

**Hearing – Special Occasion Permits and House Bill 1771**  
**House Liquor Control Committee**  
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Testimony of the Pennsylvania Liquor Control Board:

Joe Conti  
Chief Executive Officer

Chairman Taylor, Chairman Santoni, Members of the House Liquor Control Committee, good morning.

On behalf of the Pennsylvania Liquor Control Board, thank you for the opportunity to provide testimony today on the topic of special occasion permits and House Bill 1771, which represents a significant attempt to streamline the process for issuing such permits to qualified eligible entities. Sitting with me this morning is Jerry Waters, Director of the Office of Regulatory Affairs, and Rodrigo Diaz, Executive Deputy Chief Counsel, who will briefly give you an overview of the privileges inherent in such permits, the types of entities that may qualify, a brief description of the processing of such permit applications, and the challenges faced by the agency under the current statutory framework. They will then briefly discuss a few issues related to House Bill 1771 for the benefit of this Committee as it continues to consider and deliberate this measure.

The Board's Bureau of Licensing, which operates within the Office of Regulatory Affairs, issues approximately sixty (60) different types of licenses and permits that enable their holders to sell, purchase, transport, and/or manufacture alcoholic beverages. You are likely familiar with the traditional retail license, such as the

restaurant liquor license, which authorizes the holder to sell liquor and malt or brewed beverages at its licensed location.

A number of your constituents may ask about “one day” or “special event” licenses or permits. Under the authority of section 408.4 of the Liquor Code, the Board is authorized to issue special occasion permits which grant “eligible entities,” typically certain non-profit organizations, temporary authority to conduct sales of alcohol as a means of raising funds for themselves. [47 P.S. § 4-408.4]. The Board has been authorized to issue SOPs since 1972 (via Act 71 of 1972). The definition of an “eligible entity” is set forth in section 102 of the Liquor Code. [47 P.S. § 1-102]. Originally the definition consisted of four (4) eligible entities: a hospital, church, synagogue or volunteer fire company. Since 1972, the definition of an eligible entity has been amended frequently, so that there are now at least forty (40) eligible entity classifications, including six (6) that were added pursuant to Act 11 of 2011 and three (3) that were added pursuant to Act 113 of 2011. Some of these classifications are broad (e.g., church, volunteer fire company) while others are highly specific, requiring that the eligible entity be located in a municipality of a certain class in a county of a certain class and whose mission is for a very particular purpose (e.g., a 501(c)(3) nonprofit social service organization in a county of the third class, whose purpose is to serve individuals and families in that county).

During specified days and at an identified location, the holder of an SOP can sell beer, wine or spirits for consumption on or off the licensed area during the same hours a restaurant licensee can sell: from 7:00 a.m. until 2:00 a.m., Monday

through Saturday, and on Sunday, from 11:00 a.m. until 2:00 a.m. Only one (1) SOP may be issued to an eligible entity per calendar year. An eligible entity may use its SOP for up to six (6) consecutive or nonconsecutive days, with an exception that allows certain eligible entities to use an SOP for six (6) nonconsecutive or ten (10) consecutive days. SOPs may be issued in a municipality that has voted to prohibit the issuance of various types of licenses for the retail sale of liquor or malt or brewed beverages (i.e. “dry” municipalities), provided that the municipality issues a resolution approving the issuance of the SOP which is provided to the Board with the SOP application.

Certain eligible entities include those entities which may also hold a license issued by the Board (e.g., club or catering club license holders). The Liquor Code specifically authorizes the Board to issue an SOP to such a licensed eligible entity. However, in such cases, the SOP cannot be used at the currently licensed premises, unless the applicant owns the premises and is a volunteer fire company, volunteer rescue company or volunteer ambulance squad. In all other situations, the licensee would have to de-license a portion of its premises to use the SOP at its currently licensed location.

An eligible entity which applies for and acquires an SOP must give the local police department or the Pennsylvania State Police, if there is no local police department, at least forty-eight (48) hours written notice prior to each use of the SOP. Written notice consists of notifying the police of the date, time and place of the impending sale of alcoholic beverages. It should be noted that, like any other liquor licensee,

the holder of an SOP must prevent the sale of alcoholic beverages to minors or to visibly intoxicated persons. [47 P.S. § 4-493(1)].

The Board's Bureau of Licensing ("Licensing"), which operates within the Office of Regulatory Affairs, is responsible for processing and investigating applications for SOPs. In 2011, Licensing processed two thousand eight hundred twenty-eight (2,828) SOP applications for approximately one thousand (1,000) eligible entities. Over the past several years, this number has been relatively consistent. Historically, churches, hospitals, fire companies and veterans clubs comprise roughly two-thirds (2/3) of the groups which are issued SOPs.

The application process is initiated by the filing of an application form. In many cases, the eligibility of the applicant entity is established by the submission of adequate documentation. In cases where an applicant organization may approximately meet one of the eligible entity definitions, more information may be needed, and an investigation is conducted by Licensing. This may include an examination of the entity's records including its charter, minutes, constitution and by-laws. A "per-day" permit fee is established by the Administrative Code: the fee is eighty-five dollars (\$85.00) if an investigation is required, or thirty dollars (\$30.00) if no investigation is required).

The Liquor Code authorizes the Board to refuse to issue an SOP if it finds the applicant is not reputable or does not otherwise meet the requirements of the Liquor Code. Further, the Board may refuse to issue an SOP based in whole or in

part on the applicant's operational history of an SOP or any license issued by the Board to the applicant.

As noted earlier, the purpose of an SOP is to provide the eligible entity with a means of raising funds for itself. While an SOP may be used in conjunction with activities and events involving other entities, only the holder of an SOP may have a pecuniary interest in the permit. This issue has, at various times, given rise to certain enforcement concerns, as there have been instances in which another non-qualified entity or for-profit business has been retaining the proceeds of the sale of alcohol at such events.

House Bill 1771 (P.N. 2277) ("HB 1771"), introduced by Chairman Santoni, would comprehensively amend the Liquor Code relative to the issuance of SOPs, and increases the minimum penalties for non-enhanced penalty violations of the Liquor Code. The bill would delete many of the references to specific eligible entities, and add a catch-all definition that allows any non-profit organization as defined under section 501(c)(3) of the Internal Revenue Code to meet the definition of an eligible entity. Last week, the Board's Office of Chief Counsel provided the Executive Directors with a memo that includes technical comments and suggestions to the measure; therefore, I will only address larger policy considerations for your consideration.

While HB 1771 would streamline the definition of an "eligible entity," the Board cannot guarantee that entities being deleted from the definition are, in fact, all 501(c)(3) entities. If such entities are not 501(c)(3) non-profit organizations, and

they are not currently required to be, they will lose the ability to obtain an SOP. Accordingly, care should be taken to ensure that the measure encompasses all intended beneficiaries of the legislation.

The bill amends section 408.4 by authorizing the Board to issue a “Special Occasion License,” in addition to the existing SOP. It appears that the intent is to license, in advance, organizations which may later desire to obtain an SOP for use at a specific event, presumably to expedite the actual issuance of the SOP. The bill contemplates a second application process whereby the licensed eligible entity would later apply for an SOP in order to conduct sell alcohol at its special occasion/fundraiser on specified days and at a specified location. The intent of this two (2)-step process may be to expedite SOP requests by “pre-licensing” the SOP holder. However, it should be noted that Licensing, in its administration of SOPs, has developed a procedure very similar to what is being contemplated: an organization that applies for and is granted an initial SOP is issued a unique Licensee Identification Number (“LID”). This allows the Board to quickly access the applicant’s information for use with subsequent applications.

In addition, it should not be forgotten that the word “license” is used throughout the Liquor Code, and that the use of the word has particular significance; the word “license” is not used interchangeably with the word “permit” elsewhere in the Liquor Code. Accordingly, the introduction of the word “license” with respect to special occasions may result in significant unintended consequences. Therefore, a careful analysis should be made to be sure that unintended consequences are

avoided. In the alternative, it is suggested that the word “permit” be utilized throughout the legislation to avoid such potential issues.

The bill adds new section 408.4(i)(1), which requires that an application for an SOP be submitted to the Board at least five (5) business days prior to the requested permit date. While there is currently no set amount of prior notice that the Board must be given before an event, the Board typically advises applicants to submit their applications at least thirty (30) days before an event. While Licensing is currently capable of approving certain applications within such a short time, especially where an organization has held an SOP previously, it should be noted that this measure, as drafted, will open the door for more than an estimated thirty-four thousand (34,000) tax-exempt 501(c)(3) organizations (not including out-of-state non-profit entities) to apply for such a license, all of which would have to be investigated should they apply, and all of which may apply for an SOP, which may require additional investigation. Thus, a five (5)-day minimum notice requirement may be insufficient to allow Licensing time to properly allocate resources to investigate and approve a given SOP in time for the proposed event. In addition, it should be noted that certain applications will be denied by Licensing; if such a permit is submitted only a week before the scheduled event, it is possible that the applicant will not have enough time to re-apply or seek an alternative upon receiving the denial letter. Further, the five (5)-day minimum notice requirement may inadvertently increase the number of “last minute” applications, exacerbating these problems even further.

Further, section 471 is amended by increasing the minimum fines for non-enhanced penalty violations from fifty dollars (\$50.00) to one hundred dollars (\$100.00). As you know, the Board supports an increase to the monetary penalties that are imposed on licensees which are found to have violated the Liquor Code, as the current fine structure has been unchanged (except with respect to slots licensees) since 1987. The amount of fines collected fall significantly short of covering the annual cost of enforcement, a trend which continues to worsen each year. Accordingly, while the Board is supportive of such an increase in the minimum fines for such violations, it asks that you consider increasing the minimum and maximum fine levels for both enhanced penalty violations (e.g., sales to minors and visibly intoxicated persons) and non-enhanced penalty violations. Such legislative changes have already been approved by the Committee as part of House Bills 11 and 260.

For your general information, we have included the SOP application form with our testimony. We have also included the “Special Occasion Permit Holder’s Planning Handbook” published by the Board.

We will be happy to answer any questions that you may have. Thank you.