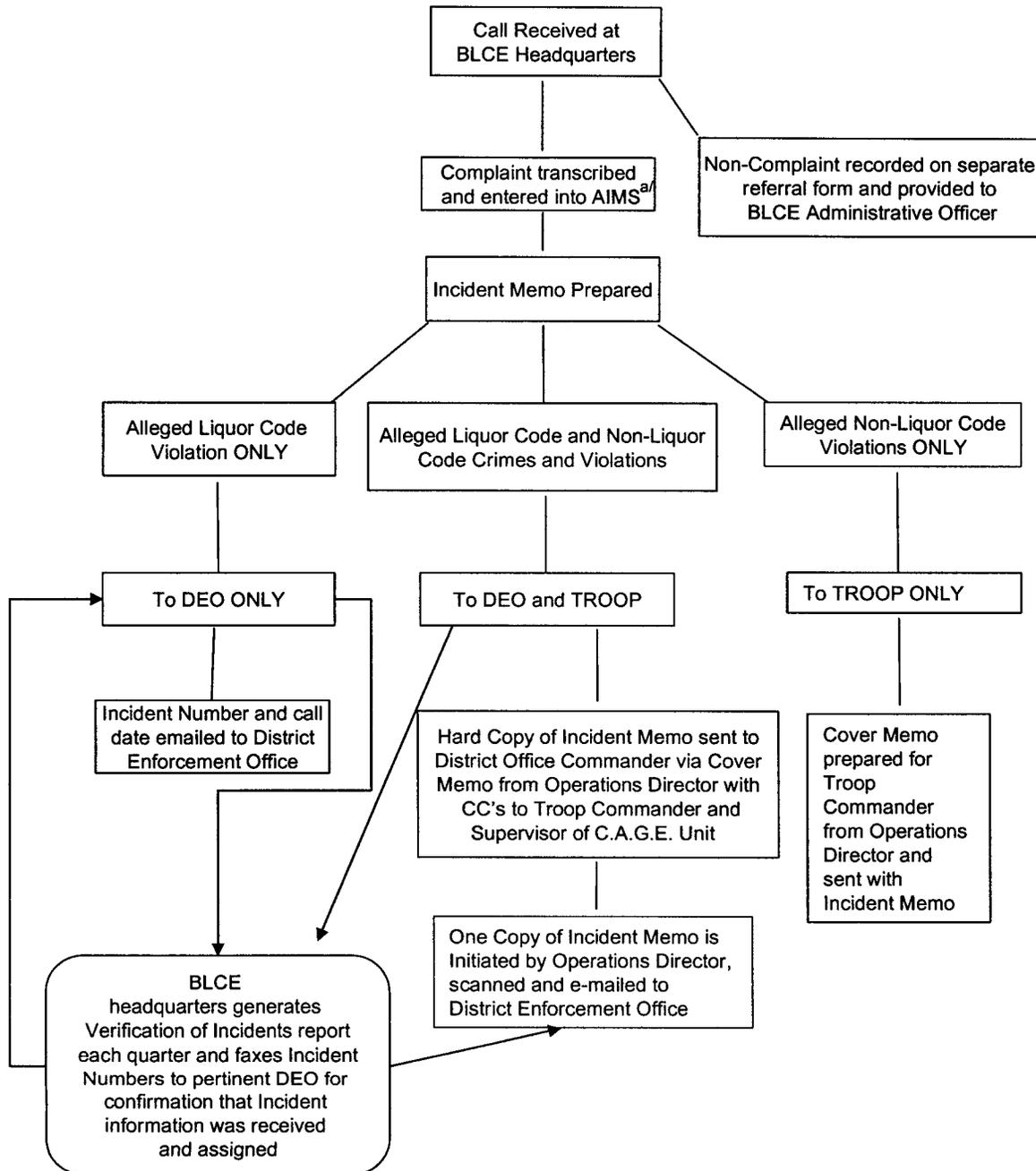
11. Exceptions to the usual complaint calls occur, however, and separate procedures are provided for in some cases. For example:

- Calls pertaining to a Troop that involve a future event or any emergency calls are faxed to the appropriate Troop after all necessary correspondence is prepared. In the case of some emergency situations, phone contact with the Troop may be necessary.
- Calls regarding other agencies (such as those directed to the PLCB) are designated as "Referred to Other Agency." All other information on the Incident Memo is completed in accordance with the specific request. A cover memo is completed by the Operations Director to the appropriate agency. For example, a call relating to a complaint about a State Liquor Store would be referred to the PLCB Director of Store Operations; a complaint concerning the illegal sale of cigarette products would be referred to the Department of Revenue.

12. For follow-up purposes, the BLCE headquarters utilizes a "verification of incidents report." At the end of each calendar quarter, a list of all referrals (i.e., Incident Numbers) made to each district enforcement office is generated and faxed to each office for verification that an Incident was received and assignment made to district personnel for investigative action. The district enforcement office is to respond to headquarters via e-mail "no later than the 10th of the proceeding month." For complaints that are referred only to a troop, or to another agency, such as the PA Liquor Control Board or Department of Revenue, no verification of incidents is typically conducted.

Appendix E (Continued)

**BLCE General Complaint Hotline Flowchart
(1-300-932-0602)**



^aThe PSP's Automated Incident Management System.

Source: Developed by LB&FC staff using information obtained from the Pennsylvania State Police, Bureau of Liquor Control Enforcement.

APPENDIX F

BLCE Underage Drinking Hotline Procedures

Established in October 1998, this 24-hour hotline (1-888-UNDER21) is a toll-free line utilized in conjunction with Enforcing the Underage Drinking Laws Program, the Bureau's federally funded college initiative program. Calls placed to this hotline are initially received at the Department's Consolidated Dispatch Center (CDC) located in Harrisburg. Information is recorded by a Police Communications Officer and forwarded to the appropriate law enforcement agency and the BLCE.

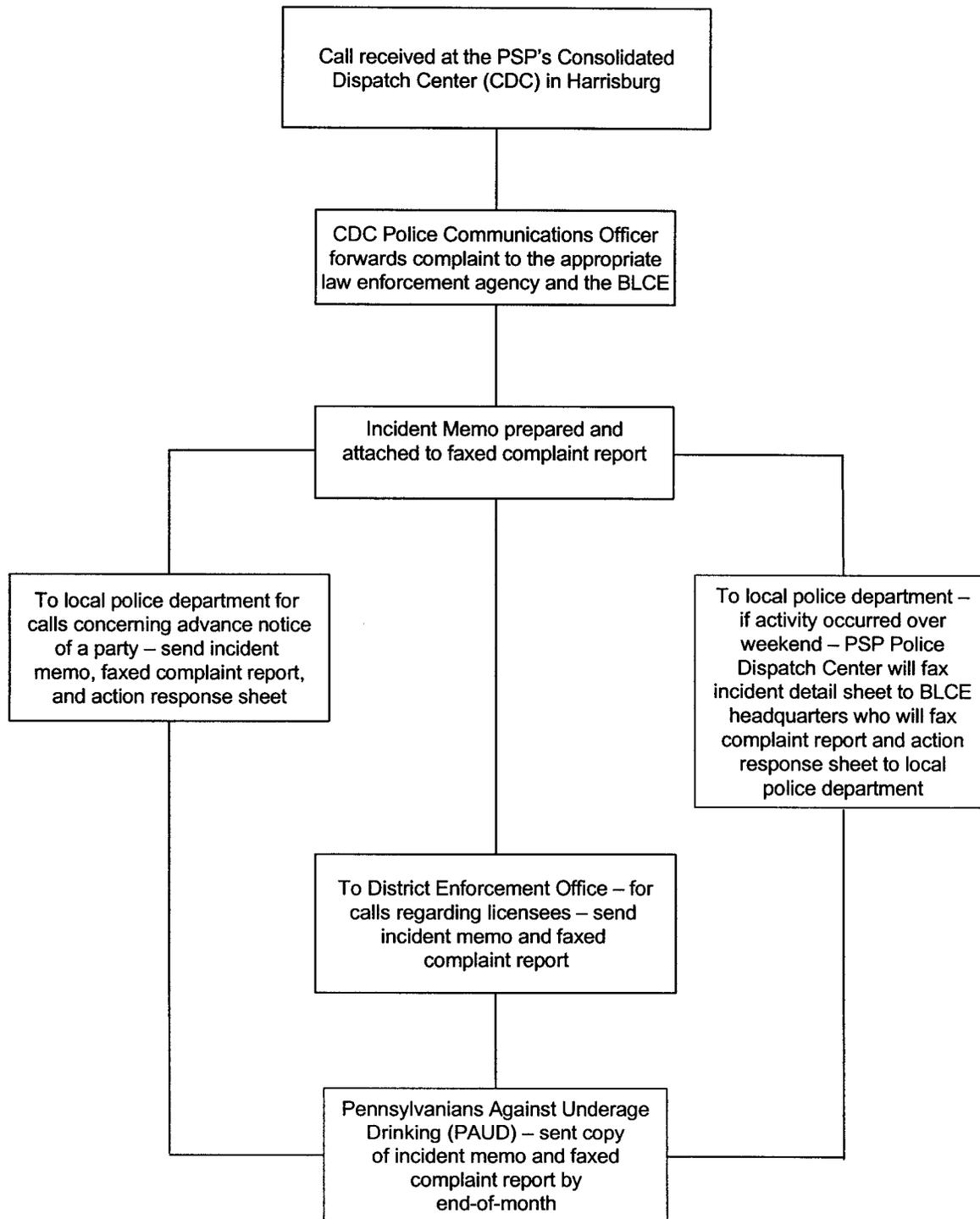
Information from a complainant's call is recorded on a complaint report and faxed by the CDC to the C.A.G.E. Unit. This faxed complaint report should provide information about the nature of the alleged violation together with pertinent descriptive details, including the location to which the complaint is to be referred. When a complaint pertains to a licensee, the C.A.G.E. Unit is responsible for preparing an Incident Memorandum for transmittal to the appropriate district enforcement office. When developed and reviewed, the Incident Memo and the faxed CDC complaint report are scanned and e-mailed to the appropriate district office and a copy is also provided to the Supervisor of the C.A.G.E. Unit.

Callers, who may wish to remain anonymous, are encouraged to provide tips about planned events involving underage drinkers or about parties already underway. If the call is an advance notice of a party, the police department with jurisdiction must be identified. The appropriate cover sheet, CDC complaint report, and an Action Response Sheet are then sent to that department for their information. If any action is taken on the complaint, a response sheet is returned. If no response is received within one to two weeks, PSP or the appropriate police department must be contacted to request a response.

If the activity occurred over the weekend, PSP Police Dispatch Center will fax an Incident Detail Sheet to BLCE headquarters detailing the recipient police department. A CDC complaint report and Action Response Sheet are sent to the appropriate police department.

After distributions have been made to the appropriate agencies, a copy of each Incident Memo and CDC complaint report are forwarded to Pennsylvanians Against Underage Drinking by the end of each month.

Appendix F (Continued)



Source: Developed by LB&FC staff from information obtained from the Pennsylvania State Police, Bureau of Liquor Control Enforcement.

APPENDIX G

The Responsible Alcohol Management Program (RAMP)

Act 2001-141 (47 P.S. §471.1) established the voluntary RAMP certification that provides incentives for licensees who participate. Completion of the program provides certification for two years.

According to the PLCB, RAMP assists licensees and their employees to more effectively:

- detect signs of impairment and intoxication, and effectively cut off a customer who has had too much to drink;
- identify underage individuals, and deter minors from coming into your establishment in the first place;
- detect altered, counterfeit, and borrowed identification;
- avoid unnecessary liability; and
- help reduce alcohol-related problems (underage drinking, vehicle crashes, fights, etc.) in your community.

For successful completion, licensees must complete all five parts of the program, which include:

1. Owner/Manager Training - An owner and/or manager must attend a free training session offered by the PLCB.
2. Alcohol Server/Seller Training – 50 percent of the licensee’s alcohol service employees must complete a PLCB certified alcohol server/seller education program. (This includes anyone who is in the position to serve alcoholic beverages and/or check IDs.) Upon completion of the program, employees are required to complete a course examination and must receive a score of 80 percent or better.
3. New Employee Orientation – New employee orientation must be provided on or before the first day of the employee’s employment as a member of the licensee’s alcohol service staff. The Board will provide the licensee with a checklist and appropriate learning methods and licensees must maintain these records.
4. Signage – Posting of signs regarding responsible alcohol service. Signage will be provided by the Board; however, the licensee may use other signage provided that it is equivalent in size, number, and content to the Board’s. Signage must be prominently displayed so that it can be observed readily by patrons. Licensees shall be responsible for posting and maintaining the signage at all times.

Appendix G (Continued)

Signage shall minimally include the following information:

- a. Acceptable forms of ID.
 - b. Refusal of alcohol service to minors and visibly intoxicated patrons.
5. Certification Compliance Appointment and Visit – The final component consists of a compliance visit from a Regional RAMP Representative. After successful completion of the four above listed requirements necessary to receive official PLCB-RAMP Certification, licensees must contact their Regional RAMP Representative and arrange a time and date for a visit to the establishment to review and complete the necessary documentation.

The PLCB has identified the following as benefits for licensees participating in the RAMP program:

- possible reduction in the fines and penalties issued by the administrative law judge to the licensee for serving a minor or a visibly intoxicated patron, so long as the licensee was in compliance with all parts of Act 141 at the time of the violation and had no citations in the previous four years;
- knowledgeable, responsible, well trained alcohol service staff and management; and
- recognition as a responsible licensee in your community.

²Act 141 of 2002 established exceptions for minors to attempt to purchase alcohol if under the direct supervision of a BLCE officer and upon completing training specified by the Bureau. Regulations prescribing compliance check procedures have been promulgated under Title 37, *Pennsylvania Code*.

Source: Pennsylvania Liquor Control Board.

APPENDIX H

BLCE Complaint/Incident Classification Summaries, by District Office (CY 2005)

	Wilkes-										Statewide Totals
	Philadelphia	Barre	Harrisburg	Pittsburgh	Altoona	Williamsport	Punxsutawney	Erie	Allentown	Towson	
Liquor Law											
License Violation	718	661	1,158	1,731	666	417	447	736	848		7,382
Insufficient Funds	419	312	369	148	95	97	46	186	400		2,072
Routine Inspection	859	203	72	203	13	89	77	47	374		1,937
Furnish/Sale to Minor	330	187	117	15	79	100	225	26	250		1,329
Other	479	59	45	151	73	15	16	58	142		1,038
Minor Patrol	99	212	72	135	22	47	17	9	414		1,027
Speakeasies	181	18	35	61	18	11	13	17	49		403
Underage Consumption	0	10	0	2	92	1	15	1	24		145
Border Patrol	20	0	17	0	13	0	0	0	19		69
Audit	2	14	0	25	7	0	8	3	2		61
Nuisance Establishment	34	0	0	15	1	0	1	0	9		60
Public Drunkenness	0	1	0	0	8	2	8	0	4		23
Total Liquor Law	3,141	1,677	1,885	2,486	1,087	779	873	1,083	2,535		15,546
Gambling											
Gambling Devices	28	0	1	81	8	2	12	0	95		227
Video Devices	0	0	3	83	1	1	5	0	61		154
Other	1	0	93	12	6	0	5	1	28		146
Pool Selling	2	0	21	5	1	0	5	0	3		37
Bookmaking	7	0	2	2	0	0	0	0	2		11
Lotteries	0	0	4	2	2	0	0	0	2		10
Total Gambling	38	0	124	183	18	3	27	1	191		585
Referred to											
PSP Station	23	6	38	18	3	3	12	22	1		126
Other Agency	2	2	0	1	1	1	0	10	0		17
Other Police	1	0	1	6	1	0	0	2	0		11
Total Referred to	26	8	39	25	5	4	12	34	1		154

Appendix H (Continued)

	<u>Philadelphia</u>	<u>Wilkes-Barre</u>	<u>Harrisburg</u>	<u>Pittsburgh</u>	<u>Altoona</u>	<u>Williamsport</u>	<u>Punxsutawney</u>	<u>Erie</u>	<u>Allentown</u>	<u>Statewide Totals</u>
Req. Assist										
PSP Station.....	0	3	0	20	2	1	0	0	0	26
Other Agency	0	0	0	7	0	13	1	0	0	21
Other Police	0	0	0	4	0	0	0	0	0	4
Other	0	0	0	3	0	0	0	0	0	3
Total Req. Assist	0	3	0	34	2	14	1	0	0	54
Speech										
BLCE Choices.....	0	7	12	60	4	11	2	1	20	117
Community Relations	48	40	2	1	2	13	2	3	5	116
Other	3	11	8	23	1	4	0	0	4	54
BLCE All Education.....	0	0	3	0	2	0	1	13	2	21
BLCE Licensee	1	0	0	0	0	2	0	0	9	12
BLCE Nuisance Estab.....	0	0	0	0	0	0	0	0	2	2
Total Speech.....	52	58	25	84	9	30	5	17	42	322
All Other	0	12	3	1	18	0	6	5	11	56
Grand Total	3,257	1,758	2,076	2,813	1,139	830	924	1,140	2,780	16,717

Source: Developed by LB&FC staff from information obtained from Pennsylvania State Police, Bureau of Liquor Control Enforcement.

APPENDIX I

Pending Legislation Relating to the Bureau of Liquor Control Enforcement (As of May 11, 2006)

House Bill 353: Amends the Workers' Compensation Act by defining occupational disease to include liquor control enforcement officers who contract hepatitis C.

House Bill 592: Amends the Liquor Code to provide for the transfer of the functions and duties of the Bureau of Liquor Control Enforcement of the Pennsylvania State Police to municipal and regional police departments.

House Bill 605: Amends the Liquor Code to provide that the State Police Commissioner has authority to appoint only up to three State Police officers who shall be employed in a supervisory capacity at the state headquarters of the enforcement bureau, all other personnel of the enforcement bureau shall be civilians.

House Bill 1574: Requires institutions of higher education to notify the Bureau of Liquor Control Enforcement of underage drinking.

House Bill 2408: Amends the Crimes Code to permit an individual who is 18 to 21 years of age and an officer, employee or intern with a full-time municipal police department to participate in age compliance checks. Currently, only officers, employees or interns of the BLCE are permitted to participate in such checks.

Senate Bill 1041: Allows an individual who is 18 to 21 years of age and an officer, employee or intern of a full-time municipal police department to participate in age compliance checks.

APPENDIX J

Pennsylvania State Police Response to This Report



PENNSYLVANIA STATE POLICE
BUREAU OF LIQUOR CONTROL ENFORCEMENT
3655 VARTAN WAY
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OFFICE OF THE DIRECTOR

June 1, 2006

Mr. John H. Rowe, Jr.
Chief Analyst
Legislative Budget and Finance Committee
Room 400 Finance Building
P.O. Box 8737
Harrisburg, Pennsylvania 17105-8737

Re: *A Program and Operational Review of the PA State
Police's Bureau of Liquor Control Enforcement*
June 2006 Draft Report

Dear Mr. Rowe,

Thank you for the opportunity to review the Committee's draft report on the State Police Bureau of Liquor Control Enforcement (BLCE) program. We appreciate the professional manner in which you conducted this study, as well as your receptiveness to revisions we felt were necessary for a fair and balanced presentation of our operations.

In the draft report, the Committee has made four recommendations. First, the Committee believes the General Assembly should consider amending the Liquor Code to transfer most enforcement functions from civilian Liquor Control Enforcement Officers to enlisted members of the State Police. As the Committee acknowledges, this proposal requires a substantial amount of additional analysis to determine its cost and feasibility, but we agree that these issues and other considerations deserve further review.

In the meantime, however, we believe the BLCE is tremendously effective given its current resources. The draft report seems to criticize BLCE enforcement efforts as "largely complaint-driven and reactive in nature." It is true that the BLCE has traditionally engaged in reactive enforcement by conducting complaint-driven investigations. However, this does not mean the BLCE lacks initiative or that reactive enforcement should have a negative connotation. To the contrary, the BLCE strives hard to anticipate and prevent problems before they occur.

For example, in the past, large-scale sporting and entertainment events held at the Citizens Bank Park and Lincoln Financial Field in Philadelphia, the Giant Center in Hershey, PNC Park in Pittsburgh, and the Nittany Lion Stadium and Bryce Jordan Center in State College have drawn large numbers of under age drinkers, disorderly conduct, and drunk driving. In anticipation of such incidents, the BLCE now conducts

undercover operations in and around these venues to detect and prevent sales to minors and underage drinking.

In addition, the BLCE tries to make sure that every single complaint received from the public is thoroughly investigated. In 2005, the BLCE received 16,717 complaints, which translates to approximately 129 complaint investigations per individual Liquor Enforcement Officer.

Further, while training, court time, and administrative paperwork do account for 38% of an officer's obligated time, these are necessary and important job functions. Significantly, each Liquor Enforcement Officer still has nearly five remaining hours each day for aggressive and proactive enforcement. During 2005, for example, the BLCE conducted 377 age compliance checks and 3,058 routine inspections. In our University/College Underage Drinking Program, we conducted 162 raids and made 1,000 arrests. We conducted 56 border patrols, processed 4,028 intoxicating source web page entries, gave 275 Choices presentations, and trained 19 more Choices presenters. This year, we have already conducted 555 age compliance checks. Clearly, our officers are vigorously engaged in a wide array of successful enforcement activities.

Next, the Committee recommended various amendments to the Liquor Code in order to maximize use of BLCE resources. Many of these proposals have considerable merit, including elimination of the BLCE's statutory duty to investigate worthless checks, expediting forfeiture proceedings, eliminating *de novo* review of BLCE citations, and allowing sales of seized assets. The State Police look forward to working with the legislature to address these issues.

Third, the Committee believes the BLCE should take steps to redesign and improve its statistical recordkeeping and information management system. In fact, the BLCE is already in the process of conducting a complete internal review of all statistical reporting and data collection processes, and we are currently developing an automated Access-based system. While minor errors have occurred in the past, the reliability and validity of the data has not been compromised. The available statistical data provides the command and supervisory staff with meaningful and reliable management information. Enforcement statistical data is provided to the public via the Department's public web site. We also provide data to the General Assembly when it is requested, and the BLCE has already recommended changes to the performance measures provided to the Governor's Budget Office for the next fiscal year. Moreover, as BLCE personnel have explained, when the Department's Incident Information Management System (IIMS) is fully implemented, it will ultimately address all of the specific concerns expressed in the Committee's draft report.

Finally, the Committee recommends that the State Police Fiscal Division work with the General Assembly on a format for submitting an annual, itemized accounting of BLCE expenditures. The Liquor Code currently requires the State Police to provide the House and Senate Appropriations Committees with "a copy of the most recently

completed audit of expenditures of the enforcement bureau." 47 P.S. § 2-211(f)(1). However, the law does not require annual audits of BLCE expenditures nor does it require the State Police to provide an annual, itemized accounting of BLCE expenditures. As the draft report recognizes, the State Police annually submits budget and expenditure materials to the Appropriations Committees. If the Committees would like more detailed information, we will gladly work with them to provide it in a mutually acceptable format.

In closing, I want to thank you again for this opportunity to comment on the Committee's draft report. If we can provide you with any further information, please let us know. It has been a pleasure working with you and your staff.

Sincerely,

A handwritten signature in cursive script that reads "Maj. Leonard H. McDonald".

Major Leonard H. McDonald
Director
Bureau of Liquor Control Enforcement

LHM/SLG