



**Senate Committee on Community, Economic  
and Recreational Development**

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#2563

April 4, 2007

Kim Kaufman  
Executive Director  
333 Market St, 14th Floor  
Harrisburg, PA 17101

**RE: Proposed Pennsylvania Gaming Control Board Final-form Rules 125-47 (58 Pa. Code, Ch. 481a. Diversity.)**

Dear Mr. Kaufman:

Attached is a copy of public comments being submitted in my capacity as the Chair of the Senate Community, Economic and Recreational Development Committee with regard to the Pennsylvania Gaming Control Board Final-form Rules 125-47 (58 Pa. Code, Chapter 481a. Diversity.). The attached comments and recommendations reflect areas that could be further clarified with regard to the proposed Final-form Rules relating to the diversity provisions provided for in the Pennsylvania Race Horse Development and Gaming Act (Part II, 4 Pa.C.S.).

Your time and consideration with regard to these matters is appreciated. If you have any questions, please contact Jason R. Brehouse in my office.

Sincerely,

Jane M. Earll

Attachment

Cc: Senator Gerald LaValle  
Anthony Rigano  
Richard Sandusky (PGCB)  
Dan Stambaugh (PGCB)  
Scott R. Schalles (IRRC)

INDEPENDENT REGULATORY  
REVIEW COMMISSION

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Comments on Proposed Final Rulemaking  
58 Pa. Code Ch. 481a. Diversity.

Section 481a.1. Statement of purpose, policy and applicability.

1. Paragraph (a) states: "This chapter establishes the procedures for promoting and ensuring that regulated entities foster participation and diversity in all aspects of their operations in this Commonwealth."

At issue is the term "participation" in that it is not clear from the language above what is meant by ensuring regulated entities foster participation in all aspects of their operations. It is not clear who or what they are supposed to be fostering the participation of in their operations. It should be noted that the term participation is essentially utilized in two ways in the corresponding legislation:

Examples:

- 1) "... shall work to enhance the representation of diverse groups in the ownership, participation and operation of licensed entities and licensed facilities and through the ownership, **participation** and operation of business enterprises associated with or utilized by licensed entities and licensed facilities and through the provision of goods and services utilized by slot machine licensees under this part." [4 Pa.C.S. § 1212(a)]
- 2) "... which promotes a diverse work force, **minority participation** and personnel from within the surrounding geographical area." [4 Pa.C.S. § 1510(a)]

The solution in this instance would seem to be to insert the term "minority" before participation (as is cited in the 2<sup>nd</sup> example referenced above). Another option would be to simply strike the term. As currently used the term participation is confusing and provides less guidance than can be found in the applicable statutes.

2. Paragraph (b) states: "It is the policy of the Board to promote and ensure that regulated entities conduct all aspects of their operations in a manner that assures diversity of opportunity as follows:"

In order to be consistent with the usage of language in the legislation it is recommended that you strike the term "of" and insert "and equal" (as shown below):

"... all aspects of their operations in a manner that assures diversity and equal opportunity as follows:"

This representation is consistent with how the terminology is used in the applicable statutes.

Examples:

- 1) "... are accorded equality of opportunity in employment and contracting by the board, its contractors, subcontractors, assignees, lessees, agents, vendors and suppliers." [4 Pa.C.S. § 1202(b)(21)]
- 2) "... to assure that all persons are accorded equality of opportunity in employment and contracting by the applicant, its contractors, subcontractors, assignees, lessees, agents, vendors and suppliers. [4 Pa.C.S. § 1325(b)]

- 3) “to assure that all persons are accorded equality of opportunity in employment and contracting by it and any contractors, subcontractors, assignees, lessees, agents, vendors and suppliers it may employ directly or indirectly.” [4 Pa.C.S. § 1325(c)(3)]

Section 481a.4. Establishment of diversity plan required.

1. Paragraph (a) states: “Each regulated entity shall include in its application for licensure or certification a diversity plan that establishes a **separate goal of** diversity in the ownership, participation and operation of, and employment at the regulated entity. The Board will determine whether the stated goals set forth in each diversity plan are reasonable and represent a good faith effort to assure that all persons are accorder equality of opportunity in contracting and employment. . . .”

It would be advisable to strike the phrase “a separate goal of” and possibly also inserts “and promotes” as follows:

“Each regulated entity shall include in its application for licensure or certification a diversity plan that establishes and promotes diversity in the ownership, participation and. . . .”

The diversity plan represents the goal and as such not sure how it can be referenced as establishing a separate goal of diversity.