

# CONSTRUCTION LAW

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## So You Want to Do Construction Work on a Pennsylvania Slots Parlor?

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Construction work on Pennsylvania slots parlors has been underway in other parts of the state for many months. In Philadelphia, it is anticipated that over the next year work will begin in earnest on two slots parlors. These projects will generate multiple millions of dollars of work for construction contractors, subcontractors and suppliers.

But before any contractor desiring to work in any substantial way on a Pennsylvania slots parlor can begin performance, it must first navigate a formidable regulatory application process and secure approval from the Pennsylvania Gaming Control Board (PGCB). This process is time consuming and expensive.

The purpose of this article is to provide a descriptive framework for the regulatory approval process which a contractor, subcontractor, supplier or construction professional must navigate before it can perform construction work on a Pennsylvania slots project.

### CONTRACTOR CLASSIFICATION

The various definitions and regulatory provisions applicable for businesses that desire to perform work for Pennsylvania slots parlors, including Pennsylvania slots construction, are found generally at Title 58 of the



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Pennsylvania Code. Under the code, companies, subcontractors and professionals involved in the construction of a facility for a slot machine licensee or applicant are categorized as “vendors,” i.e. companies that provide non-gaming related goods or services to a slots parlor licensee or applicant.

Vendors are required to be either “registered” or “certified” with the PGCB. Before a vendor begins work on a slots parlor project, its application for registration or certification to the PGCB must be submitted. The slots parlor applicant or licensee must submit the vendor’s application to the PGCB. Once the application is submitted, work on a slots parlor project may begin, but it is subject to ultimate approval through a PGCB-conducted background investigation of the vendor. If a vendor desires to work for multiple slots parlor applicants or licensees, then multiple applica-

tions to the PGCB must be submitted.

A vendor “registration” application must be submitted if the contractor, subcontractor, supplier or construction professional intends to perform work the total dollar amount of which will exceed \$15,000, but will be less than \$200,000, with a single slots parlor applicant or licensee within a consecutive 12-month period; or if the total dollar amount of business will be more than \$15,000 but less than \$500,000 within a consecutive 12-month period for multiple applicants or licensees.

A vendor “certification” application must be submitted if the contractor, subcontractor, supplier or construction professional intends to perform work within a consecutive 12-month period that will exceed \$200,000 with a single slots parlor applicant or licensee, or the total amount of business with multiple applicants or licensees within a consecutive 12-month period that will exceed \$500,000. Further, an application for certification must be submitted if the vendor’s employees will work in a restricted area of the slots parlor or on the gaming floor.

Approved vendor registration or certification applications are valid for a four-year period, after which another application must be submitted for approval by the PGCB. The current vendor “registration” application fee, payable upon approval of the application, is \$2,000. The application fee for “certification” is

\$1,500, with an additional “certification fee” of \$4,000 payable for ultimately certified applicants. While the slots parlor applicant or licensee ostensibly pays these fees, it is expected that they will become part of the construction cost of the work being performed by each vendor.

Vendors applying for “certification” must also submit with their applications a separate application for each principal of their company and for their “key employees.” Each of these applications requires payment of a \$500 fee. Principals and key employees are generally defined as officers, directors and equity owners of the company whose interest equals or exceeds 5 percent or more of the company. The PGCB has the authority to include an individual in the “key employee” category based on its background investigation.

## THE APPLICATION

As one would expect, given the highly regulated nature of the casino industry, the vendor registration and certification application forms are lengthy and intrusive. The certification application form is especially demanding. Space limitations preclude a discussion of each category of information required. However, the following are the most significant areas of information required in the certification application form:

- Applicant’s form of organization;
- Identification of any outstanding tax liabilities to any governmental entity in the commonwealth;
- Identification of the contract and proposed services to be provided;
- Identification of any subsidiary companies or other companies in which the applicant has any ownership interest, and provision of an organizational chart of any such company;
- Identification of each governmental license or certification (in any jurisdiction) obtained or for which an application was made during the prior 10-year period;

- Identification of each employee who will contract with or will deal with the slot parlor applicant, and the supervisors of each such employee;

- Identification of each officer, director, partner or trustee of the applicant;

- Identification of each owner of the applicant who maintains in excess of a 5 percent ownership interest;

- Identification of all prior bankruptcy or insolvency proceedings;

- A “criminal history” of each officer, director, partner, trustee or owner;

- A description of any proceeding in which the applicant has been called to testify before or been the subject of an investigation conducted by a governmental agency, court or grand jury, or has been requested to take a polygraph examination by any such agency, court, or grand jury; and

- Identification of all existing civil litigation in which the amount in dispute is expected to exceed \$100,000.

Applicants for “certification” must also submit “personal history” applications for its key employees. These personal history forms represent a request for detailed personal information including the following: residence and mortgage information; prior employment; criminal history; criminal investigation history; substance abuse history; litigation history in civil matters for the prior 15 year period; financial net worth statements; state and federal tax returns for the prior two years; a list of personal references. These histories must be submitted, with appropriate affidavits, in addition to the entity application.

The application forms also contain releases authorizing a range of governmental and private investigative entities to secure a broad spectrum of information and documentation concerning and about the applicant, its owners, directors, officers and their spouses, without regard to any constitutional, statutory, regulatory or common law privilege. A general waiver of liability in favor of the commonwealth and the PGCB in con-

nection with the application and investigation process is included.

Further, the applicant for “certification” must submit with its application its federal tax returns and related tax documents for the prior three years, as well as its state tax return for the prior year.

The “registration” application form is marginally less demanding. The instructions do not require the submission of tax returns. However the registration application requires the same release and waivers related to the investigative process as does the certification application. Further, the instructions for both applications contain the following statement:

“Any person who applies for and obtains a license, registration, certificate or permit from the Board may be required to submit to warrantless searches when present in a licensed gaming facility pursuant to the Act.”

This language appears to constitute a limited waiver of constitutional protections against search and seizure under the Fourth Amendment and the Pennsylvania Constitution in licensed slots facilities.

The PGCB maintains on its Web site, [www.pgcb.state.pa.us](http://www.pgcb.state.pa.us), a list of approved vendors. It also maintains a list of “prohibited vendors” who have been disqualified or debarred from providing goods or services to slots parlor applicants.

## CONCLUSION

The anticipated project size and volume of construction work for Pennsylvania approved slots parlors offers a substantial potential benefit to contractors, subcontractors, suppliers, and construction professionals who desire to perform work on those projects. However, applicants should carefully weigh the costs, administrative burden and intrusive nature of the application process before embarking on securing approval to perform work on these projects. •