

Virginia ABC Board Meeting Minutes

October 3, 2024

Call Meeting to Order

Meeting called to order at 9:08 a.m.

Attendees

Board Chair Tim Hugo
Board Vice-Chair Mark Stepanian
Board Member Greg Holland
Board Member William Euille
Board Member Lisa Jennings
CEO Dale Farino
GAO John Daniel
COO Tom Kirby
CFO David Alfano
CHRO John Singleton
Deputy Secretary Chris Curtis
Office of the Attorney General Elizabeth Peay
Director of Finance Doug Robinson
Executive Administrative Assistant Kathleen LaMotte
Senior Paralegal Helen Gordon

Opening:

- CEO Farino asked the Board to watch a video created by the Authority's Communications and Digital team regarding how the Authority plans to get allocated products out to consumers better. This video will be shared with legislators and other stakeholders and is available on the Authority's website: <https://vimeo.com/1015424448/4e7562a1d7?share=copy>
- Chair Hugo noted that in January of this year many suppliers voiced their dissatisfaction with the Virginia ABC at a National Alcohol Beverage Control Association Meeting (NABCA) event. However, when he returned to NABCA in September, suppliers offered many compliments, praising increased partnership opportunities and listing dialogue. Additionally, Virginia legislators from both sides of the aisle are asking Mr. Hugo about events at ABC. Mr. Hugo stated that he sent a note to the Governor's office about this great change, and the Governor's office replied that they appreciate the leadership at ABC's efforts to transform.

New Business – Board Approval

Approve Minutes From August 22 and September 23 Board Meetings

- Mr. Hugo moved on to review of the minutes from the August 22nd and September 23rd Board meetings. The Chair asked if there were any comments or amendments?
- Board Member Holland noted two scrivener's errors in the minutes for the meeting on August 22. The word "processed" should read "prosecuted", "20232" should read "2023".
- Vice-Chair Stepanian moved to amend the minutes as noted by Mr. Holland. Board Member Jennings seconded the motion, which passed on a roll call vote of 5 – 0.

- Mrs. Jennings then moved to approve the minutes for August 22, 2024 as amended, and the minutes for September 23, 2024. Mr. Stepanian seconded the motion, which passed on a roll call vote of 5 – 0.

Approve Real Estate Committee (REC) Recommendations

- Mr. Farino stated that there is one potential store closure, Store 342 in Newport News in the Warwick shopping center. The REC voted to close this store after careful consideration of its declining sales and the deterioration of the shopping center location.
- The REC recommended five (5) renewals, Store 032 (Deltaville), 067 (Christiansburg), 076 (Falls Church), 248 (Arlington), and 393 (Fairfax).
- Board member Euille moved to approve the recommendations of the REC. Mrs. Jennings seconded the motion, which passed on a roll-call vote of 5 – 0.
- Improvements are being considered for Store 244 in Hampton with the recent discussion to close Store 342 (Newport News). The store is an office building that formerly housed an enforcement regional office.
- Mr. Farino advised that information on the two stores the Board previously voted to recommend closing were sent to legislators who have not objected to the closures. The Authority will update the Governor's office and proceed from there.
- Mr. Daniel noted that in the Board's August meeting, the Board approved the relocation of store 211 in Suffolk. After this vote, the landlord of the existing location contacted the Authority and is willing to reduce the cost per square foot and provide \$25,000 to renovate. Mr. Daniel asked the Board to give the REC authority to re-consider moving the store and proceed with negotiations to renew with the current landlord.
- Mr. Euille made a motion to reconsider the moving store 211. Mr. Holland seconded the motion, which passed on a roll call vote of 5 – 0.
- The Chair asked how many stores ABC currently has? Mr. Farino responded that the Authority currently operates 403 stores.
- The Chair asked if we were looking at something like JLL down the road? Mr. Farino responded that the committee is looking at JLL, but has not come up with any conclusions. Mr. Farino noted that we have some very sharp people in real estate that are stepping up and we're giving them a chance to give us some ideas. JLL may be able to provide analytical data or serve as a broker. Mr. Hugo noted that JLL may be an expensive option. Mr. Farino advised that the Authority will test JLL with the Williamsburg store (Store 320) as the landlord has advised the Authority's lease will not be renewed, but there is an option to move across the street to a much bigger store. The Authority plans to ask JLL to provide an estimate to complete a superstore in the Williamsburg market.
- The Chair asked if there had been any interest shown in renting out space in the ABC Headquarters building? Mr. Farino stated there had been no response, Mr. Alfano added that officials from the Commonwealth have walked the space twice and advised that the building's location is too far out and there is no interest in moving any other agency to Mechanicsville.
- The Chair asked if we could possibly rent out space to private companies? Mr. Daniel stated that he believed that was something the Authority could do, and Mr. Euille advised the Authority to consider that.

Review and approve updates to Governance and Authority Delegation of Responsibilities Policies (Farino)

- Mr. Farino stated that he would like to review the changes made to the policies since the last Board meeting, show the Board the changes that were made and talk through any remaining differences to come up with some common ground regarding them going forward as there are several new policies that need to be presented to the Board going forward.

- Mr. Farino referred the Board to page 20 in the Board book. The first change is on page 21, number 3, where it states the Board reports to the Governor, the committee took out “is ultimately responsible” and changed it to “is responsible to the people of Virginia”.
- Mr. Farino moved on to discuss the change to move oversight of Security Operations and Information Security to report to the CFO pursuant to a recommendation from Mrs. Jennings. Internal Audit will report to the CEO and have indirect (dotted line) access to the Board as well, with the Board having unfettered access to review audits.
- Mr. Farino went on to say that as economic times improve, the Authority may examine having a person over SecOps and Info Sec instead of having them report to the CFO. Any C-suite and above, and any salaries over \$200,000 will be reported to the Board for all new hires. The Board will have to approve those salaries with salaries above \$200,000.
- Mr. Farino moved on to the settlement of monetary claims less than \$250,000 -a language change was made here that is much more stringent than what we had previously. The old language was very dated. The Chair asked if this change meant that the CEO would use his best judgment to inform the Board of these claims but that it was not a requirement that the Board be notified? Mr. Farino said that was correct.
- Mr. Holland said that he had raised this question before. If the CEO can utilize his best judgment to determine when to notify the Board of pending litigation, he would not want to get into a situation where the CEO approves a settlement that the Board wouldn’t agree with. Mr. Farino said that any settlement over \$250,000 would have to be approved by the Board.
- Mrs. Jennings said that way we have the ability to negotiate quickly. I don’t have a problem with the number but I do think it should be stated that the Board must be notified of any pending litigation against the company.
- Mr. Daniel stated that his concern is not having the necessary authority to settle a claim when we go to the table. You have to be able to say yes or no to having authority or you may lose the deal.
- The Chair suggested the language say “shall apprise the Board.” Mr. Daniel said that language sounded good to him but that he also hoped that giving the Board the information in status reports along the way will help to satisfy the Board’s concerns. Mr. Holland said that is better but I’m still not entirely comfortable with it. I think the \$250,000 is too high. How many times have matters reached that amount? Mr. Farino stated it has just been twice recently, but it isn’t a common occurrence.
- Mr. Holland moved to change the figure to \$100,000 and substitute “the CEO shall apprise the Board of significant developments”. Mrs. Jennings seconded
- Mr. Daniel added further comments saying the Authority used the figure of \$250,000 as that was the threshold used by the Attorney General’s office to go to the Governor’s office, and a threshold below \$250,000 would be more restrictive on the ABC than other Agencies. Mr. Holland agreed that in heavy negotiations, it is important to be able to make decisions quickly, but thinks the Board could be kept advised of the status of negotiations and voice concerns.
- The Chair stated that there is a motion, properly seconded. The motion failed on a roll-call vote of two “ayes (Holland and Hugo) to three “nays” (Euille, Stepanian and Jennings).
- The Chair said that hearing no further discussion, roll call will be taken. Member Euille voted “nay”, Holland voted “aye”, Jennings voted “nay”, Stepanian voted “nay”, and the Chair voted “aye.” The amendment has failed. Is there a substitute motion?
- Mrs. Jennings made a substitute motion to change the language to “the CEO shall apprise the Board of significant developments” but keep the \$250,000 figure. Mr. Euille seconded the motion, which was passed on a roll-call vote of 5 – 0.

- Mr. Farino moved on to page 26, at the bottom, commitment of Authority funds 1 million dollars and above-language was added to read “not in approved budget”, because the Board would have already approved the commitment of funds in the budget.
- Moving on to page 27, language was added to clarify the Board would receive a report of any contract that would have an aggregate commitment of Authority funds over \$200,000, which would allow the Board greater oversight to micro-contracts with the same vendor.
- Mr. Holland pointed out that these changes are merely stating that these matters will be reported to the Board; not that the Board has to approve them. Mr. Farino replied that the topics we are talking about now are things approved by the CEO and reported to the Board.
- A change was proposed to how the Board hears of in band pay adjustments. If salaries increase over 10% in a year, this is reported to the Board. The Board will get these reports in their Board books every month. Mrs. Jennings agreed that that amount is pretty common.
- Mr. Farino said that the Board approvals were in the prior section. There are guardrails and those guardrails are the approval by the Board. Mr. Farino stated those were all of the highlighted changes he had to go over. The changes in blue were the administrative changes that went along with the reorganization the Authority completed in June.
- Mr. Holland asked what is an example of a settlement of a non-monetary case against the Authority as shown on page 28, #19 of the Board Book? Mr. Daniel said it could be violations that may involve public safety measures and not a monetary amount or something like the current MBAR action that is a constitutional issue; no monetary amounts are being asked for. Chief Kirby added the skill games litigation would be another one of those potential non-monetary settlements.
- The Chair stated that there had been language before that said that the Authority could make changes in the regulations and then report those changes back to the Board; was that language still in this policy? Mr. Farino referred the Board to page 28, number 20-any revised policies or old policies that are rescinded are done at the CEO’s level in order for the Authority to be able to be nimble. Mr. Farino advised that there are over 100 policies at Virginia ABC. For the Authority to be more nimble and run like a business, Mr. Farino would like the ability to change the policies and report them to the Board. The Board could bring the policy back for additional changes if they would like to.
- The Chair asked if there were any further comments, changes, amendments? Is there a motion as amended?
- Mrs. Jennings made a motion to approve the Governance and Authority Delegation of Responsibilities policies as amended. Mr. Euille seconded that motion, and the motion passed on a roll call vote of 5 – 0.

[Approve Governor’s Advisory Council on Revenue Estimates \(GACRE\) Forecast \(Alfano\)](#)

- Mr. Alfano presented the GACRE five-year revenue forecast. Each year the Authority has the opportunity to review our five-year forecast provided to the Governor’s office. This forecast is used to help craft the budgets for the Commonwealth. The Governor’s office has not provided an exact due date, but the Authority has revised their forecast in preparation for the request.
- The Authority’s forecast depends largely on our revenue production and the impact of a change in the Fair Labor Standards Act change made in July which will impact costs. The Authority has tracked trends in spirits industry, which see sales leveling off and, in some cases, declining. Consumers have reduced their discretionary spending, there is increased competition with beverages that the Authority does not sell, and the increased use of cannabis and a change in the customs of younger consumers’ drinking habits also drive this change. The Authority has seen sales increase in the low 1% range and never any higher than a 2% increase. Most experts think sales will be flat or declining for the foreseeable future.

- The Chair asked how much of our alcohol is imported? Mr. Alfano replied he is not sure about the exact percentage, but conversations are ongoing with suppliers to try to get ahead of any potential port shutdown situation. Mr. Hugo added that the port shutdown situation may be ongoing for a while. Chief Kirby replied that the strike at the ports is definitely a concern to the Authority, and suppliers have been trying to plan for this strike but we do have products that are affected by a shutdown. Mr. Alfano replied that we will definitely continue to monitor how the strike affects our product availability.
- Mr. Alfano continued that the Authority has revised the revenue forecast to show that revenues will be flat for the coming year. The Authority is taking this more conservative approach so that we are not over promising funds to the state budget and then having to under deliver. If we net a higher profit, those funds will return to the Commonwealth.
- Mr. Holland asked when the ABC representatives would be meeting with the Governor's money committees?
- In response to an inquiry from Mr. Holland, Mr. Farino and Mr. Daniel replied that ABC will be meeting with the House on the 15th and the Senate on the 16th to review the forecast with the money committees. Mr. Holland said that he was curious to see how the legislators will respond to saying profits would be flat over the next five years. Mr. Alfano stated that the team is presenting that ABC expects revenues to be flat for this year, but with an anticipated rebound in 2025, but not to the levels the ABC has previously seen. Mr. Alfano presented some quotes from industry partners with examples of the softening of demand, changes in drinking habits of younger generation and increased pressure, and the expectation among the spirits industry that there will be modest growth.
- Mr. Farino asked the Chair if there were any comments at the NABCA meeting regarding the alcohol revenue forecast? Mr. Hugo responded that while NABCA members were complimentary about the ABC, they were candid and direct in their predictions of flat sales, and sales of cannabis and the port strike will cause an impact. Mr. Hugo added that members of the General Assembly have contacted him and seem to understand that. Other control states are also reporting flat sales, and Virginia is not an anomaly.
- Mr. Alfano added that at a recent Supplier Advisory Committee meeting at the Authority with industry partners, many stakeholders confirmed that they are also forecasting flat sales.
- Mr. Farino added that Virginia is still out-pacing other control states in sales. While there are strong headwinds, the Authority is doing the right things to cut costs and increase sales. Mr. Alfano responded that in nine of the last twelve months, sales have trended higher than in other control states but not by a great deal.
- The Chair noted that the pandemic was an anomaly; drinking was higher during the pandemic.
- Mr. Alfano and Doug Robinson have been able to listen in on the advisory council meetings. The Governor's office is waiting until after the November elections to complete their forecasts.
- The Authority continues to make efforts to increase revenues. ABC recently leveraged the marketing expertise of our suppliers and are testing out some practices in our stores. For example, Titos is the Authority's highest selling vodka. The presentation shows that Titos had a fairly small section on our sales floor in stores. The suppliers recommended increasing shelf-space for the higher selling SKUs (based on item's percentage of total sales). The Authority has now doubled the space allotted to Tito's product in our test store in Virginia Beach.
- The Chair stated that the suppliers previously said that ABC would not try anything new. Now, the suppliers are telling people that VA ABC will try new things to see if it works.
- Mr. Alfano stated that video that was shown to the Board at the beginning of this meeting highlights efforts of the Authority surrounding allocated products to make sure those products are on the shelf quickly. The Authority is examining what the hot sellers are in each store and making sure to stock those products more and taking advantage of the knowledge of our store managers to have more autonomy to order hot products for

their own stores, and educating store staff on product knowledge and adding shelf-talkers for information on new products.

- The Fair Labor Standards Act changes scheduled to take place in January of 2025 will increase the minimum salary for exempt employees that will impact over 100 currently exempt individuals that will need an increased wage amount to bring their pay above the minimum threshold. This will also cause a pay increase for employees with salaries near that threshold. The cost to be compliant in 2025 is a total of \$442,000, in 2026, that cost will be \$884,000. This amount was not included in our budget. The Authority completed an analysis of the cost to pay overtime to these workers, and the costs were anticipated to be a bigger hit, more in the millions.
- Mrs. Jennings asked if the Authority's payroll system was able to capture the exact hours worked and track by project? Mr. Alfano replied that it is not, other than for store personnel. Mrs. Jennings stated that she was asking because if the exempt personnel were able to keep track of their hours, based on projects, we would have a real sense of what overtime people are doing, but it sounds like that would require a payroll system change.
- Mr. Alfano then returned to the anticipated 0% revenue growth for FY25. There is an opportunity to re-capture some of the credit card fees, but this necessitates a change to the system. The Authority has factored in the 3% salary increase given to state employees this year and factored in 3% for FY26 and 1.5% for the remaining out years.
- The Chair asked if the team thought profits were going to go down again? Mr. Alfano said the Authority is operating fairly lean right now, and with anticipated operating costs, salaries, rent increases, we may see another dip in profits in 2026.
- The Chair asked if the team believes that revenue will really pop up \$15 million in 2027? Mr. Alfano replied "yes", the Authority can do what it can with costs, but revenue is the problem. The Authority is trying to drive up revenue.
- Mr. Robinson added that a bump of \$12 million is expected from the recovery of credit card fees, which also lowers the Authority's costs. Mr. Alfano stated that the last comparison shows what the Authority's last GACRE forecast was and what is expected now. The Authority may be short from what was in the original budget bill.
- Mr. Holland asked when we planned on releasing these figures to the Governor's office? Mr. Daniel responded that these figures were released with the Board's informational packet last week and have been reported already.
- Mr. Euille made a motion to approve the Authority's GACRE forecast. Mrs. Jennings seconded the motion, which passed on a roll-call vote of 5 – 0.

Review and approve proposed regulatory changes regarding winery, farm winery and brewery licenses and transportation of alcoholic beverages (Daniel)

- Mr. Farino recommended that the discussion regarding the approval of regulatory changes be moved to the next meeting on October 29th as the public comment period is still open for some of these revisions.
- Mr. Daniel added that the Authority has only received a couple of comments at this point but we will potentially have more comments to review.

NEW BUSINESS, BOARD INFORMATION

- Mr. Farino stated that the Board had been discussing the possibility of having new committees. However, because of the small size of our Board, this may not be feasible. A strategic plan is in development, and is currently with the Directors of the Authority and will return to the C-Suite at a future meeting.

- Mrs. Jennings said that she had never been on a Board without committees. The committees dig in deep with management and help management to review and revise projects where necessary. The challenge is the size of the Board. It is the same amount of work as the Board already does. We're not trying to hide things. We're trying to give Board members with specific expertise the opportunity to delve deep down into plans to understand them before they are presented to the Board for approval. A strategic plan would be a governing document though. It's a structural document of what we're trying to achieve so at this point, it is probably not optimal to build committees before the strategic plan is in place.
- Further discussion of subcommittees is tabled at this time.

August Financial Update (Alfano)

- Mr. Alfano reported that the operating expenses are \$1.8 million favorable to the budget. The Authority is not filling open positions without a lot of scrutiny. There was a lower than anticipated wage cost and a favorable PTO adjustment. Due to lower sales, the credit card fees in August is also lower than budgeted. This will change though and for the remainder of this year, the Authority anticipates not running ahead of budget.
- Mr. Alfano shared data regarding stores that were converted to counter stores. The data demonstrates that the change in layout absolutely helps with theft but it has a negative impact on our sales. The reduced shrink numbers do not balance the negative sales growth.
- Mr. Farino stated that the real estate committee will examine closing these stores, considering the lease terms, and the ability of other stores in the area to pick up sales.
- The Authority is trying to redo the lease template now so that decisions may be made to close stores more easily.
- The Chair said he knows there is of course a safety issue for our employees but otherwise, why would the Authority keep any counter stores? Mr. Farino said, based on this analysis, the ABC would probably close all of the counter stores.

Comments from the Board

- The Chair asked if there were any comments from the Board. There being none, the Chair moved on to the public comment period.

Public Comments

- The Chair asked if there were any public comments from the room or from Teams. There being none, the Chair asked that Mr. Curtis move the Board into closed session.

Closed Session

- Mr. Curtis stated that a motion needed to be made to allow the Board to convene in closed session. At 10:46 a.m., Board Member Euille moved that the Board convene into closed session to consult with legal counsel as provided in 2.2-37.11(A)(7) to discuss actual or probable litigation. Attending the closed session in full were Tim Hugo, Mark Stepanian, Greg Holland, William Euille, Lisa Jennings, John Daniel, Tom Kirby, John Singleton, Dave Alfano, Dale Farino, Tom Kirby, Chris Curtis and Elizabeth Peay. Board Member Holland seconded the motion, and the motion passed on a roll call vote of 5 – 0.
- When the Board returned from Closed session at 11:15 a.m., Board Member Jennings moved to certify that to the best of her knowledge nothing was discussed in the closed sessions but consultation with legal counsel discussed in the motion to convene in closed session and only public business matters lawfully exempted from

open meeting requirements were discussed. Board Member Euille seconded; the motion passed on a roll-call vote of 5 – 0.

Meeting Adjournment

Meeting adjourned at 11:16 a.m.