

# PROPOSED RULEMAKING LIQUOR CONTROL BOARD

[ 40 PA. CODE CH. 3 ]

## 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)), proposes to amend § 3.105 (relating to quarterly filing of applications and application hearings).

### 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. See section 461 of the Liquor Code (47 P. S. § 4-461). There are several exceptions to section 461 of the Liquor Code, one of which allows the Board to issue an economic development restaurant (EDR) liquor license or an economic development eating (EDE) place retail dispenser license, even if the quota for the county is full. However, the applicant must satisfy certain conditions to receive an EDR or EDE license, including proof that the applicant has “exhausted reasonable means for obtaining a suitable license within the county” under section 461(b.1)(1) of the Liquor Code. This information must be presented at an administrative hearing under § 3.105. The regulations do not currently provide 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 amendments to § 3.105 provide specific criteria for an applicant to show that it has met that condition.

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. See section 461(b.1)(2) of the Liquor Code. Because of these restrictions, it is unknown how many potential future applicants may benefit from this proposed rulemaking. As of October 2, 2014, the Board has approved the issuance of 25 EDR licenses and 1 EDE license since it was first authorized to do so in 2002.

### Affected Parties

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

### Paperwork Requirements

The proposed rulemaking seeks to clarify what is expected of an applicant for an EDR or EDE license. 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 to help establish that it has “exhausted reasonable means.” However, the proposed rulemaking would not require additional paperwork to be filed.

### Fiscal Impact

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

### Effective Date

This proposed rulemaking will become effective upon final-form publication 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, Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001 within 30 days after publication of the proposed rulemaking in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted. Public comments will be posted on the Independent Regulatory Review Commission’s (IRRC) web site. Personal information will not 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 November 5, 2014, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to 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 rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

JOSEPH E. BRION,  
*Chairperson*

**Fiscal Note:** 54-81. No fiscal impact; (8) recommends adoption.

### Annex A

#### 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.

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(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. **Evidence includes the following:**

**(1) 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.**

(i) The purpose of the contact is to inquire as to the availability of the licensee's license for purchase.

(ii) 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 50% of all the existing restaurant liquor or eating place retail dispenser licensees in the county.

(iii) 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 75% of all the existing restaurant liquor or eating place retail dispenser licensees in the county.

(2) Evidence that the applicant, or the applicant's agent, has offered to purchase a 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.

(3) 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.

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

(f) 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 will refuse the application. This only applies if the license in safekeeping is in the same county as the license applied for.

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

[ (g) ] (h) 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.

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