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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 805 Session of  
2009

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INTRODUCED BY ORIE, FARNESE, ALLOWAY, RAFFERTY, BROWNE, VANCE,  
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APRIL 23, 2009

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REFERRED TO COMMUNITY, ECONOMIC AND RECREATIONAL DEVELOPMENT,  
APRIL 23, 2009

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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; providing for  
11 prosecutorial and adjudicatory functions; and further  
12 providing for investigations and enforcement.

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

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

17 § 1201. Pennsylvania Gaming Control Board established.

18 \* \* \*

19 (h) Qualifications and restrictions.--

20 \* \* \*

21 (4) No member, employee or independent contractor of the  
22 board or other agency having regulatory authority over the

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

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

15 \* \* \*

16 (k) Appointments.--The appointing authorities shall make  
17 their [initial] appointments within 60 days of [the effective  
18 date of this part.] a vacancy in an office for which such  
19 appointing authority is responsible for making an appointment.

20 No appointment shall be final until receipt by the appointing  
21 authority of the required background investigation of the  
22 appointee by the Pennsylvania State Police which shall be  
23 completed within 30 days[.] and until the advice and consent of  
24 two-thirds of the members elected to the Senate has been given.

25 No person who has been convicted in any domestic or foreign  
26 jurisdiction of a felony, infamous crime or gaming offense shall  
27 be appointed to the board.

28 \* \* \*

29 Section 2. Section 1202(a)(4) of Title 4 is amended and  
30 subsection (b) is amended by adding a paragraph to read:

1 § 1202. General and specific powers.

2 (a) General powers.--

3 \* \* \*

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

11 \* \* \*

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

14 \* \* \*

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

1 decisions of the licensee and any affiliate, intermediary,  
2 subsidiary or holding company and the extent of that power or  
3 voting rights.

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

6 § 1202.1. Code of conduct.

7 \* \* \*

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

13 \* \* \*

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

22 \* \* \*

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

25 § 1204. Licensed gaming entity application appeals from board.

26 [The Supreme Court of Pennsylvania shall be vested with  
27 exclusive appellate jurisdiction to] A court of competent  
28 jurisdiction may consider appeals of any final order,  
29 determination or decision of the board involving the approval,  
30 issuance, denial or conditioning of a slot machine license.

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

11 § 1205. License or permit application hearing process; public  
12 input hearings.

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

24 \* \* \*

25 § 1206. Board minutes and records.

26 \* \* \*

27 (f) Confidentiality of information.--All information  
28 submitted by an applicant pursuant to section 1310(a) (relating  
29 to slot machine license application character requirements) [or  
30 obtained by the board or the bureau as part of a background

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

18 Confidential information may include:

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

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

1 prospects for services subject to competition.

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

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

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

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

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

22 \* \* \*

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

25 § 1207. Regulatory authority of board.

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

27 \* \* \*

28 (18) Require a surety bond or other form of performance  
29 bond from a licensee whose application contained a proposed  
30 facility to be considered by the board under section 1325(c)

1 (relating to license or permit issuance) and the facility is  
2 to be developed by the licensee.

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

5 § 1209. Slot machine license fee.

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

18 \* \* \*

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

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

28 The board shall not authorize the operation of slot machines  
29 at a licensed facility within a city of the first class that  
30 occupies, in whole or in part, submerged lands of the



1 Commonwealth, until such time as the licensed gaming entity has  
2 obtained an easement, right-of-way, license or lease under an  
3 act of the General Assembly, enacted following the effective  
4 date of this section, and has made payment to the Commonwealth  
5 for the occupancy of the submerged lands in an amount  
6 established by the General Assembly.

7 Section 8. Section 1506 of Title 4 is repealed:

8 [§ 1506. Licensed facility zoning and land use appeals.

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

19 Section 9. Title 4 is amended by adding a section to read:

20 § 1516.1. Prosecutorial and adjudicatory functions.

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

26 Section 10. Section 1517(c.1) of Title 4 is amended to read:

27 § 1517. Investigations and enforcement.

28 \* \* \*

29 (c.1) Powers and duties of Attorney General.--Within the  
30 Office of Attorney General, the Attorney General shall establish

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

12 \* \* \*

13 Section 11. This act shall take effect in 60 days.