

ROLL CALL: PENNSYLVANIA

Pennsylvania Gaming Law and Pennsylvania Gaming Control Board Update

BY JEFFREY A. FRANKLIN, ESQ.
RYAN, RUSSELL, OGDEN & SELTZER P.C.
<http://www.RyanRussell.com>

Since the inaugural meeting in December 2004 of the Pennsylvania Gaming Control Board (PGCB or board), we have identified and analyzed issues and trends facing the nascent Pennsylvania slots industry. We are happy to report that since last year's IAGA PA update, the PGCB is reaching a critical transition period, operators and vendors have renewed vigor, and slots are ringing. First we identify the progress made, and then address some potential hurdles for the future. The board addressed the following five critical issues in 2006:

Staffing - After a long-delayed start due primarily to pending litigation, the board added more than 135 employees in 2006 and has reached critical mass with more than 200 employees. The PGCB also expanded its offices in Harrisburg and opened offices in Pittsburgh and Philadelphia. The board selected people who were leading gaming regulators in other states, have gaming experience, come from law enforcement, or know Pennsylvania. Importantly, the board filled all of its key positions including chief counsel.

Regulations – The board adopted more than 550 pages of temporary regulations, which are now under review by the Independent Regulatory Review Commission for inclusion as final regulations of the board. The legislature and Governor Ed Rendell addressed the supplier issue through legislation following a long stale-mate at the board regarding supplier regulations. Pennsylvania's use of extensive regulations in place of regular legislative updates should be more flexible and thus serve the Commonwealth well.

Licensing – A major victory for the PGCB in 2006 was awarding licenses for Category 1 and 2 operators, manufactures, and suppliers. Overall in 2006, the PGCB license unit reviewed 1,503 applications and the board approved six permanent Category 1 and five Category 2 slot facility licenses, 14 manufacturers' licenses, and 19 supplier licenses. While it has yet to issue one Category 1 license and both Category 3 licenses, the board has issued the other eleven.

The board's development of an online application system, State Licensing Online Tracking System (SLOTSlink) is relied upon by slot facility operators to submit gaming and non-gaming applications to the board. Vendors are required to be either registered or certified depending on the dollar amount of business being conducted in a twelve month period.

Investigations and Enforcement – These critical areas have been organized under the Bureau of Investigations and Enforcement (BIE) to ensure the integrity of the Commonwealth's gaming industry. By the end of 2006, 102 registered vendor applications were received, but more than 12,000 such applications are expected to be processed using SLOTSlink in the coming months. BIE performed its duties in 2006 in cooperation with the Pennsylvania State Police, Department of Revenue, and private investigation background companies. As discussed below, BIE may be working much more closely with the Pennsylvania Attorney General's office from now on.

Diversity – Since its inception, the board has emphasized the importance of diversity through, among others, its own staffing and policies, regulations, forums, notices, and application reviews. The board's Chief Diversity Officer participated in preparation of suitability reports concerning the fitness of applicants for licensure.

What challenges lay ahead for the board in 2007 and beyond? Three key issues are the most noteworthy, although the list is far from exhaustive. The pre-eminent challenge for the board is a new one, successfully transforming itself from primarily a licensing entity into its long-term form of regulator, which will involve all three issues below.

Litigation - continues to plague the board. While the primary lawsuit (*Pennsylvanians Against Gambling Expansion Fund, Inc. v. Commonwealth*) causing delay for the board was resolved by the Pennsylvania Supreme Court on June 22, 2005, others are pending and more are always possible, especially with the emotional and politically charged environment that gave rise to gaming in Pennsylvania. On November 1, 2006, Casino Free Philadelphia and others petitioned the Pennsylvania Supreme Court challenging the constitutionality of the gaming act at Docket No. 153 EM 2006. That proceeding is continuing. In addition, unsuccessful applicants and others have appealed to the Pennsylvania Supreme Court concerning several of the PGCB's license awards. The likelihood of additional delay due to litigation is uncertain.

Tension - potential tension between the board, State Police, Department of Revenue, and the Pennsylvania Attorney General's office. Overlapping responsibilities of these entities under the gaming act will require the board to assign responsibilities and mediate differences of opinion. The relevant entities will need to respect the delineation of their responsibilities for successful implementation of gaming. Pennsylvania Senate Bill 862, Act 135 of 2006, expanded the role of the Attorney General in instituting criminal proceedings under the act, as well as modified and clarified the enforcement roles of the board, State Police, and Attorney General.

Fiscal responsibility – The gaming oversight costs are in addition to state taxes and assessments totaling 55 percent of gross terminal revenue. The PGCB's total budget 2005-2006 expenditures were over \$13 million. As the board transitions from licensing entity to regulation enforcer, it expects its staff and other expenses to increase. The board's fiscal year 2007-2008 budget is \$52 million. A significant challenge facing the

PGCB and the other entities is to balance spending sufficient funds to carryout their important tasks while not crippling the nascent gaming industry in Pennsylvania and the benefits to be derived for Pennsylvanians under the gaming act.

Beyond the Board, what challenges lay ahead for the operators in 2007 and beyond? The preeminent challenge may be negotiating the local zoning and land-use minefield. Several other challenges are also discussed below.

Local Zoning - While the primary lawsuit causing delay for the Board was resolved by the Pennsylvania Supreme Court on June 22, 2005 in *Pennsylvanians Against Gambling Expansion Fund, Inc. v. Commonwealth of Pennsylvania* (*PAGE*). *PAGE* brings new challenges to bear for gaming operators, especially with the emotional and politically charged environment that gave rise to gaming in Pennsylvania.

In *PAGE*, the Pennsylvania Supreme Court agreed that Section 1506 of the Pennsylvania Race Horse Development and Gaming Act (gaming act) clearly reflects the legislative intent to override local zoning and land-use provisions to the extent that a licensed facility has been approved by the Board. However, the court concluded that this Section failed to provide adequate standards and guidelines required to constitutionally delegate that power. Thus, the Court severed this Section from the gaming act and local regulation was restored.

The Court left the door open for the legislature to rewrite preemption of local zoning and land-use regulations, but the legislature chose not to do so in SB 862. Unless the legislature and Governor Ed Rendell act, Pennsylvania gaming operations will be subject to local zoning and land-use.

What are the likely consequences of *PAGE* making gaming operations subject to local zoning and land-use? Uncertainty, increased costs, and delay in the implementation of slots under the Gaming Act. In general, the local zoning and land-use process in Pennsylvania involves a zoning officer, a zoning hearing board which may hear and decide applications, the governing body, appeal by aggrieved parties to the county Court of Common Pleas, appeal to the Commonwealth Court of Pennsylvania, and with permission, appeal to the Supreme Court of Pennsylvania (SB 862 streamlined this appeal process). For larger projects, such as the proposed slot venues, this can be a complex, costly, and time consuming process taking months or years to complete. Given the scope of the proposed gaming operations and their emotional nature, local opposition should not be unexpected. While the gaming act originally envisioned the board considering and accepting comments from local residents and governments, local opposition has new outlets and local governments have substantial responsibility to shoulder.

Events unfolding in Philadelphia could be a catalyst for further legislative change. Anti-casino activists submitted a petition in February with about 27,000 signatures requesting an advisory referendum regarding casinos in the May primary ballot asking voters to prohibit casinos near homes, houses of worship, schools, playgrounds, parks,

libraries, and civic centers. Casino opponents are looking to Philadelphia City Councilman Frank DiCicco, who represents the district in which both board licensed casinos would be built in Philadelphia, to lead the charge. In January, he initiated a Rules Committee hearing introducing a seven-bill package of legislation to regulate or ban casinos in Philadelphia. During a February 21, 2007 City Council hearing, City Solicitor Romulo Diaz was reported as saying he would be "hard pressed" to argue in support of the bills because it is "highly unlikely" courts would find some of the proposed legislation lawful. Testimony at the meeting fell along predictable lines, and Council support for the bills remains uncertain.

Pennsylvania Senate Bill 862, Act 135 of 2006, revised the gaming act, Act 71 of 2004, in several significant respects including:

- Eliminates the controversial public officials ownership interest authorization in gaming interests;
- Provides exclusive jurisdiction to the state Supreme Court in zoning and land use decisions by local governments;
- Extends and clarifies the role of the Attorney General and the office's gaming unit in criminal proceedings under the act and clarifies the enforcement roles of the board, State Police, and Attorney General;
- Restricts the board from hiring any person without a full background investigation;
- Codifies the board's code of conduct;
- Requires a waiver of benefits by Category 2 and 3 facility applicants to be located in Keystone Opportunity and related zones;
- Makes the use of suppliers optional, while capping manufacturers' share of slot machines for 2 and ½ years;
- Requires PGCB regulations in cooperation with the Liquor Control Board to ensure sufficient safeguards in licensee provision of complimentary alcoholic beverages at gaming facilities (See also HB 446 (2006) modifying the Liquor Code to authorize free drinks to slots patrons);
- Requires PGCB budget hearing participation and legislative approval;
- Requires various PGCB reports to the legislature concerning the impact of gaming;
- Requires the board to hold public input hearings in municipalities where facilities are to be located; and
- Allows casinos to continue operation in the event of a state budget stalemate.

In addition, the Pennsylvania House has established the **Gaming Oversight Committee**, a standing committee for oversight of the PGCB. The House may be more involved in gaming matters. Co-chairman Rep. Paul Clymer (R-Bucks) said he expects a parade of proposed legislation to mitigate the predicted ill effects of gaming, such as traffic and social disorders. The addition of table games, restrictions on free alcoholic drinks, smoking restrictions, a one or two year stay-out requirement for public officials seeking to be on the board or in the gaming industry, board salary reductions, and requiring casinos to send patrons monthly statements are proposals likely to be debated.

Category 3 licenses - The board expects to reopen the application process for the two Category 3 resort licenses that were not awarded after both applicants withdrew. Some Pennsylvania legislators are considering modifying this category to make it more attractive to potential applicants. Potential modifications include increasing the number of authorized slot machines and eliminating the "guest only" requirement of the current gaming law.

Audits - Pennsylvania Auditor General Jack Wagner has promised gaming will be subject to reviews to ensure the state reaps the benefits the gaming law was designed to provide. He announced that casino hiring practices would be the subject of his department's first audit of the industry. He also stated that the public wants the PGCB to operate effectively and efficiently and that is something his department can and will audit.

Pennsylvania is spinning forward with slots now operating, revenue flowing, licenses largely granted, the board in transition to its long-term regulatory role, the supplier issue behind us, and a renewed sense of optimism by operators and others in the industry that Pennsylvania is really underway. Local control, litigation, fiscal responsibility, and other issues loom, but much progress has been made towards implementing the gaming act in Pennsylvania.

(The author is a partner with Ryan, Russell, Ogden & Seltzer P.C. [www.RyanRussell.com], a Pennsylvania-based law firm that has been representing clients in regulated industries, eminent domain, and land-use for more than 50 years.)

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