INDEPENDENT STATE STORE UNION TESTIMONY

SENATE LAW AND JUSTICE COMMITTEE
HEARING ON SENATE BILL 1287
PLCB "MODERNIZATION" INITIATIVES
PRICING, PROCUREMENT and PERSONNEL

JANUARY 24, 2012

Good morning Chairman Pippy, Chairman Ferlo and members of the committee. My name is Neil Cashman and I am appearing today on behalf of the Independent State Store Union (ISSU), which represents the more than 700 first level supervisory personnel employed in the state-owned and operated liquor stores throughout the Commonwealth.

Accompanying me today is Dennis Harty, ISSU President and David Wanamaker, Immediate Past-President and ISSU Executive Board member. Mr. Harty and Mr. Wanamaker will be assisting with responses to any questions you may have subsequent to our formal testimony.

We appreciate the opportunity to appear before you to discuss the PLCB Modernization initiatives contained in Senate Bill 1287 and the impacts on the state liquor store system.

"Alternative to Privatization" and "Modernization"

Background

In early January 2011, the PLCB authored a closely held document entitled "Alternative to Privatization." The document contained numerous legislative initiatives that the Board claimed would increase profits and prevent privatization efforts in the legislature.

Many of the legislative initiatives ignored any semblance of reasonable alcohol policy and focused solely on increased profit through sales. Other initiatives focused on purported cost savings through numerous administrative changes to the governing statutes of the agency – several of which targeted employees.

In March 2011, the PLCB started to publically discuss some of the initiatives originally contained in the "Alternative to Privatization" document and began to circulate a document that they were now calling their "Modernization" plan. The "Modernization" plan contained many -- but not all -- of the initiatives proposed in the original "Alternative to Privatization" plan.

Senate Bill 1287 would implement some of the PLCB sponsored "Modernization" initiatives. The content and focus of SB 1287 is being referred to as the PLCB's 3 Ps initiative – Pricing, Procurement and Personnel.

Senate Bill 1287 proposes to amend the Liquor Code in the following manner:

- removes the proportional pricing requirement for liquor and wines sold by the Board;
- removes the Civil Service Act and Administrative Code provisions relating to appointment, compensation, classification and duties of employees ; and,
- grants the Board authority to purchase goods and services without following the Commonwealth's Procurement Code as is required for all other state agencies

PRICING

Current Requirements

Currently, the Liquor Code grants the Board the authority to fix retail prices for liquor and wine sold but stipulates that such prices shall be "proportional" with the prices paid by the Board. This means that the Board must apply a fixed markup on all wine and liquor products purchased for sale.

This statutory provision ensures a uniform retail price for items that are purchased at similar wholesale prices. In accordance with the statute, a standard mark-up of 30% is currently applied to the wholesale price of all items purchased by the Board.

Proposed Changes

Under the bill, the "proportional" pricing requirement would be deleted and replaced with language that would allow the Board total decision making power on pricing of items so long as a the price of a particular product is uniform throughout the Commonwealth. As a result, the Board could apply differing mark-ups for similarly priced products.

For example, for two brands of vodka which both cost $10 at wholesale, the Board, at their sole discretion, could mark-up one at 20% and the other at 40%. This scenario would result in adding $2 toward the final retail shelf price of one product while adding $4 to the other – despite the fact that both cost the same at wholesale.

Creating Winners and Losers

In their "Alternative to Privatization" document, the Board states that private retailers enjoy complete flexibility to mark-up their products and granting the PLCB the same flexibility would allow them to operate more like a private retailer. What the PLCB fails to realize – or admit – is that they are NOT a private retailer. Rather, they are a state-owned monopoly charged with the reasonable and responsible distribution of alcohol.

Variable mark-up by private retailers is a component of competition. However, in a state-owned alcohol distribution system, variable mark-up, or market-based pricing, can only result in unnecessary and unreasonable price manipulation on products to the detriment of the consumers and system.

The Board indicated in the "Alternative" document that they could increase revenue and profitability on higher-end or higher-velocity items through variable mark-up. They estimate that, depending on market conditions, they could easily produce an additional $20 million to $70 million annually.

This additional revenue would be generated by increasing the mark-up on standard items that are usually less expensive and are high-velocity, while decreasing the mark-up on premium items which are usually more costly.
As a result, popular and less costly items would increase in price while high-end premium items would decrease in price – thus, creating winners and losers among products at the expense of the consumer, including licensees.

In the private retail sector, it may be common practice to mark-up the wholesale price of an inexpensive, store brand can of beans much more than an expensive, national brand can of beans to manipulate the final shelf prices on both to increase profit. We do not believe such a practice has an acceptable place in the state store system.

The PLCB Modernization initiative relating to market-based pricing appeared on page 6 of the Board's "Alternative to Privatization" document. Excerpts are included with our testimony as Attachment #1.

PROCUREMENT

Current Requirements

While not specifically referenced in the Liquor Code, all state agencies, including the PLCB, are required to follow the procedures established under the Commonwealth Procurement Code when purchasing all goods and services.

Proposed Changes

Senate Bill 1287 amends the Liquor Code to allow the Board to purchase, in its sole discretion, all goods and services which it deems necessary and permits the Board to promulgate its own regulations for procurement of such goods and services.

The bill also adds a new subsection to permit the Board the power to enter into agreements with other governmental units of the Commonwealth and other states for the purchase or sale of goods and/or services with, from, or to the other governmental units.

Eliminating Procurement Code Provisions

Exempting the PLCB from the provisions of the Procurement Code would allow the Board to award contracts without independent oversight or regulation as required of every other state agency. Granting such authority would remove or hinder the transparency of the bidding process and could increase the likelihood of "sweetheart" deals and the potential for corruption.

In justifying the need to be exempt from the purchasing procedures as contained in the Procurement Code, the PLCB cites what they claim to be their "unique" function to acquire goods and services without restrictions. In reality, the only "unique" function of the PLCB is the purchase of wine and spirits – which has already been exempted by law from the requirements of the Procurement Code.

Despite the PLCB's claim that their statutory function creates a significant need to purchase supporting goods and services such as computers and software, information technology services, warehousing functions and marketing, it must be noted that every state agency has similar needs and they comply with the procedures contained in the Procurement Code and the regulations established by the Department of General Services.

If the existing laws and regulations in place to safeguard the interest of our citizens in the procurement process are cumbersome or inadequate, as the Board claims, the legislature should consider amending the Procurement Code to provide a more efficient and effective purchasing process for all agencies – not take action to exempt one agency from the uniform standards in place.

If agencies are allowed to opt-out of the uniform standards adopted by the Procurement Code and establish their own purchasing policies, the legislature is opening the door to abuse in the form of no-bid contracts, favoritism, patronage and pay-to-play.

Wine Kiosk RFP

As we all know, the PLCB failed miserably, and may have acted illegally, in the RFP process for the now infamous wine kiosk program. After appointing a committee to review, score and make recommendations on the response to the wine kiosk RFP – as established by the Procurement Code – the Board ignored the recommendation of its own RFP review committee.

The wine kiosk RFP committee recommended that the Board reject the Simple Brands proposal and the Board not proceed with a contract based on their findings that the response was deficient. The committee scored the proposal at 305.57 points out of a possible 1000 points. In the end, the Board proceeded with the Simple Brands contract despite the objections of the RFP committee. It is clear that the Board simply went through the motions of the RFP process to satisfy the letter of the law without regard to the spirit of the law. We can only imagine how reckless the Board would operate if absolved from the same reasonable purchasing process that every other state agency is required to follow.

With the unmitigated failure of the wine and liquor kiosk program – unquestionably the largest debacle and the most public embarrassment to the system in the 77 year history of the PLCB – still playing before our eyes, it is unfathomable that the legislature would consider granting the PLCB's request to essentially operate without oversight or accountability as provided in the Procurement Code.

Wholesaler to Other States

As requested by the PLCB, SB 1287 contains a provision that allows the Board to enter into agreements with other governmental units in the Commonwealth or other states for the purchase or sale of goods and/or services with, from, or to the government units. While it is not immediately clear from the stated language what the Board intends to do with this new found purchasing authority, a review of the Board's "Alternative to Privatization" document provides the answer.

One of the intended purposes for requesting such language is to permit the Board to use its purchasing power and market leverage to purchase liquor and wine from manufactures and sell the products to other "control" state jurisdictions. In effect, the Board wants to become a liquor and wine wholesaler to other states.

At a time when our own liquor control system is under attack, we question the logic and reason for such a proposal. Proponents of privatization have steadfastly and emphatically claimed that the Commonwealth should not be in the retail business of selling alcohol to our residents and now the Board wants the authority to become a wholesaler to other states.

While we dispute and disagree with the privateers' premise that the Commonwealth does not have a legitimate and compelling public health and safety interest in controlling the retail sale of alcohol, by no stretch of the imagination can we support the PLCB's request to become a wholesale distributor of liquor and wine for other state jurisdictions and we would hope that the legislature wouldn't either.

The PLCB Modernization initiative relating to the procurement issue appeared on pages 8 and 9 of the Board's "Alternative to Privatization" document. Excerpts of that document are included with our testimony as Attachment #1.

PERSONNEL

Current Requirements

The Liquor Code grants the Board the authority to appoint, classify, compensate and define the duties of clerks, managers and other employees subject to the provisions of the Administrative Code of 1929 and the Civil Service Act. It also requires that each store be operated by a manager appointed in the manner provided in the Civil Service Act.

Proposed Changes

Senate Bill 1287 deletes the requirement that employment be subject to the provisions of the Civil Service Act and Administrative Code and replaces it with language that simply states employees shall serve at the pleasure of the Board. Likewise, the bill deletes the requirement that managers be appointed in the manner provided by the Civil Service Act and simply provides that such managers be appointed by the Board.

Commonwealth Agency Practices and Procedures

Despite the fact that SB 1287 absolves the Board from the Civil Service Act and Administrative Code requirements, it also states that the Board shall conduct its activities consistent with the practices and procedures of Commonwealth agencies.

This provision is somewhat confusing and almost contradictory. If the legislature intends that the Board conducts its activities consistent with the practices and procedures of Commonwealth agencies, why exempt them from the very statutes that adopt and implement those practices and procedures in the first place? The best way for the Board to conduct its activities consistent with the practices and procedures of Commonwealth agencies is to simply have them adhere to the same statutes as every other Commonwealth agency.

Collective Bargaining/Elimination of ISSU

The bill adds language which states that all collective bargaining agreements in effect at the time of enactment of the new provisions shall remain in force for the term of the contract and that new collective bargaining agreements shall be negotiated by the collective bargaining agent for each bargaining unit.

As currently drafted, the provisions seem to allow for the elimination of ISSU as the collective bargaining agent for the first level supervisors. As is frequently pointed out by the Board and others, ISSU and the supervisory bargaining unit do not operate under a collective bargaining agreement. Rather, as provided by the Public Employe Relations Act, first level supervisory personnel bargain as a meet and discuss group and a Memorandum of Understanding. Absent the specific reference to the Memorandum of Understanding, it is likely that the Board will refuse to recognize ISSU as a bargaining agent should these changes become law.

Even if the current language is amended to include Memorandums of Understanding, it is just as likely that the Board will use its new found authority relating to employee classification to decimate or eliminate ISSU through reclassification. The combined proposed changes to the Liquor Code relating to Civil Service and the Administrative Code provide the necessary tools for the Board to eliminate ISSU any consultation with the Office of Administration or the Civil Service Commission.

Elimination of Civil Service Requirements

Exempting the Board from the provisions of the Civil Service Act would result in the following:

- There will no longer be Civil Service provisions requiring veterans' preference in the hiring process and no oversight by an outside agency;
- There will no longer be a competitive process for promotions and no oversight by an outside agency;
- The Board will be able to hire managers and all other employees "off the street" ignoring current employees for promotional opportunities;
- There will no longer be an independent appeal process for employees to challenge any adverse actions taken by the Board with respect to promotions, demotions, discipline, etc.;
- Probationary employees will have no appeal rights or grievance rights and could be demoted or terminated with no recourse; and,
- Civil Service status will only be "grandfathered" in as long as current employees remain in the position/classification they hold when the legislation is enacted.

Attack on Workers

The PLCB claims that the Civil Service process is cumbersome and discourages recruitment of qualified candidates from outside government. They also claim that the restrictions imposed by the Civil Service Act impair its ability to effectively hire the right employee with the right skill sets in a timely fashion.

The reality is that absent the Civil Service requirement, the PLCB could become a haven for patronage and nepotism, workers' rights and protections will be eliminated and veterans will be disenfranchised from employment opportunities.

Despite the PLCB claims that such a change will permit them to operate more efficiently, perhaps the true intent of the measure can be found in a co-sponsorship memo for a companion House bill. The co-sponsorship memo for House Bill 1356 – the House version of the PLCB Personnel initiatives -

clearly states that the specific intent of the legislation is to ***"enable the PLCB to remove ... employees with greater ease."***

This PLCB proposal is offensive and insulting to the dedicated men and women who are currently employed in the state store system and is an outright attack on all workers and workers' rights.

Burdensome Process

When the PLCB discussed the need for eliminating the Civil Service requirement at a House Liquor Control Committee meeting, the Director of Administration stated that the Civil Service requirements were burdensome and did not produce qualified candidates or employees with the requisite skills for their needs. She then proceeded to cite what she termed as excessive turnover rates of employees to support her claim.

However, when questioned she admitted that the high turnover rates were most significant in the southeast region. Under further interrogation, she finally admitted the high turnover rates in the southeast were a result of private retailers paying higher wages than those provided by the PLCB. Clearly, wages and earnings are NOT a problem caused by the Civil Service requirement for employment.

The fact that the Director of Administration offered bogus justification for elimination of the Civil Service requirement begs the question as to the real reasons and motivation for such a request.

Veterans' Preference

Elimination of the Civil Service Act provisions from the Liquor Code would disenfranchise veterans from employment opportunities with the PLCB by eliminating the veterans' preference awarded through testing. The PLCB proposal regarding Civil Service elimination represents a total disregard for our veterans, veterans' preference and veteran employment opportunities.

The PLCB proposal on eliminating Civil Service is insulting to the men and women who have served and are currently serving our country. Given the recently announced unemployment statistics for veterans, it is clear that they can ill-afford any additional barriers to employment opportunities and an agency of the Commonwealth should not be trying to legislatively impose any such barriers.

The fact that the legislature would even consider elimination of Civil Service requirements is puzzling given that just a few months ago the Senate unanimously passed, and the Governor signed, House Bill 387 which added a veteran to the Civil Service Commission to ensure veterans' preference was being properly enforced and utilized by all Commonwealth agencies.

The nexus for HB 387 was an audit by Auditor General Jack Wagner that found Commonwealth agencies were ignoring or circumventing the veterans' preference requirements in the hiring process. The audit finding discussed an attitude prevalent in Commonwealth human resources agencies that viewed the Civil Service requirements as too burdensome as the reason for circumventing the veterans' preference requirements. Sound familiar?

Perhaps the best reason for not eliminating Civil Service and the attendant veterans' preference can best be stated by echoing the words of Marwan Kreide, former Chairman of the Civil Service Commission, in a recent Memorial Day opinion column.

In that column, Chairman Kreidie wrote the following:

> *In Pennsylvania, the State Civil Service Commission has been quietly doing its part to ensure that vets have preferences for jobs. You'd think the government agencies involved would be grateful for this success, but in my 6 1/2 years as chairman of the State Civil Service Commission, most agencies whose hiring practices we audited tried to avoid this requirement.*
>
> *The reality is that the preference for vets is regarded as burdensome. Agencies would complain that the commission was too forceful in enforcing the preference, but the simple truth is that without a strong civil-service system that monitors and enforces the preferences, the number of vets hired for government jobs would be much smaller.*
>
> *Let's look at noncivil-service state agencies. While the law also requires these agencies to give preferences to vets, that rarely happens. The fact is that without civil-service preferences and protections, bureaucrats will not hire vets.*
>
> *It's even more galling to see that some agencies will try to remove civil-service coverage - supposedly in the name of "good government" and "more flexibility in hiring" but motivated at least in part to avoid the veterans' preferences.*
>
> *Examples like these abound. I am concerned with the recent Liquor Control Board bill (H.B. 1356), which would eliminate civil-service coverage for "more flexibility in hiring." This would result in fewer qualified vets getting entry-level jobs, and, if the PLCB were to be privatized, thousands of employed vets would lose well-paying, family-sustaining jobs.*
>
> *While the preference, including added points and absolute preference in hiring, does reduce some hiring flexibility, the reality is that Pennsylvania owes its vets more than just parades and speeches because of the sacrifices, courage and service they have given us.*
>
> *Contrary to the myths, civil- service systems are nimble, can hire qualified employees quickly and efficiently, remove patronage and nepotism from hiring decisions, and can help our deserving veterans find good jobs with benefits. Politics and patronage aside - we owe them that!*

We would respectfully request that this committee heed the warnings of former Chairman Kreidie and reject the ill-conceived initiative of eliminating the PLCB from the requirements of Civil Service.

Elimination of Administrative Code Requirements

The PLCB "Modernization" plan and SB 1287 would exempt the Board from the provisions of the Administrative Code with respect to personnel matters as currently required under the Liquor Code.

Exempting the Board from the provisions of the Administrative Code would:

- Allow the Board to establish a classification/compensation system with no oversight or direction from the Office of Administration;
- Result in incentive bonuses for increased sales;
- Result in bonuses for well compensated administrative personnel;
- Allow the Board to create a leave program (annual, sick, personal, etc.) different from other state employees with no oversight or direction from the Office of Administration;
- Allow the Board to withdraw from PEBTF -- currently, as an agency under the Governor's jurisdiction, employees are required to be in PEBTF;
- Allow the Board to create a new benefits package different from other state employees;
- Remove the Office of Administration from the labor relations process;
- Allow the Board the latitude to determine what, if any, process would be used for grievances and arbitration;
- Remove the Office of Administration from process of establishing new labor agreements' and.
- Allow the Board to unilaterally bargain all terms of employment.

Office of Administration

In justifying the need for such a change, the PLCB has offered specious arguments for exempting itself from the provisions of the Administrative Code. The PLCB claims that the Governor's Office of Administration (OA) – the office responsible for the proper classification of every Commonwealth employee – lacks the operational knowledge and understanding of the unique functions of the PLCB to properly classify its positions.

In reality, every state agency has "unique" needs with respect to specialized statutory functions. While there are a number of common job classifications across various agencies, each also have specialized positions that OA is responsible for evaluating with respect to classification and compensation.

For example, the Department of Labor and Industry employs Elevator Inspectors, the Department of Environmental Protection employs Mine Inspectors and the Department of Banking employs Bank Examiners. Each of these positions requires specialized and unique skills which must be reviewed and classified by OA. If OA is capable of performing these reviews for other agencies with specialized functions, they are surely capable of performing the same function for the PLCB.

Bonus Pay for Increased Sales

If the PLCB is allowed to create its own classification and compensation plan, rest assured it will include six digit salaries – bolstered by bonus incentives based on sales – for its senior management as is the norm in private retail operations.

It is not unreasonable to expect that compensation for the store personnel will also include a sales-related bonus option. Despite a recent claim by the PLCB that the employees have no incentive to sell wine or liquor to underage or inebriated individuals, they are opening the door to such an incentive program with this classification and compensation plan. And, absent the Civil Service requirement for store managers, promotions will likely be based on sales performance which again incentivizes sales.

The PLCB briefly raised the issue of compensation based on sales with ISSU after negotiations several years ago. While there have not been any additional conversations regarding sales based compensation and bonuses, we have recently discovered that the concept is still being contemplated and advance by the PLCB.

ISSU recently discovered that the PLCB include the plan in the 2011 Transition Report to the Governor. Excerpts from the Transition Report relating to the plan are provided as Attachment #2.

Hidden Agenda

In addition to establishing a separate classification and compensation plan, there are a host of other operational changes that the PLCB can implement if they are exempted from the Administrative Code. While those changes were outlined in the PLCB authored "Alternative to Privatization" document, they were conspicuously absent in the document they provided to this Committee and the House Liquor Control Committee when they previously appeared to discuss the plan.

In the "Alternative to Privatization" document, the PLCB stated that if exempted from the Administrative Code they would have the ability to:

- establish its own benefit program;
- withdraw from the Pennsylvania Employee Benefit Trust Fund (PEBTF);
- establish its own Workers' Compensation program; and,
- establish its own leave program

Currently, all of the above programs are administered collectively on behalf of all state agencies in order to provide a uniform level of benefits and services for all Commonwealth employees at reduced costs.

Of particular interest is the reference to withdrawing from the PEBTF. Currently, as an agency under the Governor's jurisdiction, the PLCB is required to participate in PEBTF. However, if they become an independent agency, as is envisioned by removing the Administrative Code provisions, they have the option of participation.

If the PLCB is aware of a benefit package that offers the same level of coverage for a discounted cost, they should disclose the source of the plan so the Commonwealth can also explore potential savings.

Will any such change to the benefit package be competitively bid or will they exercise their new found authority of being free from the Procurement Code to awarding a no-bid contract?

We find the fact that the PLCB stated their intention to withdraw from PEBTF in their original "Alternative to Privatization" document but failed to disclose that fact to the committee to be particularly alarming. Exempting the PLCB from the Administrative Code will give them the authority to withdraw from PEBTF at will. We strongly believe that this is an issue that is definitely deserving of a more thorough review.

The PLCB Modernization Initiative relating to PEBTF and other benefit programs appeared on pages 6 thru 8 of the Board's "Alternative to Privatization" document. Excerpts of that document are included with our testimony as Attachment #1.

Conclusion

In closing, I would like to offer a few general comments as to the thoughts of our members and officers as to the Board's recent proposals and actions.

Time and again, since their self-proclaimed renaissance, the Board and current management team have championed themselves as "world class retailers" and ignored their fundamental responsibility to oversee and run a publicly owned and operated agency that was created for the common good of all Pennsylvanians.

The Board's aspiration to be renowned as a "world class retailer" has led to the abandonment of any semblance of control policies and now has spawned an attack on the employees who are the backbone of the agency.

The legislative initiatives relating to Personnel matters, if enacted, will downgrade every aspect of the jobs currently existing in the system and will radically diminish the standard of living of the employees in the stores.

Employee rights are under attack in the Board's efforts to act more like Walmart and Target instead of striving to perform as a legislatively mandated government agency created to foster a responsible alcohol policy.

The removal of Civil Service rights and the Administrative Code provisions – combined with the new language in the bill such as "who shall serve at the Board's pleasure" and "managers appointed by the board" -- renders every employee an "at will" employee.

The request for an in-house classification plan is a poorly veiled attempt to eliminate the jobs of more than 700 state store managers and the union that represents them.

The goal of the Board, and its administrative staff, is to be an independent state agency so they can operate like Walmart and Target. Furthering this agenda will diminish or destroy the collective community of interest in favor of a "world class retail" model.

Thank you for the opportunity to appear today and address our concerns with the proposed legislation. At this time, Dennis, David and I are available to answer any questions you may have.

Attachment #1

ALTERNATIVE TO PRIVATIZATION

MODERNIZATION INITIATIVES

To strengthen the PLCB, it is recommended that the new administration and the General Assembly consider the following modernization initiatives, which the PLCB believes will generate substantial additional annual revenue for the benefit of the Commonwealth. Proposed legislative language required to implement such modernizations is attached.

1) **Allow market-based pricing:**

- Under the Liquor Code, the PLCB must apply its markup (currently 30%) equally on all products (i.e., it must adhere to proportional pricing on all products).
- Flexibility would allow the PLCB to function more like a private retailer, with the ability to increase revenue and profitability on higher-end or higher-velocity items, while being able to offer better deals to consumers on other products.
- Private retailers enjoy complete flexibility to mark-up their products.
- The PLCB is not seeking "variable pricing;" the PLCB intends to charge the same price for a bottle of Grey Goose Vodka regardless of whether it is sold in Pittsburgh, Harrisburg, or Philadelphia, thereby eliminating any potential regional bias.
- An amendment to the Liquor Code which would have allowed the PLCB to engage in such market-based pricing was introduced in House Bill 2038, but was never voted out of the House Liquor Control Committee.
- On a separate but related note, consideration should be given to allowing the PLCB to adjust the licensee discount (currently 10% pursuant to section 305(b) of the Liquor Code) on a periodic basis to provide an incentive for licensee participation in various initiatives, such as, utilizing the PLCB's licensee service centers. In addition to amending section 305(b), any proposed amendment would need to explicitly supersede the Regulatory Review Act, given that the Regulatory Review Act currently defines a regulation, among other things, as any action by the PLCB which has an effect on the discount rate for retail licensees.
- FISCAL IMPACT: While it is difficult to quantify the actual fiscal impact of the initiative, granting the PLCB the discretion to make such pricing decisions could easily lead to an increase of twenty million dollars ($20,000,000.00) to seventy million dollars ($70,000,000.00) per year, depending on market conditions.

2) **Changes to Staffing and Human Resource Management:**

- Restrictions imposed on the PLCB by the Civil Service Act and the Administrative Code impair its ability to effectively hire the right employees with the right skill sets in a timely fashion, remove under-performing or insubordinate employees, and establish the right amount of pay and benefits to its employees. These existing limitations hamper the PLCB's ability to effectively operate as a business and create inefficiencies within the agency.
- Exemption from Civil Service coverage for future hires -
  - Section 302 of the Liquor Code provides that employees of the PLCB shall be appointed and employed subject to the provisions of the Civil Service Act.

- Section 741.3(d)(1) of the Civil Service Act provides that all positions (with limited exceptions such as department heads, PLCB members, attorneys, unskilled labor and public relations positions) created by the PLCB are covered by Civil Service.
- The PLCB currently pays the Civil Service Commission approximately $1,000,000.00 per year to administer examinations. This money would be directly saved by the PLCB.
- The Civil Service process is cumbersome and discourages recruitment of qualified candidates from outside state government. It is also extraordinarily difficult to remove unsatisfactory employees once hired under Civil Service.
- When qualified candidates from the private sector are persuaded to come to the PLCB, a lengthy process is required to get that candidate actually working.

- Ability to classify its own positions
  - Because of the PLCB's retail functions, many positions are unique to the PLCB.
  - Under current practices, the Governor's Office of Administration ("OA") approves the classification of positions. However, OA lacks the operational knowledge of the unique functions of the PLCB to properly classify many positions.
  - Allowing the PLCB to classify these positions in accordance with the candidates' actual duties will allow the PLCB to fill the positions with qualified candidates who possess the right skill sets.
  - This proposal is revenue neutral as some costs associated will be higher and some lower.
- Ability to set compensation of all employees
  - The PLCB is a unique organization within Pennsylvania government in that it possesses not only a significant and far reaching regulatory function, but that it also has a massive retail function as the sole retailer of alcoholic beverages in Pennsylvania. As a result, many of its job titles are unique to the PLCB and many of the titles it shares with other state agencies involve a number of duties beyond a traditional governmental function.
  - Given these highly specialized needs, it is imperative that the PLCB be given the discretion as to compensation and pay scale, because it is most familiar with its position requirements.
  - This proposal is revenue neutral, as some costs associated will be higher and some lower for individual employees.
- Ability to establish its own benefits package / withdrawal from the Pennsylvania Employees Benefit Trust Fund ("PEBTF")
- Removal from the current Worker's Compensation plan (via Comp Services)
  - The PLCB is currently reviewing opportunities to reduce its worker's compensation costs, including the implementation of risk prevention measures, increased employee education, and the actuarial valuation of the PLCB's existing risk pool.
  - Cost savings is the ultimate goal in allowing the PLCB to negotiate for its own coverage.
- Establish the PLCB's own leave programs

- o Abuse of sick leave policies costs the Commonwealth millions of dollars in lost productivity. Further, payouts for unused sick leave can be substantial from year to year. The PLCB would like to explore the possibility of offering employees a set number of days per year which could be taken for any purpose.
- FISCAL IMPACT: As described above, the PLCB is in the best position to understand the operational needs of the agency, and the qualifications an individual needs for a specific role. The primary goal of this initiative is the autonomy and independence needed by the PLCB to place the right people in the right positions at the right rates of pay and benefits. The PLCB firmly believes that this will result in efficiency across the agency, leading to cost savings, better service for the residents of Pennsylvania (the PLCB's shareholders), and vastly improved profitability.

3) Allow the PLCB to acquire goods and services without the restrictions of the Procurement Code, or establish a threshold amount under which the PLCB may acquire goods and services under its own authority:

- The General Assembly, recognizing that the PLCB's legislatively mandated functions are unique, exempted the PLCB's purchases of wine and spirits and alcohol-related accessories from the provisions of the Commonwealth's Procurement Code.
- In addition to being the largest purchaser of wine and spirits in the United States, the PLCB has a significant need for supporting goods and services in carrying out its statutory functions under the Liquor Code (e.g., goods – shopping bags, computers and software; services – information technology services, warehousing functions, and marketing and advertising services).
- To acquire other goods and services, however, the PLCB must comply with the Procurement Code and the regulations of Department of General Services ("DGS").
- While the PLCB recognizes that the careful review and analysis of bids and proposals are necessary for projects of large magnitude or potential impact, the PLCB can cite to numerous examples of instances in which the procedural dictates of the Procurement Code have resulted in lengthy delays and unfavorable results.
  - o For example, the PLCB recently was involved in a Request for Proposal ("RFP") for credit card processing services. The PLCB's share of utilization for such credit card services represents approximately 80% of all transactions involving Commonwealth agencies. Even though the PLCB was in the best position, as the primary user of such services, to determine what was in the best interests of the PLCB and the Commonwealth, the PLCB was required to negotiate the contract via DGS. This resulted in delays and less than favorable terms.
- Therefore the PLCB requests that the General Assembly, in furtherance of its recognition that the PLCB is unique given its statutory mandates, permit the PLCB to establish its own procurement procedures in acquiring all of its goods and services, or, in the alternative, establish a threshold amount under which the PLCB may acquire goods and services outside of the Procurement Code.
- Further, the PLCB believes that its demand for goods and services, and its ability to exercise significant market leverage in applicable markets, could represent a significant revenue opportunity for the Commonwealth if the PLCB is permitted to

sell its goods and services to out-of-state entities and governments. By way of example, another "control" state or local entity looking to acquire liquor and liquor-related products may benefit from being able to purchase such products via the PLCB, through its market leverage, at lower prices than it could on its own in the marketplace. Further, other "control" jurisdictions may need the services provided by the PLCB's customized Enterprise Resource Program and compensate the PLCB. Accordingly, if such an arrangement were permitted, the PLCB would realize additional revenue from sales to the other state. The converse may be true for certain goods or services in which the PLCB may benefit from lower prices in acquiring certain goods or services through another state or local entity, resulting in cost savings to the PLCB. Such potentially beneficial arrangements, however, would only be permissible with a specific statutory amendment to section 207 of the Liquor Code.

- FISCAL IMPACT: Ultimately, the PLCB believes that, if given the authority to establish its own criteria for procuring goods and services (via an informal bid process for goods and services under a certain threshold amount, or via a formal bidding process for higher value goods and services), it can acquire goods and services on its behalf in a more expeditious fashion, and, in certain instances, at more competitive prices.

4) <u>Increase Licensing Fees</u>

- The existing fee structure has remained the same since 1991, almost 20 years ago. While most fees are set forth in the Administrative Code of 1929, some are defined by the Liquor Code or the PLCB's Regulations.
- Altogether, approximately 60,000 individual fee transactions are processed through Licensing each year.
- For FY 2009-10, more than $15,900,000 was collected by the Bureau of Licensing for fees associated with licensing transactions. Of that amount, approximately 28% (or $4,500,000) was returned to municipalities (via the Liquor License Fund) in which the licensees are located, pursuant to section 801 of the Liquor Code.
- The current fee schedule only <u>partially</u> funds the administrative costs associated with processing licensing applications, and does not provide sufficient revenue to cover the PLCB's costs in funding the operational budget of the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau") for compliance and enforcement efforts.
- Accordingly, an increase to the current fee schedule is recommended for licensing applications. This could be accomplished in several ways:
  - 1) Increase all licensing fees and application fees by a uniform percentage – An increase by a uniform percentage is one of the simplest methods by which the General Assembly could raise licensing transaction fees. By uniformly raising all fees, no particular category would receive a disproportionate hardship.
  - 2) Increase fees for select licenses and permits – Anticipated additional revenue would fluctuate based on which licensing transaction fees are increased and to what extent they are increased.

Attachment #2

pennsylvania
LIQUOR CONTROL BOARD

Transition Team Report

To

Governor Tom Corbett

2011

- *Graphic Arts Division*: The Division provides the agency with a full range of graphic arts services including photolithography, bindery services, skilled offset press work, forms design, multi-impression color duplication, metal type composition, and automated graphic packages.

(5) Bureau of Talent Management and Organizational Development: The Bureau leads the development and execution of the agency's talent management programs to attract, develop, retain, and deploy talent to drive the PLCB strategic business goals for the agency.

- *Curriculum Development Division*: The Division is responsible for designing, developing, executing, and administering the agency's various training programs. The Division also develops formal coaching and mentoring programs and analyzes education and training delivery options and methodologies.

- *Product Education Division*: The Division administers, develops, delivers and evaluates statewide, multi-level wine and spirits education programs for agency retail, marketing, and purchasing staff.

- *Staff Development Division*: The Division coordinates, facilitates and delivers training and developmental programs to agency administrative and store staff at all levels throughout the state. The Division also manages and directs the implementation and operation of the PLCB Training Academies.

Revenue enhancers/cost cutting (recent/current/anticipated)

- Worker's Compensation Optimization: The PLCB is currently reviewing opportunities to reduce its worker's compensation costs, including the implementation of risk prevention measures, increased employee education, and the actuarial valuation of the PLCB's existing risk pool.

- Guaranteed Energy Savings Act (GESA) Project: The PLCB is working with the Department of General Services to implement a guaranteed energy savings initiative. Through this project, the PLCB will make improvements to the Northwest Office Building (NWOB) that will result in energy cost savings over several years. GESA will enable the PLCB to upgrade the NWOB infrastructure and achieve significant energy savings with no upfront capital outlay from the State Stores Fund.

- Human Resource Modernization: The PLCB is exploring opportunities to streamline human resource functions to increase service levels while realizing cost savings.

    (1) Establishing a classification plan separate from the traditional plan managed by the Governor's Office of Administration. The plan would be based on

job competencies instead of work duties and would allow for greater flexibility to hire quality candidates and compensate them competitively.

(2) Establishing pay-for-performance schedules for management-level employees and store employees, which will allow greater flexibility in recruiting and retaining high-caliber talent and compensating for specialized skills not reflected in the Commonwealth's classification/pay plan.

(3) Review merit-system hiring practices to determine more effective and beneficial recruitment processes. Currently the PLCB pays the State Civil Service Commission approximately $1,000,000.00 annually to recruit and hire candidates for the agency. However, the PLCB is currently losing one (one) out of every three (three) new hires through attrition or termination. Additionally, one out of every five (5) candidates on the civil service list cannot be considered for hire due to criminal history issues. The hiring timeline under the current civil service processes averages eight (8) to twelve (12) weeks, which severely hampers the agency's retail operations.

(4) Establish a more cost-effective leave program to replace the Commonwealth's current sick leave and Sick, Parental and Family (SPF) programs.

PROGRAMS AND INITIATIVES

- Training Academies: This initiative seeks to consolidate employee training under one (1) authority. Under the new Training Academy model, the PLCB will partner agency subject matter experts with training professionals to produce effective, measurable, and timely training courses. This will allow for greater accountability, increased planning capacity, and more knowledgeable employees. Currently, the PLCB is developing training academy spaces in Philadelphia, Wilkes-Barre, and Pittsburgh. The Training Academy initiative is expected to be fully operational by mid-2011.

- Leadership Development: This new program will provide professional developmental opportunities for employees who exhibit leadership potential and demonstrate the ability to succeed in positions of greater responsibility.

- Customer Service Training: The professional development contract with Solutions 21 ended in June 2010. The newly created Bureau of Talent Management and Organizational Development has established and is delivering customer service training to PLCB store employees monthly via various training methods, such as classroom training, management huddles, newsletters and e-blasts.

- Learning Management System (LMS): The PLCB is seeking to subscribe to a Learning Management System (LMS) software application. The PLCB intends to use the proposed LMS to deliver training, to track the completion of training courses, and to assess development for two (2) primary user groups. Those groups are most easily identified as the internal PLCB employee population of approximately 5,000 individuals and a large, transient external group connected to the PLCB's industry partners. As part of this initiative, the PLCB also plans to replace multiple existing methods for tracking user training. Thus, there is a need to migrate historical data from the PLCB's legacy systems to a future LMS.

- Knowledge Management: Knowledge management is getting the right information to the right people at the right time, and helping people create knowledge and share and act upon information in ways that will measurably improve the performance of PLCB. This means providing access to information at the time people need it to make the best decisions possible for operational success. The three (3) goals of the Knowledge Management program are to sustain the PLCB's knowledge across missions and generations by identifying and capturing the information that exists across the agency; help staff find, organize, and share the knowledge it already has; and increase collaboration and facilitate knowledge creation and sharing by developing techniques and tools for staff to work across boundaries.

- Recruitment and Onboarding: – This new program is geared towards attracting and retaining the highest caliber employees. The PLCB is in the midst of implementing a strategic plan to attract and hire talent at all levels of the agency to ensure that the agency has the right skills and knowledge, in the right place, at the right time while reducing recruitment and turnover costs.

- TimeLink: The PLCB is currently working with the Governor's Office of Administration to implement TimeLink as a time-keeping solution for PLCB employees. This solution is anticipated to be of significant benefit to the PLCB's Retail Operations because it will better enable the scheduling of work shifts and store coverage.

Union Considerations

One (1) of the most vital responsibilities of the Office of Administration is to work cooperatively and effectively with the multiple unions that represent PLCB. Three (3) unions are involved with PLCB employment:

- United Food and Commercial Workers ("UFCW")
- American Federation of State, County and Municipal Employees ("AFSCME")
- Independent State Stores Union ("ISSU")

The Board's proposed objective in approaching the 2011 collective bargaining between the PLCB and UFCW contains four (4) basic points for consideration:

(1) In place of negotiating previously defined terms and conditions, the PLCB proposes a new fresh look at the overarching labor agreement. Both parties would focus on key objectives, reach consensus, and then allow the terms and conditions to be shaped through discussion;

(2) Structure store staffing to allow for flexibility in managing and staffing stores;

(3) Develop a compensation strategy that rewards good service and professional development; and

(4) Ensure that all expenses resulting from the labor agreement reflect best practice and cost-effective retail management.