

SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

BILL NO.

Senate Bill 1088

PRINTER'S NO.

1482

AMOUNT

Minimal cost to the Commonwealth

FUND

State Gaming Fund

DATE INTRODUCED

Sept. 14, 2009

PRIME SPONSOR

Senator Earll

HISTORY OF BILL

Referred to COMMUNITY, ECONOMIC & RECREATIONAL DEVELOPMENT,
Sept. 14, 2009

Reported as amended, Sept. 16, 2009

First consideration, Sept. 16, 2009

Second consideration, Sept. 17, 2009

Re-committed to COMMUNITY, ECONOMIC & RECREATIONAL DEVELOPMENT,
Sept. 23, 2009

Re-reported as amended, Oct. 8, 2009

Re-referred to APPROPRIATIONS, Oct. 8, 2009

Re-reported as committed, Oct. 9, 2009

DESCRIPTION AND PURPOSE OF BILL

Senate Bill 1088 amends the Pennsylvania Race Horse Development and Gaming Act (Part II of Title 4) by providing for omnibus gaming reforms with regard to the regulation of the Pennsylvania slot machine and table game gaming industry.

Section 1102 of the act regarding legislative intent is amended by adding language which emphasizes that the General Assembly has a compelling interest to protect the integrity of the electoral and legislative processes by preventing corruption and the appearance of corruption that may arise through permitting campaign contributions by the gaming industry. The legislative intent section is further amended by adding language to completely ban campaign contributions by certain individuals and entities subject to the act.

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The legislation amends section 1103 of the act (definitions) by making a technical correction to the term "conviction" with regard to an order of Accelerated Rehabilitative Disposition. The term "executive-level public employee" is relocated, as is the term "licensed entity representative". The term "licensed entity" is amended to be interchangeable with the term "licensee". The definition section is further amended to add the term "trustee", which is defined as "an individual appointed by the Pennsylvania Gaming Control Board to manage and control the operations of a licensed facility ... to preserve the viability of a licensed facility and the integrity of gaming in this Commonwealth."

Senate Bill 1088 adds section 1201(h)(4.1) to prohibit Board members from engaging in any business or holding outside employment (applies to future members only). Section 1201(h)(7.1) is amended by extending the financial interest prohibition applicable to Board members and immediate family from one year to two years. Section 1201(h)(10) clarifies that a former Board member cannot appear before the Board or participate in any other proceeding for two years from their term of office, and § 1201(h)(11) prohibits Board members, employees or independent contractors of the Board from receiving a complimentary service or prize for a period of two years.

The legislation also addresses the revolving door issue by extending post-employment prohibitions on Board employees (including attorneys) from one to two years. Employees and independent contractors of the Board must sign an affidavit agreeing to the ban as a condition of employment or contract. Further restrictions are imposed by providing that any member, employee or independent contractor who is removed from the Board or terminated may have no dealings with gaming for a period of five years.

Senate Bill 1088 requires appointing authorities to fill a vacancy on the Board within 60 days. A new section 1201(m.1) is added, which provides that in the event of a budget impasse or fiscal crisis, employees of the Board, Department of Revenue, the Pennsylvania State Police and the Office of Attorney General who are involved in the regulation and oversight of gaming are not subject to furlough.

The legislation amends section 1202(a)(2) by prohibiting the Board from taking final action in filling the positions of executive director of the Board, director of the bureau, chief counsel of the Board or director of the Office of Enforcement Counsel until receipt and review

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of the results of the background investigation conducted by the Pennsylvania State Police.

Section 1202(a)(4) regarding employees is repealed and a new section 1202(a)(4.1) is added, which requires the Board to create a classification and compensation system, subject to the provisions of the Administrative Code, for future Board personnel.

Section 1202(b) of the act, regarding specific powers of the Board, is amended to strengthen the Board's subpoena powers. Section 1202(b)(23) strengthens the suitability standard for licensees by clarifying that an applicant must demonstrate "by clear and convincing evidence" that the applicant is a person of good character, honesty and integrity.

The legislation adds new section 1202(b)(31) that requires the Board to collect and post information on its Internet website regarding the slot machine licensee controlling interest and ownership interest.

A new section 1202(b)(32) authorizes the Board to appoint a trustee as prescribed further in new section 1332 (relating to appointment of trustee). Section 1202(b)(33) is added which allows the Board to consult with the State Ethics Commission and other governmental agencies in developing regulations to govern the postemployment limitations and restrictions of Board employees. The Board shall consult with the Administrative Office of the Pennsylvania Courts regarding postemployment limitations and restrictions with employees of the Board who are members of the Pennsylvania Bar.

Section 1202.1(c) regarding restrictions on the Board, and new sections 1202.1(c.1) and (c.2) regarding prohibitions on the Board, provide procedures for disclosing ex parte communications and establishes a recusal process for Board members, employees, and hearing officers.

Senate Bill 1088 establishes a new section 1202.2 regarding expenses by Board members and employees. Reimbursements for expenses are limited to actual and reasonable expenses, with receipts required for expenses exceeding \$10. In addition, a new section 1211(a.3) requires the monthly and annual posting of Board expenses attributable to members and employees on its Internet website.

Section 1205(b) regarding public input hearings is amended to require at least one public input hearing prior to issuing or renewing a slot

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machine license or approving the structural redesign of a licensed facility located in a city of the first class (i.e. Philadelphia). Furthermore, the hearing shall be held in the municipality where the facility will be or is located, and new section 1205(b)(4) requires the Board to establish a public comment period during the hearing.

The legislation amends section 1206(f) regarding confidentiality of information by establishing and identifying categories of confidential information, and by clarifying that nothing prohibits the Board from seeking a voluntary waiver of confidentiality by the applicant. Also, no claim of confidentiality shall be made regarding any information from a criminal history record check that is available to the public under 18 Pa.C.S. § 9121(b). No claim of confidentiality shall be made regarding any record in possession of the Board that is otherwise publicly available from a Commonwealth agency, local agency or other jurisdiction.

Section 1207(4) is amended by increasing the time period in which a licensed entity must submit audited financial statements and related information from 60 to 90 days after the end of the licensee's fiscal year.

Various pertinent sections of the act are amended so that all permits and licenses are shifted from a one-year to a three-year renewal period. When the renewal period is three years instead of one, the annual fee for renewal shall be trebled.

Section 1213 relating to license or permit prohibition is amended to strengthen the felony ban provisions of the act by setting forth a lifetime ban on applicants with a felony conviction who seek a principal or key employee license. The stricter ban is prospective only, and the existing 15-year ban remains in place for all other license or permit applications.

The legislation adds new section 1308(a.1), which requires that all applicants for a license or permit fully disclose all arrests and criminal convictions, including expungements, guilty pleas, pardons, etc., which the Board may consider when analyzing an applicant's suitability. In addition, section 1310(a) is amended by adding a new paragraph, which requires the Board to consider convictions that have been expunged, overturned, pardoned, etc. as part of the review concerning an applicant's suitability. New section 1310(d) is added to require that all slot machine, principal, and key employee applicants apply to the

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Federal Government for records under the Freedom of Information Act and submit the full record received to the Board.

The legislation amends section 1328 of the act regarding change in ownership or control of a slot machine licensee by requiring that the new fee be paid upon assignment and actual change of control or ownership. Section 1329 is amended to address the portability and relocation of a slot machine license by clarifying and expanding the provisions regarding relocating a licensed facility. Section 1329 now requires specific evaluation criteria, requires a public input hearing, and prohibits the Commonwealth from providing any grants or loans to the licensee to facilitate the relocation.

Section 1332 is added with regard to the appointment, qualifications and powers of a trustee.

The legislation adds section 1407(e), which requires the Office of the Budget, in cooperation with the Department of Community and Economic Development, to submit an annual report to the General Assembly regarding distributions from the Pennsylvania Gaming Economic Development and Tourism Fund ("PGEDTF"). New section 1407(f) requires that any entity that receives money from the PGEDTF shall submit a report to the Office of the Budget and General Assembly regarding distribution of funds received.

Section 1407(g) is added to clarify that following the distribution to Allegheny County of \$42.5 million from the PGEDTF for the Allegheny County airport, all remaining funds shall be distributed directly to the airport authority.

Section 1516.1 is added, which requires the Board to adopt regulations and procedures necessary to ensure that the Bureau of Investigations and Enforcement's ("BIE's") investigatory and prosecutorial functions are not commingled with the adjudicatory functions of the Board.

Language is added in section 1517 to clarify that BIE may conduct reviews of a licensed entity as opposed to full audits. The legislation provides that the Office of Enforcement Council within BIE is authorized to petition the Board for the appointment of a trustee.

Section 1517(c) regarding the powers and duties of the Pennsylvania State Police is amended by adding new subsection (1.1), which requires the State Police to promptly conduct a background investigation on an individual selected by the Board to fill the position

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of executive director of the board, director of the bureau, chief counsel of the Board or the director of the Office of Enforcement Counsel and submit the results to the Board. New subsection (14) is added, which requires the State Police Commissioner to submit a report to the General Assembly by March 1 of each year summarizing law enforcement activities at each licensed facility during the previous calendar year.

The legislation adds a new section 1518.1 regarding report of suspicious transactions, which is reserved.

New section 1518.2 is added, which allows the chief enforcement counsel to petition the Commonwealth Court for authorization to review or obtain information in the possession of an agency in this Commonwealth by averring specific facts demonstrating that the agency has in its possession information material to a pending investigation or inquiry being conducted by the bureau and that disclosure or release is in the best interest of the Commonwealth.

This act shall take effect immediately.

FISCAL IMPACT:

Costs associated with the Pennsylvania Gaming Control Board's duties under this act are expected to be minimal and capable of being absorbed within existing fiscal resources. In addition, the extension of license renewals from one to three years may have the effect of easing the administrative costs associated with annual license renewals, thereby offsetting other minor costs that may occur.

Any costs associated with the reporting requirements of the Pennsylvania State Police are expected to be minimal and should not require additional resources. Presumably, the State Police is presently maintaining most, if not all, of the information required in the report. The requirement for the State Police to conduct background investigations for key Board staff should have little fiscal impact in Fiscal Year 2009-10. The key positions are presently filled, and so no new investigations should be needed in the near future.