

# Legislative Audit Division

State of Montana



Report to the Legislature

October 2001

## Performance Audit

### On-Premises Liquor Licensing Process

Customer Service Center - Department of Revenue  
Gambling Control Division - Department of Justice

Our review of the on-premises liquor licensing process identified a number of improvements that can be made. Report recommendations relate to improvements in management of the process, procedural changes, and potential legislative changes. Recommendations include:

- < Eliminating in-state residency requirements as a condition of licensure.
- < Establishing an expedited process for some licensing requests.
- < Improving management and staffing controls over the process.
- < Improving the liquor lottery drawing process.
- < Both departments assessing the feasibility of consolidating the process within one agency.

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Members of the performance audit staff hold degrees in disciplines appropriate to the audit process. Areas of expertise include business and public administration, statistics, economics, accounting, logistics, computer science, and engineering.

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October 2001

The Legislative Audit Committee  
Of the Montana State Legislature:

We conducted a performance audit of the on-premises liquor licensing process. This audit examined the process to review and approve applications for on-premises liquor licenses that allow consumption of alcohol at the location where it was purchased. Our review included work at both the Department of Revenue and the Department of Justice.

This report discusses the roles and responsibilities of the agencies involved in the process. Report recommendations relate to improvements in management of the process, procedural changes and potential legislative changes. A written response from both departments is included at the end of the report.

We appreciated the cooperation of staff from both departments during this audit.

Respectfully submitted,

*(Signature on File)*

Scott A. Seecat  
Legislative Auditor

# **Legislative Audit Division**

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## **Performance Audit**

# **On-Premises Liquor Licensing Process**

**Customer Service Center - Department of Revenue  
Gambling Control Division - Department of Justice**

Members of the audit staff involved in this audit were Lisa Blanford,  
Angie Grove, and Joe Murray.

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## **Appointed and Administrative Officials**

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### **Department of Revenue**

Kurt Alme, Director

Neil Peterson, Customer Service Center Process Lead

### **Department of Justice**

Mike McGrath, Attorney General

Gene Huntington, Gambling Control Division Administrator



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### **Introduction**

The Legislative Audit Committee requested a performance audit of the state's liquor licensing process. Establishments that serve alcohol on-site constitute a majority of the licensing workload. As a result, the audit focused on this aspect of liquor licensing. The licensing process involves both the Department of Revenue (DOR) and the Department of Justice, Gambling Control Division (GCD).

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### **Coordination Between Departments**

DOR is statutorily responsible for administering the Montana Alcoholic Beverage Code while GCD is statutorily responsible for conducting any investigations related to the same code. Due to the statutory split in duties, the departments entered into a Memorandum of Understanding (MOU) in an effort to better coordinate respective responsibilities. It stipulates the GCD will conduct personal interviews with applicants, perform reviews of application supporting documents, investigate the background of applicants, physically inspect the proposed premises, make a determination whether the applicant and premises meet statutory liquor licensing criteria, and issue a written report of findings to DOR.

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### **Department of Revenue Conducts Initial Application Review**

The first step in the process is for applicants to complete an application and submit it to DOR. Applicants also provide several pieces of supporting documents with their application. DOR reviews the on-premises liquor application and supporting documents for completeness. Once all information is provided to the department and deemed complete, the applications are sent to GCD for investigation.

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### **GCD Conducts Investigation**

Section 16-4-402, MCA, requires DOR to submit all on-premises liquor license applications to GCD to investigate all matters relating to the application. Liquor licensing investigations include: a review of the application and supporting documents; review of the license transfer or purchase; check for criminal-related activities of the applicants; personal interviews with each applicant; and inspection of the premises. Upon completion of the investigation, DOR is provided a report summarizing the results and concluding whether or not the applicants and premises meet statutory liquor licensing criteria. DOR has statutory responsibility for making the final licensing decision using the investigative reports provided by GCD

## Report Summary

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in conjunction with other information obtained during the application process.

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### **Current Process Takes an Average of 193 Days**

It takes an average of 193 days to review and approve on-premises liquor applications. The majority of the 193-day timeframe reflects DOR processing activities. During initial stages of review, it takes department staff an average of 81 days to deem an application complete. GCD investigations are completed in an average of 42 days. When the application is referred to GCD, DOR provides notice to local government officials and contacts local area newspapers to publish an applicant's intent to purchase the liquor license. When these steps are completed and DOR obtains GCD's investigation report, DOR continues processing the application to determine whether to grant or deny the license request. Our analysis showed this last portion of the process took DOR an average of 70 days to perform.

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### **Current Process Increases Paperwork and Causes Duplicate Review**

Ninety percent of on-premises liquor applications have a corresponding gambling application. We noted applicants are required to provide essentially the same supporting documentation to DOR and GCD if applying for both a liquor and a gambling license. For those applicants seeking only a liquor license, all supporting documentation is initially provided to DOR. DOR then photocopies the supporting documents and forwards them to GCD. Under the current licensing system, two different agencies review documents provided with liquor applications.

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### **Business Costs are Increased**

Industry representatives claim licensing delays have increased their business costs and impacted the sale and purchase of businesses. They said the current process often makes completing these transactions more difficult and expensive because of the amount of time involved. They are frustrated with the lack of DOR responsiveness and that on-premises liquor licenses are not issued in a timely manner. They cited examples of lost business revenues and lost leases.

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### **Liquor Licensing Process Delays Gambling License Process**

Statutory gambling license criteria requires gambling license applicants first be licensed for on-premises consumption of alcohol.

Our file reviews revealed delays in liquor licensing impacts issuance of gambling licenses. We found issuance of a gambling license was delayed for 87 percent (13 of 15) of the reviewed gambling applications. The average delay was 35 days. For the 13 businesses in our sample, the 35-day delay translates into lost earning potential of over \$207,600 in gambling revenues.

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### **Residency as a Condition of Liquor Licensure**

We believe a key change that would streamline the process would be to remove a requirement from the current licensing criteria. Montana statutes specify in-state residency as a condition to receive on-premises consumption all-beverage, beer, and beer/wine licenses. One of the primary issues investigated during review of liquor license applications is determining if all ownership interests in the business have been disclosed. This is necessary to determine the residency status of each applicant and each person with a controlling interest in the business. This work contributes to the time involved to process on-premises liquor applications. In developing business plans for estate planning, residency requirements also add time and complexity to the applicant's submission of the application.

Recent court decisions in two states (Kansas and Texas) ruled residency requirements are invalid because they violate the United States Constitution. Although the constitution grants the authority to regulate alcohol, the constitution also contains provisions that prevent the restraint of trade. The U.S. District Court for the State of Kansas and U.S. Court of Appeals, Fifth Circuit, both issued rulings which found the constitution's commerce clause takes precedence over a state's right to regulate alcohol. Courts stated having residency as a requirement to obtain liquor licenses favored in-state economic interests over out-of-state interests and unless valid reasons exists for favoring out-of-state interests, then a form of "economic protectionism" is created. Elimination of in-state residency requirements could streamline the licensing process by removing one major area for scrutiny during the application process.

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### **Expedited Procedures are Needed for Minor License Changes**

We noted examples where it took the department several months to approve certain types of changes to existing on-premises liquor

## Report Summary

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licenses. Current license holders making relatively minor requests must go through the same statutorily required review as applicants applying for a license for the first time. The efficiency of the department's on-premises liquor licensing process would be improved by implementing an expedited review process for minor changes. DOR should seek legislation to allow for an expedited process for minor licensing changes

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### **DOR Staffing and Supervision**

Our review raised questions about the experience and training of some DOR compliance specialists who perform detailed reviews of supporting documents submitted with applications. Financial information submitted by applicants is complex and some DOR compliance specialists did not believe they could conduct the level of review necessary to determine issues such as undisclosed financial interests. DOR staff relies on GCD staff who received specific training to conduct these reviews. DOR licensing staff also receives limited supervisory oversight. This general lack of oversight has contributed to delays in the liquor licensing process and has created inappropriate staff performance measures. DOR needs to assess the capabilities of its liquor licensing staff, establish relevant staff performance measures, and require management to monitor adherence to these performance measures.

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### **Improvements Needed in Electronic Information**

Data on the current electronic licensing processing system used by DOR is inaccurate and limited in its usefulness. We found dates often did not correspond to actual documents in the file or reflect all actions or pending issues. DOR should establish controls that includes redesigning needed information and ensuring data accuracy to provide better information to licensing staff and to assist in supervision.

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### **Lottery Drawing Procedures Should be Improved**

The liquor lottery drawing process takes an average of 146 days to complete from the time of license availability until lottery winners are notified. There are no DOR requirements that the lottery be completed within a certain time after applications are due. DOR's liquor lottery drawing procedures do not appear to be directed at customer service and have added time to the process.

A lack of formal procedures related to preparing applications for liquor lottery drawings has resulted in procedural inconsistencies in lottery drawings. We also questioned whether the current administrative rules create a fair liquor lottery process. Although the lottery is reasonable for processing an influx of applications, once the application deadline passes and someone submits an application for the last available license or licenses, the process should not stop and go to a lottery drawing. Instead, on-premises liquor applications should be reviewed on a first come, first served basis. DOR needs to establish formal liquor lottery procedures, change administrative rules to ensure licenses are issued on a first come, first served basis for the last available license, and establish specific lottery timelines in administrative rule.

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### **Confidential Information in DOR Files**

DOR on-premises liquor licensing files are open to public inspection. In contrast, the requirements applicable to GCD file information do not allow public inspection. GCD files are confidential under the Montana Criminal Justice Information Act. We noted several examples where information related to an applicant's criminal background was in DOR files. In addition, we found other confidential records such as income tax returns were left in DOR liquor licensing files. DOR procedures indicate confidential information obtained from GCD should be shredded or returned to GCD. DOR and GCD need to periodically train liquor licensing staff on procedures related to confidential information.

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### **Liquor Quota Data Needs More Timely Updates**

The department is not incorporating the most recent census projections into the license quota system in a timely manner. As a result, information regarding the number of available liquor licenses was not updated in a timely manner. DOR should make updating quota statistics on liquor license availability a priority.

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### **RBW Fee Procedures Should be Clarified**

Restaurant beer and wine (RBW) fees include an initial licensing fee, an application processing fee, and an annual license renewal fee. Initial licensing fees are correctly assessed. However, there are inconsistencies in collecting and refunding both processing and

## Report Summary

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annual renewal fees. DOR needs to develop and clarify administrative rules for RBW fees and refunds.

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### **Lottery Drawing Preference Points**

State law allows two drawing preference points be given to applicants when applying for an RBW license. Preference points increase an applicant's chance of obtaining a license. A preference point is given to applicants who have operated a restaurant for at least 12 months prior to submitting an RBW application. A preference point is also awarded to applicants unsuccessful in previous lottery drawings. Presently, DOR awards a preference point to restaurants operating for at least 12 months and applicants unsuccessful in a previous RBW lottery. Any applicants who were unsuccessful in a previous lottery for an all-beverage or beer license do not receive a preference point when they participate in a drawing for an RBW license. We questioned whether the department is correctly applying the preference point for previous drawings. The department should obtain clarification on this issue.

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### **Applicants Submit Multiple Lottery Applications**

Applicants often submit multiple lottery applications for the same drawing. Department officials are concerned that this practice impacts the fairness of the process. In addition, it creates bottlenecks in the liquor licensing process because it requires staff to verify information on significantly more applications. The department said the average businessperson trying to get into the liquor business can not compete with "license brokers" because they do not have the financial resources to secure multiple premises locations or set up separate business entities. When applicants submit multiple applications for a lottery it reduces the chances for applicants who can afford to submit only one application. It is not clear whether the legislature intended applicants to be allowed to submit multiple applications for lottery drawings. DOR needs to seek legislation on whether liquor license applicants should be allowed to submit multiple applications.

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### **Further Streamlining of Process May be Needed**

Current statutes place responsibility for the liquor licensing process in two agencies. This split in responsibilities contributes to the 193-day timeline to process on-premises liquor applications. It also

contributes to coordination problems between the two agencies, causes duplication of review and paperwork, contributes to process inefficiencies, and frustrates applicants having to deal with two agencies.

Over the last several years, much of the responsibility for on-premises liquor licensing has been transferred to GCD. DOR involvement in the process has been reduced. The 1997 Legislature passed legislation to make it easier for businesses to get licensed. The legislature believed businesses should be able to obtain licenses from a single agency. Currently, businesses seeking either liquor or gambling licenses must deal with two agencies. Since data shows 90 percent of businesses with on-premises liquor licenses also have gambling licenses, two separate agencies are regulating essentially the same business community. Consolidating the on-premises licensing process within the GCD could improve process efficiency by reducing duplication, eliminating coordination problems, and placing decision-making authority within a single agency.

Both the DOR and GCD recognize the on-premises liquor licensing process could be further refined and streamlined. The agencies are currently holding discussions to determine potential changes to improve coordination of their respective responsibilities in the process. These discussions should be expanded to determine if additional liquor license streamlining is needed and whether all liquor licensing functions could be consolidated within a single agency.

# Chapter I - Introduction

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## Introduction

The Legislative Audit Committee requested an audit of the state's liquor licensing process. Liquor licensing involves the regulation of three separate industry areas: manufacturers, distributors, and retailers. There are two types of retail liquor sales: off-premises consumption and on-premises consumption. Establishments that serve alcohol on-site constitute a majority of the licensing workload. As a result, the audit focused on this aspect of the liquor licensing process.

On-premises consumption liquor licenses allow alcoholic beverages to be consumed at the location where the beverage is purchased. The licensing process involves both the Department of Revenue (DOR) and the Department of Justice, Gambling Control Division (GCD). DOR is responsible for administering the Montana Alcoholic Beverage Code and managing the liquor licensing function. GCD is responsible for both liquor and gambling-related investigative services. This includes investigative work to determine whether applicants and premises meet statutory liquor licensing requirements.

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## Audit Objectives

During preliminary review we gathered information to gain an understanding of the on-premises licensing process and develop audit scope and objectives. We reviewed state laws, administrative rules, policies and procedures, management information and conducted reviews of files. We also interviewed management and staff at DOR and GCD regarding each entity's responsibilities.

We developed audit objectives related to the on-premises liquor licensing process. In addition to providing the legislature with information regarding the process, the following questions were answered:

1. Does the administration of the process negatively affect the private business community?
2. Did reorganization at DOR increase the efficiency of processing liquor license applications?
3. Did the transfer of statutory responsibility for liquor-related investigative functions to the GCD improve process efficiency?



## Chapter I - Introduction

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### Audit Scope and Methodology

4. Is the on-premise licensing process working as intended by the legislature?

This audit provides information on the process to review and approve applications for on-premises consumption liquor licenses. Our review did not include an assessment of the licensing process for other types of liquor licenses such as manufacturers, distributors, off-premise sales, or special licenses/permits issued in order to sell alcoholic beverages at special events. We did not examine the quota system or compliance and enforcement activities to ensure licensees comply with statutory and administrative rule requirements once they are licensed.

DOR and GCD established a Memorandum of Understanding (MOU) outlining the role and responsibilities of each agency. The MOU addresses liquor investigation activities and liquor licensing-related duties. We reviewed the MOU to gain an understanding of both departments' respective duties.

To assess the efficiency of the on-premises liquor licensing process we reviewed a statistical sample of recent liquor license applications. Seventy-two on-premises liquor applications and associated files were examined. Thirty-six files related to the overall on-premises licensing process and thirty-six related specifically to DOR's liquor lottery process. Our sample was from applications processed by DOR and GCD between July 1, 1999 and December 31, 2000.

We reviewed DOR file information to develop an understanding of the licensing process and assess action taken by staff to ensure applicants meet licensing criteria. We tracked and analyzed key process dates in order to assess the amount of elapsed time from when an application is first submitted to the department to when a licensing determination is provided to the applicant. We reviewed supporting documentation requested from liquor applicants to determine how the documents impacted licensing decisions. GCD files were reviewed to evaluate their procedures for processing liquor license applications.

If a liquor license applicant in our sample applied for a gambling license, we also reviewed the efficiency of the process used by GCD to investigate and review the gambling application. We performed this review in order to compare the liquor licensing process to the gambling licensing process. Applicants are required to pay certain liquor license fees to obtain liquor licenses. We did not conduct an evaluation of these fees.

We discussed the processing of liquor and gambling applications with DOR and GCD management and staff. Interviews were conducted with personnel located in Helena and in regional field offices. We also observed a liquor/gambling licensing training course GCD management provided to GCD licensing staff. During the audit, DOR and GCD management and staff held discussions on potential changes that could be made to improve the liquor licensing process. We attended these meetings to stay informed as to the potential changes being considered. We tracked legislation introduced during the 2001 Legislative Session related to the liquor licensing process. House Bill 399, Chapter 448 changed certain timelines of the liquor licensing process. It also provided DOR more flexibility in using liquor license fees to support licensing activities.

We also obtained input from the tavern and gambling industries relative to both the liquor and gambling licensing processes. We contacted a sample of business owners and their legal counsels to gather opinions and suggestions regarding their recent license applications and experience with the departments. Interviews were also conducted with industry officials from the Montana Tavern Association and the Gambling Industry Association. We also obtained information from other states related to their liquor licensing process. This information was used to compare with Montana's process and identify potential efficiencies that could be incorporated into Montana's licensing process.

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### Compliance

We reviewed compliance with liquor-related state laws and administrative rules. Testing focused on various statutory requirements which directly impact the on-premises liquor licensing

## Chapter I - Introduction

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process. Testing examined adherence to statutory time frames, roles and responsibilities of each agency, management of the liquor license quota system, and licensing fees. Specific statutory issues are presented throughout this report.

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### Management Memorandums

During the course of the audit we sent management memorandums to DOR. The issues identified are not included in this report, but implementation would help increase the efficiency of on-premises liquor licensing process. These memorandums addressed the following areas:

- ▶ DOR should combine the lottery drawing application used for the restaurant beer and wine (RBW) license lottery with the application for other on-premises license lotteries into a single application.
- ▶ DOR should simplify the liquor lottery drawing process by reducing the number of department staff involved in the process and conduct the drawings at DOR headquarters.
- ▶ The condition of DOR on-premises liquor licensing files made it difficult to outline the events of the liquor licensing process and determine how licensing decisions were made. The DOR should improve maintenance procedures for on-premises liquor license files.

We also discussed several issues with GCD related to division operations. We provided the division with suggestions in three areas. These areas were:

- ▶ GCD should review their procedures to ensure regional supervisors distribute and review all cases in a timely manner.
- ▶ GCD should refresh staff on how to refer potential concerns identified during license investigations to appropriate federal or state authorities.
- ▶ GCD should review the supervisory reporting structure for field revenue agents.

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### Report Organization

The remainder of this report is organized as follows:

## **Chapter I - Introduction**

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Chapter II – On-Premises Liquor Licensing Background

Chapter III - On-Premises Liquor Licensing Process

Chapter IV - Streamline the On-Premises Liquor Licensing Process

Chapter V - Other On-Premises Liquor Licensing Issues

Chapter VI – Further Streamlining of Process May Be Appropriate



# Chapter II - On-Premises Liquor Licensing Background

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## Introduction

There are currently two agencies involved in licensing establishments for on-premises consumption of alcohol: Department of Revenue (DOR) and Department of Justice, Gambling Control Division (GCD). They spend a combined total of over \$1 million each year on liquor licensing and regulation. This chapter contains a discussion of the statutory responsibilities of both agencies and presents information relative to funding and FTE. It includes information on the types of liquor licenses available and associated licensing fees, statutory limits on the number of licenses available, current licensing statistics, and license qualifications.

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## Department of Revenue

Section 16-1-301, MCA, gives DOR the power and duty to administer the Montana Alcoholic Beverage Code. State law also outlines the department's functions, powers, and duties related to alcoholic beverages in Montana. Some major department duties related to on-premises liquor licensing include:

- ▶ Controlling the possession, sale, and delivery of liquor.
- ▶ Employing the staff needed to administer the code.
- ▶ Granting and issuing liquor licenses.
- ▶ Placing special restrictions on the use of particular liquor licenses.

DOR completed a re-organization in 1999. A main objective of this re-organization was for DOR to place greater focus on customer service. Prior to reorganization, the department's Liquor Division administered liquor-related activities including liquor licensing. Reorganization eliminated the Liquor Division and the licensing function is now handled by the Customer Intake (CI) Section within the department's Customer Service Center. CI Section duties related to on-premises liquor licensing include:

- ▶ Application processing for all new retail and wholesale liquor licenses.

## **Chapter II - On-Premises Liquor Licensing Background**

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- ▶ Transferring of existing licenses.
- ▶ Renewing annual liquor licenses.

The CI Section also processes winery registrations and permits, licenses brewers and liquor manufacturers, issues permits allowing alcohol consumption at special events, monitors activities of existing liquor license holders and responds to issues relating to liquor activities.

The CI Section also has non-liquor licensing duties. This includes DOR's customer call center, developing and distributing tax forms, registering and licensing businesses for withholding and unemployment insurance, cigarette and tobacco tax, and administering one-stop business licensing.

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### **Funding and FTE**

The CI Section is authorized a total of 31 FTE. Of these, 9.72 FTE are dedicated to liquor licensing administration. Two positions are currently vacant. Fiscal year 1999-00 expenditures for DOR liquor license activities were approximately \$525,000 and fiscal year 2000-01 expenditures were approximately \$510,000. These expenditures relate to all DOR liquor licensing activities including on-premises, off-premises, manufacturers, distributors, and brewers. They also include general liquor license administration and monitoring related activities. The department does not maintain financial data related specifically to expenditures for on-premises liquor licensing activities.

Liquor licensing activities were historically funded from the State General Fund. House Bill 399, Chapter 448, passed during the 2001 Legislative Session and changed the funding flow for liquor license administration. Since July 1, 2001 revenue collected by DOR from all liquor license fees and permit fees is deposited into the department's liquor enterprise fund. The department will pay expenses associated with administering liquor licensing from this fund along with expenses associated with investigations pursuant to its agreement with the Department of Justice. Net proceeds (total collections less administrative costs) will be deposited into the state General Fund. The department sought this change to allow more

## Chapter II - On-Premises Liquor Licensing Background

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flexibility in the administration and funding of liquor license administration. Specifically, DOR wants to transfer more responsibility to GCD to review supporting documents related to on-premises liquor license transactions.

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### Gambling Control Division

GCD has been responsible for investigative functions related to alcoholic beverage licensing and enforcement since 1993 when liquor investigative functions were statutorily transferred from DOR to GCD. GCD conducts investigations of liquor license applicants to determine if they meet licensing qualifications and inspects establishments wanting to be licensed.

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### Funding and FTE

GCD is authorized 48 FTE which are divided between four units: Administration (3 FTE), Operations (15 FTE), Technical Services (6 FTE), and Investigations (24 FTE). The primary focus of the division is administration and enforcement of laws and rules related to the gambling industry. Liquor investigation and liquor licensing work is conducted in addition to gambling-related duties performed by the division. The majority of work related to liquor licensing is performed by the Investigations and Operations Bureaus.

A portion of liquor license revenues is appropriated to fund the GCD. Fiscal year 1999-00 expenditures for GCD liquor-related investigations were \$524,608. Fiscal year 2000-01 expenditures were \$536,076. These expenditures include the work to investigate on-premises liquor license applications. Expenditures also related to investigations into potential violations of the Montana Alcoholic Beverage Code, such as the sale of untaxed liquor.

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### Type of On-Premises Liquor Licenses and Associated Fees

DOR issues several types of on-premises consumption liquor licenses. The majority of on-premises liquor licenses are issued to bars, taverns and restaurants. However, DOR also issues licenses that allow on-premises consumption at other types of establishments such as airports, resorts, golf courses and veteran and fraternal organizations. The basic types of on-premises consumption licenses are:

- ▶ All-beverage License – This license allows a license holder to sell liquor, beer, and wine to be consumed at the licensed location. A license holder approved for this license can offer gambling if they qualify.



## **Chapter II - On-Premises Liquor Licensing Background**

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- ▶ Beer License – This license allows a license holder to sell beer for consumption at the licensed location. Qualifying businesses can also purchase a wine amendment with this license so wine can be sold. This license is called a beer/wine license. A license holder approved for this license can offer gambling if they qualify. The only exception is a person issued a new beer license approved within the city quota area after October 1, 1997, can not have gambling.
- ▶ Restaurant Beer and Wine (RBW) license – This license allows restaurants to sell beer and wine to patrons for on-premises consumption. Unlike all-beverage and beer licenses gambling can not be offered with this license.

All-beverage, beer/wine, and RBW licenses are transferable and the license owner can sell the license on the open market. An additional distinction between the various on-premises licenses is a person is restricted to owning only one all-beverage license. This same restriction does not apply to beer or RBW licenses.

State law and administrative rule allow DOR to issue “temporary operating authority” to a buyer of a on-premises liquor license. Temporary operating authority is issued in 45-day increments and authorizes the buyer to operate the business pending DOR’s final approval of the application for the transfer of the license. Temporary operating authority can not be issued if the location of a business changes or if it is a new license.

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### **License Fees**

Owners of on-premises liquor licenses are assessed an initial license fee when they are first granted a license. In addition, they pay an annual fee to renew the liquor license. Fee amounts are based on statutory criteria. Section 16-4-420, MCA, sets fees for RBW licenses and section 16-4-501, MCA, sets fees for all other on-premises liquor licenses. The fees are based on whether businesses are located within the city limits, population, and the seating capacity of an establishment. The following table illustrates the various on-premises liquor license origination and renewal fees.

## Chapter II - On-Premises Liquor Licensing Background

**Table 1**  
**On-Premises Liquor License Fees**

<u>Type of License</u>	<u>Statutory Fee Criteria</u>	<u>Initial Fee</u>	<u>Renewal Fee</u>
All-beverage	Located 5 miles outside city limits	\$ 400	\$400
	City of less than 2,000 inhabitants*	\$ 400	\$400
	City between 2,000 - 5000 inhabitants *	\$ 500	\$500
	City between 5,001- 10,000 inhabitants *	\$ 650	\$650
	City more than 10,000 inhabitants *	\$20,000	\$800
Beer	All locations	\$ 200	\$200
	With wine consumption amendment	\$ 400	\$400
RBW	Seating capacity of:		
	60 or less	\$ 5,000	\$400
	61 to 100	\$10,000	\$400
	101 or more	\$20,000	\$400

\* Applies to within 5 miles of city limits

**Source: Compiled by the Legislative Audit Division from Montana Code Annotated.**

There are other miscellaneous licensing and endorsement fees which apply to liquor licenses. For example, if applicants want to provide catering services they pay additional fees ranging from \$200 to \$250 depending on the type of license. In addition, there is a \$200 processing fee for most on-premises liquor licenses. The processing fee for RBW licenses is \$100. The department collected approximately \$1.7 million in liquor licensing and processing fees during fiscal years 1999-00 and 2000-01. These funds were transferred to the state General Fund.

### **Licenses Issued are Based on a Quota System**

The maximum number of on-premises liquor licenses which can be issued by the department are established by statute. The liquor license quota system is based on the population within each quota area. The quota system limits the number of all-beverage licenses which can be issued in each city and county. Beer and RBW licenses are only subject to the quota within city limits including the five miles surrounding the city limits. The following table describes the statutory formula for determining how many licenses can be issued under the quota system for each type of license.

## Chapter II - On-Premises Liquor Licensing Background

Table 2

### Statutory Limits on Number of Liquor Licenses

#### All-Beverage Licenses

- Towns of 500 inhabitants or less and within a distance of 5 miles of the city limits can not be issued more than two licenses.
- Cities/towns of more than 500 inhabitants but less than 3,000 inhabitants and within a distance of 5 miles of the city limits can be issued three licenses for the first 1,000 inhabitants and one license for each additional 1,000 inhabitants.
- Cities/towns over 3,000 inhabitants and within a distance of 5 miles of the city limits can be issued five licenses for the first 3,000 inhabitants and one license for each additional 1,500 inhabitants.
- Portions of county more than 5 miles from city limits can be issued one license for each 750 inhabitants.

#### Beer and Beer/Wine Licenses

- Towns of 500 inhabitants or less and within a distance of 5 miles of the city limits can not be issued more than one license.
- Cities/towns of more than 500 inhabitants and not over 2,000 inhabitants and within a distance of 5 miles from the city limits can be issued one license for every 500 inhabitants.
- Cities/towns over 2,000 inhabitants and within 5 miles of the city limits can be issued four licenses for the first 2,000 inhabitants, two additional licenses for the next 2,000, and one additional license for every additional 2,000 inhabitants.

#### RBW Licenses

- Restaurants located in quota areas with 20,000 inhabitants or fewer the number of licenses issued can be no more than 80 percent of the beer license quota in a city of that size.
- Restaurants located in quota areas with 20,001 to 60,000 inhabitants the number of licenses issued can be no more than 50 percent of the beer license quota in a city of that size.
- Restaurants located in quota areas with 60,001 or more inhabitants the number of licenses issued can be no more than 40 percent of the beer license quota for a city of that size.

**Source: Compiled by the Legislative Audit Division from Montana Code Annotated.**

### **Number of Liquor Licenses Issued**

As of July 2001, there were a total of 2,026 on-premises consumption quota licenses issued in the state. Of these, 1,951 all-beverage, beer, and RBW licenses were subject to the quota system. There were another 75 beer licenses issued within counties that were not subject to quota limits. In comparison, there were 1,722 gambling operator licenses issued by GCD during the same time period. The following table provides statewide data for the number of all-beverage, beer, and RBW licenses which have been issued.

## Chapter II - On-Premises Liquor Licensing Background

**Table 3**

**License Quota vs. Licenses Issued (Statewide)**  
**July 2001**

<u>Type of License</u>	<u>Quota</u>	<u>Issued</u>	<u>Difference</u>
All-Beverage	1,122	1,437	315
Beer	448	430	(18)
RBW	<u>307</u>	<u>84</u>	(223)
Totals	1,877	1,951	

**Source:** Compiled by the Legislative Audit Division from DOR records.

As the table shows, there are currently 315 more all-beverage licenses than allowed under the quota. Beer and RBW licenses are both under statewide quota limits. On a city or county basis, some cities and counties are under quota while others are over quota.

According to DOR officials, there are several reasons some areas are over quota. In many cases, when licenses subject to quota restrictions were originally issued, the number issued were within quota limits. However, a drop in population in several areas resulted in a corresponding drop in the license quota. Since the licenses had already been issued, the result was quota limits were exceeded in several cities and counties. In other cases, areas were over quota when the quota system was created. For example, the Butte/Silver Bow area currently has a quota of 26 all-beverage licenses but 88 licenses had been issued (over quota by 62 licenses). DOR officials said they were over quota when the quota system was created and “grandfathered” in this way. In some instances, all beverage licenses can be “floated” or transferred from one area where the quota is exceeded to another area that is over quota. This has contributed to some areas being over quota for all-beverage licenses, according to DOR officials.

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### Liquor Lottery Drawing Used to Select Some Applicants

Since the quota system limits the number of licenses that can be issued, it is not uncommon for the DOR to receive more applications than available licenses. In these cases, the department uses a liquor

## **Chapter II - On-Premises Liquor Licensing Background**

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lottery drawing to determine which applicants can apply for a license. The liquor lottery was established in 1997 when the legislature created the RBW license.

During the lottery, applicants are randomly chosen from a pool of applicants for the opportunity to apply for a license. For example, if one license is available in a quota area and the department receives five applications a lottery is conducted to determine which applicant can apply for the license. The first applicant selected applies for the license and the others are ranked in the order they were drawn. In the event the lottery winner does not qualify for the license the second applicant drawn gets to apply, which has occasionally happened. In 1998, DOR began to use the lottery drawing for all on-premise liquor licenses.

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### **Number of Liquor License Applications Submitted Annually**

According to DOR staff, much of the work concerning liquor licensing relates to on-premises consumption licenses. On-premises consumption licensing activities consist of:

- ▶ Newly issued licenses.
- ▶ Transfer of ownership of an existing license.
- ▶ Remove an individual from an existing license.
- ▶ Alter or change the business premises.
- ▶ Move business to a new location.
- ▶ Add or change a secured party to a license.

Most applications relate to transfer of ownership (sale) of an existing on-premises license. A transfer of ownership requires the purchaser of the liquor license to submit an application for licensure to DOR. The application is processed to ensure the applicant meets statutory and administrative rule licensing criteria. The applicant must be approved before the license sale can be finalized. Table 4 illustrates the number of on-premises liquor license applications received and processed by the department during calendar years 1999 and 2000.

## Chapter II - On-Premises Liquor Licensing Background

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Table 4

**On-Premises Liquor License Applications Received**  
**(Calendar Years 1999 and 2000)**

<u>Type of License</u>	<i>Number Received</i>	
	<u>CY 1999</u>	<u>CY 2000</u>
All-Beverage	157	199
Beer	69	70
RBW	<u>11</u>	<u>28</u>
Total	237	297

**Source: Compiled by the Legislative Audit Division from DOR records.**

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### Liquor License Qualifications

Section 16-4-401, MCA, states that receiving an on-premises liquor license “is a privilege that the state may grant to an applicant and not a right to which any applicant is entitled.” Therefore, applicants must meet several statutory qualifications to receive a license. State law sets forth the criteria individual and corporate applicants must meet to be approved for on-premises licensure. The following table summarizes these requirements.

## Chapter II - On-Premises Liquor Licensing Background

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Table 5

**Licensing Requirements for All-Beverage and Beer Licenses**

*Individuals*

- Can not possess ownership interest in more than one establishment licensed for all-beverage sales.
- Can not possess an ownership interest in an agency liquor store.
- The applicant and any member of the applicant's immediate family must be without financing from or any affiliation with a manufacturer, importer, bottler, or distributor of alcoholic beverages.
- Must be a resident of the state and be qualified to vote in a state election. (Voting qualifications are: at least 18 years of age, resident of the state for 30 days, U.S. citizen, not currently serving sentence in a penal institution for felony violation)
- Must have past record and present status as a purveyor of alcoholic beverages and as a business person and citizen that demonstrates the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments.
- Must be at least 19 years of age.

*Corporations*

- The owners of 51 percent of the outstanding stock must be a resident of the state and be qualified to vote in a state election.
- Each owner of 10 percent or more of the outstanding stock must meet the requirements for an individual applicant.
- Each individual who has control over the operation of the license or shares in the profits or liabilities of the license meets the requirements for an individual applicant. \*
- The corporation is authorized to do business in Montana.
- If a corporation's stock is not listed on a national stock exchange, each owner of stock may not possess an ownership interest in more than one establishment licensed for all-beverage sales or in an agency liquor store.

\* Effective July 1, 2001, each person who **shares in the profits or liability of a license** must meet the requirements for an individual applicant. This section also applies to a shareholder of a corporation who owns more than 10 percent of the outstanding stock in that corporation.

**Source: Compiled by the Legislative Audit Division from Montana Code Annotated.**

The licensing criteria for on-premises RBW licenses are slightly different. A key difference is applicants for RBW licenses are not required to be residents of the state.

The location proposed for conducting business must also meet statutory criteria. For example, section 16-3-306, MCA, does not allow a license to be issued to any business whose premises are within 600 feet and on the same street as a church or school. A proposed premises must also meet building, health and fire codes, and comply with any local ordinances.

# Chapter III - On-Premises Liquor Licensing Process

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## Introduction

All applications for on-premises liquor licenses go through basically the same review and approval process. For example, an applicant applying for a new beer license goes through the same process as an applicant purchasing an existing license from a current license holder. This chapter discusses the role of DOR and GCD in the review and approval process for on-premises liquor licenses.

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## Coordination Between Departments

DOR is statutorily responsible for administering the Montana Alcoholic Beverage Code while GCD is statutorily responsible for conducting any investigations related to the same code. Due to the statutory split in duties, the departments entered into a Memorandum of Understanding (MOU) in an effort to better coordinate respective responsibilities. The MOU addresses the following GCD responsibilities:

- ▶ Investigate the character of liquor applicants and determine suitability of the proposed premises to ensure both applicants and premises meet licensing criteria.
- ▶ Gather facts and evidence necessary for DOR to determine whether the department should approve, deny, or revoke a liquor license or impose civil sanctions against a licensee.
- ▶ Review the financial background and personal criminal record of applicants.
- ▶ Assist in the enforcement of the Liquor Code by providing investigations into civil or criminal violations and forwarding this information to DOR.
- ▶ Coordinate efforts with license applications and enforcement activities related to gambling statutes.
- ▶ Investigate all matters relating to the purchase, sale, importation, exportation, possession, and delivery of alcoholic beverages, and conduct searches and seizures of alcoholic beverages illegally stored or received.
- ▶ Serve as a liaison to local law enforcement authorities in matters relating to alcoholic beverages law enforcement.



## Chapter III - On-Premises Liquor Licensing Process

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- ▶ Conduct financial reviews of liquor license applicants.

The MOU stipulates GCD staff will conduct personal interviews with applicants, perform reviews of application-supporting documents, investigate the background of applicants, physically inspect the proposed premises, make a determination regarding whether the applicant and premises meet statutory liquor licensing criteria, and issue a written report of findings to DOR. Much of the work GCD staff performs related to liquor applications is similar to what is completed for gambling applications.

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### Department of Revenue Conducts Initial Application Review

The first step in the process is for applicants to complete an application and submit it to DOR. Applicants must also provide supporting documents with their application including: business and personal financial information, stock ledgers/certificates, floor plans, articles of incorporation, corporate meeting minutes, partnership agreements, buy/sell agreements, and personal history statements. When DOR receives the application it is assigned to a department compliance specialist for review.

Compliance specialists review the on-premises liquor application and supporting documents for completeness. If documentation is incomplete, missing, or compliance specialists have questions, a “process letter” is sent to the applicant to obtain the needed information. Section 16-4-207, MCA, gives DOR one chance to request additional information from the applicant. State law gives the applicant 60 days to provide the information requested. It should be noted that HB 399 passed by the 2001 Legislature shortened the timeframe applicants have to provide this information to 30 days. This change became effective July 1, 2001. If applicants do not provide the information, the application process can be terminated and the application returned to the applicant. However, the department generally contacts the applicant to obtain the information so the application process can continue.

Once all information is provided to the department and compliance specialists deem applications complete, they are sent to GCD for

## Chapter III - On-Premises Liquor Licensing Process

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investigation of the applicant and the proposed premises. DOR also issues public notice in the applicant's local newspaper noting an application was made for an on-premises liquor license.

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### Public Can Protest License Applications

Public notice gives the public an opportunity to protest the application if they do not believe it is in the best interest of their community. If public protest occurs, the applicant can request a hearing with the department. This hearing provides an opportunity for both the applicant and those protesting to communicate to the department why the license should or should not be approved. Upon completion of the hearing, DOR hearing officials (including the department director) review the information and a decision is made on whether to continue or stop the licensing process. Based on our file reviews, the primary reasons for public protests are concerns with the number of bars or taverns in an area, proximity to churches or schools, or concerns with potential gambling activities.

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### GCD Conducts Investigation

Section 16-4-402, MCA, requires DOR to submit all on-premises liquor license applications to the GCD to investigate all matters relating to the application. GCD conducts investigations to determine if the applicant and premises meet statutory liquor licensing criteria. Investigations are performed by GCD field staff, which includes division investigators and revenue agents. All investigative work is reviewed by GCD regional supervisors to ensure the documentation and facts gathered during the investigation support the conclusion reached.

The main focus of GCD liquor licensing investigative work is to ensure all financing and ownership interests in the transaction have been disclosed by the applicants. Liquor licensing investigations include: a review of the application and supporting documents; review of the license transfer or purchase; check for criminal-related activities of the applicants; personal interviews with each applicant; and an inspection of proposed premises. Statute provides the GCD 90 days to complete its investigation of the liquor license application. Upon completion of the investigation, DOR is provided a report summarizing the results of the investigation and concluding whether

## Chapter III - On-Premises Liquor Licensing Process

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or not the applicants and premises meet statutory liquor licensing criteria.

At the time of the audit, the MOU between GCD and DOR was being updated to transfer more responsibility for financial reviews of liquor license applications to GCD. When this transfer is complete, a GCD revenue agent will also review financial related information submitted for liquor applications without a corresponding gambling application.

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### DOR Issues Final Licensing Decision

DOR has statutory responsibility for making the final licensing decision to either approve or deny the application. According to DOR staff, the investigative reports issued by GCD are used in conjunction with other information obtained during the application process to make final licensing decisions. Other information used includes the comments provided from local officials, and if public protests of an application were received, the findings of fact and conclusions of law of the hearing examiner.

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### Basis for Denial

Section 16-4-405, MCA, specifies several reasons an application for an on-premises liquor license can be denied. These reasons include:

- ▶ Premises are off “regular police beats” and cannot be properly policed by local authorities.
- ▶ A premise is situated within a zone of a city, town or county where the sale of alcoholic beverages is prohibited by ordinance.
- ▶ The welfare of the people or other retail licensees residing in the vicinity of the proposed premises will be adversely and seriously affected.
- ▶ There is not a public convenience and necessity for the business.
- ▶ Applicant and/or premises do not meet statutory qualifications for licensure.
- ▶ Applicant does not comply with all department requirements set forth in conditional licenses.

In calendar year 1999, the department denied seven applications for new licenses or for transfers of ownership. Reasons for these denials

### **Chapter III - On-Premises Liquor Licensing Process**

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included applicants falsifying applications or proposed premises not meeting statutory requirements. The department denied one application for a new liquor license during calendar year 2000 due to the premises having health code problems and the applicant not paying state income taxes. The department also denied several license renewals in each of these years. However, most licenses were reinstated once the problems were resolved and a fine was paid.



# Chapter IV - Streamline the On-Premises Liquor Licensing Process

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## Introduction

Our primary audit objective focused on the efficiency of the licensing process. We identified a number of improvements that could be made to increase the timeliness of the liquor licensing process. We developed recommendations which could streamline the process, eliminate duplication, and remove excessive requirements placed on license applicants while continuing to ensure compliance with statutory licensing requirements.

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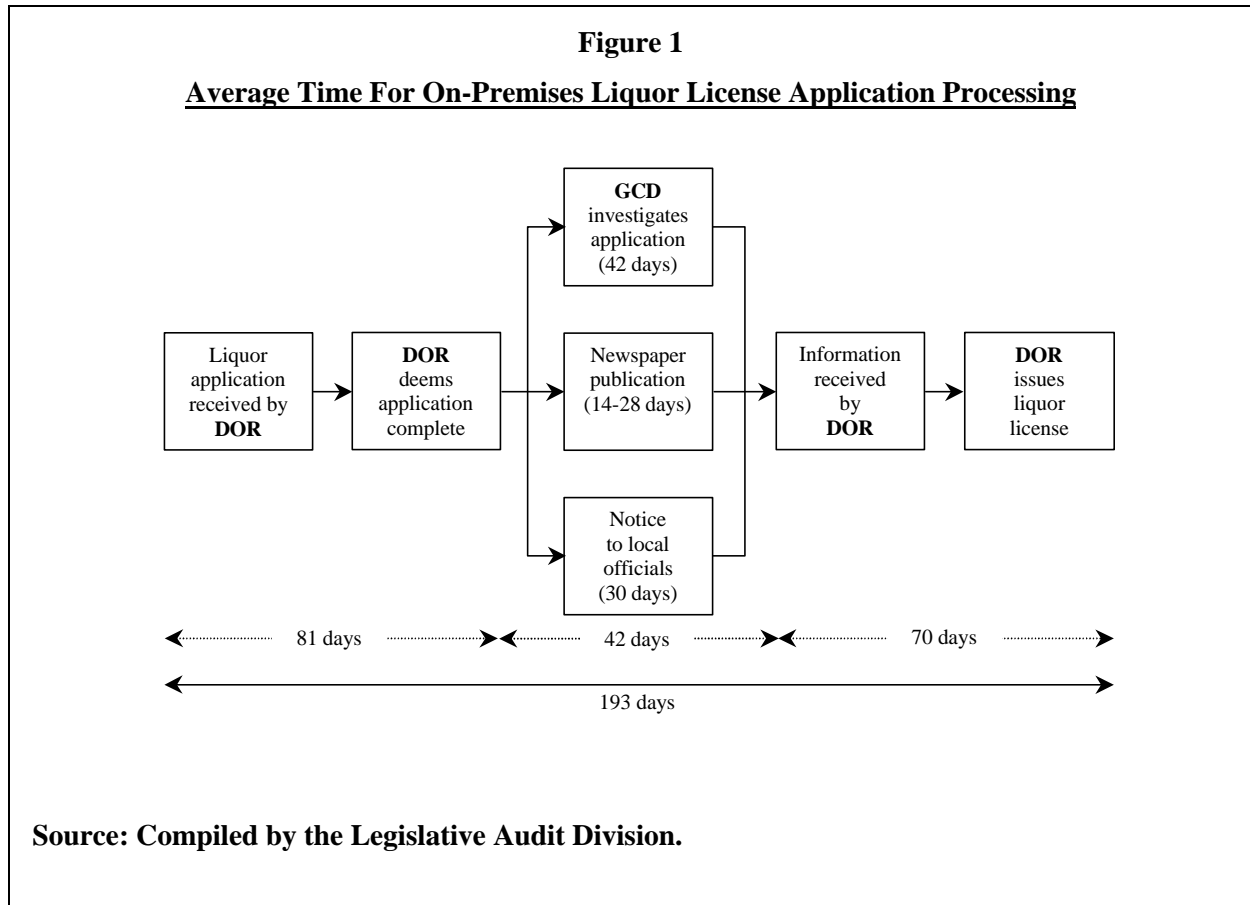
## Current Process Takes an Average of 193 Days

A major focus during the audit was reviewing the timeliness of the current on-premises liquor licensing process. DOR liquor license compliance specialists receive approximately 3.50 on-premises applications each month. Based on our review of a sample of licensing files, we found it takes an average of 193 days to review and approve these applications. We used three different criteria to compare the reasonableness of this time frame.

- < DOR license application information indicates processing time is generally 12 to 14 weeks (less than 100 days).
- < Information provided by surrounding states indicated their liquor licenses are processed in 4 to 12 weeks.
- < Because of similarities in application requirements to receive a Montana liquor and gambling license, we noted gambling license applications are processed in an average of 16 weeks (110 days).

The following figure illustrates the time involved with each step in processing on-premises consumption retail liquor licenses.

## Chapter IV - Streamline the On-Premises Liquor Licensing Process



The majority of the 193-day timeframe reflects DOR processing activities. During initial stages of review, it takes department staff an average of 81 days to deem an application complete. This part of the process consists of DOR staff reviewing supporting documents provided with liquor applications. We noted it takes DOR approximately 23 days to complete their initial review of supporting documentation and send their first request to applicants for additional information. Applicants took an average of 33 days to provide this information to the department. After receiving this information, the department took an average of 25 additional days to complete their review and deem the application complete.

Once an application is deemed complete, it is then turned over to Gambling Control Division (GCD) for processing. As part of the investigation, GCD staff review law enforcement records to determine if applicants have a criminal history, conduct personal

## Chapter IV - Streamline the On-Premises Liquor Licensing Process

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interviews with each applicant, perform an inspection of the premises, and investigate the business transactions and finances. Statutes allow 90 days for this review. GCD investigations are completed in an average of 42 days. When the application is referred to GCD, DOR provides notice to local government officials regarding the pending application. DOR also contacts local area newspapers so an applicant's intent to purchase the liquor license can be published and local citizens notified of the pending transaction. The GCD investigation, notice to local officials, and newspaper publication are performed concurrently.

Once these steps are completed, DOR continues processing the application and issues a determination as to whether to grant or deny the license request. Analysis of files shows this last portion of department processing takes an average of 70 days to perform. Some of this delay is due to coordination problems between DOR and GCD, DOR requesting additional documentation from GCD or applicants, DOR waiting for final approval from local officials on whether buildings meet building, health and fire codes, and resolution of protests.

*Conclusion: The on-premises liquor licensing process takes an average of 193 days.*

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### Impacts of Current Licensing Process

The current timeframes to complete the liquor licensing process have several impacts to both applicants and the state agencies involved in the process. These impacts are discussed in the following sections.

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### Current Process Increases Paperwork and Causes Duplicate Review

Ninety percent of on-premises liquor applications have a corresponding gambling application. We noted applicants are required to provide essentially the same supporting documentation to DOR and GCD if applying for both a liquor and a gambling license. The supporting documentation is used to determine financing sources, residency, number of all-beverage licenses owned, and criminal history. Examples of supporting documentation submitted to both agencies include:

- ▶ Articles of Incorporation
- ▶ Stock certificates
- ▶ Corporate meeting minutes



## Chapter IV - Streamline the On-Premises Liquor Licensing Process

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- ▶ Bank signature cards
- ▶ Sale/purchase agreements
- ▶ Loan documents
- ▶ Balance sheets
- ▶ Income statements
- ▶ Lease agreements
- ▶ Personal history statements
- ▶ Certified surveys
- ▶ Floor plans

For those applicants seeking only a liquor license, all supporting documentation is initially provided to DOR. DOR then photocopies the application and supporting documents and forwards them to GCD for investigation. GCD investigators obtain additional documents from applicants if necessary once the application is forwarded to GCD.

Under the current liquor licensing system, two different agencies review documents provided with liquor applications. DOR staff review documents in order to determine if the application packet is complete and whether sufficient evidence exists to enable them to reach a licensing decision. GCD staff, during the course of the liquor investigation, also require these documents for review to ensure they accurately reflect the business transaction, that all financial and business interests have been disclosed, and to determine whether the applicant and premises meet statutory liquor licensing criteria.

*Conclusion: The on-premises liquor licensing process causes applicants to submit duplicate paperwork and results in duplication of effort and review.*

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### **Business Costs are Increased**

We interviewed liquor license applicants, legal counsel, and industry representatives from Montana Tavern Association (MTA) and Gambling Industry Association who were familiar with the on-premises liquor licensing process.

Industry representatives claim licensing delays have increased their business costs and impacted the sale and purchase of the business. They said the current process often makes completing these transactions more difficult and expensive because of the amount of

## Chapter IV - Streamline the On-Premises Liquor Licensing Process

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time involved. They are frustrated with the lack of DOR responsiveness and that on-premises liquor licenses are not issued in a timely manner. They cited examples of lost sales of a business, lost business revenues and lost leases. One applicant stated an additional \$6,000 was paid to lease a building for several months while waiting for DOR approval of the request to transfer the liquor license. Because of a convoluted process, applicants and licensees stated another cost they incur are attorney's fees. MTA officials estimate the average attorney fee associated with liquor license transactions is approximately \$3,000. Another business owner estimated costs associated with the liquor licensing process were \$7,000. While a more efficient licensing process would not eliminate attorney fees, it could help reduce them. Documents contained in DOR licensing files supported these statements. For example, one applicant's building lease expired during the time DOR was processing the application. Consequently, the applicant withdrew its application.

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### Liquor Licensing Delays Gambling License Process

Statutory gambling licensing criteria requires an applicant for a gambling license must first be licensed to provide on-premises consumption of alcohol. As a result, GCD is not able to issue a gambling license until the applicant secures a liquor license. In order to mitigate this impact, GCD will issue a gambling license to applicants who have been issued temporary operating authority for their liquor license from DOR. However, our file review revealed delays in liquor licensing continues to impact issuance of gambling licenses. In reviewing a sample of gambling applications, we found issuance of a gambling license was delayed for 87 percent (13 of 15) of the reviewed gambling applications. The average delay was 35 days. GCD was unable to issue a gambling license as the applicant did not have either final or temporary liquor license approval from DOR.

Businesses we contacted during the audit also expressed concerns with the impact the liquor licensing process has on gambling license issuance. One licensee indicated the liquor license process delayed issuance of its gambling license by six months. Both businesses and industry representatives indicated these delays cause significant lost earning potential from revenue associated with the gambling

## Chapter IV - Streamline the On-Premises Liquor Licensing Process

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activities. Using gambling revenue statistics compiled by the GCD, we estimate for each one-day delay in issuing a gambling license, there is lost earning potential of \$456 in video gambling revenue. For the 13 businesses in our sample, the 35-day delay translates into lost earning potential of over \$207,600 of gambling revenues for those businesses. There was also lost earning potential of liquor and food sales for applicants experiencing delays in liquor license approval. This also results in lost tax revenue to the state and local entities.

*Conclusion: The on-premises liquor licensing process negatively impacts business by increasing business costs and/or causing lost business revenues.*

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### Process Efficiency Needs to Improve

Our review noted the on-premises licensing process takes an average of 193 days to complete. The process contains duplication between GCD and DOR and negatively impacts many businesses that go through the process. There are several reasons for the inefficiencies we noted with the process. These include:

- ▶ outdated requirements to obtain liquor licenses
- ▶ lack of an expedited process for certain applications
- ▶ weaknesses in DOR staffing and supervision
- ▶ inaccurate or incomplete management information
- ▶ unfair liquor lottery drawings

The following sections discuss each of these areas.

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### Residency as a Condition of Liquor Licensure

We believe a key process change that would streamline the process would be to remove an outdated requirement from the current licensing criteria. Montana statutes specify in-state residency as a condition to receive on-premises consumption all-beverage, beer, and beer/wine licenses. Montana established residency requirements when Montana's liquor codes were first enacted in 1937. Section 16-4-401, MCA, sets forth the general licensing criteria for on-premises consumption of alcoholic beverages. Individual owners must be a resident of the State of Montana and be qualified to vote in

## **Chapter IV - Streamline the On-Premises Liquor Licensing Process**

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a state election. Corporate applicants must also meet residency requirements. Each owner of 10 percent or more of the outstanding stock or anyone who has control over the operation of the license or shares in the profits or liabilities of the license must be a resident of the state.

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### **Residency Requirements Questionable**

Recent court decisions in two states (Kansas and Texas) ruled residency requirements are invalid because they violate the United States Constitution. Although the constitution grants states the authority to regulate alcohol, the constitution also contains provisions which prevent the restraint of trade. The U.S. District Court for the State of Kansas and U.S. Court of Appeals, Fifth Circuit, both issued rulings which found the constitution's commerce clause takes precedence over a state's right to regulate alcohol. Courts stated having residency as a requirement to obtain liquor licenses favored in-state economic interests over out-of-state interests. Residency requirements present a challenge to out-of-state businesses wishing to expand business into the state. The courts said that unless there was a valid reason for favoring in-state interests, then a form of "economic protectionism" is created. The court decisions noted states often have difficulty justifying residency requirements, so statutes favoring in-state interests are routinely struck down under the Commerce Clause. As a result of these rulings, some states have moved away from in-state residency as a condition of liquor licensure.

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### **Residency Requirement Contributes to Licensing Timeframes**

According to both DOR and GCD management, one of the primary issues investigated during review of a liquor license application is determining if all ownership interests in the business have been disclosed on the application. This is necessary to determine the residency status of each applicant and each person with a controlling interest in the business. Investigative work required to ensure residency requirements are met contributes to the time involved to process on-premises liquor applications.

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### **Residency Requirements Creates Estate Planning Difficulties**

In developing business plans for estate planning, residency requirements add time and complexity to the on-premises license application process. For example, residency requirements prohibit liquor licensees from adding their children name's to a liquor license

## **Chapter IV - Streamline the On-Premises Liquor Licensing Process**

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if the children reside in another state. A business owner of a major restaurant chain in Montana sent a letter to the DOR and elected officials noting the difficulties residency requirements caused them in estate planning. This license holder wanted to develop an estate plan to leave the business to their children. However, only one child was a Montana resident and the others were not. In order to meet the residency requirements, the license holder said they had to create a new corporation and spin off 59 of the 77 restaurants into the corporation. This allowed the license holder to develop a business plan so the percentage of non-resident ownership allowed in law was not exceeded. The license holder's main concern was that developing this type of arrangement was expensive, burdensome, and in their view, unnecessary.

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### **Liquor Industry Input on Residency**

We discussed residency requirements with representatives from the liquor industry, including applicants and MTA officials. Some applicants questioned the need for in-state residency requirements and said the requirements make it difficult for business chains to get licensed in the state. MTA officials said some association members may support eliminating residency requirements while others may not. They said supporters may believe the value of their liquor licenses could increase or provide more potential buyers for licenses. Opponents may be concerned eliminating residency requirements could create more out-of-state ownership resulting in money leaving the state. MTA officials also stated residency requirements are "an issue of control and regulation of liquor."

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### **Residency Requirements Should be Reviewed by the 2003 Legislature**

Elimination of in-state residency requirements could streamline the licensing process by removing one additional area for scrutiny during the application process. DOR officials responded to this issue by saying residency requirements were enacted prior to the state's ability to easily obtain background information on applicants. They indicated the requirement "adds a significant amount of work to the process for both the applicant and the department." DOR officials said certain issues would need to be considered if residency requirements were repealed, such as whether licensees would need to be U.S. citizens. However, DOR officials said eliminating in-state residency requirements would have a positive impact on processing on-premises liquor license applications. GCD officials stated

## Chapter IV - Streamline the On-Premises Liquor Licensing Process

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eliminating residency requirements would simplify the licensing process by eliminating the need for applicants to create or change business structures to comply with residency requirements.

### **Recommendation #1**

**We recommend the Department of Revenue seek legislation to eliminate in-state residency as a requirement for all beverage, beer, and beer/wine on-premises consumption licenses.**

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### **Expedited Procedures are Needed for Minor License Changes**

During our file reviews we noted examples where it took the department several months to approve certain types of changes to existing on-premises liquor licenses. The following are four examples we identified:

- ▶ In January 2000, a business that owned its on-premises license since 1992 submitted an application to the department to move their business into a newly constructed building in town. Business ownership was not changed. The application was not approved until May 2000 (four months).
- ▶ In March 2000, a business that owned its on-premises liquor license since 1993 submitted an application to the DOR to change the business structure from joint owners to a limited liability corporation. No changes in ownership were proposed. The application was not approved until November 2000 (eight months).
- ▶ In January 2000, a license holder submitted an application to DOR because they wanted to change the name of the business and move to a new location. Business ownership was not changing. The department issued conditional approval in August 2000 (seven months) and final approval in February 2001 (13 months).
- ▶ One business that was only moving to a new location was required to submit a total of 17 different pieces of documentation during the review process. There did not always seem to be a correlation between some of the documentation required and the request to move to a new building.

An expedited process exists for some types of requests. For example, Administrative Rule 42.12.118 does not require an application be submitted if a business is removing a name from a

## Chapter IV - Streamline the On-Premises Liquor Licensing Process

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license. Based on our file reviews, however, we found the current practice to process on-premises liquor applications is generally a “one size fits all” process. This has limited the department’s ability to meet its goal of making it as “simple and pleasant as possible” to conduct business with the department. Current license holders making a relatively minor request go through the same extensive statutorily required review as applicants applying for an on-premises license for the first time. Applications that would benefit from an expedited review process include moving to a new location, changes in percentage in stock ownership, and changes for estate planning. We found other states have an expedited review process for these types of license changes. For example, Idaho statute allows a licensee to move its business to another location within the same city. Based on statutory language, this move only requires the Idaho State Police, which oversees liquor licensing in the state, to ensure the new premises is suitable for carrying on the business.

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### **Expedited Review Would Streamline Procedures for Some Businesses**

The efficiency and effectiveness of the department’s on-premises liquor-licensing process would be improved by implementing an expedited review process for applications with minor changes in existing licenses. The current application review process was developed with the intent of determining if new applicants meet licensing qualifications. It was not developed to issue licenses in a timely manner when businesses are making relatively minor changes to their operations such as moving to a new location or minor changes in business structure. We discussed this issue with DOR officials and they believe an expedited process has merit. They would like to review their process to determine those situations where an expedited process could be implemented and seek statutory changes to allow for it.

#### **Recommendation #2**

**We recommend the Department of Revenue seek legislation to allow for an expedited process for minor licensing changes.**

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### **DOR Staffing and Supervision**

Management controls are needed to ensure resources are used in an efficient manner. A vital component of these controls is a good system for managing staff. Strong staff management includes controls such as assuring staff capabilities meet performance

## Chapter IV - Streamline the On-Premises Liquor Licensing Process

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expectations, identifying training needs of staff, and on-going staff supervision. We did not find these controls in place with the current DOR licensing process. This contributed to the time it takes the department to complete the on-premises liquor-licensing process.

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### Staff Experience and Training

Section 2-15-112, MCA, gives department directors authority to make staffing changes or transfers to promote efficient and effective operations. After DOR re-organization, management did not take this step in the liquor licensing process. For example, our review raised questions about the experience and training of some compliance specialists who perform detailed reviews of supporting documents submitted with applications. File reviews did not document detailed DOR staff analysis. DOR staff noted their experience was limited in reviewing supporting documentation provided by applicants. Financial information submitted by applicants is complex and some DOR compliance specialists did not believe they could conduct the level of review necessary to determine issues such as undisclosed financial interests. Staff relies on GCD staff who received specific training to conduct these reviews. For example, GCD has Certified Public Accountants who are responsible for financial analysis of license applications. DOR licensing staff does not have similar experience or training. Since they were not sure how to analyze all supporting documents, some DOR compliance specialists said they sent liquor applications and corresponding documentation to GCD that were not thoroughly reviewed. This results in GCD not always being provided all the information needed to perform a thorough license investigation. Therefore, GCD staff must request additional information from applicants which delays the liquor licensing process further.

DOR management could strengthen the licensing process by formally assessing the experience and training of current licensing staff to determine if they have the skills needed to perform their liquor licensing duties. This includes identifying areas where training may improve staff skills. It may not be possible to provide training to staff in some areas, such as financial analysis, that will give them the skills needed to perform these duties. However, training may be possible in other areas, such as what documents should be provided with applications or when applications can be



## **Chapter IV - Streamline the On-Premises Liquor Licensing Process**

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deemed complete. This assessment may result in staff position changes and/or the need for additional staff training.

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### **Staff Performance Measures Need to be Reviewed and Expanded**

The next step needed to strengthen the licensing process is to ensure on-going staff supervision and performance measurement. Currently DOR licensing staff receives limited supervision over their processing of liquor license applications. For example, we noted DOR compliance specialists make an average of two additional requests for information from applicants and we found as many as five requests. However, section 16-4-207, MCA, specifically states DOR staff are to make one request for additional application information. We found supervisors are often not aware of how many requests for information are made or how timely each step in the process is completed.

This general lack of supervisory oversight has contributed to delays in the liquor licensing process and has created inappropriate staff performance measures. For example, DOR staff performance goals relate to how many applications should be processed each month rather than how quickly applications are reviewed and approved. Current performance measures require staff to process approximately four applications every month. Therefore, staff is under no obligation to get applications processed in a specific amount of time. Our review found some staff may meet this goal. However, applications that were processed have generally been at the department for several months. During our file review, we found the average time DOR spends processing applications is 151 days. We believe DOR could improve process timeliness by establishing staff performance measures and supervisory oversight of the process.

**Recommendation #3**

**We recommend the Department of Revenue strengthen management and staffing controls by:**

- A. Assessing the capabilities of liquor licensing staff to determine potential position changes and/or training needs.**
- B. Establishing relevant staff performance measures to assure reviews of liquor license applications are completed in a timely manner.**
- C. Requiring management staff to monitor staff adherence to performance measures.**

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**Improvements Needed in Electronic Information**

We found data on the current electronic licensing processing system used by DOR is inaccurate and limited in its usefulness. During our file review, we found dates often did not correspond to actual documents in the files and/or reflect all actions or pending issues. As noted earlier, we found staff were often sending multiple requests for additional application information or supporting documents to applicants. The current electronic system has a data screen for recording only one date. Therefore, DOR supervisors were unaware of the multiple process letters when reviewing process activity on the licensing system. Other examples included the date for transfer of documents to GCD. In our file sample, we found the date recorded varied between the date deemed complete by DOR staff, the date referred to GCD, and/or the date a letter was sent to the applicant. DOR should take steps to improve the system by reassessing the information that should be recorded and assessing data accuracy. Without adequate management information, DOR management and staff cannot rely upon the accuracy of data in making key licensing decisions.

**Recommendation #4**

**We recommend the Department of Revenue establish electronic system controls. This should include re-designing needed information and assuring data accuracy to provide better information to staff and assist in staff supervision.**

## Chapter IV - Streamline the On-Premises Liquor Licensing Process

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### Lottery Drawing Procedures Should be Improved

One of our audit objectives was to determine if the current on-premises application process negatively impacts businesses. We found DOR's liquor lottery drawing procedures do not appear to be directed at customer service and have added time to the process. During our review of lottery files, we noted several concerns related to liquor lottery procedures that reduced the efficiency and effectiveness of the liquor licensing process. The following sections outline our suggested improvements for strengthening this area.

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### Procedures Not Clear

During the audit we did not find any formal procedures related to preparing applications for liquor lottery drawings. This resulted in procedural inconsistencies in DOR lottery drawings. For example:

- ▶ DOR staff contacted applicants and subsequently corrected applications for some drawings but not for others.
- ▶ Department staff was unsure how to handle problems or other situations that arose with the lottery. For example, in one drawing we observed, department staff did not know what criteria disqualified applications from the drawing.
- ▶ The department waited to complete some lottery drawings until additional lotteries were needed. Department staff said this was done so they could complete several drawings at once because it was more convenient than conducting several different lotteries.

Department staff who currently handles lottery duties indicated they took over the responsibilities when other staff left the department. DOR staff said they made several errors in the process (such as contacting applicants) because formal procedures were not in place. Department staff indicated they must generally meet with department management to determine how problems will be solved. This has resulted in additional time delays and inconsistencies between drawings. In some cases it has also resulted in staff "wheel spinning" trying to determine how to handle problems or waiting to get questions answered. Procedures should be clear enough to ensure staff can resolve problems in a timely manner. In response to this issue, the DOR started developing procedures related to the liquor lottery.

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### Procedures for Last Available License Should be Improved

Applicants have questioned whether the current Administrative Rules create a fair liquor lottery process for the last available license. We identified several examples where the process did not appear reasonable. Under the existing process the department:

- ▶ Will start processing an application and then stop the processing when another application for the same license is received.
- ▶ Inadvertently penalize applicants who submit applications early.
- ▶ Does not follow first come, first served procedure.

These problems caused delays in the on-premises licensing process. For example, we reviewed a liquor application where processing stopped after five months of review because additional applications were submitted. A lottery was conducted and it took almost ten months to license the successful applicant. In other cases, successful licensees were the last to submit their applications. In another example a license had to be rescinded because DOR had issued it in error due to confusion over when a lottery is required. In that instance, the business ultimately had to purchase a license on the open market from an existing business for \$20,000 (compared to the \$400 for the first license they were awarded). Since a qualified applicant was awarded a license and then had it rescinded due to the department's error, the business filed a tort claim against the State of Montana. To settle the claim the state paid \$11,300 of the license cost due to the department's processing errors. However, the applicant still incurred increased costs since they had to pay an additional \$8,300 for a license.

In general, we found these problems occurred because priority is not given to applications already being processed by the department. The criteria used by the department to go to a lottery has not created a fair process for applicants who submit applications for the last available license. Although we agree a lottery is reasonable for processing an influx of applications, once the application deadline passes and someone submits an application for the last available license or licenses, the process should not come to a stop and go to a lottery drawing. Instead, on-premises liquor applications should be

## Chapter IV - Streamline the On-Premises Liquor Licensing Process

reviewed on a first come, first served basis. Administrative Rule 42.12.131 needs to be changed to provide for procedures for the last available license.

### **Timeliness of Lottery can be Improved**

We reviewed liquor lottery drawings held in calendar years 1999 and 2000. We found the liquor lottery drawing process took an average of 146 days to complete from the time license availability was advertised until lottery winners were notified. Under the current process, it generally takes several months until businesses are notified by DOR if they can apply for a license. This has resulted in lost opportunities for some license applicants. We identified applicants who lost building leases because of delays in the department's ability to complete the lottery process and ultimately had to withdraw their applications. In other cases, applicants were forced to pay increased lease costs or deposits to continue to secure proposed locations. One reason for delays in the lottery process is because department staff is not under any time limit to complete the lottery. There are no DOR requirements for staff that the lottery be completed within a certain time after applications are due at the department.

In response to our concerns, DOR officials indicated they will establish timelines in Administrative Rule to ensure the lottery is completed in a more timely basis. The department believes they can reduce the process by more than 60 days. The table below identifies DOR's timeline goals related to the liquor lottery compared to current timelines we identified during our review.

**Table 6**  
**DOR Current vs. Proposed Lottery Timelines**

<b>Lottery Step</b>	<b>Reviewed Process (CY 1999 &amp; 2000)</b>	<b>Proposed Process</b>
Public notice of license availability	21 Days	21 Days
End of public notice to application deadline	30 Days	30 Days
Application deadline until lottery held	90 Days	30 Days
Notification of lottery results	5 Days	1 Day
Average Completion Time	146 Days	82 Days

**Source: Compiled by the Legislative Audit Division from DOR records.**

## **Chapter IV - Streamline the On-Premises Liquor Licensing Process**

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As discussed above, significant delays and process inconsistencies occur in the current liquor lottery process. Changes are needed to address these areas. Steps needed include establishing formal procedures, clarifying when a lottery should occur, and establishing formal time frames.

### **Recommendation #5**

**We recommend the Department of Revenue improve the liquor lottery process by:**

- A. Establishing formal liquor lottery procedures.**
- B. Changing Administrative Rules to ensure licenses are issued on a first come, first served basis for the last available liquor license.**
- C. Establishing specific lottery processing timelines in Administrative Rules.**



# Chapter V - Other On-Premises Liquor Licensing Issues

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## Introduction

Our audit of the on-premises liquor licensing process identified several issues not directly related to streamlining application processing. These issues include file management controls, procedures to update liquor quotas, Restaurant Beer and Wine (RBW) fees, and lottery preference points and application submission. While not directly related to application processing, these issues impact the process by creating uncertainty and inconsistencies in criteria to make licensing decisions. To eliminate this confusion and ensure consistency these areas should be clarified. These issues will need to be addressed either by the 2003 Legislature, by clarifying current administrative rules, or changing department procedures. These issues are discussed further in the following sections.

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## File Management Controls

File management is critical for agencies involved in making decisions and documenting actions. Currently, DOR maintains copies of application decisions and actions in central liquor licensing files. Documentation includes license applications, financial information, bank documents, and business and tax records. File documents are important to the department because they are the primary source of documentation that supports liquor-licensing decisions. During file reviews we identified concerns related to information contained in these files.

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## Confidential Information in DOR Files

DOR on-premises liquor licensing files are open to public inspection. Therefore, it is important that controls exist to ensure personal information related to applicants or their businesses are in place to ensure privacy is protected. In contrast, the requirements applicable to GCD file information does not allow public inspection. GCD licensing investigations include information such as criminal history information of applicants. Therefore, GCD files are confidential under the Montana Criminal Justice Information Act. GCD obtains reports from the Criminal Justice Information Network (CJIN) to determine the criminal history of liquor and/or gambling license applicants. CJIN information can only be obtained and reviewed by



## Chapter V - Other On-Premises Liquor Licensing Issues

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law enforcement agencies. Placing this information in files where it can be viewed by the public could jeopardize Department of Justice CJIN accreditation. Therefore, DOR liquor licensing policies state any information related to a criminal background investigation completed by GCD should not be in DOR's files.

During our file reviews, we noted several examples where information related to an applicant's criminal background was in DOR files. Examples included personal history statements and CJIN reports discussing the criminal history of liquor license applicants. In addition, we found other confidential records such as income tax returns were left in DOR liquor licensing files. Confidential information should not be available in DOR files that are accessed by the public. DOR procedures indicate confidential information obtained from GCD should be shredded or returned to GCD. Additionally, procedures indicate information obtained from GCD should be marked "confidential and that it is a violation of law to disseminate the information."

We found DOR staff was generally not familiar with procedures related to confidential information. As staff turnover has occurred, newer staff have not been provided training or instructed on the procedures for maintaining confidential information. We also found GCD staff was not always marking information confidential as required by policy. DOR and GCD staff should receive training to ensure procedures related to confidential information obtained during the liquor licensing process are followed.

**Recommendation #6**

**We recommend the Department of Revenue and the Department of Justice periodically train liquor licensing staff on procedures related to confidential information obtained during the liquor licensing process.**

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### Liquor Quota Data Needs More Timely Updates

Statutes allow cities and counties that experience population growth to be entitled to additional liquor licenses. We reviewed the department's maintenance of the liquor license quota system to

## Chapter V - Other On-Premises Liquor Licensing Issues

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determine if it complies with statutory requirements. Based on this review, we found the department is not incorporating the most recent census projections into the license quota system in a timely manner. For instance, the current quota for liquor licenses is based upon calendar year 1999 population projections. Although the department received this information in October 2000, it was not incorporated into the quota projection spreadsheets until mid-January 2001. In addition, even though 2000 census information was released in March 2001, the department did not input this information into its quota projection formulas and recalculate liquor license availability until July 2001.

As a result of this delay, information regarding the number of available liquor licenses information was not updated in a timely manner. Thus, in cities and counties where the population increased, there are additional liquor licenses which should be made available to the public. Based on the 2000 census there are 42 new liquor licenses statewide that could have been made available in sooner. This includes 27 new county licenses, 10 new city licenses, and 5 licenses that can be “floated” or moved between cities.

Administrative Rule 42.12.104, requires the department to use the most recent population estimates published by the Bureau of the Census. However, updating liquor license quota information to incorporate most recent population estimates has not been a priority of staff. The department has an obligation to maintain as current as possible liquor license quota statistics.

**Recommendation #7**

**We recommend the Department of Revenue make updating quota statistics on liquor license availability a priority.**

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### **Restaurant Beer and Wine Fee Procedures Could be Clarified**

During our review of liquor licensing files, we reviewed DOR’s compliance with assessing statutorily established fees for restaurant beer and wine (RBW) licenses. RBW fees include: an initial licensing fee; an application processing fee; and an annual license renewal fee. We found initial licensing fees are correctly assessed.

## Chapter V - Other On-Premises Liquor Licensing Issues

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However, we identified inconsistencies in collecting and refunding both processing and annual renewal fees. For example:

- ▶ Processing fees for most new licenses are listed in Administrative Rule 42.12.111. However, RBW processing fees are not specifically included in this rule.
- ▶ Neither the statute nor Administrative Rule specifies whether the annual RBW renewal fee of \$400 is due at the time an application is submitted. Administrative Rule 42.12.114 clearly states the annual renewal fee should be assessed when new all-beverage licenses are issued. To be consistent with other licensing process, DOR staff has generally assessed the annual renewal fee when processing new RBW license applications.
- ▶ Another inconsistency is in the area of refunding fees. Some DOR staff indicated they refund processing fees if the application did not get to the stage where public notice of the license application was issued. However, other staff indicated refunds are never given to applicants for any reason. Administrative Rule 42.12.111 specifically states processing fees are not refundable although RBW fees are not outlined in that rule. To add further confusion, subsection (11) of 16-4-420, MCA, allows the department to retain a \$100 processing fee only if a license is denied and requires all other fees collected be refunded to the applicant.
- ▶ Section 16-4-420, (11), MCA, which relates to RBW licenses includes language which requires the department pay interest on fees held over four months. Although the rate of interest allowed refers to section 16-1-409(4) MCA, there is no reference to what interest rate should be paid by the department in that statute. During our file review, two RBW licensing processes took over four months to get approved. Nothing in the files noted whether interest had been paid to the applicant.

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### **DOR Should Clarify RBW Fee Statutes and Administrative Rules**

Overall, DOR staff does not have clear guidelines for administering RBW fees. As a result, fees charged, collected, and refunded vary. These inconsistencies also create a potential for non-compliance with department rules. The department should establish formal procedures in Administrative Rules to ensure all staff consistently charge and collect designated licensing fees.

**Recommendation #8**

**We recommend the Department of Revenue develop and clarify Administrative Rules that reflect clear, consistent procedures for staff and licensees for RBW fees and refunds.**

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### **Lottery Drawing Preference Points**

Section 16-4-420, MCA, requires up to two drawing preference points be given to applicants when applying for an RBW license. Preference points increase an applicant's chances of obtaining a license. A preference point is given to applicants who have operated a restaurant for at least 12 months prior to submitting an RBW application. A preference point is also awarded to applicants unsuccessful in previous lottery drawings. Presently, the department awards a preference point to restaurants operating for at least 12 months and applicants who were unsuccessful in a previous RBW drawing. Any applicants who were unsuccessful in a previous lottery for an all-beverage or a beer license do not receive a preference point when they participate in a drawing for an RBW license. Consequently, their chances of being awarded a license are not increased. Our observations of the lottery process noted clarification is needed relating to when preference points for previous unsuccessful drawings should be awarded. DOR staff has indicated this issue needs clarification.

During the audit we questioned whether the department is correctly applying the preference point for previous drawings to applicants participating in RBW liquor license drawings. Because the lottery drawing is discussed specifically in RBW related statutes, department officials have interpreted statutes to allow a preference for previous RBW license lottery drawings only. However, language in the statute does not specify the previous drawing must have been for an RBW drawing. Section 16-4-420 (9) (b), MCA, states "any unsuccessful lottery applicants from previous selections must also be given a preference." This issue needs to be resolved.

In a written response to this audit issue, DOR officials said they may seek an Attorney General (AG) opinion regarding this issue. They believe this would be a timely means of addressing the issue and

## Chapter V - Other On-Premises Liquor Licensing Issues

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they would like the issue resolved as quickly as possible. If DOR elects not to seek an AG opinion then they should seek statutory clarification from the 2003 Legislature.

### **Recommendation #9**

**We recommend the Department of Revenue clarify if lottery applicants applying for RBW licenses should be awarded preference points for previous unsuccessful all-beverage and beer license lottery drawings.**

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### **Applicants Submit Multiple Lottery Applications**

During our review of the liquor lottery process, we noted instances where applicants submitted several lottery applications for the same drawing. For example, we reviewed documentation for a lottery for one newly available all-beverage license. There were a total of 59 applications submitted for this license. Our review noted one applicant submitted 10 applications and two other applicants submitted 7 applications each. These three applicants submitted more than 40 percent of the applications in the drawing. In another drawing, two applicants submitted 5 applications for one new beer license. There were a total of 17 applications so two applicants had approximately 29 percent of the applications in the drawing. Applicants are able to submit multiple applications by forming different business entities or using other premises locations. In some cases the different premises location was nothing more than a suite number.

Department officials are concerned with the trend of applicants submitting multiple applications for lottery drawings. Their primary concern is how this practice impacts the fairness of the process. In addition, it creates additional bottlenecks in the process because it requires staff to verify information on significantly more applications. Department officials said multiple applications are generally submitted by applicants who are in the “liquor licensing brokerage business.” These applicants obtain newly issued liquor licenses, get a business started, and then sell the business and liquor license for a profit. The department said the average businessperson trying to get into the liquor business can not compete with “license

## Chapter V - Other On-Premises Liquor Licensing Issues

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brokers” because they do not have the financial resources to secure multiple premises locations or set up separate business entities. Department officials said when applicants submit multiple applications for a lottery it reduces the chances for applicants who can only afford to submit one application.

There is nothing in statute or administrative rule that prevents applicants from submitting more than one application. The only statute related to multiple applications relates to actual liquor applications submitted to the department for review and approval of liquor licensure. Section 16-4-412, MCA, states an application for a new licensure or the transfer of an existing license may not be considered if a previous application is pending for the same location. The legislature created the liquor lottery process because they believed it provided a fair manner to select applicants who will be given the opportunity to apply for a license. What is not clear is whether the legislature intended applicants to be allowed to submit multiple applications for lottery drawings by describing different locations. DOR needs to seek legislation to clarify this issue.

### **Recommendation #10**

**We recommend the Department of Revenue seek legislation on whether liquor license applicants should be allowed to submit multiple applications for liquor lottery drawings.**



# Chapter VI - Further Streamlining of Process May be Appropriate

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## Introduction

The on-premises liquor licensing process is a complex process that has been subject to statutory and organizational changes over the years. It is a process that is closely scrutinized by both the regulated business community and the general public. Management of this system will require on-going evaluation of process management to determine where further changes are needed. Previous chapters outlined recommendations to increase process efficiency and consistency. This chapter discusses the need for DOR and GCD to conduct further assessment to determine where additional streamlining is needed in processing liquor license applications.

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## Statutes Place Responsibility in Two Agencies

Current statutes place responsibility for the liquor licensing process in two agencies. For example, section 16-1-301, MCA, states DOR shall have the power and duties to administer the Montana Alcoholic Beverage Code. However, section 16-4-402, MCA, places the responsibility within GCD to investigate “all matters” related to the license application. This split in responsibilities contributes to the 193-day timeline to process on-premises liquor license applications. It also contributes to coordination problems between the two agencies, causes duplication of review and paperwork, contributes to process inefficiencies, and frustrates applicants having to deal with two agencies.

Over the last several years, much of the responsibility for on-premises liquor licensing has been transferred to GCD. There have been gradual changes in statutes placing more licensing activities within GCD. For example, the 1993 Legislature consolidated the liquor and gambling investigation function. Six DOR investigators were moved from DOR to GCD to eliminate duplicate investigations between the agencies so license applicants were not investigated twice. In addition, other duties have been transferred to GCD, such as review of supporting documents, premises inspection, and assessing compliance with statutory liquor licensing requirements.



## **Chapter VI - Further Streamlining of Process May be Appropriate**

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In general, the only parts of the process that have not been placed within GCD include notifying local officials of the application, submitting a notice of the application in the local newspaper, conducting protest hearings, and issuing the liquor license. A large portion of the on-premises licensing process, such as analyzing supporting documents, interviewing applicants, inspecting a proposed premises, and determining if applicants meet statutory licensing qualifications are duties of GCD. Based on our review, the level of DOR's involvement in the process has been reduced over the years. Table 7 below illustrates the licensing duties of each agency.

**Table 7**

**Responsibilities for On-Premises Liquor Licensing**

**DOR Responsibilities**

Ensure application complete  
Gather supporting documents  
Review supporting documents  
Obtain local officials decision  
Submit notice to local newspaper  
Conduct protest hearings\*  
Make final licensing decision

**GCD Responsibilities**

Ensure application complete  
Gather supporting documents  
Review supporting documents  
Interview applicants  
Inspect premises  
Check law enforcement records  
Determine compliance with licensing requirements

\*As needed

**Source: Compiled by the Legislative Audit Division.**

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### **Further Streamlining of Process May be Needed**

Currently, DOR is also responsible for processing liquor licenses other than on-premises liquor licenses. For example, they also process licenses for off-premises retail sales, brewers, wholesalers, and manufacturers. DOR officials indicate these duties comprise about 20 percent of staff time. Since our audit focused on on-premises licensing, we did not examine the licensing process for the other types of alcohol-related licenses.

The 1997 Legislature passed legislation to make it easier for businesses to get licensed. They believed businesses should be able to obtain licenses from a single agency and one-stop licensing was created. Currently, businesses seeking either liquor or gambling

## **Chapter VI - Further Streamlining of Process May be Appropriate**

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licenses are required to deal with two agencies. Since data shows 90 percent of businesses with on-premises liquor licenses also have gambling licenses, two separate agencies are regulating essentially the same business community. This dual regulation also impacts businesses seeking liquor-only licenses. Due to split responsibilities between the two agencies, these businesses are also regulated by two agencies.

GCD currently is responsible for the substantive portion of on-premises liquor licensing. The control system they have in place over their licensing process allows them to review applications and make licensing decisions in a timely manner. Consolidating the on-premises licensing process within GCD could improve process efficiency by reducing duplication, eliminating coordination problems, and placing decision-making authority within a single agency. This could reduce the time it takes to review and approve on-premises liquor license applications. This could also result in cost savings to both the state and license applicants. However, to determine whether this consolidation is practical, consideration must also be given to the other types of liquor license DOR issues and compliance-related duties. Our audit scope only included a review of the on-premises licensing process so we do not know if consolidating all liquor licensing processes is feasible.

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### **Agencies Recognize Need for Further Streamlining**

Both DOR and GCD recognize the licensing process could be further refined and streamlined. The agencies are currently holding discussions to determine potential changes to improve coordination of their respective responsibilities in the process. The discussions between DOR and GCD should be expanded to determine if additional liquor license streamlining is needed and all liquor license functions consolidated. This would help determine whether consolidation of on-premises licensing activities within one agency is possible. However, further examination of how other types of liquor licenses are processed is needed to ultimately make this determination. Discussions between the agencies should consider the pros and cons of transferring licensing activities to a single agency, address resource needs for these duties, and identify

## **Chapter VI - Further Streamlining of Process May be Appropriate**

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potential cost savings. If it is determined this transfer will streamline the liquor licensing process then DOR and GCD should seek legislation to make the needed changes.

### **Recommendation #11**

**We recommend the Department of Revenue and Gambling Control Division determine whether additional streamlining such as consolidating all liquor license functions within one agency is feasible.**

# **Agencies Responses**

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SEP 18 2001

Customer Service Center  
Sam W. Mitchell Building  
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Montana Department of  
**REVENUE**

P. O. Box 5805  
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September 18, 2001

Mr. Jim Pellegrini, Deputy Legislative Auditor  
Performance Audits  
Legislative Audit Division  
P.O. Box 201705  
Helena, MT 59620-1705

Dear Mr. Pellegrini:

Attach is our response to the performance audit performed by your office of the On-premises Liquor Licensing Process.

We appreciate the time you and your staff spent at the department with my staff and myself. We welcome your comments concerning the licensing process and are confident that working together we can develop and implement a streamlined process that benefits the citizens of Montana.

Please call me at 444-1941 if you have any questions concerning our response.

Sincerely,

Neil Peterson  
Process Lead

## Department of Revenue's Response to On-premises Liquor Licensing Audit

### ***Recommendation #1***

***We recommend the DOR seek legislation to eliminate in-state residency as a requirement for all beverage, beer, and beer/wine on-premises consumption licenses.***

### **Response**

#### **Partially Concur**

The residency requirement in § 16-4-401, MCA, requires us to request documents and analyze these documents to assure all applicants required to qualify are Montana residents. The residency requirement adds a significant amount of work to the process for both the applicant and the department. We agree the elimination of the residency requirement would have a positive material impact on the processing of some applications. The residency requirement primarily comes into play in the situation of national franchises for hotels and restaurants that require the sale of alcohol as part of their overall marketing strategy. To a lesser extent estate planning is also affected. Because of residency requirements businesses, such as these, need to enter into complicated financial arrangements with a Montana resident to ensure that alcohol can be sold in conjunction with their hotel or restaurant business. These complicated financial transactions require additional time and resources for all parties involved.

We do not know if the elimination of the residency requirement will have a positive or negative impact on the value of current liquor licenses. We do not know whether there would be a positive or negative economic impact on Montana. We do not believe there will be any affect on the quota system.

Our concern in the administration of liquor licensing is related to control and regulation – ensuring only qualified persons are license holders. We feel that residency requirements offer benefits in regulating the sale of alcohol, but at the same time cause us regulatory problems. However, we believe there are a number of other issues that need consideration as well as a thorough analysis of residency requirements as they relate to the U.S. Commerce Clause and the 21<sup>st</sup> Amendment of the U.S. Constitution. Some of the questions that need to be answered are: Would Montana require licensees to be United States citizens, resident aliens or non-resident aliens? Would Montana require non-residents to come to Montana for personal interviews and to conduct business related to the license, or would the state be required to travel to their location? Would the licensee be required to maintain their business records in Montana? What additional difficulties, if any, would arise in investigating, licensing, and compliance issues of out-of-state residents? Additional discussions should also be had with members of the licensing community.

At this time, without further analysis and review, we cannot agree to seek legislation to eliminate the residency requirement for owning an on-premises license to sell alcohol.

***Recommendation #2***

***We recommend DOR seek legislation to allow for an expedited process for minor licensing changes.***

**Response**

**Concur**

We agree that where possible we should provide for an expedited licensing process for certain minor changes. We have adopted in ARM 42.12.101 a number of specific changes that do not require a license application. Specifically, a change in security interest; transfer of ownership that does not result in a new owner owning more than 10% of the same licensed corporation; transfers of ownership from a foreclosure; and removal of an owner are some of the examples set forth in the rule. We will continue to work with stakeholders and the Department of Justice to identify situations where an expedited process is appropriate and will seek legislation to enable changes, if necessary.

***Recommendation #3***

***We recommend DOR strengthen management and staffing controls by:***

- A. Assessing the capabilities of liquor licensing staff to determine potential position changes and/or training needs.***
- B. Establishing relevant staff performance measures to assure reviews of liquor license applications are completed in a timely manner.***
- C. Requiring management staff to monitor staff adherence to performance measures.***

**Response**

**A. We Concur**

The legislative audit report suggested the department assess staff to determine areas where training may improve staff skills and where it may not. The only area where the legislative audit report stated that staff skills might not be able to be sufficiently improved is financial analysis. Pursuant to HB399 passed this last session, all financial analysis will be transferred to the Department of Justice.



We are also taking a number of steps to ensure our licensing staff has the necessary training to perform their jobs. That training is both “on-the-job” and more general training.

Regarding “on-the-job” training, we have instituted weekly team meetings to discuss specific cases. We also have legal counsel present for part of the weekly staff meeting to offer interpretations of statute, rules, and to provide training when necessary. We have also instituted a buddy system where licensing staff work in assigned pairs with review of each others work taking place on a daily basis.

Regarding more general training, we have recently finished mapping all of the business processes in the liquor licensing area. The process flows will be used to develop procedures and desktop instructions for licensing staff. These process flows, procedures, and desktop instructions can then be used in regular training sessions.

## **B. We Concur**

We agree that the 193 days that were cited in the legislative audit report is too long a time to approve an application for a liquor license. During 1999 and the first part of 2000 we were undergoing a significant re-organization and experienced a substantial turnover of staff in the licensing area, losing nine staff from a full staff of five. In response, we have developed and implemented process controls in the licensing of on-premises licenses with the goal of reducing the time it takes to get a license to 120 days or less for almost all applications.

We have changed staff performance measures from the total number of applications processed each month, to how long it takes to process each application. Licensing staff now must review new applications and send a process letter requesting additional information within 10 days of the receipt; deem the application complete or issue a denial of application within 30 days of receipt; request investigation reports for the Department of Justice, approvals from local building, health, fire and police within 30 days; and approve or a deny a license within 10 days of receiving a completed investigation report from the Department of Justice. New fields for these timeframes have been added to our licensing database, as well as for any follow-up requests for information. Weekly reports generated from the licensing database allow us to track all licenses in process.

In addition, we have expanded the number of staff trained to work on-premise applications from five to seven; established a team environment to ensure if we do have turnover in the future we have staff ready to pick up and work on applications in process; and established a training plan to cross-train additional staff to help in other registration areas, freeing up time to work on on-premise

applications. The annual renewal process is an excellent example where three-support staff process 90% of the 2,200 annual renewals with licensing staff only involved in the renewals requiring special attention.

These efforts are already paying dividends. We have received to date 154 applications in 2001. We have processed 66 of these licenses taking an average of approximately 113 days. The remaining 88 2001 applications in process average 76 days. The time to process an application is down and we believe as we continue our implementation efforts and our joint work with DOJ that those results will continue. We are confident we are instituting the proper management controls and monitoring processes to ensure applications are processed timely while at the same time performing our regulatory duties.

**C. We Concur**

We have made a number of changes to ensure management oversight of the liquor licensing staff. All licensing staff now report directly to the Division Process Lead. The Division Process Lead meets weekly with the Liquor Licensing Team Lead and team members to review tracking reports, and to ensure that applications are timely moved through the process. In addition, starting in late October, we will be analyzing the management structure and this may result in another layer of management dedicated to liquor licensing management.

***Recommendation #4***

***We recommend DOR establish electronic system controls. This should include redesigning needed information and assuring data accuracy to provide better information to staff and assist in staff supervision.***

**Response**

**Concur**

As stated in our response to recommendation 3.B., we have made a number of changes to our electronic licensing system adding a number of new fields of information that allow us to monitor the progress of all applications in process. To ensure data integrity, the Team Lead receives all new applications and enters the necessary information into the system, and he continues to review the information entered by licensing staff into the system on a weekly basis. As well, training was provided to licensing staff on how to input data correctly. The system also has been modified to produce a number of reports that aid in tracking of license applications and staff supervision.

***Recommendation #5***

***We recommend the Department of Revenue improve the liquor lottery process by:***

- A. *Establishing formal liquor lottery procedures.***
- B. *Changing ARMS to ensure licenses are issued on a first come, first served basis for the last available liquor license.***
- C. *Establishing specific lottery processing timelines in ARM.***

**Response**

**A. We Concur**

We agree that we should establish additional policies for processing lottery applications in the areas of contacting applicants, disqualifying applicants, and the timing of conducting lotteries. The additional policies should be adopted through the administrative rules process to ensure the public's participation in their development.

**B. We Concur**

We agree that a first come, first served process used for licenses issued after the initial advertisement of available licenses could avoid delays from receiving an application for a final license when processing of a prior application has begun. Many questions need to be answered before we move to a first come, first served process. Some questions are: How to define first come, first served? Is it the postmark date? What happens when two applications have the same postmark? How to handle applications submitted but not complete? Would they need to be disqualified? How long to wait before an initial advertisement is not available for a lottery? If the first applicant does not meet the qualifications, how do we notify other potential applicants that a license is still available? We believe these questions can be answered, and therefore a first come, first served process can be implemented.

**C. We Concur**

We agree to establish timelines in administrative rules to ensure the lottery is completed in a timely manner. The audit report indicates an average completion time of 146 days for lotteries in 1999 and 2000. We believe the current timelines for 2000 and 2001 are more reflective of the timely completion of lotteries. In 1999, we combined a number of available licenses and corresponding lotteries in November that resulted in the 146-day average time for completing a lottery. For 2000 and 2001 the average time it took to complete a lottery was 104 days. The difference between the recommended time in the audit report of 82 days and the time to conduct lotteries in 2000 and 2001 is 22 days.

**Recommendation #6**

***We recommend the Department of Revenue and the Department of Justice periodically train liquor licensing staff on procedures related to confidential information obtained during the liquor licensing process.***

**Response**

**We Concur**

We have already completed training for existing staff on information that is confidential and should not be included in the license file. Also, as we handle files, we are reviewing them to make sure no confidential information is contained in the file, and are purging any information that has been deemed confidential. We also have all new employees sign a letter that informs them of the need to protect confidential information. Finally, we have scheduled training for licensing staff on confidentiality of gaming records to be conducted by DOJ early in October.

**Recommendation #7**

***We recommend the Department of Revenue make updating quota statistics on liquor license availability a priority.***

**Response**

**We Concur**

We will update quota information due to new census data, due to license lapses, or revocations more timely. Although some of the 42 new licenses cited in the legislative audit report would likely be applied for immediately, therefore, the department should update quota information more timely, most of the new licenses were in areas that already had quota licenses available, and were not applied for immediately. We have received only 13 applications for the above referenced 42 licenses within the statutory deadline for submitting an application.

**Recommendation #8**

***We recommend the Department of Revenue develop and clarify ARMs that reflect clear, consistent procedures for staff and licensees for RBW fees and refunds.***

**Response**

**We Concur**

We will seek clarification through the adoption of rules regarding fees and refunds for RBW license applications. We believe that we have applied the same fee and refund

policies on a fairly consistent basis for RBW license applications. Generally, we have worked hard over the last several years to develop and adopt rules that provide guidance to applicants and licensees alike for all license types. We do have rules for RBW licenses that clarify and guide potential RBW license holders. With the help of interested parties, we will expand these rules with regard to RBW fees and refunds.

***Recommendation #9***

***We recommend the Department of Revenue clarify if lottery applicants applying for RBW licenses should be awarded preference points for previous unsuccessful all-beverage and beer license drawings.***

**Response**

**We Concur**

Department legal counsel has reviewed the statute in question and concluded that preference points should not be awarded for applicants who have been unsuccessful in non-RBW lotteries. We have consistently applied this legal opinion in all RBW lotteries in awarding preference points. Furthermore RBW applicants in past lotteries have never challenged the interpretation of the statute. Additional clarification from an administrative rule, Attorney General's Opinion, or legislation may be beneficial.

***Recommendation #10***

***We recommend the Department of Revenue seek legislation on whether liquor license applicants should be allowed to submit multiple applications for liquor lottery drawings.***

**Response**

**We Concur**

Multiple applications for a lottery license by the same individual or individuals potentially create an unfair playing field for applicants seeking a liquor license. We have seen instances in past lotteries where an individual or individuals have submitted in excess of 16 lottery applications. Clarification from the legislature on this practice would be welcomed. We have received complaints for lottery applicants that allowing multiple lottery applications produces an unfair advantage for those applicants that have the financial resources to secure multiple locations and thereby increase their odds of winning.

***Recommendation #11***

***We recommend DOR and GCD determine whether additional streamlining such as consolidating all liquor license functions within one agency is feasible.***

## Response

### We Concur

We have recognized for over a year that the on-premises liquor license process needed to be streamlined. In response, in the fall of 2000, we started a cooperative effort with GCD and industry representatives from the Montana Tavern Association and the Gaming Industry Association. We also involved current licensees and attorneys that practice in the area of liquor licensing. A significant participant and supporter of this effort is Representative Joe McKinney. This group reviewed the processes of both agencies at a high level and identified specific changes designed to reduce the time to obtain a license. Based upon these recommendations, HB399 (sponsored by Representative McKinney) was drafted and introduced in the 2001 Legislative Session. HB399 reduced the statutory time from 60 to 30 days to get an application complete, eliminated a 30-day delay in publishing the receipt of an application, and provided for flexibility in funding licensing activities between DOR and GCD. Governor Martz subsequently signed HB399 into law.

We are continuing to work with GCD to identify additional opportunities to reduce the time and to eliminate duplication of effort related to liquor and gaming applications. Specifically we have implemented or plan on implementing the following:

- We have transferred funding under the provisions of HB399 to GCD to fund additional investigation activities previously performed by department staff, which will speed up the time in deeming an application complete and starting the investigation process, publishing process, and local health, fire, building codes, and police approvals. The duties transferred to GCD will involve the review and analyses of financial documents. We understand GCD will assume these duties within the next 30 days.
- We are in the process of developing a combined liquor licensing and gaming operator application. A combined application will reduce the time it takes an applicant to complete and submit an application. It will also synchronize the beginning of the approval process at DOR and GCD resulting in increased efficiencies and reduction of work in both agencies.
- We have identified a number of areas where liquor licensing law and rules differ from gaming license law and rules. We believe standardizing and making these laws and rules will eliminate confusion to applicants and attorneys alike. We have a work plan that will rely on both the staff of DOR and GCD as well as attorneys and representatives of industry.
- We are working toward the applicant submitting one application and writing one check to GCD to start the process. GCD will be a single point of contact responsible for the applicant; requesting information, conducting financial reviews, investigating the backgrounds of individual applicants, and then forwarding the results to DOR. DOR will advise GCD on whether a license is available under the quota system and whether the applicant is delinquent on

child support payments. GCD will advise when the application is considered complete and DOR will notify local health, building, fire, and police as well as publish notice of the proposed licensing change. DOR will conduct public hearings on protested applications and will make the final decision to approve or deny an application.<sup>1</sup> The new process will be contained in a revised Memorandum of Understanding with GCD.

- We have conducted one training session for GCD staff in liquor law, procedures for processing, investigating applications, and will be conducting another training session late this month. In addition, training programs will be developed for staff from each agency.
- Increased communication with GCD. We weekly e-mail a listing of outstanding ICR's (investigation requests) to identify snags and delays in specific applications.

The legislative audit report specifically suggests that DOR and GCD consider consolidating all liquor licensing functions in one agency. Ever since the regulation of gambling was transferred to GCD, this question has been open. On-premises liquor licenses share much in common with gaming, regulated by GCD, and all other liquor licenses regulated by DOR. Consolidating all gaming and liquor licensing renewal and compliance functions would likely help eliminate some coordination problems between agencies. However, many issues need to be thoughtfully and thoroughly considered before such a consolidation should occur. Which licenses are best grouped together? If licensing activities are transferred, should enforcement activities be transferred also? Is it better to have these activities regulated by an agency focusing primarily on criminal justice, tax matters, or something else? Is it an industry better regulated by an agency controlled by the governor or the Attorney General? What costs and risks for disruptions of service are related to such a transfer?

One factor that should have little relevance in this decision is the current environment in each agency. As this legislative audit shows DOR has had control and efficiency issues recently. However, DOR's processes are improving, and over the years GCD's could deteriorate. Already, because of process controls instituted by DOR and changes pursuant to HB399, the length of time to process applications received in 2001 is approximately 113 days, down from 193 days in the sample of the legislative auditors in 1999 and 2000.

We have recently met with Attorney General McGrath and Gaming Division Administrator Gene Huntington to discuss and agree on a plan for further streamlining efforts. Neither DOR nor GCD has formed an opinion regarding whether transferring responsibility for on-premises liquor licensing would be in the best interests of the state.

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<sup>1</sup> It should also be noted that Table 7 should include under DOR responsibilities that DOR also updates census data for quota purposes, conducts liquor licensing lotteries, issues temporary authority and conditional approvals, checks applicants for delinquent child support payments, and determines whether a license is available under the quota system when an application is received.

It appears that most of the efficiencies discussed in the report can be achieved through implementing internal control procedures in DOR and continuing with the joint streamlining project we are currently undertaking with GCD.

We agree that further study with GCD and members of the licensing community is warranted and to consider the suggestion of consolidation as well as all proposals to make the state's administration of all liquor and gaming licenses more efficient. We realized over a year ago that there were problems in the licensing of on-premises establishments and are working diligently to streamline the process, and substantially reduce the time to approve licenses while at the same time pertaining our regulatory duties.





STATE OF MONTANA  
**DEPARTMENT OF JUSTICE**  
GAMBLING CONTROL DIVISION

SEP 12 2001

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September 11, 2001

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RE: Audit Response - On-premises Liquor Licensing Process

Dear Jim,

I have reviewed the final report on the audit of the on-premises liquor licensing process. The Gambling Control Division (GCD) concurs with the recommendations of the audit Report that relate to GCD.

While most of the recommendations are directed to the Department of Revenue, the two following recommendations are also directed to GCD:

***Recommendation #6** – We recommend the Department of Revenue and the Department of Justice periodically train liquor licensing staff on procedures related to confidential information obtained during the liquor licensing process*

**Response** – A training session will be scheduled by the end of October 2001.

***Recommendation #10** – We recommend the DOR and GCD determine whether additional streamlining such as consolidating all liquor license functions within one agency is feasible.*

**Response** – GCD and the Department of Revenue have preliminarily agreed to implement a single application that can be used for both on premise liquor and a gambling application. The agencies have further agreed to consolidate the initial processing of the application at GCD. This will eliminate having two different agencies having contact with the applicant and making separate requests for documents and additional information. This should allow the liquor and gaming licenses to move forward together.

(Response continued)

The estimated date for this process to begin would be March 1, 2002. The changes in the process will require the adoption of new rules, the development of new forms, a new application packet, staff training and an effort to inform applicants of the new process.

GCD and the Department of Revenue will attempt to implement this change during the current biennium utilizing the Memorandum of Understanding and the flexibility provided by House Bill 399. If this new process is successful, GCD would work with the Department of Revenue to develop legislation to make the change permanent in 2003.

GCD is willing to participate in any efforts to examine further reorganization of the liquor licensing function.

I appreciate the cooperation and open communication we have enjoyed with the staff of the Legislative Audit Division. If you would like additional information, please give me a call.

Sincerely,



Gene Huntington  
CC Larry Fasbender  
Neil Peterson