

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1562 Session of
2008

INTRODUCED BY ORIE, FUMO, M. WHITE, EARLL, BAKER, PIPPY,
FONTANA, LOGAN, KASUNIC, STACK, VANCE AND WAUGH,
SEPTEMBER 12, 2008

REFERRED TO COMMUNITY, ECONOMIC AND RECREATIONAL DEVELOPMENT,
SEPTEMBER 12, 2008

AN ACT

1 Amending Title 4 (Amusements) of the Pennsylvania Consolidated
2 Statutes, further providing for the Pennsylvania Gaming
3 Control Board and its general and specific powers, for code
4 of conduct, for licensed gaming entity application appeals
5 from board, for license or permit application hearing process
6 and public input hearings, for board minutes and records, for
7 regulatory authority of board and for slot machine license
8 fee; providing for commencement of slot operations in cities
9 of the first class; repealing provisions relating to licensed
10 facility zoning and land use appeals; further providing for
11 political influence restrictions; providing for prosecutorial
12 and adjudicatory functions; and further providing for
13 investigations and enforcement.

14 The General Assembly of the Commonwealth of Pennsylvania
15 hereby enacts as follows:

16 Section 1. Section 1201(h)(4) and (5) and (k) of Title 4 of
17 the Pennsylvania Consolidated Statutes are amended to read:

18 § 1201. Pennsylvania Gaming Control Board established.

19 * * *

20 (h) Qualifications and restrictions.--

21 * * *

22 (4) No member, employee or independent contractor of the

1 board or other agency having regulatory authority over the
2 board or over forms of gaming regulated by this part shall
3 [be employed,] hold any office or position or be engaged in
4 any activity which is incompatible with the position,
5 employment or contract. No member appointed after January 1,
6 2009, shall engage in any business, employment or vocation
7 for which the member shall receive any remuneration except as
8 provided under this part.

9 (5) No member shall be paid or receive any fee or other
10 compensation other than salary and expenses provided by law
11 for any activity related to the duties or authority of the
12 board. [Nothing in this part shall prohibit a member from
13 engaging in any employment or receiving any compensation for
14 such employment that is not connected to or incompatible with
15 his service as a member of the board.]

16 * * *

17 (k) Appointments.--The appointing authorities shall make
18 their [initial] appointments within 60 days of [the effective
19 date of this part.] a vacancy in an office for which such
20 appointing authority is responsible for making an appointment.
21 No appointment shall be final until receipt by the appointing
22 authority of the required background investigation of the
23 appointee by the Pennsylvania State Police which shall be
24 completed within 30 days[.] and until the advice and consent of
25 two-thirds of the members elected to the Senate has been given.
26 No person who has been convicted in any domestic or foreign
27 jurisdiction of a felony, infamous crime or gaming offense shall
28 be appointed to the board.

29 * * *

30 Section 2. Section 1202(a)(4) of Title 4 is amended and

1 subsection (b) is amended by adding a paragraph to read:

2 § 1202. General and specific powers.

3 (a) General powers.--

4 * * *

5 (4) The board shall establish a system of classification
6 and compensation of its employees and shall [not] be subject
7 to the provisions of the act of April 9, 1929 (P.L.177,
8 No.175), known as The Administrative Code of 1929, as to
9 classification and compensation for its employees and conduct
10 its activities consistent with the practices and procedures
11 of Commonwealth agencies.

12 * * *

13 (b) Specific powers.--The board shall have the specific
14 power and duty:

15 * * *

16 (31) To collect and post information on its Internet
17 website of sufficient detail to inform the public of the
18 controlling interests and management structure of the
19 individual or entity which holds the license, including any
20 affiliate, intermediary, subsidiary or holding companies, and
21 all officers, directors and key employees. The posting shall
22 include the names of all persons who own a financial equity
23 share which equals or exceeds 1% in the licensee or any of
24 its affiliates, intermediaries, subsidiaries or holding
25 companies, unless the entity is a publicly held corporation
26 or the equity share consists merely of a financial investment
27 through an entity over which the person has no voting rights
28 or role in governance. The posting shall also include the
29 names of all persons who have voting rights, a role in
30 corporate governance or other managerial power as a director,

1 shareholder or officer with regard to the actions or
2 decisions of the licensee and any affiliate, intermediary,
3 subsidiary or holding company and the extent of that power or
4 voting rights.

5 Section 3. Section 1202.1 of Title 4 is amended by adding
6 subsections to read:

7 § 1202.1. Code of conduct.

8 * * *

9 (c.1) Employment.--No member or executive level employee of
10 the board retained or appointed after January 1, 2009, may
11 accept employment with, nor represent, any person who has any
12 matter before the board for two years after the member or
13 officer leaves employment with the board.

14 * * *

15 (d.1) Referral to State Ethics Commission.--The board shall
16 refer all potential violations of this code of conduct or the
17 provisions of 65 Pa.C.S. Chs. 7 (relating to open meetings) and
18 11 (relating to ethics standards and financial disclosure) to
19 the State Ethics Commission for an advisory opinion under 65
20 Pa.C.S. § 1107 (relating to powers and duties of commission) or
21 for investigation under 65 Pa.C.S. § 1108 (relating to
22 investigations by commission)

23 * * *

24 Section 4. Sections 1204, 1205(a) and 1206(f) of Title 4 are
25 amended to read:

26 § 1204. Licensed gaming entity application appeals from board.

27 [The Supreme Court of Pennsylvania shall be vested with
28 exclusive appellate jurisdiction to] A court of competent
29 jurisdiction may consider appeals of any final order,

30 determination or decision of the board involving the approval,

1 issuance, denial or conditioning of a slot machine license.
2 Notwithstanding the provisions of 2 Pa.C.S. Ch. 7 Subch. A
3 (relating to judicial review of Commonwealth agency action) and
4 42 Pa.C.S. § 763 (relating to direct appeals from government
5 agencies), [the Supreme Court] a court shall affirm all final
6 orders, determinations or decisions of the board involving the
7 approval, issuance, denial or conditioning of a slot machine
8 license unless it shall find that the board committed an error
9 of law or that the order, determination or decision of the board
10 was arbitrary and there was a capricious disregard of the
11 evidence.

12 § 1205. License or permit application hearing process; public
13 input hearings.

14 (a) General rule.--The board's consideration and resolution
15 of all license or permit applications shall be conducted in
16 accordance with 2 Pa.C.S. (relating to administrative law and
17 procedure) or with procedures adopted by order of the board.
18 [Notwithstanding the requirements of 2 Pa.C.S. §§ 504 (relating
19 to hearing and record) and 505 (relating to evidence and cross-
20 examination) as they relate to the conduct of oral hearings, the
21 board may adopt procedures to provide parties before it with a
22 documentary hearing, and the board may resolve disputed material
23 facts without conducting an oral hearing where constitutionally
24 permissible.]

25 * * *

26 § 1206. Board minutes and records.

27 * * *

28 (f) Confidentiality of information.--All information
29 submitted by an applicant pursuant to section 1310(a) (relating
30 to slot machine license application character requirements) [or

1 obtained by the board or the bureau as part of a background
2 investigation from any source] related to an applicant's
3 character requirements shall be considered confidential. Except
4 as provided in section 1517(f) (relating to investigation and
5 enforcement), the information shall be withheld from public
6 disclosure in whole or in part, except that any information
7 shall be released upon the lawful order of a court of competent
8 jurisdiction or, with the approval of the Attorney General, to a
9 duly authorized law enforcement agency or shall be released to
10 the public, in whole or in part, to the extent that such release
11 is requested by an applicant and does not otherwise contain
12 confidential information about another person. [The board may
13 not require any applicant to waive any confidentiality provided
14 for in this subsection as a condition for the approval of a
15 license or any other action of the board.] Any person who
16 violates this subsection shall be administratively disciplined
17 by discharge, suspension or other formal disciplinary action as
18 the board deems appropriate. Confidential information may
19 include:

20 (1) Nonpublic personal information, including telephone
21 numbers, Social Security numbers, educational records,
22 memberships, medical records, tax returns and declarations,
23 actual or proposed compensation, financial account records,
24 creditworthiness or financial condition relating to an
25 applicant, licensee or permittee or the immediate family
26 thereof.

27 (2) Documents and information relating to proprietary
28 information, trade secrets, patents or exclusive licenses,
29 architectural and engineering plans and information relating
30 to competitive marketing materials and strategies which may

1 include customer-identifying information or customer
2 prospects for services subject to competition.

3 (3) Security information, including risk prevention
4 plans, detection and countermeasures, emergency management
5 plans, security and surveillance plans, equipment and usage
6 protocols and theft and fraud prevention plans and
7 countermeasures.

8 (4) Information with respect to which there is a
9 reasonable possibility that public release or inspection of
10 the information would constitute an unwarranted invasion into
11 personal privacy as determined by the board.

12 (5) Records of an applicant or licensee not required to
13 be filed with the Securities and Exchange Commission by
14 issuers that either have securities registered under section
15 12 of the Securities Exchange Act of 1934 (48 Stat. 881, 15
16 U.S.C. § 78a et seq.) or are required to file reports under
17 section 15(d) of the Securities Exchange Act of 1934.

18 (6) Records considered nonpublic matters or information
19 by the Securities and Exchange Commission as provided by 17
20 CFR 200.80 (relating to commission records information).

21 No claim of confidentiality shall be made to any information
22 that is otherwise publicly available.

23 * * *

24 Section 5. Section 1207 of Title 4 is amended by adding a
25 paragraph to read:

26 § 1207. Regulatory authority of board.

27 The board shall have the power and its duties shall be to:

28 * * *

29 (18) Require a surety bond or other form of performance
30 bond from a licensee whose application contained a proposed

1 facility to be considered by the board under section 1325(c)
2 (relating to license or permit issuance) and the facility is
3 to be developed by the licensee.

4 Section 6. Section 1209(a) of Title 4 is amended and the
5 section is amended by adding a subsection to read:

6 § 1209. Slot machine license fee.

7 (a) Imposition.--Except as provided for a Category 3
8 licensed gaming entity under section 1305 (relating to Category
9 3 slot machine license) and subject to the requirements of this
10 section, at the time of license issuance the board shall impose
11 a one-time slot machine license fee to be paid by each
12 successful applicant for a conditional Category 1, a Category 1
13 or a Category 2 license in the amount of \$50,000,000 and
14 deposited in the State Gaming Fund. No fee shall be imposed by
15 the board for a Category 1 license if the applicant has paid a
16 \$50,000,000 fee for a conditional Category 1 license. The board
17 may require that no applicant borrow or otherwise encumber the
18 fee paid by the applicant.

19 * * *

20 (g) Forfeiture of slot machine license fee.--The provisions
21 of this section shall not be deemed to limit the board's power
22 to require forfeiture of fees in the event of default or
23 revocation of an applicant in its authorization to conduct its
24 approved activities pursuant to section 1326(b) (relating to
25 license renewals).

26 Section 7. Title 4 is amended by adding a section to read:
27 § 1306.1. Commencement of slot operations in cities of the
28 first class.

29 The board shall not authorize the operation of slot machines
30 at a licensed facility within a city of the first class that

occupies, in whole or in part, submerged lands of the
Commonwealth, until such time as the licensed gaming entity has
obtained an easement, right-of-way, license or lease pursuant to
an act of the General Assembly, enacted following the effective
date of this section, and has made payment to the Commonwealth
for the occupancy of the submerged lands in an amount
established by the General Assembly.

Section 8. Section 1506 of Title 4 is repealed:

[§ 1506. Licensed facility zoning and land use appeals.

In order to facilitate timely implementation of casino gaming as provided in this part, notwithstanding 42 Pa.C.S. § 933(a)(2) (relating to appeals from government agencies), the Supreme Court of Pennsylvania is vested with exclusive appellate jurisdiction to consider appeals of a final order, determination or decision of a political subdivision or local instrumentality involving zoning, usage, layout, construction or occupancy, including location, size, bulk and use of a licensed facility. The court, as appropriate, may appoint a master to hear an appeal under this section.]

Section 9. Section 1513(a) of Title 4 is amended to read:

§ 1513. Political influence.

(a) Contribution restriction.--The following persons shall be prohibited from contributing any money or in-kind contribution to a candidate for nomination or election to any public office in this Commonwealth, or to any political party committee or other political committee in this Commonwealth or to any group, committee or association organized in support of a candidate, political party committee or other political committee in this Commonwealth:

(1) An applicant for a slot machine license,

1 manufacturer license, supplier license, principal license,
2 key employee license or horse or harness racing license.

3 (2) A slot machine licensee, licensed manufacturer,
4 licensed supplier or licensed racing entity.

5 (3) A licensed principal or licensed key employee of a
6 slot machine licensee, licensed manufacturer, licensed
7 supplier or licensed racing entity.

8 (4) An affiliate, intermediary, subsidiary or holding
9 company of a slot machine licensee, licensed manufacturer,
10 licensed supplier or licensed racing entity.

11 (5) A licensed principal or licensed key employee of an
12 affiliate, intermediary, subsidiary or holding company of a
13 slot machine licensee, licensed manufacturer, licensed
14 supplier or licensed racing entity.

15 (6) A person who holds a similar gaming license in
16 another jurisdiction and the affiliates, intermediaries,
17 subsidiaries, holding companies, principals or key employees
18 thereof.

19 (7) A licensed entity representative.

20 * * *

21 Section 10. Title 4 is amended by adding a section to read:

22 § 1516.1. Prosecutorial and adjudicatory functions.

23 The board shall adopt administrative regulations necessary to
24 prevent commingling of the prosecutorial functions of the Bureau
25 of Investigations and Enforcement as set forth in section 1517
26 (relating to investigations and enforcement) and the
27 adjudicatory functions of the board.

28 Section 11. Section 1517(c.1) of Title 4 is amended to read:

29 § 1517. Investigations and enforcement.

30 * * *

1 (c.1) Powers and duties of Attorney General.--Within the
2 Office of Attorney General, the Attorney General shall establish
3 a gaming unit. The unit shall investigate and institute criminal
4 proceedings as authorized by subsection (d). The Attorney
5 General may also investigate and prosecute or assist the board,
6 the Bureau of Investigations and Enforcement, the State Ethics
7 Commission or the Pennsylvania State Police in the investigation
8 and prosecution of violations of the code of conduct established
9 in section 1202.1 (relating to code of conduct), the provisions
10 of this section and section 1517.2 (relating to conduct of
11 public officials and employees) or the provisions of 65 Pa.C.S.
12 Chs. 7 (relating to open meetings) and 11 (relating to ethics
13 standards and financial disclosure).

14 * * *

15 Section 12. This act shall take effect in 60 days.