



**Pennsylvania
Gaming Control Board**



The Pennsylvania Gaming Control Board

10 Years in Review

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1. INTRODUCTION

In July 2004, upon the enactment of the Pennsylvania Race Horse Development and Gaming Act (“Act”), 4 Pa.C.S. §1101, et seq. *as amended*, Pennsylvania embarked on an expansive initiative providing for legalized slot machine gaming at a limited number of licensed facilities within the Commonwealth. The primary expressed objective of the legislation is to protect the public through regulating and policing all activities involving gaming. Other objectives include enhancing live horse racing and breeding programs, entertainment and employment in the Commonwealth, providing a significant source of income to the Commonwealth for tax relief, providing broad economic opportunities to Pennsylvania’s citizens, developing tourism, strictly monitoring licensing of specified locations, persons, associations, practices, activities, licensees and permittees, considering the public interest of the citizens of the Commonwealth and the social effects of gaming when rendering decisions and maintaining the integrity of the regulatory control of the facilities’ slots. In addition, the Board is tasked with strictly monitoring and enforcing control over gaming through regulations and licensing, assuring strict financial controls of licensees, avoiding political influence and campaign contributions involving the gambling industry, and taking steps to address compulsive and problem gambling in Pennsylvania. 4 Pa.C.S. §1102.

As addressed in more detail below, the first casino in Pennsylvania opened its doors to slot machine gambling in November 2006. Since that time, eleven more casinos have commenced operations and all casinos have added table games to their gaming floors. A number of casinos have expanded, built hotels, entertainment venues and shopping areas to complement the gaming options

available. Other casinos have seen significant projects in the immediate vicinity taking advantage of the economic engines the casinos have become in their locales.

At the conclusion of the 2015-16 fiscal year, Jobs/employment etc...

2. THE GAMING CONTROL BOARD

The Act establishes the Pennsylvania Gaming Control Board (“the Board” or “PGCB”) which is comprised of seven members: three gubernatorial and four legislative appointee members. 4 Pa.C.S. §1201(b). The Board is provided general jurisdiction over all gaming and related activities, including but not limited to overseeing acquisition and operation of slot machines and issuing, approving, renewing, revoking, suspending, conditioning and denying slot machine licenses. 4 Pa.C.S. §1202.

Board members undergo background investigations conducted by the Pennsylvania State Police, may not hold any other position incompatible with the Board, may not earn outside income more than 15% of the Board member’s salary, may not participate in a hearing in which the members interests could be affected without disclosure and potential recusal, may not have a financial interest in a regulated entity, may not solicit or recommend employment of any person to a regulated entity, may not accept employment with a licensee for two years after leaving the board, may not wager or accept a complementary service from a licensed entity while a Board member and for two years thereafter, 4 Pa.C.S. §1201(h).

The Act also imposes a Code of Conduct which prohibits Board members from accepting any gift, compensation, travel, lodging or thing of value from a licensee, must disclose and recuse from any hearing in which his objectivity or impartiality may reasonably be questioned, must refrain from any financial or business dealings which would reflect adversely on his objectivity and impartiality, cannot hold or campaign for office, contribute to or solicit contributions to a political campaign or publicly endorse or actively participate in a political campaign. In addition, a Board member cannot solicit funds for any charitable or other such cause from licensees, nor meet with a licensee unless on Board premises or at a casino and recorded in a log, nor engage in any ex parte communication with any person concerning any matter which is likely to come before the Board in a contested on the record proceeding.

The Office of Chief Counsel serves as counsel to the Board with respect to licensing matters coming before the Board in contested, on-the-record proceedings.

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..... also oversees the promulgation of the Board's regulations, and represents the Board in appeals from Orders and adjudications of the Board.

The Act also creates the Bureau of Investigations and Enforcement (BIE) which is independent of the Board and which has duties to investigate all applicants for licensure, investigate noncriminal violations of the Act, monitor compliance with the Act, inspect premises and other related duties. The Office of

Enforcement Counsel (OEC) is within BIE and acts as the prosecutor in all noncriminal matters of enforcement under the Act. See 4 PA.C.S. §1517.

The Board has promulgated regulations and procedures to ensure that the BIE is a distinct entity from the Board and to prevent commingling of the investigatory and prosecutorial functions of BIE from the adjudicatory functions of the Board. See 4 PA.C.S. §1516.1.

The implementation of gaming in Pennsylvania was unlike any other expansion of a governmentally-regulated program due in large part to perceptions of gambling, those associated with the conduct of gaming and the feared adverse effects of gambling. These concerns result in an environment in which not only the casinos and their owners are subjected to intense scrutiny, but so too are each of their employees who are in a position to affect the games or the public who visit the casinos to gamble. Moreover, scrutiny extends beyond the gaming operations to those who conduct business with the casino entities to provide goods and services used in the operation of the casinos.

3. SLOT MACHINE LICENSES - CATEGORIES 1-2-3

The Act as initially promulgated provided for slot machine gambling only. Subsequently in 2010, the General Assembly added Chapter 13A to the Act to add table games as an available offering at Pennsylvania's casinos.

Three categories of slot machine licenses are authorized under the Act: Category 1 licenses permitting up to seven qualifying licensed horse racetracks to maintain slot machine facilities; Category 2 licenses permitting up to five stand-alone slot machine locations in metropolitan or other tourism areas; and Category 3 licenses permitting up to two hotel-resort slot machine facilities. 4 Pa.C.S. §§1301-1307.

A Category 1 and 2 slot machine licensee pay a \$50,000,000 fee for a slot machine license which entitles it to operate a minimum of 1,500 slot machines and as many as 5,000 slot machines with Board approval. 4 Pa.C.S. §§1209 and 1210. Category 3 licensees pay a \$5,000,000 license fee to operate up to 600 slot machines. As discussed, Amendment to the Act in 2010 added tables games as a gambling product in Pennsylvania's casinos. A Category 1 and 2 licensee paid \$16,500,000 for a table game certificate to operate up to 250 gaming tables at any one time. The fee increased to \$24,750,000 for a casino that submits an application for a table game certificate after June 1, 2010. A Category 3 licensee paid a \$7,500,000 fee to operate up to 50 table games, unless the petition for a table game certificate was filed after June 1, 2010 in which case the fee is \$11,250,000. 4 Pa.C.S. §§13A11 and 13A61.

Decisions on who is issued a slot machine license entitling the holder to operate one of 14 casinos in Pennsylvania are dependent on two separate analysis – based upon findings of **eligibility** and **suitability**. An applicant for a license must meet all eligibility criteria at the time of application in order to be considered for an award of the license. If eligible, the Board is vested with broad discretion in weighing various other factors to determine if the applicant is suitable for licensure

and in cases of multiple applicants for limited licenses, to determine which applicant for the license is, in the opinion of the Board, the best fit for the Commonwealth given all of the various factors enumerated in the Gaming Act.

A. Eligibility Criteria

The Act sets forth essential eligibility criteria for each Category of license which any license applicant must satisfy simply to proceed to consideration of its application. Those criteria are as follows:

Sections 1302 and 1303 of the Act provide the criteria for Category 1 slot machine licensees and require, among other things, that the licensee be issued a horse or harness racing license by the State Horse Racing Commission, establishes mileage restrictions between facilities, and required a minimum annual number of racing days.

Section 1304 of the Act provides the eligibility criteria for Category 2 licenses including that the applicant may not be eligible for a Category 1 license and that the locations for the Category 2 facilities include two facilities in a city of the first class, one facility in a city of the second class and the remaining two facilities in a revenue or tourism-enhanced location. Further, for each of these facilities, the Act sets specific distance requirements with respect to Category 1 and other Category 2 facilities.

Section 1305 of the Act provides the eligibility criteria for Category 3 licenses including that they must be located in a well-established resort hotel having no fewer than 275 quest rooms under common ownership and having substantial year round recreational guest amenities, and limiting casino entry to registered overnight guests, patrons of the various amenities or persons holding memberships at the facility, and establishing mileage restrictions with respect to Category 1 and 2 facilities.

The Act also imposes general eligibility criteria on all applicants for all three Categories of licenses, which include the development and implementation of a diversity plan to assure equal opportunity in employment and contracting, as well

as a requirement that the applicant be found suitable consistent with the laws of the Commonwealth and otherwise qualified for licensure. 4 Pa.C.S. §1325.

B. Suitability Criteria

Other sections of the Act impose further restrictions on who may or may not be issued licenses often referred to as **suitability factors**. The question of “Suitability” to be licensed in the gaming industry is one standard throughout all gaming jurisdictions and focuses on the good character, honesty and integrity of not only those holding the slot machine license, but on the managers, supervisors and employees of the facility, those who manufacture and supply slot machines, table games and related equipment, and persons who conduct ancillary business with casinos by providing goods and services to the casino.

The Act directs that “The board shall not approve an application for or issue or renew a license, certificate, registration or permit unless it is satisfied that the applicant has demonstrated by clear and convincing evidence that the applicant is a person of good character, honesty and integrity and is a person whose prior activities, criminal record, if any, reputation, habits and associations do not pose a threat to the public interest or the effective regulation and control of slot machine or table game operations or create or enhance the danger of unsuitable, unfair or illegal practices, methods and activities in the conduct of slot machine or table game operations or the carrying on of the business and financial arrangements incidental thereto. **4 Pa.C.S. §1202(23)**

4. The Licensing Process

Within the guidelines of the Gaming Act, the licensing process of the PGCB has been developed in a deliberate and methodical fashion to comply with mandates of law, to be applied uniformly to all applicants, and to promote the purposes of the Pennsylvania Race Horse Development and Gaming Act, 4 Pa.C.S. §§1101 et seq. The process, which includes the preparation of a Suitability Report is undertaken to assure the appropriate presentation of facts based upon substantiated information and evidence, the consistent treatment of all applicants, and the formulation of an evidentiary document in a manner which is consistent with Pennsylvania administrative law and constitutional due process principles.

Long before the Fall 2006 licensing decisions, the Gaming Control Board's staff began developing a process for conducting licensing hearings and awarding the licenses authorized under the Gaming Act. The Gaming Act does not establish a specific licensing process but rather simply establishes that the Gaming Control Board shall issue the licenses judged against a number of eligibility and suitability criteria. Therefore, the process of licensing began with researching and applying Pennsylvania administrative law, other relevant State statutes, concepts of due process as embodied in the Pennsylvania and United States Constitutions, and case law, all with the goal of developing a system which meets these requisites ingrained in our legal system while remaining true to the goal of licensing appropriate applicants.

The starting point in the process demands recognition of the ending point: in the competitive licensing situation facing the PGCB at the end of the hearing process, the Board was required to issue Adjudications and Orders which granted licenses to some applicants and denied licenses to others. Moreover, the Gaming

Act specifically provides a right of appeal directly to the Pennsylvania Supreme Court to consider appeals of any final order, determination or decision of the Board involving the approval, issuance, denial or conditioning of a slot machine license, and provided a standard of review for that Court to exercise: the Court shall affirm the Board's final order unless it shall find the Board committed an error of law or that the order or determination was arbitrary and there was a capricious disregard of the evidence. 4 Pa.C.S. §1204. Thus, the Adjudications and Orders to be issued by the Board had to follow a process and be based upon an evidentiary record which would survive any appeals by disappointed applicants in order to properly implement gaming in the Commonwealth.

A. Adjudications and Orders

Under established law, an adjudication is “any final order, decree, decision, determination or ruling by an agency affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of any or all of the parties to the proceeding in which the adjudication is made.” 2 Pa.C.S. §101; 58 Pa.Code § 491a.2. An Order by the Board that leaves applicants or licensees under the Gaming Act with no other forum in which to assert their personal or property rights, privileges or immunities constitutes an adjudication and is a “final order” under state law. See e.g. *Shaulis v. Pennsylvania State Ethics Comm’n*, 739 A.2d 1091 (Pa.Cmwlth. 1999), *appeal granted in part, affirmed* 833 A.2d 123 (Pa. 2003), *Turner v. Pennsylvania Pub. Util. Comm’n*, 683 A.2d 942 (Pa.Cmwlth. 1996), *Cook v. Pennsylvania Dept. of Agric.*, 646 A.2d 598 (1994), and *Allegheny Ludlum Steel v. Pennsylvania Pub. Util. Comm’n*, 549 A.2d 1218, 1221 (Pa.1983).

The Supreme Court has stated that since an adjudication cannot be in accordance with law if it is not decided on the basis of law and facts properly adduced, the review of an agency adjudication for capricious disregard of material, competent evidence is an appropriate component of appellate consideration. *Wintermyer v. WCAB*, 571 Pa. 189, 812 A.2d 478 (2002). Thus, to satisfy due process requirements, “administrative decisions of an adjudicatory nature must be based exclusively on evidence contained in the formal record which has been made known to the parties and which they have had an opportunity to refute.” *Mercy Regional Health Sys. v. Dep’t of Health*, 645 A.2d 924, 928 (Pa.Cmwlth. 1994), cited in *Turner*, 683 A.2d at 946 (Pa.Cmwlth 1996). The Board is required to set forth its findings in an adjudication, and that adjudication must include all findings necessary to resolve the issues raised by the evidence and which are relevant to a decision. 2 Pa.C.S. 507. See *Green Township Bd. of Supervisors v. Pennsylvania Pub. Util. Comm’n*, 642 A.2d 541 (Pa.Cmwlth. 1994).

The Board’s Order must contain findings of fact and conclusions of law supported by credible, legally competent and substantial evidence. 2 Pa.C.S. §§507 and 704. “Substantial evidence should be construed to confer finality upon an administrative decision on the facts when, upon an examination of the entire record, the evidence, including inferences therefrom, is found to be such that a reasonable man, acting reasonably, might have reached the decision.” Substantial evidence is “more than a mere scintilla and must do more than create a suspicion of the existence of a fact to be established.” *A.P. Weaver v. Sanitary Water Bd.*, 284 A.2d 515, 517 (Pa.Cmwlth. 1971). Thus, within this context, Pennsylvania law requires the Board’s decisions be based upon findings of fact contained in the evidentiary record, not upon rumor or suspicion.

Administrative Agencies are not bound by the technical rules of evidence in conducting any hearing or investigation (*see* 2 Pa.C.S. §505); however “within the administrative forum there has not been a complete abandonment of all the rules of evidence.” *Gibson v. Workers’ Compensation Appeal Board*, 861 A.2d 938 (Pa. 2004). Certain evidentiary rules are more than technical and are fundamental rules of law that “ought to be followed by agencies when facts crucial to the issue are sought to be placed on the record and an objection is made thereto.” *Id.* Our Supreme Court has identified a number of rules of evidence that are fundamental including the hearsay rule, the personal knowledge rule, and rules regarding expert and lay-witness testimony.

i. Hearsay

Hearsay under the Pennsylvania Rules of Evidence is defined as a statement, which is an oral or written assertion or nonverbal conduct of a person if intended by the person as an assertion, other than one made by the person making the statement, while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Pa.R.E. 801.

Hearsay evidence, properly objected to, is **not** competent evidence to support a finding in an administrative hearing. Furthermore, hearsay evidence that is admitted without objection may support a finding only if corroborated by competent evidence in the record. *See Burks v. Department of Public Welfare*, 408 A.2d 912 (Pa.Cmwlth. 1979). The rule was designed to ensure that when evidence is presented that cuts to the heart of a case, a party has a reasonable opportunity to examine or cross-examine the source of information. *See Smith*, 333 A.2d at 805; *See also* 2 Pa.C.S. 505; *State Board of Medical Education v. Contakos*, 346 A.2d 850 (Pa.Cmwlth. 1975).

ii. Personal Knowledge

First hand personal knowledge is another non-technical, fundamental rule of law that administrative agencies are bound to follow. *See Gibson*, 861 A.2d 947 (Pa. 2004). According to the Pennsylvania Rules of Evidence, “a witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not consist of the witness’ own testimony.” Pa.R.E. 602.

iii. Lay and Expert Witness Testimony

Those who provide testimony are typically categorized as either lay or expert witnesses. Lay witness testimony “in the form of opinion or inference is limited to those opinions or inferences which are rationally based on the perception of the witness, helpful to a clear understanding of the witness’ testimony or the determination of a fact in issue, and not based on scientific, technical, or other specialized knowledge.” Pa.R.E. 701. Testimony by experts however, is necessary “if scientific, technical or other specialized knowledge beyond that possessed by a layperson will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of an opinion or otherwise.” Pa.R.E. 702. The rules regarding lay and expert witness testimony have also been viewed by our Court as fundamental rules of law applicable to administrative agencies. *See Gibson*, 861 A.2d 947 (Pa. 2004).

In conclusion, the desired flexibility in administrative procedure does not justify an order without substantial evidence to support it. An order cannot be based upon hearsay, rumor, speculation or statements made by those without personal or specialized knowledge. An order based on invalid or inadequate

findings would violate due process rights and would not withstand judicial review under the capricious disregard standard.

B. The BIE Background Investigation Process

Entities seeking a slot machine license to operate a casino in Pennsylvania, as well as the principals¹ of these entities must undergo a background investigation conducted by the Board's Bureau of Investigations and Enforcement (BIE). 4 Pa.C.S. §1517(a.1). The background investigation includes among other things the submission of an extensive application, fingerprinting, multi-jurisdictional criminal history checks, credit checks, bank account and asset reviews, letters of reference from law enforcement and other casino jurisdictions and other information as may be required to establish by clear and convincing evidence the applicant's suitability, including good character, honesty and integrity. See generally 4 Pa.C.S. §1310. The initial burden to establish suitability to gain licensure and participate in employment in the gaming industry is always on the applicant to prove suitability by 'clear and convincing' evidence as is the duty to maintain suitability throughout the period of licensure.

The BIE conducts an exhaustive background investigation on all applicants, including natural persons and entities. The investigation process includes, but is by no means limited to, in-person interviews with applicants, interviews with the applicants' family and associates, an examination of financial records and checks of various databases. The process may also include site visits to the headquarters of the entity applicant. A thorough financial analysis is performed on the revenue

¹ A 'Principal' is defined as the officers, directors, persons holding a beneficial interest in or ownership interest of the securities of an applicant or licensee, person who holds a controlling interest in an applicant or licensee, or has the ability to elect a majority of the board of directors of a licensee or otherwise control a licensee; lenders or other financial institutions of an applicant or licensee other than a bank or lending institution which makes a loan or holds a mortgage or other lien acquired in the ordinary course of business.

projections provided by the applicant, as well as an analysis of tax records and financial reports filed by the applicant.

The BIE investigative process culminates in the presentation of a Report of Investigation (“ROI”) which is provided to a counsel within the Office of Enforcement Counsel for review to assure that all relevant questions are answered, that internal inconsistencies are not present, that all pertinent issues have been addressed, and that an overall consistency of treatment of issues is reflected among the various applicant reports which is especially important in a competitive licensing situation.

When the Act was amended in January 2010, a provision was added to the powers and duties of the BIE at Section 1517(a.1)(2) which now requires the OEC, on behalf of BIE, to prepare the final background investigation report for inclusion in a final report relating to the applicant’s suitability for licensure. Accordingly, the OEC prepares a Background Investigation Report based upon the BIE’s findings as outlined in the Report on Investigation. The Background Investigation Report distills the information into a format that addresses all relevant areas, including criminal history, financial information and a final recommendation as to whether the applicant is suitable for licensure. The Background Investigation Report must contain information that is appropriate for presentation to the Board, i.e. that the information is verifiable and has elements of reliability which the Board can use to render an adjudication.

Upon completion of the Background Investigation Report, the report is then forwarded to BOL for inclusion in the Suitability Report, along with sections prepared by the Bureau of Licensing and the Offices of Diversity and Compulsive Gambling conducting reviews of the applicants’ proposed diversity and compulsive gaming plans.

The Suitability Report is a compilation of information about each applicant including biographical information, financial information, regulatory history, criminal history, litigation history and any other relevant information which can address all of the various eligibility and suitability factors applicable to a license applicant including, *inter alia*, location; distance from other facilities; licensure by other jurisdictions; numbers of proposed machines; projected revenues and financial fitness; character information; civil judgments; owners and key employees; political contributions; payment of fees and bonds; as well as many other items. The Suitability Report provides an overview of the information obtained through the various investigations and analysis bearing on these eligibility and suitability criteria.

Upon completion, the Suitability Report is disclosed to the applicant which has an opportunity to comment on the report and identify information which it contends to be inaccurate, omitted or not a fair portrayal of a matter. If applicant's counsel and PGCB staff counsel cannot resolve any issues relating to the Suitability Report, the Suitability Report – without the requested change - goes before the Board and the applicant is provided an opportunity to address the Board on the issue in question.

The presentation of the Suitability Report to the applicant prior to submission to the Board serves several purposes. First, it provides notice of the issues upon which the applicant will have to prove to the Board at the hearing. Notice is a fundamental component of due process which does not favor a presentation by ambush. Second, it permits the applicant to bring to staff attention any perceived factual errors in the report prior to submission to the Board. Third, it provides focus to the issues which need to be addressed at the hearing. Finally, it permits stipulations as to evidence to be presented where facts are not in dispute.

Once the Suitability Report has been disclosed to the applicant and any issues are resolved, the Suitability Report is provided to the Board. The Suitability Report also contains many exhibits for the Board's review and consideration including the Background Investigation Report, organizational charts, a copy of the Diversity Plan and the Compulsive and Problem Gambling Plan, a summary of biographies of the majority shareholders, a summary of the Public Input Hearing, documentation of any promises or commitments the applicant has made if it would be licensed and a copy of the proposed Statement of Conditions for the applicant.

C. Public Input Hearings

Pursuant to the Gaming Act at Section 1205(b), the Board must hold at least one Public Input Hearing for each applicant in the municipality where the licensed facility will be located. The applicant may make a presentation on the proposed project. Importantly, members of the public, including individuals, community groups, and state and local officials may sign up to speak at the Hearing in order to voice the support or opposition to the project. The purpose of the Public Input Hearing is for the public to be engaged in the licensing process. In order to effectively carry out this function, a full schedule of Hearing dates and witnesses expected to testify be published well in advance and any member of the public who is unable to attend the Hearing will have the ability to view a live-feed on the Board's website. The Public Input Hearings assume that the Board is informed of the public views, concerns and positions with respect to a proposed gaming entity, and thereby take the public interest into account in its decision as required by 4 Pa. C.S. § 1102(10).

D. Licensing Hearings

Following background investigations, applicants are presented to the Board at public suitability hearings which provide the opportunity for the Applicant to convince the Board that it should be awarded a license. In addition to the eligibility criteria, the Act provides extensive guidance for the Board's consideration in issuing licenses.

Section 1325(c)² - Additional requirements, provides:

In addition to the eligibility requirements otherwise provided in this part, the board may also take into account the following factors when considering an application for a slot machine license:

- (1) The location and quality of the proposed facility, including, but not limited to, road and transit access, parking and centrality to market service area.
- (2) The potential for new job creation and economic development which will result from granting a license to an applicant.
- (3) The applicant's good faith plan to recruit, train and upgrade diversity in all employment classifications in the facility.
- (4) The applicant's good faith plan for enhancing the representation of diverse groups in the operation of its facility through the ownership and operation of business enterprises associated with or utilized by its facility or through the provision of goods or services utilized by its facility and through the participation in the ownership of the applicant.
- (5) The applicant's good faith effort to assure that all persons are accorded equality of opportunity in employment and contracting by it and any contractors, subcontractors, assignees, lessees, agents, vendors and suppliers it may employ directly or indirectly.

² The Section 1325(c) factors are factors which the Board may take into consideration in determining whether the grant of a license is in the public interest or otherwise in accordance with the objectives of the Act. In addition, and more important to the Category 2 licenses where competition exists, the 1325(c) factors permit a basis for comparison of applicants to determine, in the Board's discretion, which applicants' projects are best-suited for the licenses.

(6) The history and success of the applicant in developing tourism facilities ancillary to gaming development if applicable to the applicant.

(7) The degree to which the applicant presents a plan for the project which will likely lead to the creation of quality, living-wage jobs and full-time permanent jobs for residents of this Commonwealth generally and for residents of the host political subdivision in particular.

(8) The record of the applicant and its developer in meeting commitments to local agencies, community-based organizations and employees in other locations.

(9) The degree to which potential adverse effects which might result from the project, including costs of meeting the increased demand for public health care, child care, public transportation, affordable housing and social services, will be mitigated.

(10) The record of the applicant and its developer regarding compliance with:

(i) Federal, State and local discrimination, wage and hour, disability and occupational and environmental health and safety laws; and

(ii) State and local labor relations and employment laws.

(11) The applicant's record in dealing with its employees and their representatives at other locations.

The presentation of facts to the Board upon which it can legally rely is critical to its ability to draft an adjudication which will withstand appeal and, as we discuss above, is the ending point and goal of the licensing process. It is only by the implementation of these practices assuring the highest degree of quality of information being provided to the Board for its consideration in awarding licenses that the Board's decisions have each been upheld on appeal without exception. It

is worthy to note that not one appeal of the Board's award of licenses raised as an issue for reversal the Board's process of investigating and preparation of the suitability reports. Moreover, a number of counsel for the non-winning applicants have stated that while disagreeing with the Board's decisions, they could not find any fault with the process employed.

The right to a fair and impartial hearing, which "is a cornerstone of our notion of due process" guaranteed by Administrative Agency Law and the Constitution of the United States, plainly was provided to all applicants in the licensing process developed and implemented by the PGCB. *See generally* 4 Pa. Code §441a.7 (licensing hearing process).

E. The Board's Licensing Decisions

Finally, the culmination of the investigatory and hearing process resulted in the Board's Adjudications and Orders which awarded some licenses and denied others. Thorough both in terms of factual support and legal analysis under the Gaming Act, the adjudications of the Board relied upon an extensive evidentiary record built upon a foundation of "substantial evidence" which was made possible only as a result of the adherence to the strict principles of due process and administrative law discussed above. As noted, each Category 2 licensing decision was subject to at least one appeal by unsuccessful license suitors. Among the issues raised on appeal was the sufficiency of the evidence relied upon by the Board in rendering its decisions – demonstrating that the Board was correct in devising a process which would specifically safeguard against decisions erroneously made upon information not properly in the record, and was developed soundly – as all appeals were rejected and each Board decision upheld. *See*

Pocono Manor Investors v. PGCB, 592 Pa. 625, 927 A.2d 209 (7/12/2007); *Riverwalk Casino v. PGCB*, 592 Pa. 505, 926 A.2d 926 (7/17/2007); *Station Square Gaming v. PGCB*, 592 Pa. 664, 927 A.2d 232 (7/18/2007); *Greenwood Gaming and Entertainment, Inc. v. PGCB*, 609 Pa. 368 (3/8/2011).

The Board is vested with broad discretion to weigh evidence and grant or deny license applications. Appeal of the Board's decision to grant or deny an application of a slot machine license is directly to the Pennsylvania Supreme Court. Section 1204 of the Act provides:

The Supreme Court of Pennsylvania shall be vested with exclusive appellate jurisdiction to consider appeals of any final order, determination or decision of the board involving the approval, issuance, denial or conditioning of a slot machine license or the award, denial or conditioning of a table game operation certificate. Notwithstanding the provisions of 2 Pa.C.S. Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action) and 42 Pa.C.S. § 763 (relating to direct appeals from government agencies), the Supreme Court shall affirm all final orders, determinations or decisions of the board involving the approval, issuance, denial or conditioning of a slot machine license or the award, denial or conditioning of a table game operation certificate unless it shall find that the board committed an error of law or that the order, determination or decision of the board was arbitrary and there was a capricious disregard of the evidence.

4 Pa.C.S. §1204.

5. The 2006 Grant of Slot Machine Licenses

The General Assembly mandated that the Board shall consider, approve, condition or deny the approval of all initial applications for each and every category of slot machine license collectively and together, in a comprehensive state-wide manner, within 12 months following the time set by the Board at which all applications are to be filed and deemed complete by the Board. In light of the comprehensive nature of the General Assembly's directed regulation, the Board set a deadline of December 28, 2005, for applications for all three categories of licenses.³ By this deadline, the Board received six applications for Category 1 slot machine licenses representing the six entities holding either horse or harness racing licenses in Pennsylvania; fourteen applications for the five available Category 2 licenses including five applications for the two available Category 2 licenses in Philadelphia (the city of the first class); four applications for the one available Category 2 license in Pittsburgh (the city of the second class); and five applications for the two available licenses in s revenue or tourism-enhanced location; and two applications for the two available Category 3 slot machine licenses.⁴

Each of the Category 1 applicants (those with a licensed horse or harness racing track) were granted either conditional or permanent approval to receive a license during the last quarter of 2015.

With respect to the Category 2 applications, the Board engaged in extensive review and investigation. The Board conducted public input hearings for each applicant and received oral or written input from thousands of individual members of the community who expressed either favor for or opposition to gaming as well as to the proposed projects. To aid transparency, the Board placed large amounts

³ See www.pgcb.state.pa.us/press/pr_112805.htm

⁴ Ultimately one applicant in the City of the second class and both Category 3 applicants withdrew from consideration.

of information about each of the projects on its website, and conducted final hearings in November 2006 for each of the applicants.

On December 20, 2006, the Board met during a scheduled public meeting in Harrisburg to vote to grant and deny slot machine licenses. With respect to the Category 1 licenses, the Board voted to grant licenses to horse racing licensees at Philadelphia Park d/b/a Parx Casino, Penn National Gaming d/b/a Hollywood Casino at Penn National, and Presque Isle Downs; and to Harness Racing licensees at Mohegan Sun at Pocono Downs, Chester Downs Casino and Marina and Washington Trotting Association d/b/a the Meadows.

Category 2 slot machine licenses were granted by the Board to HSP Gaming d/b/a Sugarhouse Casino, Philadelphia Entertainment and Development Partners, d/b/a Foxwoods Casino, P.I.T.G. Gaming d/b/a the Rivers Casino, Sands Bethlehem Casino, and Mt Airy #1, d/b/a/ Mount Airy Resort and Casino.

G. Category 2 Litigation

Direct appeals to the Supreme Court from the Board's Category 2 licensing decisions were filed challenging the grant of licenses in Philadelphia by Riverwalk Casino which was denied a license and by individuals/community groups/local governments including Society Hill Civic Association, City council for the City of Philadelphia, Jethro Heiko, et al., and Neighbors Allied for the Best Riverfront. The Category 2 license granted to the Rivers Casino in the city of Pittsburgh was appealed by both competing applicants, Station Square Gaming and IOC Pittsburgh. The grant of a license to Mt. Airy Resort and Casino was appealed by competitor Pocono Manor Investors which had been denied a license.

1. ***Riverwalk Casino v. PGCB***, 926 A.2d 926 (Pa 2007)

Riverwalk Casino presented a list of alleged errors by the Board – all of which were rejected by the Court. Among the issues on appeal was a contention that the board violated the Sunshine Act by conducting closed deliberations concerning which applicants would be granted and denied licenses; and assertions that the Board ignored the endorsement of the City of Philadelphia for the Riverwalk project as well as of other evidence.

With respect to the Sunshine Act claim, the Court found that the Gaming Board serves as a quasi-judicial body with fact-finding and deliberative responsibilities. The Board is vested with the discretion to award licenses to the applicants who have established their eligibility for the issuance of licenses and have demonstrated the merits of their proposals under the comprehensive statutory standards of the Gaming Act. The Board must consider detailed confidential information regarding the applicants and their proposals in the course of weighing the relative merits of the proposals. Private deliberations are required to facilitate frank discourse by Board members regarding such confidential information and assessment of the relative strengths and weaknesses of the applicants' proposals. The Board's deliberations in an executive session prior to the public vote fell within the exception to the open meeting requirement for quasi-judicial deliberations. 926 A.2d at 935

As to Riverwalk's claim that the Board ignored the City's reasons for preferring Riverwalk and the specific and unique benefits the City would obtain under Riverwalk's proposal, Riverwalk stated that the benefit and costs to the City are important factors for the Board's consideration. It argued that the Board ignored the benefits recognized by the City, including financial benefits that the City would reap as a result of Riverwalk's agreement to forego tax incentives and rent payments to Penn's Landing. Riverwalk asserted that the Board's failure to consider

the City's determination of its own interests was arbitrary and capricious and a fundamental violation of due process under the state and federal constitutions.

The Board stated that the responsibility for evaluating the submissions of the applicants under the statutory standards set forth in the Gaming Act is vested in the Board. “The board shall in its sole discretion issue, renew, condition or deny a slot machine license based upon the requirements of this part and whether the issuance of a license will enhance tourism, economic development or job creation is in the best interests of the Commonwealth and advances the purposes of this part.” [4 Pa.C.S. § 1325\(a\)](#).

The Court held the Board's Adjudication demonstrates that the statutory factors for the issuance of the slot licenses were considered extensively, and that the relative merits and weaknesses of each applicant's proposal were weighed by the Board. The Board arrived at different conclusions regarding the purported superiority of Riverwalk's proposal utilizing similar criteria considered by the City. The Board did not act arbitrarily or capriciously in exercising its judgment independent of the City's endorsement or preference. 926 A.2d at 949.

2. ***Station Square Gaming and IOC v. PGCB***, 927 A.2d 232 (Pa 2007)

Station Square and IOC both asserted that the Board acted arbitrarily and capriciously when considering the financial viability of license winner, Rivers Casino. The Court reviewed the standard of capricious disregard of evidence stating,

With regard to the directive that we are to uphold orders of the Board unless such orders are arbitrary or the result of a capricious disregard of the evidence, our case law provides guidance as to the parameters of our appellate review. We have defined a capricious disregard of the evidence to exist “when there is a willful and deliberate disregard of competent testimony and relevant evidence which one of ordinary intelligence could

not possibly have avoided in reaching a result.” *Arena v. Packaging Systems Corp.*, 510 Pa. 34, 507 A.2d 18, 20 (1986); see also *Leon E. Wintermyer, Inc. v. Workers' Compensation Appeal Board (Marlowe)*, 571 Pa. 189, 812 A.2d 478 (2002). Furthermore, under the capricious disregard standard, an agency's determination is given great deference, and relief will rarely be warranted. *Wintermyer*, 812 A.2d at 484.⁴ Under this standard, an appellate tribunal is not to substitute its judgment for that of the lower tribunal and the standard “is not to be applied in such a manner as would intrude upon the agency's fact-finding role and discretionary decision-making authority.” *Id.* at 487–88.

After reviewing all of the alleged points of error in considering the evidence, the Court stated,

At bottom, IOC and Station Square's argument regarding the § 1325(c) factors is that they would have weighed the factors differently than did the Board. For example, they did not mention the diversity factor found at § 1325(c)(4) as this factor, which weighed so clearly in favor of PITG¹², was of no support to IOC and Station Square. This selective analysis of the § 1325(c) factors understandable coming from applicants who were denied a highly lucrative license. Yet, it is an analysis in which this court cannot engage. Our § 1204 appellate review does not grant us authority to act as a super-Board, employing our own discretion in determining which applicant we believe was the best applicant. We are not empowered to sift through the voluminous evidence, reweighing it. Our review in these matters is to determine whether the Board acted arbitrarily or in capricious disregard of the evidence when it considered these factors. IOC and Station Square have not established that the Board acted in an arbitrary fashion when it weighed the discretionary § 1325(c) factors

3. ***Pocono Manor Investors v. PGCB***, 927 A.2d 209 (Pa 2007)

The thrust of Pocono Manor's contest to the Board's grant of a license to Mt. Airy Casino and concurrent denial of Pocono Manor's application was its contention that the Board gave Mt. Airy procedural advantages in the licensing proceedings by permitting it to continue to amend its project and that the Board's decision was arbitrary and capricious in light of the facts and circumstances presented.

Inasmuch as Pocono Manor Investors’ challenge to the grant of a license to Mt. Airy Casino focused on changes which Mt. Airy made to its organizational structure and physical design during the hearing process, the Court rejected that claim noting that the licensing process is fluid and contemplated the submission of additional materials throughout the process.

With respect to the challenge based upon the merits of the projects, the Court stated:

The Legislature vested the Board with broad discretion in approving an applicant once the applicant was determined to be eligible. *See* [4 Pa.C.S. § 1325](#). It also enumerated a number of factors the Board “may also take into account” when considering an application, but did not place any emphasis on one consideration over another or even mandate that the Board consider each of the factors before awarding the license. *See* [4 Pa.C.S. § 1325\(c\)](#). In other words, once the eligibility requirements were met by the applicant, the Board had almost complete discretion to approve or deny a license, subject only to this court's limited review under [§ 1204](#). Ignoring the broad discretion that was entrusted to the Board, Pocono argues that the Board gave weight to certain facts regarding Mount Airy, but did not give weight to similar facts in the Pocono proposal. Pocono frames this issue in terms of the Board's capricious disregard of the evidence.

As noted previously, under the capricious disregard standard, an appellate tribunal is not to substitute its judgment for that of the lower tribunal and the standard “is not to be applied in such a manner as would intrude upon the agency's fact-finding role and discretionary decision-making authority.” [Wintermyer, 812 A.2d at 488](#). Yet, it is clear that Pocono is asking this court to intrude upon the discretionary decision-making of the Board, a task that is not properly ours.

927 A.2d at 225.

4. *Society Hill Civic Association v. PGCB*, 928 A.2d 175 (PA 2007)

The Society Hill Civic Association appealed the grant of the Philadelphia designated licenses to the Supreme Court arguing that it had been aggrieved by the Board's order and asserting standing to appeal as such. In doing so, they relied on section 702 of the Administrative Agency Law, 2 P.a.C.S. §702, which provides, "Any person aggrieved by an adjudication of a Commonwealth agency who has a direct interest in such adjudication shall have the right to appeal therefrom to the court vested with jurisdiction of such appeals by or pursuant to Title 42 (relating to judiciary and judicial procedure).

The PGCB sought summary relief arguing that the Society Hill Civic Association lacked standing to appeal the Board's grant of the slot machine licenses. Specifically, Section 1204 of the Act which vested jurisdiction with the Supreme Court stated that such jurisdiction was "notwithstanding the provisions of 2 Pa.C.S. Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action) and 42 Pa.C.S. § 763 (relating to direct appeals from government agencies)," Thus, the Board contended that the provisions of Section 702 did not apply to direct appeals of Board decisions to grant or deny slot machine licenses. Rather, Rule of Appellate Procedure 501 is applicable which provides "except where the right to appeal is enlarged by statute, any **party** who is aggrieved by an appealable order ... may appeal therefrom." Thus, given the different term of "party" versus "person," an appellant would have had to gained party status in the proceedings before the Board in order to have standing to appeal to the Supreme Court pursuant to Section 1204.

The Supreme Court agreed that Section 702 is not applicable to appeals from determinations of the Board involving the approval or conditioning of slot machine licenses, and held that the general requirement of both party status and aggrievement as set forth in Pa.R.A.P. 501 therefore applies. As such, a non-applicant would have to achieve party status in the administrative proceedings

before the Board through the Board's regulatory intervention process in order to have standing to appeal the Board's decisions to grant slot machine licenses. Having not done so, Society Hill was without recourse on appeal.

The Court dismissed the appeals of City Counsel for the City of Philadelphia, 927 A.2d 199 (2007), Jethro Heiko, et al., 927 A.2d 200 (2007), and Neighbors Allied for the Best Riverfront, 927 A.2d 199 (2007) on the basis of the *Society Hill* decision. See Exhibit ____.

Post-Licensure Litigation

5. *Keystone Redevelopment Partners v. PGCB*, 5 A.3d 448 (Pa Commonwealth Ct. 2010)

Following the Board's grant of slot machine licenses in December 2006 and the ensuing appeals, other litigation followed. For instance, the PEDP/Foxwoods project ran into roadblocks in the City of Philadelphia in terms of obtaining necessary permits to commence construction. Moreover, during the pendency of Foxwoods – City of Philadelphia standoff, the economic downturn of 2008-09 hit resulting in Foxwoods losing the previously secured financial commitments to build the casino project.

The prospect of Foxwoods being unable to fulfill the conditions of its license and possibly losing its slot machine license as a result of the delays and loss of financing caused another disappointed applicant from the 2006 period to reassert its interest in the license. Specifically, Keystone Redevelopment Partners filed a petition with the Board seeking to reopen the licensing proceedings, declare the Foxwoods license abandoned and requesting that it be awarded the license as the only remaining eligible and suitable applicant. During the pendency of Keystone's petition, in May 2009, Foxwoods filed a motion before the Board seeking an extension of time by which to make slot machines available for play at its facility.

In turn, Keystone filed a motion to intervene in Foxwoods extension proceedings.

The Board issued orders denying intervention to Keystone on the basis it had no substantial direct and immediate interest in the licensee's extension petition. The Board also granted a 24 month extension to Foxwoods to commence operations, and thereafter, denied Keystone's petition to reopen the licensing proceedings, again concluding that Keystone had no substantial direct and immediate interest in Foxwood's license at that point in time, Keystone appealed to Commonwealth Court.

The Court agreed with the Board, finding that the Board was within its bounds in denying standing on the various issues to Keystone, relying heavily on the facts that Keystone was no longer an applicant for a license, Keystone did not appeal the denial of its application, Keystone did not appeal the grant of the license to Foxwoods, nearly three years had passed since the license was granted, Keystone does not hold a license in Pennsylvania and there existed other parties to represent the public's interests in the proceedings. See Exhibit _____.

6. Keystone Redevelopment Partners v. Decker et al., 631 F.3d 89 (3rd Cir. 2011)

In December 2008, Keystone Redevelopment Partners also filed a civil action against Board members and executive staff in federal court asserting that the Board violated its rights under the commerce clause and equal protection rights when the Board used as one of many factors in the decision to issue the Category 2 licenses in Philadelphia whether an applicant had a New Jersey Casino. The factor was raised by competing applicants in the 2006 proceedings to argue that a Philadelphia casino with a sister property in New Jersey would have incentive to build a data base of players in Pennsylvania and then use the Pennsylvania players as a feeder to the New Jersey casino where tax rates on gaming are a mere fraction

of Pennsylvania's tax rate – thereby substantially increasing the company's profits from New Jersey operations.

The Board moved to dismiss the complaint before the district court on the basis of quasi-judicial immunity. Quasi-judicial immunity attaches to public officials whose roles are “ ‘functionally comparable’ to that of a judge.” [*Hamilton v. Leavy*, 322 F.3d 776, 785 \(3d Cir.2003\)](#) (quoting [*Butz v. Economou*, 438 U.S. 478, 513, 98 S.Ct. 2894, 57 L.Ed.2d 895 \(1978\)](#)). Such immunity “flows not from rank or title or location within the Government, but from the nature of the responsibilities of the individual official.” [*Cleavinger v. Saxner*, 474 U.S. 193, 201, 106 S.Ct. 496, 88 L.Ed.2d 507 \(1985\)](#) (citation and internal quotation marks omitted). Thus, in evaluating whether quasi-judicial immunity grants immunity to a particular official, a court inquires into “the official's job function, as opposed to the particular act of which the plaintiff complains.” [*Dotzel*](#), 438 F.3d at 325. The district court denied quasi-judicial immunity on the basis that it required the development of an evidentiary record to determine whether the Board's function was akin to that of a judge. The Board appealed.

On appeal to the Third Circuit Court of Appeals, the Court of Appeals held that the Board conducts its licensing functions in a quasi-judicial manner and therefore is entitled to quasi-judicial immunity from suits for damages arising therefrom. In doing so, the Court reviewed the non-exhaustive list of six factors “characteristic of the judicial process” that it had identified in *Butz* as relevant to a determination of whether an official enjoys quasi-judicial, and thus absolute, immunity:

- (a) the need to assure that the individual can perform his functions without harassment or intimidation;
- (b) the presence of safeguards that reduce the need for private damages actions as a means of controlling unconstitutional conduct;
- (c) insulation from political

influence; (d) the importance of precedent; (e) the adversary nature of the process; and (f) the correctability of error on appeal.

The Court reviewed each of these factors independently and concluded that in each instance, the Butz factors clearly support quasi-judicial immunity for members of the Pennsylvania Gaming Control Board.

7. Philadelphia Entertainment and Development Partners / Foxwoods v. PGCB, 34 A.3d 261(Pa Commonwealth Court 2011)



Foxwoods

Philadelphia Entertainment and Development Partners, L.P. (“PEDP” or “Foxwoods”) was awarded a Category 2 slot machine license on December 20, 2006. The \$525.8 million facility was to be located on a 16 and one half acre parcel of vacant land along the Delaware River.

Since that time, Foxwoods was been confronted with a number of delays and road blocks including an appeal by a disappointed losing applicant for the license, permitting and zoning delays, lost time while exploring alternative locations as well as a connection with a much publicized transaction which would have brought

a well-known partner to the project only to have the deal unravel for reasons still unknown to the public. The delays with that project are well chronicled.

On September 1, 2009, the Board in response to a Foxwoods Petition for an extension of time to commence operations, issued an adjudication which granted an extension of time to Foxwoods to make slot machines available to play until May 29, 2011. However, the extension was conditioned upon Foxwoods meeting a number of benchmarks including the provision of monthly updates, the submission of financing documents and commitments for financing, architectural renderings, a timeline for completion of all phases of the project. See Attachment 1.

Foxwoods was unable to comply with two of the conditions and filed a motion for an extension of time to do so. The Board conducted a hearing on the motion on January 27, 2010 and on February 10, 2010 issued an Order and Adjudication which denied the motion and issued a \$2,000 per day sanction for non-compliance with a Board Order.

Subsequently, the Foxwoods group announced that it had been engaged in discussions with outside gaming interests to assist in the effort to fulfill the promise of the gaming facility on South Columbus Boulevard, and submitted documentation to the Board indicating an intent to enter into a partnership agreement with Wynn Resorts to finance and build the casino project. The Board held a hearing on March 3, 2010 during which Steve Wynn appeared and recounted his vision of the project and his commitment to build a first class facility on the Waterfront. Just one month later, on April 8, 2010, Wynn Resorts issued a press release indicating that it had “terminated all agreements and negotiations with respect to a potential investment in the Foxwoods Casino project in Philadelphia, PA.”

Thereafter, on April 29, 2010, the Office of Enforcement Counsel filed a Complaint for Revocation of Slot of the Category 2 slot machine license asserting

a failure to comply with the entity's Statement of Conditions on the license, the inability of the entity to have 1,500 slot machines available for play by May 29, 2011, the entity's failure to maintain suitability to hold the license.

On December 23, 2010, the Board issued an order revoking PEDP/Foxwoods' Category 2 slot machine license. The revocation came only after the Foxwoods project was given multiple extensions of time to comply with Board orders relative to obtaining financing, commencing construction and fulfilling the promises that were made to the board in order to obtain the slot machine license. Foxwoods appealed the revocation of its license arguing that the Board applied an incorrect legal standard to determine if Foxwoods violated conditions of its license, that standards of financial fitness and suitability in the Act were unconstitutionally vague, and that the Board violated Foxwoods due process rights by revoking its license via summary judgment without conducting an evidentiary hearing.

The Court rejected all three arguments. It first held that the same standard of financial fitness and suitability applies to licensees as it did to applicants for the license in the first instance – a licensee must be likely to maintain a financially successful, viable and efficient business operation, and will be likely to be able to maintain a steady level of growth of revenue to the Commonwealth. Second, the Court held that the financial fitness/suitability standard is not vague, and requires a factual showing of a licensee's historical financial stability and financial wherewithal of its ability to develop the proposed project and to maintain a steady level of growth of revenue to the Commonwealth. As the court wrote, "even more simply stated, PEDP merely had to demonstrate that it could construct and operate the gaming facility for which the Board awarded it the license. Finally, the Court found due process was not violated by the use of the summary judgment process. The court noted that PEDP had been on notice of the potential revocation of its

license for nearly 10 months, that it had many opportunities to be heard and to present information necessary to demonstrate its compliance with the Gaming Act, and that the Board's decision was supported by undisputed facts of record. Finally, the Court addressed an argument of Foxwoods that the revocation of its \$50,000,000 license as a result of its noncompliance was unreasonably harsh sanction, when a lesser sanctions were available. The court noted that while lesser sanctions are generally favored, in this case, a lesser sanction of \$2,000 a day for non-compliance had been imposed by the Board more than a year earlier but even together with the threat of revocation, it did not result in achieving the Board's objectives of PEDP fulfilling the conditions of its license. The Supreme Court subsequently denied Foxwoods' Petition for Allowance of appeal.

Postscript - Following the revocation of its license, PEDP/Foxwoods filed for Bankruptcy in the Eastern District of Pennsylvania in March 2014 and filed a seven count complaint against the Pennsylvania Department of Revenue seeking to recover the \$50,000,000 license fee paid to the Commonwealth for its now-revoked Category 2 slot machine license. On April 8, 2016, the Bankruptcy Court issued an opinion denying relief on the basis that each of the claims was premised upon state law and not within the surrender of sovereign immunity in Bankruptcy proceedings. The Court stated, "until a court of competent jurisdiction adjudicates the viability of the State Law Claims or otherwise establishes the Debtor's alleged entitlement to a refund, the Trustee's assertion of its Bankruptcy Claims is, at best, premature" and dismissed the claims with prejudice.

8. Stadium Casino – the second Philadelphia license

Following the finality of the Foxwoods revocation, the Board set out to accept applications to again issue the second license designated for the City of

Philadelphia. The Board set an application deadline of November 15, 2012, by which it received six applications for the available Category 2 license. The applicants at that time included 1) Market East Associates (“Market East”), d/b/a Market8; 2) PA Gaming Ventures, LLC d/b/a/ Hollywood Casino Philadelphia; 3) PHL Local Gaming, LLC (“PHL”), d/b/a Casino Revolution; 4) Stadium Casino, LLC (“Stadium Casino”), d/b/a Live! Hotel and Casino; 5) Tower Entertainment, LLC (“Tower”), d/b/a The Provence; and 6) Wynn PA, Inc d/b/a Wynn Philadelphia. PA Gaming Ventures and Wynn subsequently withdrew their respective applications.⁵

On November 18, 2014, the Board met during an open, public meeting and voted to award the license to Stadium Casino. The Board’s decision was based upon a number of factors, chief among them that 1) Stadium Casino’s project is “right-sized” for the Philadelphia market in that it is not overbuilt or heavily laden with debt would ensure that in a competitive gaming market leading to Stadium Casino in a better position to operate a successful gaming operation and in a position to service any debts, make capital improvements and reinvest in its facility, as well as meet its commitments to the City of Philadelphia and the Commonwealth even with conservative revenues; 2) located in the Stadium District, it is strategically positioned away from large residential populations yet bordering the vast parking lots of the nearby sports stadium and arenas which boast nearly 8 million visitors a year and fits within the area landscape; 3) the location as it relates to the other established Philadelphia area casinos is positioned far enough from the other properties to create a buffer between them, is convenient by personal automobile to major highway access off Interstates 76 and 95, and yet not

⁵ Wynn PA and its affiliated principal entities and individuals, filed a petition to withdraw its application for the license. The Board granted the petition on December 11, 2013. Also, PA Gaming Ventures filed a petition to withdraw its application on June 27, 2014. The Board granted the petition on July 9, 2014.

insurmountably far from a nearby subway stop; 4) the degree of public opposition to the Stadium Casino project was not a substantial impediment to the Board's consideration of the applicant for licensure, with most opposition premised on traffic and parking which Stadium had committed to mitigate; 5) Stadium Casinos' established operators would contribute an established database of customers which can be cross marketed to the benefit to the Philadelphia property; and 6) Stadium Casino had the ability to self-finance the construction of its casino property, thus limiting economic risk associated with volatile credit markets.

As with other Category 2 applications, appeals Market East and intervenor SugarHouse Casino followed. On March 29, 2016, the Pennsylvania Supreme Court issued an Opinion which affirmed, in part, and vacated, in part, the Board's award of the Category 2 slot machine license for the City of Philadelphia to Stadium. Specifically, with regard to SugarHouse Casino, the Court held that the Board did not err in granting limited intervention to SugarHouse as to the issue of market saturation and in denying intervention as to the other issues for which there were other parties to the proceedings to adequately represent the interests, i.e. issues of Stadium's eligibility to be granted the license under various provisions of the Gaming Act. With respect to the only issue for which it had been granted intervention and obtained party status, alleged market saturation, SugarHouse had failed to address the issue in its brief and hence waived any argument on appeal. *See Sugarhouse HSP Gaming v. Pa Gaming Control Board, and Market East Assoc. v. Pa Gaming Control Board*, 136 A.3d 457 (Pa 2016).

With regard to the Market East appeal, the Court rejected claims that the Board did not address whether the grant of the license to Stadium presented an undue concentration of economic opportunities, as well as that the Board's grant of the license to Stadium was arbitrary and a capricious disregard of the evidence and thereby affirmed the Board's decision as to those issues. However, the Court found

two issues which it could not resolve based upon the record presented and remanded the matter to the Board to issue supplemental findings of fact and conclusions of law as to those two matters.⁶ The two issues which the Court remanded to the Board are the following:

1. Noting that Section 1302 of the Race Horse Development and Gaming Act (“Gaming Act”), 4 Pa.C.S. § 1101, *et. seq.* prohibits a person eligible to apply for a Category 1 license from applying for a Category 2 license, the Court stated it could not determine whether Watche Manoukian continues to be eligible to apply for a Category 1 license for another facility. As such, the Court remanded for the Board to address whether Stadium or any of its affiliates was eligible to apply for another Category 1 slot machine license at the time Stadium applied for a Category 2 slot machine license, and
2. The Court stated that Section 1330 of the Gaming Act prohibits a licensee from possessing an ownership or financial interest that is greater than 33.3% in another licensee. The Court noted that while the Board addressed the “ownership” of Stadium by Mr. Manoukian, it had not addressed the “financial interest” held by Manoukian. Accordingly, the Court has remanded that issue for the Board to address whether Manoukian would have a “financial interest” in Stadium that violates the prohibition on multiple slot machine licensees contained in Section 1330 of the Gaming Act.⁷

Id. at p.

Following remand, on June 23, 2016, the Board issued a Supplemental Adjudication addressing the two issues which had been the subject of the remand. Examining the issues, the Board found that adequate factual basis existed within

⁶ On the fourteenth day after the Court issued the Opinion, SugarHouse Casino filed a Petition for Reargument of the Court’s disposition of the intervention matter. The filing of the petition caused jurisdiction to be retained by the Court and hence the record was not remanded for the Board to issue this Supplemental Adjudication until the Petition for Reargument was denied by the Court on June 2, 2016.

⁷ The Board notes that the distinction between the ownership interest and financial interest was not raised before the Board by Market East or any other competing applicant during the licensing proceeding or on appeal.

the record of the proceedings before it, as well as within the official records of the Board, to address the two issues. As such, the Board stated an additional hearing for the purpose of taking further evidence was not necessary. The Board made 30 additional findings of fact based upon the existing record, and issued conclusions of law that 1) Stadium was eligible to apply for and hold the Category 2 slot machine license because neither it nor any of its affiliates was otherwise eligible to apply for a Category 1 slot machine license, and 2) Watche Manoukian's financial interest in Stadium does not, in fact, violate the prohibition of multiple slot machine licenses contained in 1330 of the Gaming Act.

On the same day the Board issued its Supplemental Adjudication, SugarHouse filed a Petition to Intervene in the Remand Proceedings, renewing its contention that SugarHouse should be granted intervention to contest Stadium's compliance with provisions of the Gaming Act despite the Court's affirmance of the Board's denial of intervention to SugarHouse to contest those issues. The Petition to Intervene in the Remand Proceedings was returned by the PGCB's Office of Hearings and Appeals on June 29, 2016 and the docket was marked closed, the PGCB Hearing Officer stating that "it was determined that the relief sought ("the right to intervene and participate in the Proceedings on Remand") could not be granted because, in fact, the Board had already issued the Supplemental Adjudication."

Both Market East and Sugarhouse appealed the Supplemental Adjudication. Those appeals remain pending as of December 2016.

6. Category 3 Slot Machine Licensee Experience

The concept of Pennsylvania's Category 3, well-established resort slot machine license is somewhat of an anomaly in the American casino landscape.

Section 1305 of the Gaming Act defines the parameters of the Category 3 licensee and provides:

(1) A person may be eligible to apply for a Category 3 slot machine license if the applicant, its affiliate, intermediary, subsidiary or holding company has not applied for or been approved or issued a Category 1 or Category 2 slot machine license and the person is seeking to locate a Category 3 licensed facility in a well-established resort hotel having no fewer than 275 guest rooms under common ownership and having substantial year-round recreational guest amenities. The applicant for a Category 3 license shall be the owner or be a wholly owned subsidiary of the owner of the well-established resort hotel. A Category 3 license may only be granted upon the express condition that an individual may not enter a gaming area of the licensed facility if the individual is not any of the following:

- (i) A registered overnight guest of the well-established resort hotel.
- (ii) A patron of one or more of the amenities provided by the well-established resort hotel.
- (iii) An authorized employee of the slot machine licensee, of a gaming service provider, of the board or of any regulatory, emergency response or law enforcement agency while engaged in the performance of the employee's duties.
- (iv) An individual holding a valid membership approved in accordance with paragraph (1.1) or a guest of such individual.

A Category 3 licenses shall entitle the licensed entity to operate no more than 500 slot machines at the licensed facility, unless it also holds a table game operation certificate in which case it shall be entitled to operate up to 600 slot machines at its licensed facility. The Category 3 license fee was established as \$5,000,000. A table game operation certificate fee which permits the Category 3 facility to operate up to 50 table games is, subject to one exception, \$7,500,000.

The unusual aspect of the Category 3 licensees the restriction on patronage of the casino in that members of the general public may not drive up and enter the casino to game. Rather, the Act requires that persons entering the casino must be

“**patrons of the amenities**” of the resort-hotel in order to gain access and must pay a non-de minimis fee in order to spend money at the casino. The Act defines "Patron of the amenities" to mean any individual who is a registered attendee of a convention, meeting or banquet event or a participant in a sport or recreational event or any other social, cultural or business event held at a resort hotel or who participates in one or more of the amenities provided to registered guests of the well-established resort hotel.

Initially, in December 2005, two applicants for a Category 3 license had applied to the Board but each withdrew its application prior to the December 2006 decisions of the Board to award the licenses. One applicant cited the “patron of the amenities” restriction as influencing his decision to withdraw.

Subsequently, the Board reopened the application period and following the same process employed in the Category 1 and 2 license proceedings, awarded a Category 3 license to Valley Forge Resort and Casino on May 8, 2009. That decision was appealed by Greenwood Gaming, d/b/a/ Parx Casino, a local competitor of the Valley Forge location which had intervened in the proceedings before the Board to contest the eligibility of Valley Forge to obtain a Category 3 license. Parx primarily contested that Valley Forge Resort Casino was a “well-established resort hotel” as used in the Act, asserting that Valley Forge was a convention center and not a resort. Parx also contested that the applicant was the owner of the resort-hotel, and asserted that the determination that the applicant was suitable for licensure was arbitrary and in capricious disregard of the evidence.

Examining the record and the definitions within the Act, the Supreme Court stated, we cannot conclude that the Board committed legal error or acted arbitrarily in capricious disregard of the evidence”. The Court held, “that the Valley Forge Convention Center focused its self-promotion on its convention center attributes and did not market its resort amenities as heavily does not mean that the two

aspects are mutually exclusive. They are not. Further, the long-standing existence of the Valley Forge Convention Center is not subject to question, and it cannot be gainsaid that Valley Forge Partners presented competent evidence that the Convention Center provides a complement of amenities characteristic of a resort hotel. Thus, the Board's conclusion that the Valley Forge Convention Center is a well-established resort hotel is not arbitrary. Moreover, the record demonstrates that the Board did not capriciously disregard Greenwood's evidence. Instead, the record shows that the Board appropriately weighed competing evidence and found in favor of the applicant. That the applicant's marketplace branding strategy does not employ the word “resort” is not determinative of the legality or reasonableness of the Board's decision to award it a Category 3 slot machine license. 15 A.3d at 888-92. The Court similarly rejected the other Parx challenges as well.

Justice Eakin’s dissent in the case took issue with the majority’s determination that Valley Forge is a Resort-hotel, stating

“Our question is whether the Valley Forge Convention Center is a “well-established resort hotel.” That term, though modified by further requirements of room and recreational amenities, is entirely undefined in the statute, but much like pornography, we need not define it to know it when we see it and anyone who has seen this excellent complex knows what it is, and what it is not.

For all the expert testimony of pools and “theme rooms,” let me suggest the matter can be settled by a simple common sense test. Let each member of the Pennsylvania Gaming Control Board say to his or her significant other, “Honey, I'm taking you for a romantic weekend at a ‘well-established resort hotel.’ ” Then put the suitcases in the car, get on the turnpike or the Schuylkill Expressway and drive to the front of the Valley Forge Convention Center. Get out, smile, say “Honey, we're here!”, and see what your loved one says.

The Convention Center is a fine place, and I do not suggest otherwise. It is more than suitable for many things and with many features justifying its obvious success—indeed, until very recently, our Court's Bar Examiners

held the bar exam at the Convention Center. It is many things, but it simply is not a resort. It is enclosed by the turnpike and major arteries, surrounded by apartment complexes, office parks, and sprawling shopping malls. The area is overrun with traffic, and the center is populated by conventioners with nametags meeting in the commodious rooms built for the purpose of conventioning. It is a wonderful and centrally located convention center and attracts visitors by the busload. I do not know why the statute created a license issuable only to a well-established resort instead of a convention center, but it did, and we should not perpetuate the deceit of calling this facility something it is not.

You can call a duck a goose. You can point to its size, its aquatic lifestyle and its diet, its bill and its cry, its feathery wings and its webbed feet. There are similarities to be sure, but at the end of the day, it is still a duck. No matter what the Board here tried to shoehorn into the term, we know a duck when we see one, and for better or worse, the Convention Center is a duck, not a goose.

15 A.3d at 895-6.

As to the second Category 3 License, an earlier applicant, the Bushkill Group, Inc. encountered issues with securing financing similar to those affected other entities. Acknowledging the difficulties in current economic markets, on April 8, 2009, the Board agreed to continue to consider Bushkill Group, Inc.'s application but it also re-opened the application process to other interested and qualified applicants. On January 12, 2010, Woodlands Fayette, LLC submitted an application for Nemaocolin Resort in Fayette County. On April 7, 2010, Mason-Dixon Resorts, LP submitted an application for a facility in Adams County. On April 8, 2010, Penn Harris Gaming, LP submitted an application for a hotel in Cumberland County.

Thus, four applicants for the license existed, including from the Bushkill Group in the Poconos, Mason-Dixon Resorts outside Gettysburg, Penn Harris Gaming in Mechanicsburg and from Nemaocolin Woodlands in Fayette County. Again following an exhaustive administrative review and hearing process, the

Board voted during a public meeting on April 14, 2011 to award the remaining license to Nemaocolin Woodlands and issued a 106 page adjudication on May 20, 2011 explaining its decision.

Mason Dixon appealed the decision to the Supreme Court raising seven issues for review including that Nemaocolins casino would not be “in” a well establish resort hotel because it was in a building on the grounds but not attached to the hotel, that it did not have 275 guest rooms under common ownership, that the processes of the Board violated Mason Dixon’s due process rights, that the Board placed undue emphasis on the quality of the facility factor, that the Board’s decision was inconsistent with the Act’s objective to assist the horse racing industry given its proximity to the Meadows Racetrack and Casino, that the Board did not apply a ‘prudent man’ standard in finding Nemaocolin financially suitable, and that the Board erred in finding Woodlands and its affiliate suitable.

The Supreme Court considered the claims under the now well established standard for Board licensing decisions – the Court “shall affirm all final orders, determinations or decisions of the board involving the approval, issuance, denial or conditioning of a slot machine license ... unless it shall find that the board committed an error of law or that the order, determination or decision of the board was arbitrary and there was a capricious disregard of the evidence.” 4 Pa.C.S. § 1204. 617 Pa. 18, 30, 52 A.3d 1087, 1093 (2012) and reiterated “We have defined a ‘capricious disregard’ as a ‘willful and deliberate disregard of competent testimony and relevant evidence which one of ordinary intelligence could not possibly have avoided in reaching a result.’ *Riverwalk Casino, LP, v. Pa. Gaming Control Bd.*, 592 Pa. 505, 926 A.2d 926, 929 (2007).” The court then took each issue one by one and held the Board did not err in its disposition of the matter.

7. Remaining licenses

A. Category 1

In 2006, six of the possible seven Category 1 licenses were awarded to entities which either were currently operating a horse or harness racing track, or were approved by the Horse or Harness Racing Commission to do so. The effort to award that last license has taken a long and sometimes tortured path.

Pursuant to the Gaming Act, a person may be eligible to apply for and be eligible to receive a Category 1 license if the person has been issued a license from either the State Horse Racing Commission or the State Harness Racing Commission to conduct thoroughbred or harness race meetings with pari-mutual wagering and has conducted live horse races for not less than two years immediately preceding the effected date of the Act. 4 Pa.C.S. §§ 1302(a) and 1303(a).

On September 5, 2007, the Harness Racing Commission awarded the State's last remaining harness racing license to Valley View Downs, LP in Lawrence County with the requirement that Valley view Downs be operational and providing live harness racing by September 2008. In October 2007, Valley View Downs submitted a Category 1 slot machine application. During the period of application and investigative review, Valley View lost its initial financing. On August 8, 2008, the Harness Racing Commission unanimously approved an extension to September 5, 2010.

In October 2009, Valley View Downs filed for Chapter 11 bankruptcy in order to restructure its debt. By that time, having no ability to finance the project, PGCB suspended active efforts to continue towards licensure proceedings.

On September 3, 2010, the Harness Racing Commission issued an Order regarding Valley View which established two conditions relating to the Harness Racing license it currently possesses: (1) by October 5, 2010, Valley View is required to certify in writing to the Harness Racing Commission that it has

received at least one bid for the acquisition of its assets; and (2) by December 31, 2010, the winning competitive bidder, as determined by the bankruptcy court, must file an application for a harness racing license with the Harness Racing Commission.

On October 4, 2010, Valley View Downs submitted to the Harness Racing Commission a certification that Valley View Downs had received at least one written bid for the acquisition of the assets of Valley View Downs. As later certified by the Bankruptcy court, that winning bidder was American Harness Tracks, LLC. As did its predecessors though, American Harness Tracks was unable to bring the project to fruition and a stock transfer to Endeka was approved by the Commission on October 25, 2012.

Endeka was granted several extensions by the Commission to complete the project and on May 31, 2013, Endeka submitted an application for a Category 1 slot machine license to the PGCB. Over the next three years, various efforts were made by Endeka to gain a gaming partner as well as committed financing – the latter element however proved elusive. Without satisfactory progress and without committed financing, on July 13, 2016, the Board held a public hearing concerning the viability of Endeka’s Application, and voted unanimously to deny it.

Thus, the one remaining Category 1 license remains unissued and likely will remain so until the Horse Racing Commission again issues a racing license to another entity which would then be eligible to apply to the Board for the Category 1 license.

B. Category 3 license

The Act, as amended in 2010, contemplates that the Board may issue a third Category 3 license after July 20, 2017.

7. **Individuals – Principals/Keys/Gaming and Non-gaming**

As stated above, separate and apart from the determination of which companies receive one of the limited number of Category 1, 2 or 3 licenses is the licensing of individuals associated in one way or another with the casino licensee. The terms “principal”, “key employee”, “gaming employee” and “non-gaming employee” are frequently encountered in this regard and are defined In the Act and/or the Board’s regulations as follows:

"Principal" An officer; director; person who directly holds a beneficial interest in or ownership of the securities of an applicant or licensee; person who has a controlling interest in an applicant or licensee, or has the ability to elect a majority of the board of directors of a licensee or to otherwise control a licensee; lender or other licensed financial institution of an applicant or licensee, other than a bank or lending institution which makes a loan or holds a mortgage or other lien acquired in the ordinary course of business; underwriter of an applicant or licensee; or other person or employee of an applicant, slot machine licensee, manufacturer licensee or supplier licensee deemed to be a principal by the Pennsylvania Gaming Control Board.

"Key employee" Any individual who is employed in a director or department head capacity and who is empowered to make discretionary decisions that regulate slot machine or table game operations, including the general manager and assistant manager of the licensed facility, director of slot operations, director of table game operations, director of cage and/or credit operations, director of surveillance, director of marketing, director of management information systems, director of security, comptroller and any employee who is not otherwise designated as a gaming employee and who supervises the operations of these departments or to whom these department directors or department heads report and such other positions not otherwise designated or defined under this part which the Pennsylvania Gaming Control Board shall determine based on detailed analyses of job descriptions as provided in the internal controls of the licensee as approved by the Pennsylvania Gaming Control Board. All other gaming employees unless

otherwise designated by the Pennsylvania Gaming Control Board shall be classified as non-key employees.

"Gaming employee" Any employee of a slot machine licensee, including, but not limited to: (1) Cashiers, (2) Change personnel, (3) Count room personnel, (4) Slot attendants, (5) Hosts or other individuals authorized to extend complimentary services, including employees performing functions similar to those performed by a gaming junket representative, (6) Machine mechanics, computer machine technicians or table game device technicians, (7) Security personnel, (8) Surveillance personnel, (9) Promotional play supervisors, credit supervisors, pit supervisors, cashier supervisors, shift supervisors, table game managers and assistant managers and other supervisors and managers, except for those specifically identified in this part as key employees, (10) Boxmen, (11) Dealers or croupiers, (12) Floormen, (13) Personnel authorized to issue promotional play, and (14) Personnel authorized to issue credit. The term shall include employees of a person holding a supplier's license whose duties are directly involved with the repair or distribution of slot machines, table game devices or associated equipment sold or provided to a licensed facility within this Commonwealth as determined by the Pennsylvania Gaming Control Board. The term does not include bartenders, cocktail servers or other persons engaged solely in preparing or serving food or beverages, clerical or secretarial personnel, parking attendants, janitorial, stage, sound and light technicians and other nongaming personnel as determined by the board.

"Non-gaming employee" An employee of a slot machine licensee or a certified or registered gaming service provider who is not included within the definition of "principal", "key employee" or "gaming employee," and (i) whose job duties require the employee to be (A) on the gaming floor but do not require the employee to touch or have contact with slot machines or associated equipment other than exterior cleaning; or (B) in a restricted area and the employee: (I) is under constant supervision of an employee of the slot machine licensee who is licensed or permitted and has appropriate access clearance to be in the restricted area; or (II) is not required to touch or have contact with slot machines or associated equipment other than exterior cleaning; or (ii) who the Board determines after a review of the work performed requires registration for the protection of the integrity of gaming.

All applicants for all position are required to be fingerprinted to determine the full extent of an individual criminal background, if any, in all jurisdictions in

the United States. Beyond fingerprinting, the scope of background investigations differs based upon the nature of the position being applied for. Differences between Principals and Key Employees who receive a “License”, gaming employees who receive a “Permit” and a non-gaming employees who receive a “Registration” are largely a function of the degree of vetting required by the Act and the Board in order to assure the integrity of gaming and safety of patrons and the public in the Commonwealth. For instance, a principal or key employee license may not be granted to any person who has ever been convicted of a felony in any jurisdiction, or who has been convicted of a misdemeanor gambling offense unless 15 years have lapsed from the date of conviction. 4 Pa.C.S. §1213(1) and (2). A gaming employee permit may not be issued to a person who has had a felony conviction in any jurisdiction or a misdemeanor gambling offense unless 15 years have elapsed from the date of conviction. However, the Board may still deny a license or permit after the applicable 15 year period. In considering whether to grant the license or permit, the Board shall consider the nature and duties of the applicant, the nature and seriousness of the offense, the circumstances under which the offense occurred, the age of the applicant when the offense occurred, whether the offense was random or a repeated incident, and any evidence of rehabilitation, including good conduct in the community, counseling or psychiatric treatment and recommendations of persons with substantial contact with the applicant. 4 Pa.C.S. §1213(3).

The application process for a Principal or Key Employee license is an extensive exercise! It first calls for the applicant to complete a 66-page Multi-Jurisdictional Personal History Disclosure Form which provides personal data including but not limited to citizenship; passports; residences over a 15 year period; family history; family residences and employment; sibling information; military service; educational data; offices and positions; employment and licensing

data; spouses employment and income history; prior gaming license history; business ownership; financial interests in casinos; family history in casinos; civil, criminal and investigatory proceedings; bankruptcies; vehicle operator data; financial data; assets, liabilities and loans; foreign currency exchanges; brokerage accounts; insurance claims; gifts.

In addition to the Multi-Jurisdictional Personal History form, applicants must complete a Pennsylvania Supplement form which seeks another 20 pages of information including expungements of convictions; use of alcohol or controlled substances; references, positions of family members as public officials, state, federal and foreign tax information, tax clearance authorizations; tax affidavits; law enforcement and gaming enforcement references, release authorizations; and State Police fingerprint authorizations.

Following receipt of the completed forms, the Board's Bureau of Investigation and Enforcement (BIE) will commence an extensive background investigation which may include interviews, document reviews, and site visits. Once required background investigations are completed, the BIE through its counsel, the Office of Enforcement Counsel (OEC), will prepare Suitability Reports including Background Investigation Reports (BIR's) which detail the investigation, the information obtained about the individual and a recommendation as to whether information exists that affects an individual's suitability to be licensed/permitted/registered in Pennsylvania to engage in the privilege of working in the gaming industry should be granted.

If OEC recommends the denial of an individual for licensure, the individual may request a hearing to rebut the OEC recommendation. In such case, the individual bears the burden of proving by clear and convincing evidence that he is of good character, honesty and integrity such that he should be licensed. If an adverse recommendation is not made by OEC, the applicant will proceed to be

presented to the Board at a public meeting for approval based upon the documentary record.

Persons applying for a gaming permit or non-gaming employee registration will similarly undergo a background investigation, albeit on a lesser scale. The decreasing scale of the investigation is reflective of the lesser threat to the integrity of gaming posed by the positions as they move from Principal/Key employees to gaming employees and finally to non-gaming employees.

CHART OF EMPLOYMENT OF PRINCIPALS/KEYS/GAMING AND
NONGAMING OVER 1ST TEN YEARS
TO BE INSERTED HERE

8. Gaming Service Providers (Vendors)

The PGCB has implemented a system of oversight over a broad array of entities which conduct business with slot machine licensees. The entities which provide goods or services unrelated to gaming (e.g. uniforms, food, furniture, etc.) were previously referred to as “vendors”, but are now referred to in both the Gaming Act and the Board’s regulations as “Gaming Service Providers” or “GSPs”.⁸

The decision of the Board to regulate in this regard emanated from experiences in Nevada and New Jersey’s early forays into legalized gambling which saw casinos funnel money to organized crime

⁸ Businesses which provide goods or services directly related to gaming activities fall into one of several other regulatory categories including Manufacturers (e.g. build slot machines and table game equipment), Suppliers (e.g. sellers of slot machines and table game equipment), Gaming Related Gaming Service Providers (e.g. developers of table game side wagers), Management Companies and Junkets.

syndicates through outside legitimate looking businesses, including the building and service trades. Today, various states takes differing approaches to this issue – ranging from that similar to Pennsylvania’s to other State’s exercising no oversight of GSP’s other than having visibility to casino disbursement report.

Initially, the decision of the Board in the 2005-06 time period was to cast a wide net and to capture most GSPs. Three levels of vetting (and therefore costs of licensure borne by the applicants) based upon annual income were established on the theory that the highest risk of wrongdoing occurred with the GSPs earning the greatest amount of money.

This policy was grounded in the Board’s plenary and broad discretionary authority over slot machine licensees. In fact, the regulation of these entities was not specifically provided for in the original Gaming Act, but was a creature of the Board’s regulations. In 2010, the Gaming Act was amended as set forth below to statutorily require the vetting and licensing of Gaming Service Providers.

Since the initial implementation of GSP review, the Board has enacted a series of modifications based upon experience in an effort to encourage more business participation and to minimize unnecessary burdens. For example, the Board has raised initial monetary thresholds implicating various levels of vetting in order to encourage small business development. In addition, publicly traded corporations contended the requirements were too onerous given their existing

oversight by the SEC and public disclosure requirements. As a result, the Board, since 2010, has permitted waivers for publicly traded companies.^{9,10}

The 2010 amendments of the Gaming Act provided in pertinent part:

Section 1103 Definitions

"Gaming service provider." *A person that is not required to be licensed as a manufacturer, supplier, management company or gaming junket enterprise and:*

- (1) provides goods or services to a slot machine licensee or an applicant for a slot machine license for use in the operation of a licensed facility; or*
- (2) provides goods or services at a licensed facility.*

Thus, by definition, a Gaming Service provider could include any person or entity that provides any goods or services to a casino facility whether in the casino, or outside of the casino facility.

However, the General Assembly also amended the Gaming Act to include Section 1317.2, which provides:

§ 1317.2. Gaming service provider.

- (a) Development of classification system.--The board shall develop a classification system governing the certification, registration and regulation of gaming service providers and***

⁹ It is noteworthy that, notwithstanding higher monetary thresholds and waivers of publicly traded companies, registration of employees of those companies remains required if services will be conducted on the gaming floor,

¹⁰ It is also of note that the Board's regulations also exempt from the GSP process, persons and entities otherwise regulated (e.g. banks, utilities, attorneys, etc.). See 58 Pa Code 437a.1(d), below.

individuals and entities associated with them. The classification system shall be based upon the following:

(1) The monetary value or amount of business conducted or expected to be conducted by the gaming service provider with an applicant for a slot machine license or a slot machine licensee in any consecutive 12-month period.

(2) Whether the employees of the gaming service provider will have access to the gaming floor or any gaming-related restricted area of a licensed facility.

(3) The board's analysis of the goods or services provided or to be provided by the gaming service provider.

(b) Authority to exempt.--*The board may exempt any person or type of business from the requirements of this section if the board determines:*

(1) the person or type of business is regulated by an agency of the Federal Government, an agency of the Commonwealth or the Pennsylvania Supreme Court; or

(2) the regulation of the person or type of business is determined not to be necessary in order to protect the public interest or the integrity of gaming.

(c) Duties of gaming service providers.--...

(d) Requirement for permit.--*The board may require employees of a gaming service provider to obtain a permit or other authorization if, after an analysis of duties, responsibilities and functions, the board determines that a permit or other authorization is necessary to protect the integrity of gaming.*

(e) Interim authorization.-- ...

(f) Construction.-- ...

(g) Gaming service provider lists.—...

(h) Emergency authorization.—...

(i) Criminal history record information.--If the classification system developed by the board in accordance with subsection (a) requires a gaming service provider or an individual or entity associated with the gaming service provider to submit to or provide the bureau with criminal history record information under 18 Pa.C.S. Ch. 91 (relating to criminal history record information), the bureau shall notify a slot machine licensee that submitted a certification under subsection (e)(2) whether the applicant has been convicted of a felony or misdemeanor gambling offense.

Thus, by statute, the Board now has the authority to develop a classification system for GSPs based upon:

- The monetary value of goods or service provided;
- whether the employees of the gaming service provider will access the gaming floor or gaming related restricted areas; and
- the Board’s analysis of the goods or services provided.

The Board, however, also has discretionary authority in this area as the Act specifically provided that the Board may exempt any person or type of business if The Board’s analysis of the person or type of business is determined not to be necessary in order to protect the public interest or the integrity of gaming.

A. The Board's Regulations

PGCB Regulation 403a.3 expands on the statutory definition of “gaming service provider”, as set forth above in the Act, to the following:

Gaming service provider—

(i) A person that provides goods or services to a slot machine licensee or applicant, but is not required to be licensed as a manufacturer, manufacturer designee, supplier, management company or gaming junket enterprise.

(ii) The term includes:

(A) Suppliers of alcoholic beverages (if not otherwise regulated by the Pennsylvania Liquor Control Board), food and nonalcoholic beverages.

(B) Refuse handlers.

(C) Vending machine providers and service personnel.

(D) Linen and uniform suppliers.

(E) Janitorial and maintenance companies, not relating to the repair of slot machines or associated equipment.

(F) Tenant businesses or franchises located within licensed facilities.

(G) Providers of transportation services.

(H) Companies, subcontractors and professionals involved in the construction of a facility for a slot machine licensee or applicant.

(I) Lessors of real property or goods.

(J) Other entities which the Board will determine based on detailed analyses by the Board of gaming service provider contracts.

With respect to those who fit the definition of a GSP as contained in the regulation, Chapter 437a of the regulations set forth the regulatory framework.

CHAPTER 437a. GAMING SERVICE PROVIDER CERTIFICATION AND REGISTRATION

- 437a.1. General gaming service provider requirements.*
- 437a.2. Gaming service provider registration applications.*
- 437a.3. Gaming service provider certification applications.*
- 437a.3a. Single transaction waiver.*
- 437a.4. Qualification of individuals and entities.*
- 437a.5. Construction subcontractors.*
- 437a.6. Registration and certification term and renewal.*
- 437a.7. Registered, certified and authorized gaming service provider responsibilities.*
- 437a.8. Authorized gaming service providers list; prohibited gaming service providers.*
- 437a.9. Permission to conduct business prior to certification or registration.*
- 437a.10. Emergency gaming service provider.*
- 437a.11. Slot machine applicants' and licensees' duty to investigate.*

Of particular note in Chapter 437a, is the first section, which provides many of the general requirements.

§ 437a.1. General gaming service provider requirements.

(a) Except as provided in § 437a.10 (relating to emergency gaming service provider), a gaming service provider or person seeking to conduct business with a slot machine applicant or licensee shall apply to the Board for registration if:

(1) The total dollar amount of the goods or services to be provided to a single slot machine applicant or licensee or to multiple slot machine applicants or licensees will be or is anticipated to be equal to or greater than \$100,000 but less than or equal to \$500,000 within a consecutive 12-month period.

(2) The employees of the gaming service provider or person seeking to conduct business with a slot machine applicant or licensee will be working either:

(i) In a restricted area of the licensed facility.

(ii) On the gaming floor unless all of the following conditions are met:

- (A) The employees will be on the gaming floor for less than 24 hours within a 72-hour period no more than once in any consecutive 3-month period.*
- (B) The employees sign-in with the security department at the licensed facility and the Board's casino compliance representatives prior to entering the gaming floor.*
- (C) The gaming service provider has received written approval from the Bureau of Licensing for the gaming service provider's employees to be on the gaming floor.*

(b) Except as provided in § 437a.10, a gaming service provider or person seeking to conduct business with a slot machine applicant or licensee shall apply to the Board for certification if the total dollar amount of the goods or services to be provided to a single slot machine applicant or licensee or to multiple slot machine applicants or licensees will be or is anticipated to be greater than \$500,000 within a consecutive 12-month period.

(c) A person that provides goods or services indirectly to a slot machine applicant or licensee through an intermediary, holding company or affiliate of the slot machine applicant or licensee shall be required to be registered or certified if the cost of the goods or services provided to the slot machine applicant or licensee exceeds the monetary thresholds in subsections (a) and (b).

(d) The following persons are exempt from the gaming service provider registration and certification requirements of this chapter:

(1) Public utilities which provide one or more of the following services to a slot machine applicant or licensee:

- (i) Water.*
- (ii) Sewerage.*
- (iii) Electricity.*
- (iv) Natural gas.*

(2) Insurance companies providing insurance to a slot machine applicant or licensee and its employees.

(3) Employee benefit and retirement plans including incorporated 401K plans and employee stock purchase programs.

(4) National, state or local professional associations that receive funds from the slot machine applicant or licensee for the cost of enrollment, activities and membership.

(5) State, Federal and municipal operated agencies.114

(6) Manufacturers and suppliers of liquor, wine and beer regulated by the Liquor Control Board.

(7) State and Federally chartered banks or savings and loan associations where funds are deposited by slot machine licensees, notwithstanding those sources or transactions provided to a slot machine licensee which require Board approval.

(8) Providers of professional services including accountants, attorneys, engineers and architects, when acting in their respective professional capacities.

(9) Telecommunication service providers.

(10) Shipping services.

(11) Persons that engage in efforts to influence legislative action or administrative action on behalf of a principal for economic consideration.

(12) Schools regulated by the Department of Education.

(13) Professional entertainers, sports figures and other celebrities engaged by a slot machine licensee to appear at a slot machine licensee-sponsored special entertainment or promotional event.

(14) Newspapers, television stations, radio stations and providers of simulcast services that contract with slot machine applicants or licensees.

(15) Professional sports teams of Major League Baseball, the National Hockey League, the National Football League and the National Basketball Association.

(16) Any person not otherwise exempt under this subsection that is licensed by a Federal or state agency if the agency's licensing requirements are determined by the Bureau of Licensing to be substantially similar to those of the Board.

(e) The Board may request information or assurances from any person listed in subsection (d) to determine the validity of the person's exempt status.

(f) Subsection (d) does not relieve a slot machine applicant or licensee of reporting obligations required under §§ 441a.12 and 441a.14 (relating to maintaining agreements; filing of agreements; and master purchasing and disbursement report).

(g) Notwithstanding subsections (a) and (b), a publicly traded corporation or subsidiary thereof will not be required to be registered or certified as a gaming service provider if the publicly traded corporation or subsidiary thereof submits a completed Publicly Traded Gaming Service Provider Form to the Bureau of Licensing accompanied by the filing fee posted on the Board's web site and is authorized. A publicly traded corporation or subsidiary thereof that is authorized to provide goods and services under this subsection shall be required to

(1) Comply with § 437a.7 (relating to registered, certified and authorized gaming service provider responsibilities).

(2) Immediately notify the Bureau of Licensing if the publicly traded corporation or subsidiary thereof ceases to meet the definition of a publicly traded corporation.

(h) A slot machine applicant or licensee shall complete and submit to the Bureau of Licensing a Notification of Material Gaming Service Provider Form prior to compensating a gaming service provider \$15,000 or more within a consecutive 12-month period. A slot machine applicant or licensee will not be required to submit a Notification of Material Gaming Service Provider Form to the Bureau of Licensing if either of the following apply to the gaming service provider to be compensated:

(1) The gaming service provider is exempt under subsection (d).

(2) The gaming service provider is listed on the Board's authorized gaming service provider list.

(i) A gaming service provider of a slot machine applicant or licensee whose compensation does not exceed the monetary thresholds contained in this section or who is otherwise not required to be registered or certified under subsection (d) or (g) may be required to be registered or certified if the Board determines that registration or certification is necessary to protect the integrity of gaming.

At present, there are four “levels” of oversight in place, however, as noted, the monetary thresholds for each level have been increased.

Which category a GSP falls into remains dependent on the amount of income which is generated from business conducted with casinos in a twelve month period.

The four categories which exist today (as well as the general level of vetting, costs and what GSPs are required to do if they fall into each category) are as follows:

1. No oversight – less than \$15,000 in casino generated income.
2. Notification
 - a. \$15,000 to \$100,000 in casino generated income.
 - b. File a notification form certifying the amount of business done with a casino. No vetting or costs
3. Registration
 - a. \$100,000 to \$500,000 in casino generated income.
 - b. \$500 application fee, \$2,000 registration fee and \$60 fee for each principal/employee.¹¹ Valid for 4 years.
 - c. Vetting involves fingerprinting/criminal record checks and credit checks for principals/employees, as well as tax clearance certificate for business
4. Certification
 - a. Over \$500,000 in casino generated income.
 - b. \$2,500 application fee, \$4,000 certification fee, \$1,000 fee for each principal and \$60 fee for each employee.¹² Valid for 4 years.
 - c. Full investigation of company and all principals.

A prospective GSP which does not comply or cooperate with the regulatory oversight requirements will be subject to placement on the Board's publicly-available Prohibited GSP List to notify casinos that the

¹¹ Application fees are meant to, and typically do, cover the costs of investigation unless there are extraordinary "hard costs" incurred by the PGCB, which are billed separately.

¹² See footnote 3.

business entity is not permitted to conduct business with a Pennsylvania Casino. The process is initiated after notice and opportunity to be heard.

A business placed on the Prohibited GSP list may petition the Board's Office of Hearings and Appeals to be removed from the list. The Office of Enforcement Counsel will respond to the Petition and the matter will be taken up by the Board at a public meeting. Typically, the Board will grant the petition if there is no derogatory information about the GSP's suitability, if the GSP has paid all outstanding investigative fees to the Board and subject to the imposition of a \$1,500 administrative fee to remove it from the Prohibited GSP List which was occasioned due to its prior failure to comply or cooperate in the process which led to its placement on the list.

GSP Litigation

Rubino v. PGCB, 1 A.3d 976 (Pa. Commonwealth Ct. 2010). Rubino was a licensed real estate agent seeking to conduct business with MTR Gaming, the parent of Presque Isle Downs in Erie, PA. Rubino filed a petition with the Board relating to a restriction placed on Presque Isle Downs which resulted in his inability to transact business with that entity. In part, Rubino argued that as a real estate agent, he was exempt under the vendor regulations which exempt certain "professionals" from registration and certification requirements.

The Board rejected that argument and held that real estate agents were not within the type of professionals identified in the regulation that required prolonged courses of specialized education at the collegiate level and beyond such as accountants, engineers, attorneys and architects. Therefore, the Board determined that if Rubino wanted to conduct business with

Presque Isle Downs, he had to file an application for vendor certification and successfully undergo a background investigation prior.

On appeal of that decision, the Commonwealth Court noted the considerable weight and deference to an agency's interpretation of a regulation the agency is charged with enforcing and cited that an agency's interpretation of it regulation is controlling unless the interpretation is plainly erroneous, inconsistent with the regulation or statute, or unreasonable. Under this standard, the Court stated that the Board has sole regulatory authority over the conduct of gaming and related activities in the Commonwealth and is vested with broad discretion to administer all aspects of the gaming industry in Pennsylvania. The Court continued, "The Board, as authorized by 4 Pa.C.S. §1102(1), has the responsibility to protect the public by enacting regulations and policing all activities involving gaming. Additionally, the Board via 4 Pa.S.C. §1202(b)(12), has the specific power and duty to issue, approve, renew, revoke, suspend, condition, or deny issuance or renewal of slot machine licenses at its discretion. The vendor registration and certification represented one effort by the board to fulfill this responsibility. In this capacity, the Board determined that real estate agents and brokers are not the type of professional contemplated by the Board's regulations at 58 PA.Code 437a.1(c)(8) and are, therefore, not exempt from the Board's vendor registration and certification requirements. We conclude that the board's interpretation of section 437a.1(C)(8) is both reasonable and consistent with the Board's statutory obligations."

9. Gaming Revenues and Distribution

A. Slot Machines

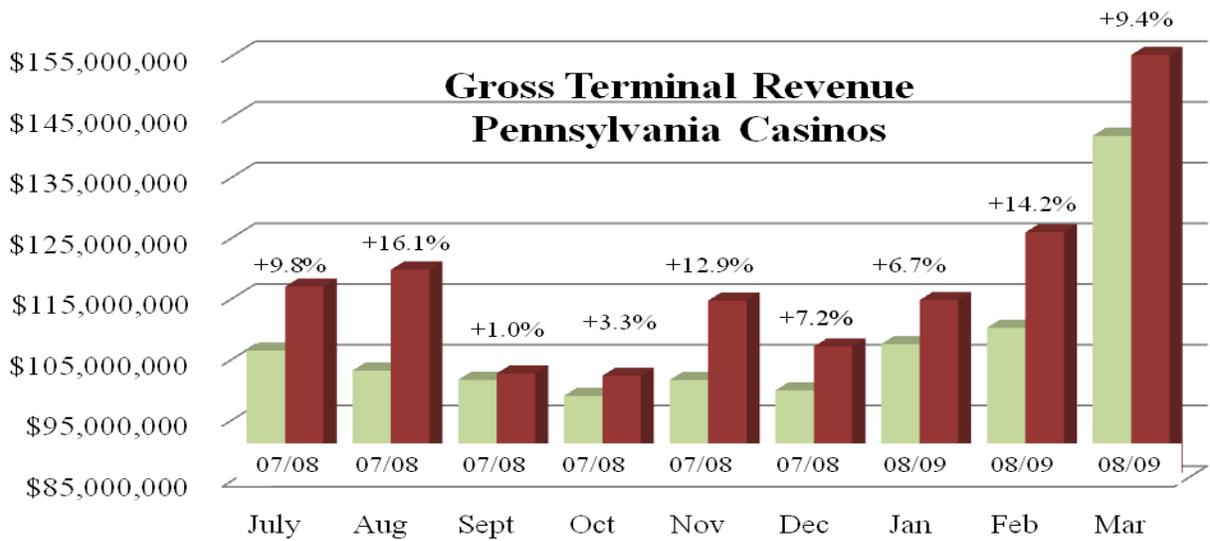
Last year's Gaming Law Update began by addressing the global economic crisis largely responsible for decreasing casino and gaming revenues across the majority of the nation. Despite those trends, Pennsylvania was fortunate enough to actually experience increasing revenues even as casinos in New Jersey and Nevada saw declining patronage and wagers. The 2009-2010 period has continued that trend as Pennsylvania's market continued to grow.

For example, in 2008, New Jersey's overall revenues fell 7.6% and its slot machine revenues declined by 9.6% during that year. Meanwhile, Pennsylvania enjoyed a 55.5% increase in gross terminal revenue in 2008, a period in which the Gaming Control Board continued to oversee and guide the expansion and fulfillment of the tremendous demand of the gaming market in Pennsylvania.

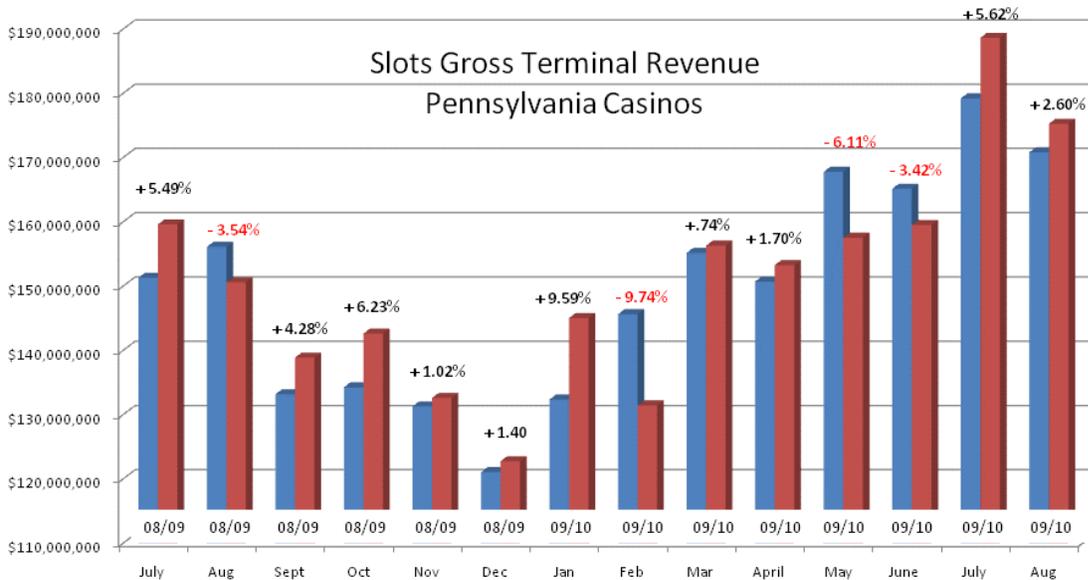
The 2008 increase in Pennsylvania's gross terminal revenue was not simply due to more casinos being open across the Commonwealth. When comparing revenues brought in by Pennsylvania casinos operating in July 2007 thru March 2008 to revenues brought in by those same casinos operating one year later, revenues have increased every single month. Additionally, according to the *Gaming Industry Observer*, Pennsylvania had 4 of the top 5 facilities in terms of East Coast slot performance when ranked by daily win per unit this past winter.

CHART OF REVENUES OVER 1ST TEN YEARS

TO BE INSERTED HERE SIMILAR TO CHART BELOW



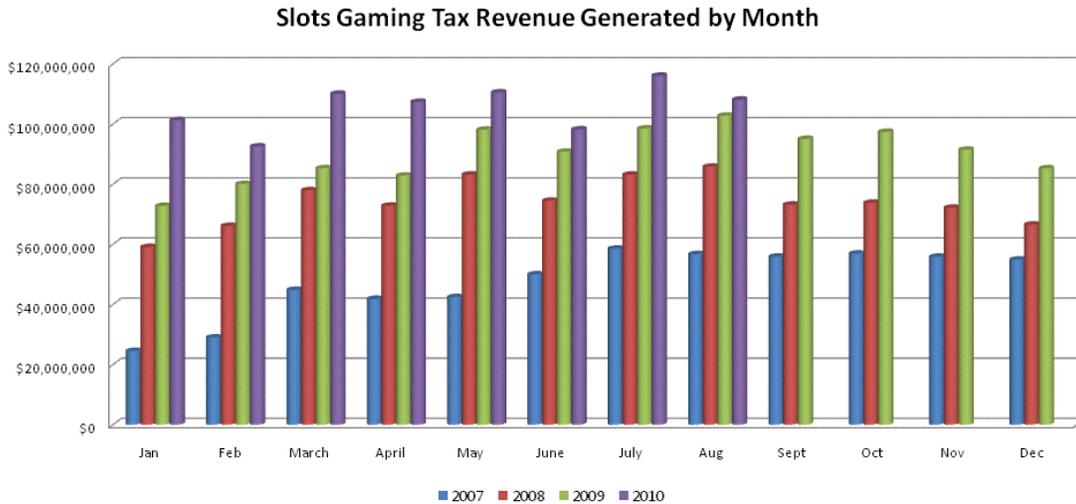
July, August, September and October compares the five open facilities with year over year numbers and excludes Mount Airy Casino Resort and Hollywood Casino at Penn National
 November, December, January and February (2008/2009) compares the six open facilities with year over year numbers and exclude Hollywood Casino at Penn National
 March compares all seven facilities



Comparisons of monthly revenues only include those revenues for casinos which were open and operating during both periods. Thus, the July 08/09 through May 09/10 compares the seven open facilities with year over year numbers and excludes the Sands Casino Resort Bethlehem and the Rivers Casino in Pittsburgh. The time

period of June 09/10 through August 09/10 compares the eight open facilities with year over year numbers and excludes the Rivers Casino in Pittsburgh.

The following chart demonstrates the amount of tax revenue generated by the gross terminal slot machine revenue from the preceding chart. The tax revenue is measured at a combined 55% of GTR.



The revenue figures from slot machines translate into tremendous benefits for Pennsylvanians. The Gaming Act establishes a 34% tax of gross terminal revenue on slot machines which is placed in the State Gaming Fund. As of June 30, 2010, statutory distributions from the State Gaming Fund were made as follows:

- \$125 million in grants to Volunteer Fire Companies
- \$34 million in payments for Forest Reserves
- \$4.5 million for Local Law Enforcement Grants
- \$7.2 million to the Compulsive & Problem Gambling Treatment Fund
- \$3 million in DCED grants to Counties for Administration of Homestead Exemptions

In addition to the distributions listed above, Act 1 of 2010 created a new grant dedicated to funding Drug and Alcohol Addiction programs. As of June 30, 2010, \$3.0 million has been designated for this fund. \$12.5 million more in unused funds of the Local Law Enforcement Grants were moved to the General Fund.

INSERT CHART OF PROPERTY TAX RELIEF

After these statutory distributions are made, the remaining money in the State Gaming Fund is placed into the Property Tax Relief Fund. As in prior years, approximately \$770 million will be disbursed from the Property Tax Relief Fund this year to continue supplementing the property tax burden on Pennsylvania homeowners.

Additionally, the Gaming Act provides for a tax of up to 12% of gross terminal revenue to benefit Pennsylvania's thoroughbred and standardbred horse industry. Through June 30, 2010, \$693.3 million has been deposited into the PA Race Horse Development Fund with \$46 million of that revenue eventually transferred to the General Fund per Act 1 of 2010.

INSERT CHART OF Horse revenues

Further, the Gaming Act provides for a 5% tax of Gross terminal revenue to be placed into the PA Gaming Economic Development and Tourism Fund. These revenues are distributed in accordance with a separately passed capital budget and the distributions are made at the discretion of the Governor as long as they are consistent with the framework of the enacted capital budget. To date it has received \$288.9

million. Finally, the Gaming Act also provides for a local 4% share assessment that provides a stable base of funding to counties and municipalities that host a slot facility within it. Not all recipients of local share funding actually host a facility; the revenue may be distributed to every municipality within a host county.

UPDATE CHART FOR GRAND TOTALS ONLY AND REMOVE YEAR

Gross Terminal Revenue For Fiscal Year 2009/2010

	Fiscal Year 09/10	Grand Total
Wagers Received	\$2,858,854,213.08	\$8,479,945,492.95
Amount Won	\$2,594,736,344.02	\$7,701,687,699.89
Promotional Plays (Internal)	\$41,530,996.44	\$62,123,391.70
Promotional Plays (External)	\$0.00	\$0.00
Adjustments	\$2.40	\$199,149.63
Gross Terminal Revenue	\$222,586,870.22	\$716,333,550.99
State Tax (34%)	\$75,679,535.91	\$243,553,467.82
LSA (4%)	\$8,903,474.80	\$28,653,349.19
EDTF (5%)	\$11,129,343.63	\$35,816,686.68
PRHDF	\$26,703,371.75	\$85,952,994.75

Casino	August 2010	August 2009	% change
Mohegan Sun at Pocono Downs	\$19,155,430.16	\$19,287,503.53	-0.68%
Parx Casino	\$34,017,008.40	\$30,312,468.47	12.22%
Harrah's Chester Casino and Racetrack	\$25,175,687.88	\$25,709,960.86	-2.08%
Presque Isle Downs and Casino	\$16,282,746.89	\$14,954,500.48	8.88%
The Meadows Racetrack and Casino	\$22,527,421.97	\$25,445,174.17	-11.47%
Mount Airy Resort and Casino	\$13,769,468.47	\$14,460,453.24	-4.78%
Hollywood Casino at Penn National Racecourse	\$21,819,358.66	\$20,365,617.89	7.14%
Sands Resort and Casino Bethlehem	\$22,460,296.23	\$20,235,659.16	10.99%
The Rivers Casino	\$21,428,430.30	\$16,164,894.62*	n/a
Statewide Total	\$196,635,848.96	\$186,936,232.42	5.19%

The Gaming Control Board provides weekly updates of casino revenue on its web site, www.pgcb.state.pa.us.

Gaming Tax Comparison

New York	70.3%
Maryland	67.0%
West Virginia	58.0%
Pennsylvania*	55.0%
Delaware	52.0%
New Jersey	9.25%

- Only state above that allows unlimited promotional play to go untaxed.

B. Table Games

On January 7, 2010, the Pennsylvania General Assembly signed omnibus amendments to the Gaming Act. The chief amendment to the Gaming Act was the authorization for slot machine licensees to conduct table games. Allowing table games at licensed facilities has supplemented slot machines, increased tax revenues, created capital investment opportunities and has created jobs.

Ten (10) of the licensed slot machine operators petitioned the Board for table games. Specifically, Petitions for Table Game Certificates were filed and granted for Chester Downs and Marina, Hollywood Casino and Racetrack, the Meadows Casino and Racetrack, Mohegan Sun Casino and Racetrack, Mt. Airy Casino and Resort, Parx Casino, Presque Isle Downs, the Rivers Casino, Sands Bethlehem Casino and Sugarhouse Casino. P.E.D.P/Foxwoods did not file a Petition seeking authorization to conduct table games.

Each of the ten petitions were approved by the Board following public input hearings and Board hearings during the spring of 2010. Each Category 1 and 2 licensee was assessed a \$16,500,000 table game certificate fee while Category 3 operators will pay \$7,500,000. *See* §1361A. Table game revenues are imposed a state tax rate of 14% for the first two years, after which the tax rate was reduced to

12%. *See* §1362A. An additional 2% tax on daily gross table game revenue is imposed as a local share tax, *see* §1363A, for total tax on table game revenue of 16% for two years and then reducing to 14% thereafter. Fully automated electronic gaming tables are taxed at 34%. The tax revenues from table games are deposited in the Commonwealth’s General Fund up to an amount of \$750,000,000 per year and thereafter are deposited in the Property Tax Relief Fund. *See* §1362A. Note that effective July 1, 2016, the General Assembly amended the Tax Code of 1971 to again impose an additional 2% state tax on table game revenues to return the state tax rate to 14% through June 2019 (plus the 2% local share).

B. Revenue – Table Game Play

Table games officially opened at 9 casinos over a three week period in July 2010. Presque Isle Downs, the Rivers Casino and the Meadows Racetrack and Casino opened on July 6, 2010. Mohegan Sun, Mt. Airy Resort and Hollywood Casino opened on July 11, 2010. Chester Downs, Parx Casino and Sands Bethlehem opened on July 16, 2010.

Casino	Number of Tables	July 2010 Gross Revenue	Number of days table games open
Mohegan Sun at Pocono Downs	62	\$1.26 million	20
Parx Casino	57	\$2.32 million	15
Harrah's Chester Casino and Racetrack	99	\$1.97 million	15
Presque Isle Downs and Casino	48	\$1.5 million	25
The Meadows Racetrack and Casino	62	\$1.91 million	25
Mount Airy Resort and Casino	72	\$2.03 million	20
Hollywood Casino at Penn National Racecourse	50	\$1.83	20
Sands Resort and	89	\$1.66 million	15

Casino Bethlehem			
The Rivers Casino	85	\$3.05 million	25
Totals	624	\$17.54 million	-

The success of the initial implementation of slot machines and table games is seen by the number of jobs, the gross gaming revenues and the other tax and fees to municipalities, agricultural interests, fire departments, etc... However, also evidencing the success of the casino industry is the expansion of facilities. Parx Casino build a new casino and then expanded it further. Sands Bethlehem built a hotel, retail mall and entertainment venue. Mohegan Sun has also constructed a hotel and spa. The Meadows Casino has expanded with a number of upgrades to its facility including the construction of a parking structure, an entertainment venue and a nearby hotel. Sugarhouse Casino has built a large parking structure, banquet space and a casino floor expansion. The Rivers Casino is pursuing the expansion of an attached hotel and the remaining facilities have all had varying degrees of capital expenditure improvements including on the gaming floor and in dining and entertainment offerings.

Mt. Airy and the Local Share Uniformity Challenge

The Gaming Act supplies a formula for funding casino host municipalities and counties which, at times, can be somewhat perplexing to understand. See generally 4 Pa.C.S. §1403. Generally, Section 1403(c) creates a “local share assessment” against casino gross slot machine revenue which is then distributed to municipalities and counties which host the casino to offset additional costs incurred through the presence of the casino. With the exception of a casino in Philadelphia, the local share consists of a 2% levy of gross terminal revenue (GTR) to the county and a 2% municipal share or \$10M annually, whichever is greater.

As a result, a casino which does not generate at least \$500M GTR in a year, must pay an additional amount or a “true-up” amount to reach the \$10M minimum payment. In Philadelphia, only a flat 4% of the casinos GTR is paid to the county.

Mt. Airy Casino brought an action challenging the statutory local share assessment as being in violation of the Pennsylvania Constitution’s “uniformity clause”. The theory underlying the claim was that because Mt. Airy (as with all other casinos) did not reach the \$500M GTR threshold, it was required to pay a true up amount at the end of the year to meet the minimum \$10M requirement. Mt. Airy argued that this situation created disparate effective taxation rates for each casino – and hence no uniformity of taxation rate.

The Supreme Court agreed and struck the local share assessment as violating the Uniformity Clause. See 2016 WL 6210519 (9/28/2016). Recognizing, however, that immediate implementation of the decision would likely create severe hardship on municipalities whose current budgets are dependent on the promised \$10M. Therefore, the Court stayed the effective date of its decision for 120 days to permit the General Assembly the opportunity to evaluate potential remedial measures to fashion a constitutional local share assessment.

Since the Court’s decision, three casinos (Mohegan Sun Pocono, Hollywood Casino at Penn National, the Rivers Casino) have entered into agreements with the host communities to maintain the prior level of annual funding in the event the General Assembly does not act to impose a new funding mechanism consistent with the Supreme Court’s directive. Other communities are waiting with the prospect of significant budgetary cuts depending on the actions or inactions of the General Assembly.

10. Job Creation

Significant job creation has accompanied the implementation of table games. Table games, being much more labor intensive than slot machines, have already provided about 4,400 gaming and key employee positions. Additional non-gaming positions, such as in food and beverage have also been added.

Casino	Key Employee VP's and Directors	Managers and Supervisors	Dealers, Pit Clerks, etc.	Security Surveillance Credit	Total
Mohegan Sun at Pocono Downs	1	105	383	54	543
Parx Casino	3	113	346	20	482
Harrah's Chester Casino and Racetrack	1	156	514	20	691
Presque Isle Downs and Casino	1	106	385	22	514
The Meadows Racetrack and Casino	1	121	416	11	549
Mount Airy Resort and Casino	2	92	295	38	427
Hollywood Casino at Penn National Racecourse	1	79	264	18	363
Sands Resort and Casino Bethlehem	1	92	221	10	324

The Rivers Casino	1	103	440	28	572
Total	12	967	3,264	221	4,464

1. Training Standards

Persons desiring to obtain employment as a table game dealer must not only pass typical honesty/character/integrity suitability criteria but must also have attained proficiency standards for specific games in which they seek to become dealers. The Board has established minimum training requirements for all table game dealers. An applicant for a permit must provide proof of satisfactory completion of: a course of curriculum related to dealing games within the past 5 years; a training program offered by a certificate holder which includes curriculum that meets minimum proficiency requirements; or at least 6 months of employment as a dealer within the last 5 years in another gaming jurisdiction. To establish minimum proficiency, a dealer must complete at least 120 hours of training for the game of Blackjack, 160 hours for the game of Craps and Pai Gow, and 80 hours for Roulette and Poker. In addition to the minimum training, a dealer must complete training in recognizing problem gamblers, must be trained in CPR and must complete a table test demonstrating proficiency at the table game.

While it is obviously imperative that an individual successfully complete an appropriate dealer training program in order to be employed by a Pennsylvania casino, it is equally imperative to recognize that even though an individual completes an appropriate dealer training program or otherwise qualifies because of prior experience, the individual must still meet the Board's other qualifications including for suitability under the Board's regulations and the Gaming Act.

For instance, Section 1213 of the Act, as amended in January 2010, now provides that an individual applying for a gaming permit which would include to be a card dealer, cannot have been convicted in any jurisdiction of a felony offense or of a misdemeanor gambling offense, unless 15 years have elapsed from the date of conviction for the offense.

We have stressed to facilities which perform their own in house table game training the need to counsel prospective employees of the requirements of licensure or permitting under the Act prior to undertaking the time consuming training – yet we still continue to see individuals with prior criminal records which exclude them from consideration apply and be denied a work permit.

10. Casino Credit

The Board has promulgated regulations regarding the issuance of credit to a patron by a licensed facility. If a facility offers credit to a patron, the facility must assess the patron's credit worthiness by running consumer and casino credit reports and outstanding balances, verifying bank account information and overall indebtedness. All credit limits must be approved by two or more individuals in the credit department and all decisions must be documented in a patron's credit file.

Once a patron is approved for casino credit, a checking account with the casino is established. A Counter Check is issued to the patron which is exchanged for gaming chips by drawing on the amount of credit available in the checking account. After a hold period of fifteen or thirty days, depending on the value, the Counter Check is deposited into the patron's bank account unless the Counter Check is redeemed or substituted before the deposit date. A patron may access his or her line of credit at any gaming table.

A patron may request the suspension of the patron's credit privileges at all licensed facilities by submitting, in person, a request form to the Board or the credit department of the licensed facility. A licensed facility may issue credit to a patron that has been removed from the voluntary credit suspension list only after re-verifying all credit worthiness information.

In addition to credit for table game players, the January amendment to the Gaming Act permits a slot machine player to also seek a line of credit to play. This is a departure from the prior rules which prohibited credit for slot machine play. A slot player would pursue a line of credit in the same manner as a table game player but has a slightly different process to draw on it.

12. Involuntary Exclusion list

The Board's statutory authority to involuntarily exclude a person from all Pennsylvania casinos can be found at 4 Pa.C.S. §1514. That provision grants the Board broad authority to promulgate regulations in the area of involuntary exclusion so as to further the General Assembly's primary objective to "protect the public through the regulation and policing of all activities involving gaming," 4 Pa.C.S. §1102(1); as well as fulfill the Board's duty to ensure the integrity of gaming in the Commonwealth through the regulation of every aspect of casino operations. 4 Pa.C.S. §1202(a)(1).

Following the directives of Section 1514, the Board promulgated Chapter 511a of the Board's Regulations, 4 Pa. Code Ch. 511a, entitled Persons Required to be Excluded. The nine sections which comprise Chapter 511a establish the criteria for excluding a person, the process to be followed before anyone can be placed on the Board's Involuntary Exclusion List, as well as a mechanism by which an individual can seek to be removed from the list.

Initially, Section 511a.3 establishes broad categories of persons which the Board is expressly authorized to exclude from casinos. Some of these categories are very clear factually, including a person who has been convicted of a crime punishable by more than 1 year in prison or a gambling offense, a person shown to be cheating at a casino game, a persons who has previously been approved by the Board to work in or with a casino, but who has had that approval revoked, and any person who is subject to a court order excluding him or her from casinos. Other categories require more extensive fact-finding. For example, “career or professional offenders” and any person with a known relationship with them, an individual convicted of a crime “involving moral turpitude”, a person who may “pose a threat” to the safety of others on the property, a person who has “disrupted gaming operations”, an individual charged with or convicted of a crime related to the “integrity of gaming operations” and any person who has performed an act or has a “notorious or unsavory reputation” that would “adversely affect public confidence and trust in gaming”. See 58 Pa.Code §511a.3(a).

Suffice is to say, the categories found in Section 511a.3(a) are quite broad. As a result, many also require the Board to additionally find the person’s presence in a casino to be “inimical to the interest of the Commonwealth or of licensed gaming therein, or both..” 58 Pa.Code §511a.3(b). This typically involves the Board finding an incompatibility with public trust in the casino’s operations, the Board’s regulation of casinos, or an enhanced risk of the appearance of unsuitable, unfair or illegal practices occurring at casinos. *Id.*

Of course, before anyone is placed on the Board’s Involuntary Exclusion List, he or she is entitled to due process. As described in the Board’s Regulations at 58 Pa Code §511a.4, The Board’s Bureau of Investigation and Enforcement

(“BIE”), through its legal counsel, the Office of Enforcement Counsel (“OEC”) ¹³, initiates the process by filing a petition seeking exclusion with the Board Clerk at the agency’s Office of Hearings and Appeals (“OHA”) and serves it, by either personal service or certified mail, upon any individual it seeks to exclude. 4 Pa.C.S. §1514(f), 58 Pa. Code §511a.6(a). The petition must clearly identify any person for which exclusion is sought, include the factual basis underlying the petition, 58 Pa Code §511a.4(b), as well as provide notice that the person has a right to request a hearing within 30 days of receipt of the petition. 4 Pa.C.S. §1514(f) and (g).

As is the case in the vast majority of exclusion list cases, if the person subject to the petition does not request a hearing within 30 days after service, all facts alleged in the petition are deemed admitted. 4 Pa.C.S. 1514(g), 58 Pa. Code §511a.6(b). Such admissions do not, however, foreclose someone from seeking judicial review if they are ultimately placed on the List of Excluded persons. 4 Pa.C.S. 1514(g). Although not specifically addressed in the Act, or the Board’s regulations – and therefore not required - in any proceeding seeking placement on the Involuntary Exclusion List in which the person subject to the petition does not request a hearing, OEC will typically file with the Board Clerk, and serve upon the person subject to the petition, a Request for Default Judgment. This serves as the triggering mechanism by which the matter is placed on the Board’s agenda for final disposition.

Of course, when an individual served with a petition seeking his or her placement on the Involuntary Exclusion List seeks a hearing, the process takes a different path. A hearing will be scheduled, typically before a Hearing Officer of

¹³ BIE, and OEC within it, function independent of the Board and essentially act as the “prosecutor” in cases seeking placement on the Board’s Involuntary Exclusion List. See 4 Pa.C.S. §1516.1 and 58 Pa. Code §405a.1. As a result, all ex parte communication prohibitions placed upon the Board apply to such proceedings. See 4 Pa.C.S. §1202.1 and 58 Pa. Code §405a.4.

the Board. 58 Pa. Code §491a.8¹⁴. At the hearing, OEC – which would not have the benefit of any deemed admissions as discussed above - has the “affirmative obligation to demonstrate that the person named in the petition for exclusion satisfies the criteria for exclusion.” 58 Pa. Code §511a.6.

Following closure of the evidentiary record, the Hearing Officer assigned the matter will prepare a written Report and Recommendation (“R & R”), including findings of fact and a recommendation to the Board for disposition of the matter. 58 Pa. Code §§494a.4 and 511a.6(c). Before being forwarded to the Board for final disposition, OHA will wait 15 days from issuance of the R&R so as to allow either party to the proceeding the ability to file “Exceptions” (formal objections) to it. 58 Pa. Code §§494a.1 and 494 a.7. If exceptions are filed by either party, the other party has 15 days from the date of service to file a response thereto. *Id.*

Ultimately, the R&R (with or without exceptions and any response thereto), is forwarded to the Board with all pleadings and the entire evidentiary record. 58 Pa. Code §§494a.5 and 511a.6(c). Soon thereafter, it will be placed on a Board public meeting agenda for final disposition. Although not required by the Act or the Board’s regulations, it has been custom to serve notice upon persons who are the subjects of a R & R, so as to allow them to come before the Board and briefly address the Board prior to a vote on the matter. This brief presentation is not meant to elicit new evidence, but is viewed more as a final argument by the person, or counsel, prior to the Board vote. Notwithstanding that fact, persons who appear may be asked questions by the Board and, if they choose to answer, will be placed under oath. Any unsuccessful party before the Board, thereafter has the right to appeal the Board’s decision to Commonwealth Court. 4 Pa.C.S. §1514(h), 58 Pa. Code §494a.11.

¹⁴ Section 491a.8 also outlines how hearings are conducted before OHA. Generally speaking, they are held consistent with other Commonwealth administrative agency hearings and allow for the receipt of testimony, documentary evidence and the like. See also, 58 Pa. Code §§491a.1 and 491a.2.

Often times, the underlying basis of a petition seeking to place a person on the Board's Involuntary Exclusion List has simultaneously led to the individual being charged with criminal offenses related to alleged misconduct involving a Pennsylvania casino. This, of course, invokes questions of how one would defend in an administrative proceeding without waiving 5th Amendment protections, the impact of an ARD dispositions in any criminal matter, a guilty plea to a non-gaming offense, and the like.

It is first worth noting that OEC very rarely relies solely on the fact that a person is charged with a crime when seeking to place someone on the Involuntary Exclusion List. Rather, the focus of OEC, and, therefore, ultimately the Board, is almost always the underlying facts. As a result, the Board will, invariably, make its decision on these matters on the facts proven, either through deemed admissions when a person fails to defend, or after a hearing on the merits. As a result, ARD dispositions, withdrawn charges, and guilty pleas to lesser offenses often play little role in the outcome of these cases before the Board. Additionally, in deference to a person's 5th Amendment privileges, OHA is typically willing to continue these administrative proceedings pending the disposition of any criminal case. To do so, however, a party must serve notice of an intent to defend, and makes such a request.

Of course, no discussion of the Board's Involuntary Exclusion List would be complete without reference as to how one can seek to be removed from the list. Absent a more specific directive particular to any individual case as described in the Board Order issued in that case, the mechanism to seek removal from the list is a petition filed by the excluded person as described in Section 511a.9 of the Board's Regulations. 58 Pa. Code §511a.9. This provision allows a person to file such a request at any time, however, if the petition is filed within 5 years of being

placed on the list, it is considered an “early consideration”. If an early consideration petition is denied, the requester must thereafter wait until the 5 year period runs before a second request may be made.

Petition’s seeking removal from the Involuntary Exclusion List must be signed by the excluded person, state facts supporting “good cause” for removal from the list and, if necessary, include supporting affidavits. Once filed with OHA, OEC will be notified of the filing and will file an answer outlining its position on the request. If OEC objects, the hearing process described above commences once again, this time with the burden on the person seeking removal from the list, as to why that relief should be granted. If OEC does not object to the removal, the matter will be forwarded to the Board for consideration “on the documents” and the petitioner will receive notice as to when the Board will take up the matter at a public meeting, once again having the opportunity to briefly address the Board , before a vote, if he or she so chooses.

13. Self-Exclusion List

The General Assembly has also provided for a Self-Exclusion mechanism for persons who desire to voluntarily exclude themselves from casinos. Section 1516, List of persons self-excluded from gaming activities, provides that the board shall establish a list of persons self-excluded from gaming activities at all licensed facilities. Any person may request placement on the list of self-excluded persons by acknowledging that the person is a problem gambler and by agreeing that, during any period of voluntary exclusion, the person may not collect any winnings or recover any losses resulting from any gaming activity at licensed facilities. 4 Pa.C.S. §1516.

Chapter 503a of the Board regulations implement Section 1516. 4 Pa. Code Ch. 503a. Pursuant to Regulation 503a.2, an individual who acknowledges that he has a gambling problem may request to be placed on the Board's self-exclusion list by appearing before a Board employee either at a casino or at one of the Board's offices. The individual will be subject to an in-person interview at which time the self-exclusion program and restrictions will be reviewed with the individual and the individual will sign acknowledging the restrictions and releasing the Board from liability as a result of the placement on the self-exclusion list. 4 Pa. Code Ch. 503a.2 (a),(e).

The individual must choose an exclusionary period of one year, five years or a lifetime ban. 4 Pa. Code Ch. 503a.2 (d). At the time of placing oneself on the list, the individual must acknowledge that if he is discovered on the gaming floor, he will be subject to removal and arrest for criminal trespass under 18 Pa.C.S. §3503 and the individuals winnings will be subject to confiscation. 4 Pa. Code Ch. 503a.2 (e)(5). Moreover, if the individual places himself on the list for one or five years, the prohibition of entering the casino remains in place until the individual requests removal from the list after the expiration of the one or five year period; i.e. the individual is not automatically removed from the list at the conclusion of the period and is subject to trespass charge if he attempts to enter without affirmatively being removed by the Board. 4 Pa. Code Ch. 503a.2 (e)(4).¹⁵

Removing oneself from the self-exclusion list is accomplished by scheduling an appointment to request removal after the expiration of the one or five year period. There presently is no right to be removed from the lifetime self-exclusion list. See 4 Pa.Code §503a.5.

¹⁵ Note: during the 2015 legislative session, SB 428 and HB 322 both sought to amend 18 Pa.C.S. §3503, Criminal Trespass, to provide for court referral of persons convicted of trespass in connection with violation of the self-exclusion list for determination if the person has a gambling disorder and whether there is a need for counseling or treatment as part of the sentence or pre-adjudication disposition. Both bills passed their respective chambers and have been referred to the others Chamber's Judiciary Committee's.

The Board's Office of Compulsive and Problem Gambling administers the self-exclusion list. Through June 30, 2016, a total of 10,134 individuals have requested Self Exclusion. 529 of those person have removed themselves from the list and subsequently placed themselves back on the list. ____ have removed themselves completely and ____ persons were on the list as of the end of June 2016.

14. Casino-related Crime

Although much of the initial opposition to legalized casino gambling in Pennsylvania predicted the onslaught of rampant crime permeating the surrounding areas, the reality has been far from that feared. Crime at the casinos has been relatively minor.

Casino Safety and Security

With the passage of Act 1 in January, the legislature added language in Section 1518 regarding criminal acts and their penalties and made it unlawful for an individual to claim, collect or take, or attempt to claim, collect or take, money or anything of value in or from a slot machine, gaming table or other table game device, with the intent to defraud, or to claim, collect or take an amount greater than the amount won, or to manipulate with the intent to cheat, any component of any slot machine, table game or table game device in a manner contrary to the designated and normal operational purpose. *See* 4 Pa.C.S. § 1518(a)(17).

An individual who violates Section 1518(a)(17) commits a misdemeanor of the first degree for the first violation and if convicted shall be sentenced to pay a fine of not less than \$75,000 nor more than \$150,000. An individual who is

convicted of a second or subsequent offense commits a felony of the second degree and shall be sentenced to pay a fine of not less than \$150,000 nor more than \$300,000.

A. Theft

B. Cheating

C. Underage Gambling

The Gaming Act prohibits persons under the age of 21 from operating or using slot machines or playing table games, 4 Pa.C.S. 1207(8), as well as from entering and remaining in any area of a licensed facility where slot machines are operated or the play of table games is conducted. 4 Pa.C.S. 1518(13)(13.1). A violation is a nongambling summary offense which carries a fine not less than \$200 nor more than \$1,000 for a first offense. A second offense escalates fines to not less than \$500 nor more than \$1,500. In addition, community service may be ordered up to 40 hours. 4 Pa.C.S. 1518(b)(3)

15. Practitioner's Resources

A. Filing Documents with the Office of Hearings and Appeals

The Board's regulations now permit electronic filing of all documents with the Board's Clerk. To file documents electronically, email them to:

boardclerk@state.pa.us.

There are no longer any filing fees associated with any filing with the Office of Hearings and Appeals (OHA); however, there are copying fees for documents.

There is a new docketing system when OHA receives a filing. The original filing receives a uniform docketing number that consist of a four digit number and the year. For example: 1400-2010. This number should be used by all parties on subsequent filings with the Board. The docketing system provides the Board's Clerk with the ability to generate appropriate and easily readable Docket Sheets for each matter that is pending before the Board or in the event of an appeal to a court.

After the initial filing and docketing by the Board Clerk's office, it will be filed it and distributed the document internally to appropriate Board staff. If an answer is filed by the Office of Enforcement Counsel or Respondent party within the thirty day time limit, a decision is made by OHA, Office of Chief Counsel and/or the Board on what further action will occur based upon the answer received. Note that the thirty day period to Answer applies to Petitions, except to Petitions to Intervene, which requires an Answer in ten days and Complaints and Motions.

B. Confidential Materials

If a filing contains or has attached to it information that is confidential pursuant to the Gaming Act, regulations or other law, Board regulations require that it be clearly marked as confidential. This can be accomplished by stamping each document or page of a document with a “Confidential” stamp.

Board policy and procedure has been that a party filing confidential information also file a Motion to keep the information confidential. The Motion should set forth the reasons that the information is confidential.

C. Other Pleadings and Next Steps

Motions: preliminary motions; motions for Summary Judgment; and all other motions are governed by 1 Pa. Code §§ 35.117 – 35.180.

Answers to Motions are due within thirty days of service of the motion, unless otherwise prescribed by the Board or Presiding Officer.

To withdraw a pleading see 58 Pa. Code § 493a.7 and 1 Pa. Code § 35.51. All that is necessary to withdraw a pleading is a letter or Notice to Withdraw. This can be a simple one or two sentence letter stating that the party wishes to withdraw the specific pleading. After thirty days, if there are no objections from OEC or other party, OHA will issue a closing Order and the matter will be complete.

After the pleadings are closed, there are multiple options for the next steps.

- The Director of OHA may order a settlement conference.

- The Board may direct OHA to schedule an evidentiary hearing before a Presiding Officer.
- The Board may direct that it hear the Matter on the documents at an upcoming Board meeting.
- The Board may schedule an oral hearing before it at an upcoming Board meeting.

In the event a Complaint is not answered, await the filing of a Request for Default Judgment from OEC and then send to the Board for consideration at an upcoming Board meeting.

D. Role of Presiding Officers and Hearings

1. Presiding Officers

Presiding Officers (Hearing Officers) have the authority to conduct hearings for the Board, rule on procedural matters related to the hearing, hold pre-hearing conferences, issue subpoenas, issue Reports or Reports and Recommendations on matters heard for the Board's consideration.

Presiding Officers may conduct hearings on the following matters:

- Recommendation for denial of licenses, permits, registrations and certifications for any person or entity applying for such with the Board.
- Enforcement Actions filed by OEC counsel.
- Petitions filed by operators and other licensed entities.

- Other miscellaneous matters that come before the Board that may require an evidentiary hearing such as an appeal of a staff action/decision pursuant to 1 Pa. Code § 35.20.

2. Hearings

Hearings conducted by OHA are held in the Hearings and Appeals Office in Harrisburg. The office is located at Strawberry Square in downtown Harrisburg, PA. Parties are permitted to participate by videoconference from our other offices located in Pittsburgh, Scranton and Conshohocken.

All OHA hearings are recorded. Hearings involving the recommended denial of a permit or registration or an objected to withdrawal of an application will be electronically recorded and a CD of the hearing will be available upon request. These recordings will be transcribed upon request or in the event of an appeal to the Commonwealth Court.

The PGCB also provides interpreters as needed for individuals who do not speak or understand English.

Hearings involving Petitions or Complaints for revocation and for any hearing deemed necessary by the Director of OHA will be recorded by a court stenographer. Parties are responsible for asking the court reporter for a copy of the transcript of these types of proceedings.

All hearings are open to the public. Therefore, if there is information that is confidential that may be revealed in testimony during the hearing, it is the parties' responsibility to file a Motion with the Board's Clerk seeking to close the hearing. This should be done in writing in advance of the hearing.

Neither the Board nor the Presiding Officers are bound by the technical rules of evidence during hearings. Relevant evidence of reasonable probative value will be admitted. However, the Walker rule governing the use of hearsay evidence in administrative hearings and the reliance on such evidence to support findings of fact does apply.

E. Board Action

Once a matter is ripe for the Board's review, it will be scheduled to be heard at a public Board meeting. All parties and/or counsel will receive notice of the date, time and place the Board will consider the matter. There are several ways the Board might hear and consider a matter at a public hearing: on the established record; with oral argument only; or during an evidentiary hearing before the full Board at the public meeting. See Appendix for example of Board Review Notice.

The Board's meeting agenda is sent about two weeks before a meeting date. The materials for that meeting agenda are sent to the Board members about one week prior to the scheduled meeting. Agenda items will only be added

after the agenda is set in an extreme emergency. The agenda may shift or an item may be removed from the agenda without much notice.

Applications and other resources may be found on our website at:

www.pgcb.state.pa.us