

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency: Pennsylvania Liquor Control Board

(2) Agency Number: 54

Identification Number: 81

IRRC Number: 3086

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(3) PA Code Cite: 40 Pa. Code § 3.105

(4) Short Title: Economic Development Licenses

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: Norina K. Blynn (717) 783-9454
Pennsylvania Liquor Control Board
401 Northwest Office Building
Harrisburg, Pennsylvania 17124
FAX: (717) 787-8820
Email: ra-lblegal@pa.gov

Secondary Contact: Rodrigo J. Diaz (717) 783-9454
(Same Contact Information)

(6) Type of Rulemaking (check applicable box):

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation

- Emergency Certification Regulation;
 - Certification by the Governor
 - Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

Subsection 461(b.1) of the Liquor Code authorizes the Pennsylvania Liquor Control Board ("Board") to issue, without regard to quota restrictions, economic development restaurant liquor licenses ("EDR") and economic development eating place retail dispenser licenses ("EDE") for the purpose of economic development in a municipality. [47 P.S. § 4-461(b.1)]. The applicant must satisfy certain conditions in order to receive an EDR or EDE license, including proof that the applicant has "exhausted reasonable means for obtaining a suitable license within the county." [47 P.S. § 4-461(b.1)(1)]. The proposed regulation provides specific criterion for an applicant to show that it has met that condition.

(8) State the statutory authority for the regulation. Include specific statutory citation.

The Board has the authority to make regulations pursuant to section 207(i) of the Liquor Code [47 P.S. § 2-207(i)].

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

No, this regulation is not mandated by any federal or state law or court order, or federal regulation. There are no relevant state or federal court decisions pertaining to this regulatory change.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

Generally speaking, the Liquor Code limits the number of restaurant liquor and eating place retail dispenser licenses the Board may issue in a county. [47 P.S. § 4-461]. There are several exceptions to the quota law, one of which allows the Board to issue an economic development restaurant liquor license (“EDR”) or an economic development eating place retail dispenser license (“EDE”), even if the quota for the county is full. However, the applicant must satisfy certain conditions in order to receive an EDR or EDE license, including proof that the applicant has “exhausted reasonable means for obtaining a suitable license within the county.” [47 P.S. § 4-461(b.1)(1)]. This information must be presented at an administrative hearing. [40 Pa. Code § 3.105]. The regulations do not currently provide any guidelines as to what is meant by “exhausted reasonable means.” As a result, applicants are unsure as to what evidence they are expected to produce. The proposed regulation amends Section 3.105 to provide specific criterion for an applicant to show that it has met that condition.

As to who will benefit, in order to apply for an EDR or EDE license, the proposed licensed premises must be located in a Keystone Opportunity Zone; an area designated as an enterprise zone by the Department of Community and Economic Development; or a municipality in which, after a public hearing, the governing body of the municipality has approved the issuance of the license by ordinance or resolution. [47 P.S. § 4-461(b.1)(2)]. Because of these restrictions, it is unknown how many potential future applicants may benefit from the proposed regulation. As of October 2, 2014, the Board has approved the issuance of twenty-five (25) EDR licenses and one (1) EDE license since it was first authorized to do so in 2002.

(11) 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 regulations.

Federal regulations do not address this matter, since the granting of licenses to sell alcohol is a matter strictly within each state’s authority.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania’s ability to compete with other states?

The proposed regulation is intended to assist applicants who are seeking an economic development license for use in Pennsylvania. While other states have similar programs, it is not expected that the proposed regulation will have any impact on an applicant’s decision to seek a liquor license in Pennsylvania.

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

After diligent research, the Board is unaware of any other regulations, issued by the Board or by another state agency, which would be affected by the promulgation of the proposed regulation.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The proposed regulation was developed without communications with or input from the public. The Board's Office of Chief Counsel has been involved in hearings pertaining to the issuance of EDRs and EDEs and, through those hearings, has become aware of the need for more detailed regulations as to when an applicant has "exhausted reasonable means" to obtain an existing license. The proposed regulation was developed in coordination with the Board's Bureau of Licensing.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

It is unknown how many persons, businesses, small businesses and organizations may be affected by the regulation. The regulation clarifies the process for future applicants of an EDR or EDE license. Such applicants are unknown to the Board and therefore cannot be identified or quantified.

(16) List the persons, groups or entities, including small businesses, which will be required to comply with the regulation. Approximate the number that will be required to comply.

There are no persons, groups, or entities that will be required to comply with the proposed regulation. The proposed regulation simply offers additional guidance to those entities that wish to apply for an EDR or EDE license.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

If there are any individuals, small businesses, businesses and labor communities and other public and private organizations that wish to obtain an EDR or EDE license, the proposed regulation will benefit them by providing greater detail and clarity as to what they need to do to establish that they have exhausted reasonable means to obtain a liquor license.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The proposed regulation does not involve any cost to an applicant beyond the time and effort necessary to contact 50% to 75% of all licensees in the county (the percentage depends upon the county class). The benefit of the proposed regulation is that it provides clarity to the applicant, which enables better case preparation and reduces or eliminates the possibility of inconsistent decisions by the Board.

(19) 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. Explain how the dollar estimates were derived.

The proposed regulation does not require any legal, accounting, or consulting procedures; therefore there are no costs or savings associated with complying with the proposed regulation.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The regulation is not expected to result in any costs or savings for local governments; it is not anticipated that any legal, accounting, or consulting services would be required.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

The regulation is not expected to result in any costs or savings for the state government; it is not anticipated that any legal, accounting, or consulting services would be required.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

Because the regulated community, local governments, and the state government are not required to take any action as a result of this regulatory change, it is not expected to affect legal, accounting or consulting procedures and should not require any additional reporting, recordkeeping or other paperwork.

(23) 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.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:						
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Savings	\$0	\$0	\$0	\$0	\$0	\$0
COSTS:						
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Costs	\$0	\$0	\$0	\$0	\$0	\$0
REVENUE LOSSES:						
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Revenue Losses	\$0	\$0	\$0	\$0	\$0	\$0

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3 2011-2012	FY -2 2012-2013	FY -1 2013-2014	Current FY 2014-2015
N/A	N/A	N/A	N/A	N/A

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

(a) An identification and estimate of the number of small businesses subject to the regulation.

It is unknown how many small businesses would be subject to the regulation because the regulation pertains to applicants who are unknown to the Board until an application is submitted.

(b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.

The applicant will not have to submit a formal report or record. The applicant will need to keep track of every existing licensee that was contacted with regard to selling its license and what the response was. It is anticipated that the costs of providing such information shall be minimal.

(c) A statement of probable effect on impacted small businesses.

A small business that is interested in obtaining an EDR or EDE license will be positively impacted by the proposed regulation, because now that small business will know exactly what it must demonstrate in order to qualify for such a license.

(d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

The requirement that an applicant shall have “exhausted reasonable means” to obtain an existing liquor license was established by legislation. There is no less intrusive or less costly alternative methods to provide clarity to the legislation and regulation besides providing clarity via the regulatory amendment.

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

No special provisions have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

Non-regulatory alternatives were not considered because the benefit for the regulated community requires the clarification of the current regulation through amendment.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

Non-regulatory alternatives were not considered because the benefit for the regulated community requires the clarification of the current regulation through amendment.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

No data was used for the basis of the proposed regulation.

(29) Include a schedule for review of the regulation including:

- A. The date by which the agency must receive public comments: March 2015
- B. The date or dates on which public meetings or hearings will be held: April 2015
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: May 2015
- D. The expected effective date of the final-form regulation: May 2015
- E. The date by which compliance with the final-form regulation will be required: N/A
- F. The date by which required permits, licenses or other approvals must be obtained: N/A

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

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

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FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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Copy below is hereby approved
as to form and legality.

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

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

Attorney General:


Pennsylvania Liquor Control Board
(AGENCY)

BY: 
Chief Counsel

BY: _____
(DEPUTY ATTORNEY GENERAL)

DOCUMENT/FISCAL NOTE NO. 54-81

October 8, 2014
DATE OF APPROVAL

OCT 30 2014
DATE OF APPROVAL

DATE OF ADOPTION: October 8, 2014

Check if applicable
Copy not approved. Objections
attached.

BY: 

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

TITLE: Chairman
(Executive Officer, Chairman or Secretary)

TITLE 40—LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 3. LICENSE APPLICATIONS

SUBCHAPTER K. ECONOMIC DEVELOPMENT LICENSES

The following section is proposed to be amended:

3.105. Quarterly filing of applications and application hearings.

PROPOSED RULEMAKING

LIQUOR CONTROL BOARD

40 PA. CODE CHAPTER 3

Subchapter K. Economic Development Licenses

The Liquor Control Board (“Board”), under the authority of section 207(i) of the Liquor Code (47 P.S. § 2-207(i)), amends Chapter 3.

Summary

Generally speaking, the Liquor Code limits the number of restaurant liquor and eating place retail dispenser licenses the Board may issue in a county. [47 P.S. § 4-461]. There are several exceptions to the quota law, one of which allows the Board to issue an economic development restaurant liquor license (“EDR”) or an economic development eating place retail dispenser license (“EDE”), even if the quota for the county is full. However, the applicant must satisfy certain conditions in order to receive an EDR or EDE license, including proof that the applicant has “exhausted reasonable means for obtaining a suitable license within the county.” [47 P.S. § 4-461(b.1)(1)]. This information must be presented at an administrative hearing. [40 Pa. Code § 3.105]. The regulations do not currently provide any guidelines as to what is meant by “exhausted reasonable means.” As a result, applicants are unsure as to what evidence they are expected to produce. The proposed regulation amends Section 3.105 to provide specific criterion for an applicant to show that it has met that condition.

In order to apply for an EDR or EDE license, the proposed licensed premises must be located in a Keystone Opportunity Zone; an area designated as an enterprise zone by the Department of Community and Economic Development; or a municipality in which, after a public hearing, the governing body of the municipality has approved the issuance of the license by ordinance or resolution. [47 P.S. § 4-461(b.1)(2)]. Because of these restrictions, it is unknown how many potential future applicants may benefit from the proposed regulation. As of October 2, 2014, the Board has approved the issuance of twenty-five (25) EDR licenses and one (1) EDE license since it was first authorized to do so in 2002.

Affected Parties

The affected parties include all future applicants for an EDR or an EDE. The proposed regulation will provide clarity as to what is expected of the applicant before it applies for an EDR or an EDE.

Paperwork Requirements

The proposed regulation seeks to clarify what is expected of an applicant for an EDR or an EDE. The applicant typically testifies at an administrative hearing as to what efforts it made to obtain an already existing license. The applicant may wish to take notes as to its efforts, in

order to help establish that it has “exhausted reasonable means,” but the proposed regulation would not require any additional paperwork to be filed.

Fiscal Impact

There is no anticipated fiscal impact with the proposed regulation. The proposed regulation is offered to provide clarity to applicants for an EDR or EDE license.

Effective Date

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

Public Comments

Interested persons are invited to submit written comments about the proposed rulemaking to Rodrigo Diaz, Executive Deputy Chief Counsel, or Norina Blynn, Assistant Counsel, Office of Chief Counsel, Pennsylvania Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001, within thirty (30) days after publication of the proposed regulation in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Please note that all public comments will be posted on the Independent Regulatory Review Commission’s website. No personal information will be redacted from the public comments received.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on _____, 2015, the Board submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons 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 thirty (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 Regulatory Review 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.

Joseph E. Brion
Chairman

TITLE 40. LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 3. LICENSE APPLICATIONS

Subchapter K. ECONOMIC DEVELOPMENT LICENSES

§ 3.105. Quarterly filing of applications and application hearings.

(a) Issuance of economic development licenses is limited to two licenses per calendar year in counties of the first through fourth class and one license per calendar year in counties of the fifth through eighth class.

(b) Quarterly filing periods are established for all counties as follows:

1st Quarter—January 1 through March 31

2nd Quarter—April 1 through June 30

3rd Quarter—July 1 through September 30

4th Quarter—October 1 through December 31

(c) At the end of the first quarter, every properly filed license application in a county will be subject to an administrative hearing before a Board hearing examiner in accordance with section 464 of the Liquor Code (47 P. S. § 4-464). Second quarter applications will be held in abeyance until after hearings are held for first quarter applications and a determination is made by the Board as to the availability of a license within the county.

(d) If a vacancy continues to exist in a county after hearings are held and a determination has been made by the Board, properly filed applications for the next quarter will be scheduled for hearings.

(e) In addition to any objections to, or support of, an application for the issuance of a license, an applicant shall [establish] provide evidence at the administrative hearing, that it has exhausted reasonable means to find a suitable license within the existing county quota law. Such evidence shall include the following:

(i) Evidence that the applicant, or the applicant's agent, made contact with existing restaurant liquor licensees, if a restaurant liquor economic development license is sought, or existing eating place retail dispenser licensees, if an eating place retail dispenser economic development license is sought, in the county.

(A) The purpose of the contact shall be to inquire as to the availability of the licensee's license for purchase.

(B) In counties of the first through fourth class, the number of licensees contacted by the applicant or the applicant's agent must be equal to or greater than fifty per centum (50%) of all the existing restaurant liquor or eating place retail dispenser licensees in the county.

(C) In counties of the fifth through eighth class, the number of licensees contacted by the applicant or the applicant's agent must be equal to or greater than seventy-five per centum (75%) of all the existing restaurant liquor or eating place retail dispenser licensees in the county.

(ii) Evidence that the applicant, or the applicant's agent, has offered to purchase any restaurant liquor or eating place retail dispenser licenses in the county that are in safekeeping at the time the application is filed with the Board, including the offered and requested amounts.

(iii) An explanation as to why it is not economically feasible for the applicant business to pay the amount requested for an existing restaurant liquor or eating place retail dispenser license.

(iv) A written estimation, with supporting documentation, of the expected economic benefits to the municipality if the application is granted.

(e.1) If the applicant, or any of the applicant's stockholders, directors, officers or members, owns, in whole or in part, a restaurant liquor or eating place retail dispenser license which is in safekeeping with the Board, the Board shall refuse the application. This provision shall only apply if the license in safekeeping is in the same county as the license applied for.

(f) Upon approval of an application, the applicant will receive a provisional license for 120 days, exclusive of periods of safekeeping.

(g) In the event of an appeal from the Board's decision regarding the issuance or renewal of an economic development license, the appeal will act as a supersedeas and will preclude the processing of additional applications for vacancies in that county.

Commonwealth of Pennsylvania
Pennsylvania Liquor Control Board
November 4, 2014

SUBJECT: Proposed Regulation Package 54-81
Economic Development Licenses

TO: DAVID SUMNER, EXECUTIVE DIRECTOR
INDEPENDENT REGULATORY REVIEW COMMISSION

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

By Hand Delivery

Submitted herewith is a courtesy copy of proposed amendments to chapter 3 of the regulations of the Pennsylvania Liquor Control Board. Also enclosed are copies of the regulatory analysis form, signed CDL-1 face sheet, preamble and Annex A (regulatory text).

These amendments are being delivered today to the legislative oversight committees, the Independent Regulatory Review Commission and to the Legislative Reference Bureau. They have been approved by the Office of Attorney General as to form and legality.

Any questions and comments about this regulatory submission can be directed to Rodrigo Diaz, Executive Deputy Chief Counsel, or Norina Blynn, Assistant Counsel, at (717) 783-9454.

cc with enclosures:

Honorable Charles McIlhinney, Chairman, Senate Law and Justice Committee
Honorable Jim Ferlo, Democratic Chairman, Senate Law and Justice Committee
Honorable John Taylor, Chairman, House Liquor Control Committee
Honorable Paul Costa, Democratic Chairman, House Liquor Control Committee
Ms. Gail Reinard, Executive Director, Senate Law and Justice Committee
Mr. Stephen Bruder, Executive Director, Senate Law and Justice Committee
Ms. Marcia Lampman, Executive Director, House Liquor Control Committee
Ms. Lynn Benka-Davies, Executive Director, House Liquor Control Committee

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

I.D. NUMBER: 54-81
SUBJECT: Economic Development Licenses
AGENCY: Liquor Control Board



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TYPE OF REGULATION

- X 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>
11/5/14	 (1)	SENATE LAW & JUSTICE COMMITTEE (Majority)
11-5-14	 (2)	SENATE LAW & JUSTICE COMMITTEE (Minority)
11/5/14	 (3)	HOUSE LIQUOR CONTROL COMMITTEE (Majority)
11/5/14	 (4)	HOUSE LIQUOR CONTROL COMMITTEE (Minority)
11/5/14	 (5)	INDEPENDENT REGULATORY REVIEW COMMISSION
11.5.14	 (6)	LEGISLATIVE REFERENCE BUREAU