



## **ADVISORY NOTICE NO. 20 (Revised)**

### **ECONOMIC DEVELOPMENT LICENSES MAY 17, 2017**

TO: All Retail Licensees and Municipalities

**Note: This notice is issued to replace in its entirety previous Advisory Notice No. 20 dated October 14, 2015.**

In 2000, the General Assembly first amended the Liquor Code to allow the Board to issue a restaurant or eating place retail dispenser license for the purpose of economic development, even if the existing number of restaurant and eating place retail dispenser licenses in a county exceeds 1 license per 3,000 inhabitants. This law was amended pursuant to Act 39 of 2016, which decreased the food and non-alcoholic beverage sales requirement from at least 70% to at least 50% of the combined gross sales of food and alcoholic beverages for economic development licenses. 47 P.S. § 4-461(b.1), (b.2).

The purpose of this Advisory Notice is to answer questions frequently asked regarding economic development licenses.

#### **1. What is an economic development license?**

An economic development license is a restaurant (“EDR”) or eating place retail dispenser license (“EDE”) which may be issued, even if the number of existing restaurant and eating place retail dispenser licenses in that county exceeds the ratio of 1 license per 3,000 inhabitants. The purpose of the economic development license is to promote economic development.

#### **2. What are the criteria for applying for an economic development license?**

Initially, a license will only be issued when an applicant has demonstrated that it has exhausted reasonable means of acquiring a license in the county. The Board has set forth what evidence an applicant must prove in order to establish that it has “exhausted reasonable means.” 40 Pa. Code 3.105.

In order to establish it has “exhausted reasonable means,” an applicant must provide evidence that it:

- Contacted existing license holders and inquired as to the availability for the license to be purchased.
  - In class 1 through 4 counties, an applicant must contact a minimum of 50% of the existing licenses in the county.
  - In class 5 through 8 counties, an applicant must contact a minimum of 75% of the existing licenses in the county.
  - An applicant need only contact that license type for which an applicant seeks to purchase. For example, in a class 1 county an applicant for an EDR license would be required to contact 50% or more of the existing restaurant license holders. However, if the applicant was seeking an EDE license, the applicant would only have to contact 50% of the existing eating place malt beverage license holders.

- Attempted to purchase licenses held in safekeeping at the time the application was filed, including the offered and requested amounts.
- Provide an explanation as to why it is not economically feasible for the applicant's business to buy a license on the open market. The explanation must include the following factors:
  - The applicant's capital and financial resources.
  - The applicant's projected revenue and expenses for its business, as well as actual revenue and expenses if the business is currently in operation.
  - Other factors the applicant considered when deciding that obtaining a liquor license in the marketplace was not economically feasible.
- Provide a written estimation of the expected economic benefits to the municipality.

Additionally, economic development licenses may only be issued to premises that are located in an Enterprise Zone as designated by the Department of Community and Economic Development, a Keystone Opportunity Zone as established under the authority of the Keystone Opportunity Zone and Keystone Opportunity Expansion Zone Act, or in a municipality where the municipality has voted to grant the issuance of such a license for the purpose of economic development. There is a surcharge of \$50,000 for an economic development license if the proposed premises is located in a county of the first through fourth class. There is a surcharge of \$25,000 for an economic development license if the proposed premises is located in a county of the fifth through eighth class.

**3. Are there any additional restrictions imposed on economic development licenses?**

Yes. The Board is limited to issuing no more than two economic development licenses in each county of the first through fourth class each calendar year. The Board is limited to issuing no more than one economic development license in each county of the fifth through eighth class each calendar year. In addition, economic development licenses are not transferable. This means that it is impermissible to attempt to transfer the license to either a new location or a new owner. However, it would be permissible for a new owner to buy the corporation currently holding an economic development license; the new owners would need to notify the Board of this change via the PLCB's online regulatory system, [PLCB+](#).

Additionally, economic development licensees may only be renewed or validated if the holder can show that its sales of food and non-alcoholic beverages are equal to 50% or more of its sales of food and alcoholic beverages, during the preceding year.

**4. Since an applicant has not sold any alcohol when it initially applies for an economic development license, how does it establish the necessary ratio for acquiring an economic development license?**

When an application is approved, the applicant will receive a provisional license good for 120 days. Prior to the expiration of the 120 days, the applicant must submit another application to the Board indicating that for a period of 90 consecutive days since the granting of the provisional license, its sales of food and non-alcoholic beverages were equal to 50% or more of its sales of food and alcoholic beverages. At that point, the Board will issue a permanent license good for the remainder of the licensing term.

**5. How are applications for economic development licenses processed, i.e., what if multiple applications are filed within the same county?**

The Bureau of Licensing will accept applications for economic development licenses on a quarterly basis. For example, applications filed from January 1 to March 31 will be considered together and if there are insufficient licenses for all of the qualified applications, the Board will decide from among the qualified applicants who will be given the license. If any licenses remain after the applications received in the first quarter have been processed, then the Board will consider applications received during the second quarter, i.e., April 1 to June 30, and so on. Upon the end of the calendar year, the cycle begins again.

**6. What happens to the application surcharge of \$25,000 or \$50,000 if the application is refused?**

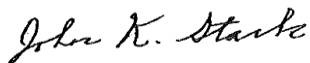
If an application for an economic development license is refused prior to the Board's issuance of a provisional 120-day license, then the application surcharge, minus a \$700 processing fee, is refunded to the applicant. An example of why an applicant would not get a provisional license could be that more applicants applied for a license than there were licenses to be given. If the application is refused after the issuance of the provisional license, then no portion of the application surcharge is refunded. An example of this would be if the applicant failed to establish that for a period of 90 consecutive days, its sales of food and nonalcoholic beverages are equal to 50% or more of its sales of food and alcoholic beverages. Please note that the manner in which the application surcharge is handled is set forth by the legislature through statute.

**7. Does a municipality have any standing to challenge the issuance of an economic development license?**

Yes. Sections 404 and 432 of the Liquor Code, 47 P.S. §§ 4-404 and 4-432, allow a municipality to protest the issuance of any economic development license regardless of the number of licenses already located in the municipality. The Board is authorized to refuse an economic development license application if the receiving municipality files a protest to that application. In addition, section 464 of the Liquor Code, 47 P.S. § 4-464, grants a municipality standing to take an appeal of any decision involving an economic development license application.

Further, if the number of existing retail licenses in the municipality is equal to or exceeds 1 license per 3,000 inhabitants, then the applicant must receive municipal approval prior to submitting its application with the Board. For additional information on the procedure for acquiring municipal approval, please see Advisory Notice No. 19.

BY ORDER OF:  
PENNSYLVANIA LIQUOR CONTROL BOARD



JOHN K. STARK  
Secretary to the Board