

Regulatory Analysis Form

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2005 MAR 17 AM 10:03

INDEPENDENT REGULATORY REVIEW COMMISSION

(1) Agency

Pennsylvania Liquor Control Board

(2) I.D. Number (Governor's Office Use)

054-61

IRRC Number: 2468

(3) Short Title
Numerous Revisions

(4) PA Code Cite

40 Pa. Code

(5) Agency Contacts & Telephone Numbers

Primary Contact: James F. Maher (717) 783-9454

Secondary Contact: Faith S. Diehl (717) 783-9454

(6) Type of Rulemaking (check one)

Proposed Rulemaking X
Final Order Adopting Regulation
Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

No X
Yes: By the Attorney General
Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The regulatory amendments and additions codify numerous agency practices and procedures and further explain various legislative changes to the Liquor Code.

- * The proposed rules explain conditions under which minors without a parent, guardian or proper supervisor may be present in those licensed premises that primarily serve food.
- * A regulation prohibits purchases or redemption of the Board's gift cards by minors.
- * It explains qualifications for obtaining Sunday sales permits by licensees.
- * It explains the process of renewing Sunday sales permits by licensees.
- * It establishes requirements for the Board to participate in wine events.
- * It codifies established practices regarding limits on point-of-sale incentive programs for malt or brewed beverages.
- * It explains the procedure for intervention by interested parties where a municipality has requested leave to enforce its own noise ordinance in lieu of the Board's Regulations on amplified music.

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(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Pennsylvania Liquor Code, section 207(i) [47 P.S. § 2-207(i)].

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

- Section 493(14) of the Liquor Code allows minors to frequent a licensed premises that primarily serves food. [47 P.S. § 4-493(14)]. It has never been clearly stated what the computation period is for a licensed premises to qualify as a “primarily food” establishment. Such establishments, like “Pizza Hut,” may allow minors to frequent the premises without parents, guardians or proper supervisors. This proposed regulation now makes the calculation clear.
- The Liquor Code allows certain establishments to purchase a permit allowing it to serve alcoholic beverages on Sunday after 11:00 a.m. and until 2: a.m., if its combined sales of food and nonalcoholic beverages is equal to at least 30 percent of its sales of food, nonalcoholic beverages and alcoholic beverages. It has never been clearly stated what the computation period is for a licensed premises to qualify for a Sunday sales permit. This proposed regulation now makes the calculation clear.
- In Act 212 of 2002, the General Assembly created an option for municipalities to request permission to enforce the municipality’s own noise ordinance in lieu of the Board’s prohibition against amplified music being heard outside a licensed premises. This proposed regulation organizes and explains the due process rights of interested parties in hearings on the municipality’s request. [47 P.S. § 4-493.1(b)].

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

- Clarifying the criteria for being a ‘primarily food’ establishment facilitates a licensee’s compliance with the Liquor Code and the Board’s Regulations.
- Clarifying the criteria for being eligible for a Sunday sales permit facilitates a licensee’s compliance with the Liquor Code and the Board’s Regulations.
- The Board’s participation in wine events is consistent with the initiative to make Pennsylvania more ‘wine friendly.’ The proposed regulations create a system to organize the Board’s participation in such events.
- The option for municipalities to request leave to enforce the municipality’s own noise ordinance in lieu of the Board’s prohibition against amplified music being heard outside a licensed premises often affects the interests of people living in and around the exempted area. Hearings on the municipality’s request often occur on relatively short notice, so setting up a system for intervenors helps all sides of the issue to be heard in an efficient fashion.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

No public health, safety, environmental or general welfare risks are associated with nonregulation. However, licensees and their staffs who have a better awareness of what is permitted will improve the overall operation of licensed premises, therefore helping to protect the welfare, health, peace and morals of the communities in which they operate. This effectuates one of the purposes of the Liquor Code.

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

There are no adverse effects as a result of this regulation.

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(15) List the persons, groups or entities that will be required to comply with the regulation.
(Approximate the number of people who will be required to comply.)

Compliance will be required mostly of liquor and beer manufacturers and the Board's licensees. As some of these regulations will affect persons outside Pennsylvania, the number of people having to comply cannot accurately be estimated.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

No public input has been received so far.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

The regulated community is not expected to incur new costs or realize new savings.

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

Local governments are not expected to incur new costs or realize new savings.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

State government is not expected to incur new costs. There may be improved tax collection from the vendors to the Board.

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

Not Applicable

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:	N/A					
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:	N/A					
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

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(20a) Explain how the cost estimates listed above were derived.

Not applicable.

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Not Applicable.

Program	FY -3	FY -2	FY -1	Current FY
	N/A	N/A	N/A	N/A

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

Not applicable.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

No nonregulatory alternatives were considered

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No alternative regulatory schemes were considered.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

None of the provisions contained in these regulations are more stringent than federal standards.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The Pennsylvania system of liquor regulation is unique, so meaningful comparison to other states is not possible. These regulatory changes will not place Pennsylvania at a competitive disadvantage with other states.

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(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

These modifications will affect only the Board's existing regulations, and because the proposed regulations primarily codify and organize existing practices, or obligations already imposed by the Liquor Code, impact on the Board's operation will only be benefited by making information more readily accessible to the regulated community.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No public hearings or informational meetings will be scheduled.

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

No changes of substance are expected

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

No special provisions have been developed to meet the needs of minorities, the elderly, small businesses and farmers.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation will become effective upon its publication, in final form, in the Pennsylvania Bulletin.

(31) Provide the schedule for continual review of the regulation.

Review of the regulations is ongoing and any changes to the regulation will be through the rulemaking process.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

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2005 MAR 17 AM 10:04

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

BY: *Amy M. Elliott*
(DEPUTY ATTORNEY GENERAL)
MAR 16 2005

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

Pennsylvania Liquor Control Board
(AGENCY)

DOCUMENT/FISCAL NOTE
NO. 054-61

DATE OF ADOPTION: 2/8/05

BY: *[Signature]*
TITLE: Chairman
(Executive Officer, Chairman or Secretary)

Copy below is hereby approved as to form and legality. Executive or Independent Agencies:

BY: *[Signature]*
2/4/05
DATE OF APPROVAL

Chief Counsel, Independent Agency

Check if applicable. No Attorney General approval or objection within 30 days after submission.

TITLE 40—LIQUOR

CHAPTER 5. DUTIES AND RIGHTS OF LICENSEES

The following Subchapters and sections (underlined) were added:

SUBCHAPTER J. MINORS ON LICENSED PREMISES

§ 5.121 Service in establishments primarily serving food.

The following section (underlined) was added:

CHAPTER 11. PURCHASE AND SALES

SUBCHAPTER A. GENERAL PROVISIONS

RETAIL AND WHOLESALE PURCHASE – GENERAL

§ 11.13. Gift card transactions by minors prohibited.

SUBCHAPTER I. SALE OF ALCOHOLIC BEVERAGES ON SUNDAY

The following Sections were amended by adding underlined text:

§ 11.72. Application for a new Sunday sales permit.

§ 11.76. Renewal

The following Section (underlined) was added:

CHAPTER 13. PROMOTION

SUBCHAPTER A. ADVERTISING.

WINE

§ 13.27. Board participation in wine events.

GIVING AND ACCEPTING THINGS OF VALUE

The following Sections (underlined) were added:

§ 13.54. Point of sale incentive programs – defined.

§ 13.56 Permissible point of sale incentive programs.

CHAPTER 17. SPECIAL RULES OF PRACTICE AND PROCEDURE FOR MATTERS BEFORE THE BOARD.

SUBCHAPTER A. GENERAL.

The following section was amended by adding underlined text:

§ 17.1. Purpose.

SUBCHAPTER B. LICENSE APPLICATIONS.

The following Section (underlined) was added:

§ 17.15. Intervention in noise exemption petitions.

PROPOSED RULEMAKING

LIQUOR CONTROL BOARD

[40 PA. CODE CH. 5, 11, 13 AND 17]

Revisions to Codify Practices and Procedures Resulting from Legislative Amendments

The Liquor Control Board (Board), under the authority of section 207(i) of the Liquor Code (47 P. S. § 2-207(i)), proposes to amend Chapters 5, 11, 13 and 17.

Summary

The proposed rulemaking codifies practices and procedures of the Board and further explains various legislative changes to the Liquor Code (47 P.S. §§ 1-101--8-803). The following is a summary:

- * The proposed rules explain conditions under which minors without a parent, guardian or proper supervisor may be present in those licensed premises that primarily serve food.
- * It prohibits purchases or redemption of the Board's gift cards by minors.
- * It explains qualifications for obtaining Sunday sales permits by licensees.
- * It explains the process of renewing Sunday sales permits by licensees.
- * It establishes requirements for the Board to participate in wine events.
- * It codifies established practices regarding limits on point-of-sale incentive programs for malt or brewed beverages.
- * It explains the procedure for intervention by interested parties where a municipality has requested leave to enforce its own noise ordinance in lieu of the Board's Regulations on amplified music.

Affected Parties

The proposed regulations will affect existing licensees, and parties interested in municipal noise ordinance proceedings.

Paperwork Requirements

The proposed regulations will not significantly increase paperwork for the Board or the regulated community.

Fiscal Impact

Because the proposed regulations primarily codify and organize existing practices or obligations under the Liquor Code, they will not have a fiscal impact on the licensees of the Board, applicants for licenses or the Board itself.

Effective Date

These regulations will become effective upon publication in final form in the *Pennsylvania Bulletin*.

Public Comment/Contact Person

Written comments, suggestions or objections will be accepted for thirty (30) days after the publication of the proposed regulations in the *Pennsylvania Bulletin*. Comments should be addressed to James F. Maher, Assistant Counsel, Office of Chief Counsel, Pennsylvania Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on 3-17, 2005, the agency submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairmen of the House Liquor Control Committee and Senate Committee on Law and Justice. A copy of this material is available to the public upon request.

Under Section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Act specifies detailed procedures for review, prior to final publication of the regulation, by the agency, the General Assembly and the Governor of comments, recommendations or objections raised.

Jonathan H. Newman
Chairman

ANNEX A

TITLE 40. LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 5. DUTIES AND RIGHTS OF LICENSEE

* * * *

SUBCHAPTER J. MINORS ON LICENSED PREMISES

§ 5.121. Service in establishments primarily serving food.

(a) Section 494(14) of the Liquor Code creates several exceptions to the general prohibition of minors being present in licensed premises. (47 P. S. § 4-493(14)). One of these exceptions, known as the "Pizza Hut" exception, permits a minor to be present in a restaurant, hotel, or retail dispenser (but not club) licensed premises that has gross sales of food and non-alcoholic beverages equal to at least 50% of its combined gross sales of both food and alcoholic beverages.

(b) Licensees qualifying for this exception will not be cited for unlawfully allowing minors to frequent the licensed premises.

(c) To qualify for this exception, a licensee will assure that:

(1) Minors are not permitted to sit at the bar counter of the premises.

(2) No alcoholic beverages are served to any adult at the table or booth where the minor is seated. (Unless the minor is also there with a parent, legal guardian, or proper supervisor).

(3) Sales of food and nonalcoholic beverages at the licensed premises during the preceding 12-month licensing year are at least 50% of the combined gross sales of both food and alcoholic beverages.

§ 11.13. Gift card transactions by minors prohibited.

Gift cards authorized by 47 P.S. § 3-305 for sale and redemption by the Board may not be purchased or redeemed by minors.

§ 11.172. Application for a new Sunday sales permit.

(a) A licensee who wishes to make Sunday sales of alcoholic beverages shall file an application in the form as may be prescribed by the Board for a Sunday sales permit. The application for a Sunday sales permit shall contain:

(1) The name and address of the licensee.

(2) The address of the licensed premises.

(3) The license number.

(4) Information [to support the application's assertion] that for at least 90 consecutive days during the 12 months immediately preceding the date of application, sales of food and nonalcoholic beverages by the applicant at the licensed premises were at least [equal to or exceed] 30% of the combined gross sales [sale] of both food and alcoholic beverages.

(b) Inaccuracy in the application shall be sufficient cause for citation of a licensee under section 471 of the Liquor Code. [The licensee shall be strictly liable for the accuracy of the information contained in the application and any inaccuracy shall be cause to show why the license should not be suspended or revoked or a fine imposed.]

(c) Sunday sales permits are specific to the named licensee and not subject to transfer of ownership.

§ 11.176. Renewal.

(a) Renewals of Sunday sales permits shall be accomplished as set forth in § 11.172 (relating to application for a new Sunday sales permit), except

that the information required by § 11.172(a)(4) shall be for the consecutive 12-month period [or portion thereof] immediately preceding the date of the application for renewal.

(b) If a licensee does not qualify for renewal of its Sunday sales permit, it may not apply for a new permit until at least 120 days after the expiration of its previous permit. The application will then be considered an application for a new Sunday sales permit.

(c) When the licensee delays its renewal application, no sales during the prior Sunday sales permit may be used to qualify the applicant for a new Sunday sales permit.

EXAMPLE: A license and Sunday sales permit expire on February 28, 2004. The licensee applies for renewal on November 30, 2003. During the 12 consecutive months preceding the renewal application (November 1, 2002 through October 31, 2003) the licensee's ratio of sales of food and nonalcoholic beverages to its sales of food and alcoholic beverages is 25%. Therefore, the licensee's Sunday sales permit is not renewable. The licensee waits the required 120 days, and on July 1, 2004, it applies for a new Sunday sales permit. Its ratio is then at 35% for 90 consecutive days. It is

issued a new Sunday sales permit that is valid until February 28, 2005. If the licensee's ratio stays above 30%, the Sunday sales permit will be validated and be in force at least until March 1, 2006.

§ 13.27. Board participation in wine events.

(a) Title 47 § 2-215(e) authorizes the Board to sponsor or participate in wine events.

(b) Persons seeking Board participation shall submit a request in writing to the Board no less than 60 days prior to the first day of the wine event.

(c) If the event is approved, the Board shall issue a letter of authority to the event organizer. The Board's letter will describe the premises upon which the wine event will be held.

(d) If the event is not approved, the Board's decision is final, and may not be appealed.

(e) Wine to be used in a wine event that the Board has chosen to sponsor or participate in may be acquired and possessed in accordance with the following:

(1) Wine donated for the event may be shipped directly to the wine event organizer or its agents.

(i) Records showing the amount, types and brands of all wine received, the identity of the donors and the dates received, and documents evidencing payment of all necessary taxes shall be forwarded to the Board prior to the wine event.

(ii) Wine obtained for the wine event that is not used at the wine event must be returned to the donor, donated to a nonprofit, charitable organization registered with the Pennsylvania Department of State or destroyed and may not be sold.

(2) Wine also may be obtained for the wine event through the Board's Wine and Spirits Stores.

(f) The Board's letter of authority shall authorize the event organizer or its agents to possess and transport wine for the wine event.

(g) Participation in the wine event, including the service and consumption of wine, may be conditioned on the purchase of a ticket to the wine event.

The event organizer, its agents or the Board may sell tickets. Sale of

tickets by the event organizer or its agents shall not constitute the unlawful sale of alcohol.

(h) The event organizer shall appoint a manager who shall be present on the premises at all times during the wine event.

(i) The Board may sell wine for off-premises consumption in an area it designates at the wine event. The Board shall comply with the provisions of the Liquor Code governing retail sales at Wine and Spirits Stores, except that advance advertisement or notice posting by the Board of the location of the designated sales area shall not be required and provisions granting a right of protest shall not be applicable.

(i) If the premises where the wine event is to occur is licensed by the Board, the licensee shall not be cited under the Liquor Code for conduct occurring on the licensed premises during the wine event, so long as the licensee, its employees or agents are not directly involved in the violation and are not participating in the operation or management of the wine event.

§ 13.51. General prohibition.

(a) Except as [provided in subsections (b), (c) and § 13.52 (relating to advertising novelties)] otherwise permitted, no in-State or out-of-State

manufacturer, licensee or group of licensees, their servants, agents or employees, may directly or indirectly, in person, individually or through a trade organization, contribute to or accept from another licensee or group of licensees of a different class, their servants, agents or employees or a trade organization of licensees of a different class, anything of value by means of advertisements, contributions, purchase, sale of tickets, donations or by any device, for any purpose.

* * *

§ 13.54. Point of Sale Incentive Programs - Defined.

A point of sale (“POS”) incentive program provides prizes for non-licensed buyers to purchase and for distributors/importing distributors to promote the sale of a brand of malt or brewed beverages. These promotions feature displays or advertisements at the location where a sale is made.

§ 13.56. Permissible Point of Sale Incentive Programs.

(a) A POS incentive program must be sponsored by a manufacturer or importing distributor of malt or brewed beverages.

(b) The composite value of prizes available to non-licensed buyers is at least three times the value of prizes available to distributors/importing distributors.

(c) Associated display and novelty items must be directed at and available for non-licensed buyers.

(d) A prize is not given to every participant.

(e) The value of a prize for a non-licensed buyer does not exceed \$1,500.

(f) The POS incentive program does not incorporate a payment to licensees based on the number of cases displayed.

(g) The POS incentive program has been approved in advance by the Office of Chief Counsel, Pennsylvania Liquor Control Board.

§ 17.1. Purpose.

This chapter supplements 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) and governs the practice and procedure before the Board regarding license applications, appeals from ALJ decisions, applications for supersedeas, [and] divestiture and noise exemption petitions.

* * *

§ 17.15. Intervention in noise exemption petitions.

(a) Petitions to intervene may be filed when a municipality has petitioned the Board for exemption from the Board's regulation regarding the sound of amplified music or other entertainment, or the advertisement thereof, being heard outside of licensed premises.

(b) The deadline for filing a petition to intervene is seven calendar days before the hearing. In extraordinary circumstances and for good cause, a petition to intervene may be accepted by the Board after the deadline, but not after the hearing begins.

(c) A petition to intervene will present proof that the petitioner has a substantial, direct and immediate interest in the outcome of the proceeding. For an interest to be substantial, it means that there is some discernible adverse effect to the petitioner's individual interest. For the petitioner to have a direct interest, it means that the person claiming to be aggrieved must show the harm to his interest would be caused by the municipality's enforcement of its own noise ordinance. An immediate interest means that there is a close causal connection between the alleged injury and the grant of the exemption.

(d) The Board may allow petitioners to become interveners if the petition also shows the petitioner has an interest of such a nature that intervention is necessary or appropriate to administration of the Liquor Code and the

Board's Regulations. The Board will also consider whether or not the interest asserted in the petition to intervene is adequately represented by existing parties.

Commonwealth of Pennsylvania
Pennsylvania Liquor Control Board
March 16, 2005

SUBJECT: Proposed Regulations 54-61 (Amendments to Title 40, Pennsylvania Code)

TO: MARY WYATTE, ACTING EXECUTIVE DIRECTOR
INDEPENDENT REGULATORY REVIEW COMMISSION

FROM: FAITH S. DIEHL *FSD*
CHIEF COUNSEL
PENNSYLVANIA LIQUOR CONTROL BOARD

By Hand Delivery

Refer to: 3-9454

Submitted herewith are proposed amendments to the regulations of the Pennsylvania Liquor Control Board. Also enclosed are the signed CDL-1, preamble, regulatory analysis form and executed transmittal sheet.

Questions and comments should be directed to James f. Maher at (717) 783-9454.

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT
TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 54-61
SUBJECT: Corrections and Revisions
AGENCY: Liquor Control Board

RECEIVED
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 REGULATORY REVIEW COMMISSION

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
3/17	<u>T. Root</u>	HOUSE COMMITTEE ON LIQUOR CONTROL (<i>Republican</i>)
3/17	<u>K. Blomer</u>	(<i>Democrat</i>)
3/17	<u>Chris Mezzadri</u>	SENATE COMMITTEE ON LAW & JUSTICE (<i>Republican</i>)
3/17	<u>Marsha Wilson</u>	(<i>Democrat</i>)
3/17	<u>Steph J. Hoff</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
2/18/05	<u>Angela Elliott</u>	ATTORNEY GENERAL
_____	_____	LEGISLATIVE REFERENCE BUREAU