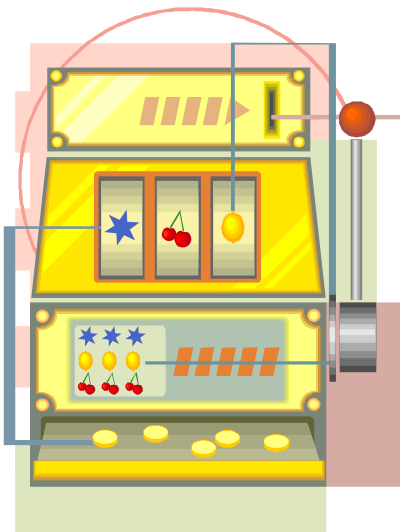


Pennsylvania Racehorse Development and Gaming Act

-4 Pa.C.S. §1101 et seq.

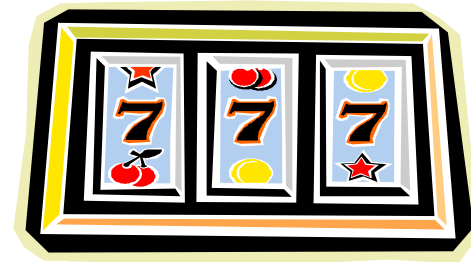
-“Act 71”



Ira C. Gubernick, Esquire
Brian F. Vrabel (admission pending)

Today's Discussion

- n Background of Act 71
- n Pennsylvania Gaming Control Board
- n Licensing
- n Special Provisions
 - n Taxes and Fees
 - n Political Limitations
 - n Facility Zoning Appeals
 - n Slot Machine Suppliers
 - n Current Status of Facilities
 - n Continuing Developments





Background of Act 71

Purpose of the Act

- n The primary objective of this Act to which all other objectives and purposes are secondary is to protect the public through the regulation and policing of all activities involving gaming.
- n Provide a significant source of new revenue to support property tax relief, wage tax reduction, economic development opportunities and other similar initiatives.
- n Enhance the further development of the tourism market throughout this Commonwealth.

History of the Act

- n Act 71 started as HB 2330, introduced on February 3, 2003, entitled: "An Act Providing for the Duties of the Pennsylvania State Police Regarding Criminal History Background Reports for Persons Participating in Harness or Horse Racing."
- n Original bill dealt exclusively with the State Police providing assistance to the State Harness and Horse Racing Commissions by providing criminal history checks and verifying fingerprints for licensing under the Race Horse Industry Reform Act of 1981.
- n Original bill was one page in length.

History of the Act

- n After three considerations in the House and two in the Senate, the bill was amended and the title was changed. Finalized on Thursday, July 1, 2004, the bill was 145 pages including seven chapters and 86 sections.
- n The following Saturday, the House voted and signed the bill followed by passage in the Senate on Sunday.
- n The bill was signed into law on Monday, July 5, 2004 as Act 71 by Governor Rendell.

History of the Act

- n Challenges to the Act at the PA Supreme Court
 - n 5 months after passing, on December 10, 2004, suit was filed challenging the constitutionality of the Act.
 - Challenged validity under “one subject” requirement
 - Challenged that subject of the bill was not clearly expressed in the title
 - Challenged that legislature changed original purpose of the bill
 - n Most of the Petitioner’s challenges were defeated, in the opinion dated June 22, 2005, and a majority of the Gaming Act survived this constitutional challenge.

History of the Act

- n Challenges to the Act at the PA Supreme Court
 - n As a result of the challenge, the following provisions were removed:
 - Sections earmarking revenues for the Volunteer Fire Company Grant Program (1408(b)) and for benefits under the Forest Reserves Municipal Financial Relief Law (1408(d)) because they were not related to the general subject of the Gaming Act and were not addressed in separate legislation
 - Section 1903(a)(2) repealing a portion and not an entire section of the Liquor Code prohibiting thoroughbred and harness racing licensees who also have slots from giving away or selling below cost alcoholic beverages

History of the Act

- n Contents of the Act:
 - n Creation of the Pennsylvania Gaming Control Board;
 - n Issuance of gaming licenses;
 - n Authorization for the creation of a variety of slot machine casinos;
 - n Guidance on generation and distribution of revenues from licensing;
 - n Creation of Gaming Fund, PA Horse Race Fund, Gaming Economic Development and Tourism Fund, Property Tax Relief Fund and the Compulsive and Problem Gambling Treatment Fund;
 - n Establishment of an Administrative and Enforcement arm; and
 - n Providing exclusive jurisdiction in the PA Supreme Court for disputes over issuance of licenses and challenges to the Gaming Act.



PA Gaming Control Board

PA Gaming Control Board

- n Administrative agency created from scratch to oversee gaming in PA
- n First new agency in PA in over 30 years
- n Established in 2004

PA Gaming Control Board

- n Board composition (Section 1201)
 - n Voting members:
 - Three appointed by the Governor
 - One appointed by each of:
 - President pro tempore of the Senate
 - Minority Leader of the Senate
 - Speaker of the House of Reps
 - Minority Leader of the House of Reps
 - n Ex officio non-voting members:
 - Secretary of Revenue
 - Secretary of Agriculture
 - State Treasurer
- n Key Provision: Licensing award decisions (1201(f)):
 - n Approval and Issuance of slot casino licenses - A "Qualified Majority" vote consisting of at least one gubernatorial appointee and the four legislative appointees

PA Gaming Control Board

n Initial board members

n Voting members

- Thomas "Tad" Decker, Chairman, appointed by Gov. Rendell
- Mary DiGiacomo Colins, appointed by Gov. Rendell
- Sandford Rivers, appointed by Gov. Rendell
- Kenneth T. McCabe, appointed by President pro tempore of the Senate Robert C. Jubelirer (R)
- William Conaboy, appointed by State Senate Minority Leader Robert J. Mellow's (D)
- Joseph W. "Chip" Marshall III, appointed by Speaker of the House John M. Perzel (R)
- Jeff Coy, appointed by Min. Leader of the House H. William DeWeese (D)

n Nonvoting members

- Dennis Wolff, Secretary of Agriculture
- Barbara Hafer, State Treasurer
- Greg C. Fajt, Secretary of Revenue

PA Gaming Control Board

n Changes to Board

n Voting members

- Mary DiGiacomo Colins, appointed by Gov. Rendell to replace Thomas Decker as Chairman (August 2007)
- James P. Ginty, appointed by Gov. Rendell, to replace Mary Colins' seat (September 2007)
- Ray Angeli, appointed by State Senate Minority Leader Robert J. Mellow's (D), to replace William Conaboy (March 2006)
- Gary A. Sojka, appointed by Min. Leader of the House Sam Smith (R) (January 2007)

n Non-voting members

- Robin Wiessmann, State Treasurer
- Thomas W. Wolf, Secretary of Revenue

PA Gaming Control Board

- n Board powers
 - n Maintain general and sole regulatory authority over the conduct of gaming (1202)
 - Oversee the operation and authorization of slot machines.
 - Issue licenses to operators, suppliers, manufacturers, key personnel and employees
 - n Establish the structure of the agency to oversee and administer duties under the Gaming Act (1202)
 - Hire employees
 - n Establish temporary regulations for the prompt implementation of the Act's mandates (1203)
 - n Adopt a Code of Conduct (1202.1)
 - n Levy and collect fees and fines (1208)

PA Gaming Control Board

n Executive Staff

- n [Anne LaCour Neeb](#) Executive Director
- n [Frank T. Donaghue](#) Chief Counsel
- n [Eileen H. McNulty](#) Chief Financial Officer
- n [Mozelle E. Daniels](#) Chief Diversity Officer
- n [Doug Harbach](#) Director of Communications
- n [Susan Hensel](#) Director of Licensing
- n [Nanette L. Horner](#) Director of the Office of Compulsive and Problem Gambling

- n [David J. Kwait](#) Director of Investigations and Enforcement

- n [Linda Lloyd](#) Director of Hearings and Appeals
Cyrus Pitre Chief Enforcement Counsel

- n [Melinda Tucker](#) Director of Racetrack Gaming
- n [Michael Walsh](#) Director of Administration

Licensing



Licensing - Overview

- n Three distinct classifications for gaming entities (1301)
 - n Category 1 Slot Machines (1302)
 - Permits a person to operate slot machines at a licensed racetrack facility
 - No more than 7 licensed facilities (1307)
 - May issue additional licenses as Category 2 if less than 7 Category 1 licenses are applied for within 5 years of the Act's passage
 - n Category 2 Slot Machines (1304)
 - Permits a person to operate slot machines in a designated city or tourist location (stand-alone casino)
 - No more than 5 licensed facilities (unless increased because less than 7 Category 1 licenses are issued) (1307)
 - n Category 3 Slot Machines (1305)
 - Permits a person to operate slot machines in an established resort hotel
 - No more than 2 licensed facilities

Licensing – Category 1

- n Category 1 slot machines
 - n Requirements (1302)
 - License may only be issued to the particular racetrack facility identified in the application (1302)
 - Applicant must meet one of the following:
 - Licensed racetrack entity must have conducted live horseracing for not less than two years preceding effective date
 - Racing must occur at least 100 days a year.
 - Licensed racetrack entity must not have conducted live horseracing but will conduct a minimum of 150 days beginning in second year following issuance of license
 - Licensee may operate 5,000 slot machines at existing horse racing facility

Licensing – Category 1

Category 1 licenses granted:

Facility	Licensing Date	Opening Date
Downs Racing, LP (Pocono Downs, Luzerne County)	9/27/2006	11/14/2006
Greenwood Gaming and Entertainment Inc. (Philadelphia Park, Bucks County)	9/27/2006	12/19/2006
Mountainview Thoroughbred Racing Association (Penn National, Dauphin County)	9/27/2006	January 2008*
Washington Trotting Association, Inc. (The Meadows, Washington County)	9/27/2006	6/11/2007
Presque Isle Downs, Inc. (Erie County)		2/28/2007
Chester Downs and Marina, LLC (Chester Downs, Delaware County)	9/27/2006	1/22/2007
Valley View Downs LLP (Lawrence County)	9/5/2007	Spring 2009*
* expected opening date		

Licensing – Category 2

- n Category 2 (1304)
 - n Applicant, its affiliate or subsidiary is not otherwise eligible for a Category 1 license
 - n Person is seeking to locate facility in Class 1 City, Class 2 City or Tourism-enhanced location
 - Class 1 City – Philadelphia
 - Class 2 City – Pittsburgh
 - Class 3 City – Others
 - n Two Category 2 licensed facilities and no more shall be located in a Class 1 City
 - n One Category 2 licensed facility and no more shall be located in a Class 2 City
 - n In December 2005, there were 17 applicants for the 5 Category 2 licenses
 - n Requirement to waive exemptions, deductions and abatements if facility located in a Keystone Opportunity Zone (added in a 2006 Amendment)
 - n Licensee may operate 5,000 slot machines at a stand alone slots facility

Licensing – Category 2

Category 2 licenses granted:

Facility	Licensing Date	Opening Date
HSP Gaming, LP (SugarHouse Casino, Philadelphia)	12/20/2006	April 2008*
Philadelphia Entertainment & Development Partners, LP (Foxwoods Casino, Philadelphia)	12/20/2006	November 2008*
PITG Gaming, LLC (PITG Gaming Casino, Pittsburgh)	12/20/2006	March 2008*
Mount Airy #1, LLC (Mount Airy Resort, Monroe County)	12/20/2006	10/22/2007
Sands Bethworks Gaming, LLC (Northampton County)	12/20/2006	July 2009*
* expected opening date		

Licensing – Category 3

- n Category 3 (1305)
 - n Person has not applied for or been approved or issued a Category 1 or 2 license
 - n Facility located in a “well-established resort hotel”
 - Well Established Resort Hotel is defined as a resort hotel having no fewer than 275 rooms under common ownership and having substantial year round recreational guest amenities. See 58 Pa. Code § 443.5(a)
 - “Substantial Year-Round Recreational Guest Amenities” means an applicant offering on its premises three or more of the following amenities: (i) sports and recreational activities and facilities such as a golf course or golf driving range, (ii) tennis courts or swimming pool, (iii) health spa, (iv) meeting and banquet facilities, (v) entertainment facilities, (vi) restaurant facilities, (vii) downhill or cross-country skiing facilities and (viii) bowling lanes. See 58 Pa. Code § 443.5(a)

Licensing – Category 3

- n Category 3 (1305)
 - n Requires that an individual not enter a gaming area of the licensee if the individual is not a registered overnight guest of the resort hotel or individual is not a “patron of the amenities” provided by the resort hotel
 - “Patron of the Amenities” means 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 resort hotel. See § 1305(E) of the Gaming Law; 58 Pa. Code § 443.5(a)
 - “Non-de minimis consideration” as discussed under “Amenities” consists of a payment of at least \$10 per patron. 58 Pa. Code § 441.1
 - n No more than 500 slot machines at each facility

Licensing – Category 3

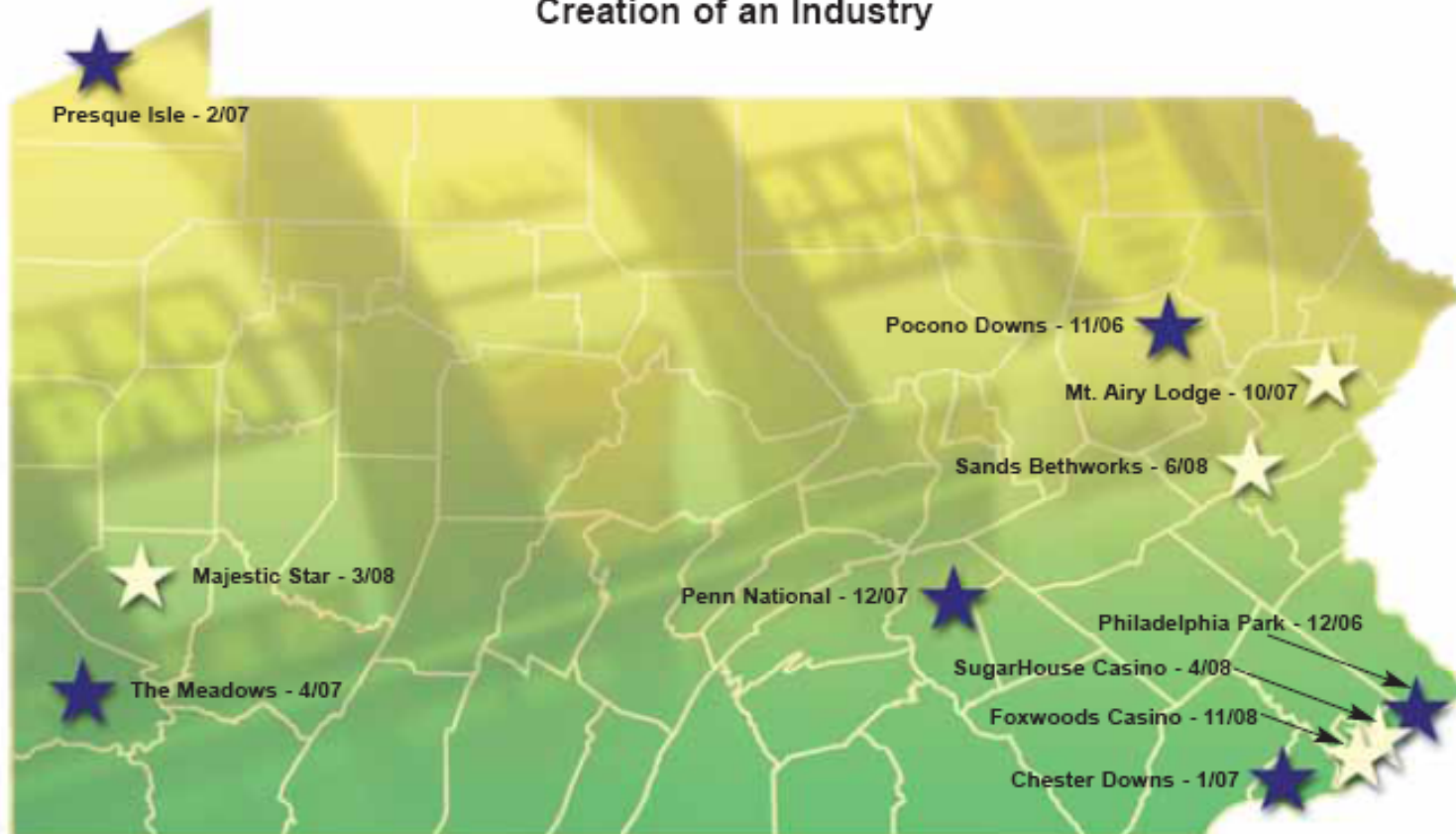
- n Category 3 (1305)
 - n Initial applicants on or before December 28, 2005:
 - Seven Springs Farm, Inc. and Nemaquin Woodlands, LLC both located in Western Pennsylvania applied
 - Both applicants withdrew from consideration in 2006
 - n Applications reopened on April 27, 2007. New applicants received by the Board for two available licenses:
 - Bushkill Group, Inc., Fernwood Hotel & Resort (Monroe County)
 - Valley Forge Convention Center Partners, L.P. (Montgomery County)
 - Vacation Charters, Ltd., The Resort at Split Rock (Carbon County)
 - CE-Palace, LP, The Palace Inn (Allegheny County)
 - n Application process in progress


Licensing

- n Distance Requirement for Facilities
 - n Category 1 facility must not be located within 20 linear miles of another Category 1 Facility (1302)
 - n Category 2 facility within in a Class 1 City may not be within 10 linear miles of a Category 1 facility (1304)
 - n Except for Category 2 facility in a Class 1 or 2 City, facility may not be located within 30 linear miles of a Category 1 facility conducting over 200 racing days a year and not within 20 miles of a Category 1 facility (1304)
 - n Except for a Category 2 facility located in a Class 1 City, no facility shall be located within 20 linear miles of another Category 2 facility (1304)
 - n Category 3 facility must not be located within 15 linear miles of another licensed facility (1305)

Licensing

Creation of an Industry



 Horse Race Tracks

 Stand Alone Venues

Act 71 permits slots gaming at up to 14 sites. Eleven with a maximum of 5,000 slots have been awarded to Horse Race Tracks and Stand Alone Venues. Dates listed indicate either the opening of a facility or the current target opening.

Licensing - Fees

- n Licensing fees
 - n \$50 million for Category 1 and 2 (1209)
 - n \$5 million for Category 3 (1305)
 - n Payment of licensing fee due at the time of license issuance. (1209)



Persons Required To Be Licensed

- n Parties requiring a license
 - n Gaming entities, affiliates and key employees
 - Category 1 - 3
 - n Gaming suppliers (1317)
 - Person seeking to provide slot machines or associated equipment to licensee
 - Licensed for 1 year with opportunity to renew
 - n Manufacturers of slot machines (1317.1)
 - Person seeking to manufacture slot machines or associated equipment within Commonwealth
 - Licensed for 1 year with opportunity to renew
 - n Key Employees (1318)
 - Person desiring to be a gaming employee and has a bona fide offer of employment from gaming entity

Licensing

- n Licensing application requires: (1309)
 - n Name, address and photo of applicant and all owners and key employees
 - n Proposed location of slot machine area
 - n Number of slot machines required
 - n Status of current horse license
 - n Details of license applied for, granted or denied; including those of other jurisdictions
 - n Loans due to financial institutions
 - n Consent to conduct background check
 - n Character requirement – disclosure of clear and convincing evidence of good character



Special Provisions

Taxes

n Tax Rates

- n 55% - State and local tax (property tax relief and other appropriations)
- n Taxes based on "gross terminal revenue", which is the difference between wagers and payouts

n Credit against tax for slot machine licensees

- n If the rate of the tax imposed by section 1403 (relating to establishment of State Gaming Fund and net slot machine revenue distribution) is increased at any time during the term of ten years following the initial issuance of the slot machine license, the slot machine licensee shall be entitled to a credit against subsequent payment of the tax equal to the difference between the tax calculated at the rate when the license was issued and the tax calculated at the increased rate (1209(c))

Licensing Fee Refunds

- n The entire one-time slot machine license fee of \$50,000,000 for each Category 1 and Category 2 slot machine license shall be returned to each licensee in the event section 1201 (relating to Pennsylvania Gaming Control Board established), 1202 (relating to general and specific powers) or 1307 (relating to number of slot machine licenses) is amended or otherwise altered by an act of the General Assembly within five years following the initial issuance of any slot machine licenses pursuant to section 1301 (relating to authorized slot machine licenses) to change: (1209(f))
 - n the composition of the board;
 - n the number or voting powers of members of the board;
 - n the manner in which members are nominated or appointed to the board;
 - n the length of term for which each member serves;
 - n the general jurisdiction of the board in a manner that impairs or otherwise reduces the board's licensing authority; or
 - n section 1307 to increase the statutory maximum number of permissible licensed facilities.

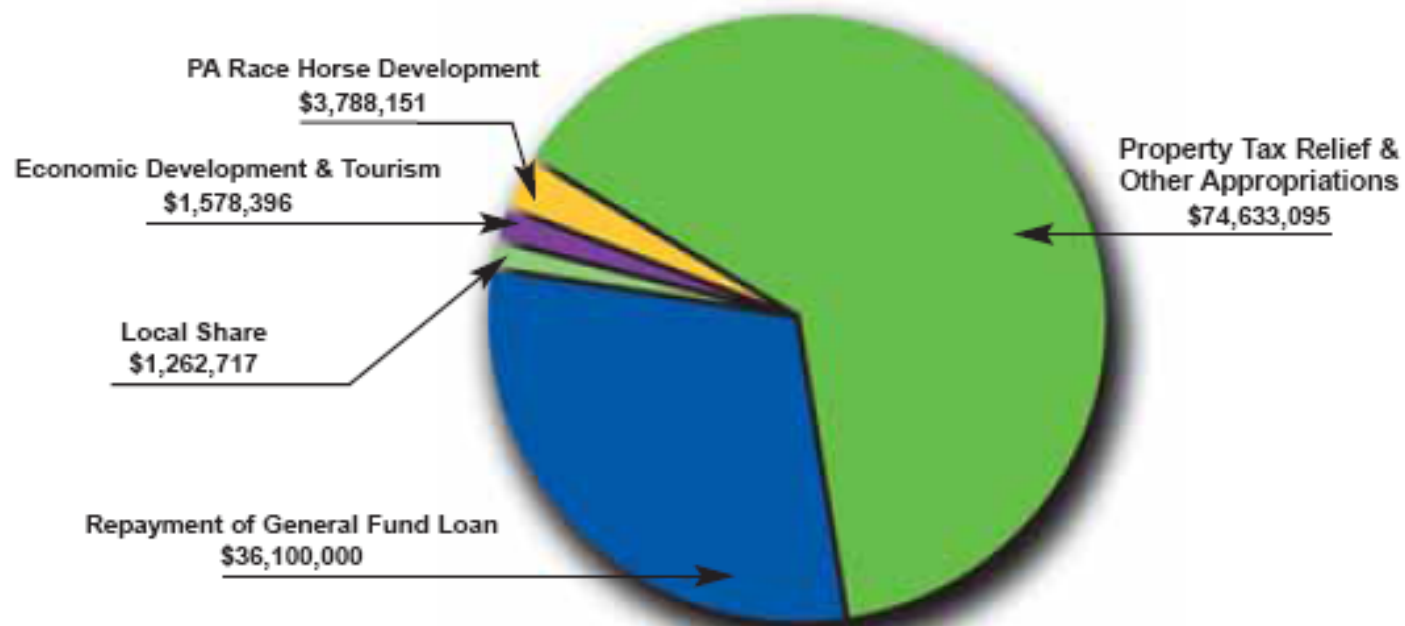
Gaming Revenue



* Chart obtained from PA Gaming Control Board 2006 Annual Report

Gaming Revenue

Distribution of Gaming Revenue
Total \$117.4 million



* Chart obtained from PA Gaming Control Board 2006 Annual Report

Political Limitations

- n Restrictions on board members (1202.1(c))
 - n May not accept any discount, gift, gratuity, compensation, or other thing of value, directly or indirectly, from any applicant, licensee, registrant or licensed entity representative thereof
 - n May not hold or campaign for political office
 - n May not contribute to or solicit for political campaigns or parties
 - n May not meet or discuss with any applicant or licensee unless on Board property and properly documented
 - n May not directly or indirectly solicit, request, suggest or recommend to any applicant, licensed entity, or an affiliate appointment or employment of any person in any capacity by the applicant, licensed entity, or an affiliate for a period of two years after leaving office (1201(h))
 - n May not accept employment with or appear before the Board on behalf of an applicant, licensed entity or affiliate for two years after leaving office (1201(h))

Political Limitations

- n Prohibition on political contributions (1513)
 - n Applicants, licensees, manufacturers, key employees, licensed suppliers, licensed racing entities, licensed principals, licensed key employees, subsidiaries or holding companies of a slot machine licensee or persons who hold a similar gaming license in another jurisdiction are prohibited from contributing to political organizations or candidates.

- n Prohibition on public official ownership interests
 - n Public officials are prohibited from acquiring an ownership stake in slots, manufacturers and supplier licensees

Facility Zoning Appeals

- n Gov. Rendell vetoed Senate Bill 1209 in November 2004 which would have limited the Gaming Board's authority over licensing and zoning matters.
- n In October of 2006, the state House and Senate considered pre-empting local zoning authority in Philadelphia and Pittsburgh by granting such power to the Gaming Board. The proposal was defeated.
- n Under the Act, the State Supreme Court 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. (1506)
 - n Provision added November 1, 2006

Slot Machine Suppliers

- n The legislation as originally passed provided for suppliers who would purchase slot machines from manufacturers and resell them to casinos. Purchasing slot machines from “middlemen” was mandatory in the original legislation.
- n In March of 2006, the state House initially voted to eliminate the use of suppliers, but reconsidered the vote repealing the supplier requirement.
- n Later in 2006, an amendment was passed making purchases from suppliers optional after the expiration of supplier’s one year license which started expiring in July of 2007.
- n For 2.5 years, no more than 50% of the machines may be purchased from any one slot manufacturer.

Current Status of Facilities

Casino Opening Dates & Number of Slot Machines:

n Mohegan Sun at Pocono Downs:	November 14, 2006	1,203 Slots
n Philadelphia Park:	December 19, 2006	2,402 Slots
n Harrah's Chester:	January 25, 2007	2,796 Slots
n Presque Isle Downs:	February 28, 2007	2,000 Slots
n The Meadows:	June 11, 2007	1,738 Slots
n Mount Airy Casino Resort	October 22, 2007	<u>2,525</u> Slots

TOTAL SLOTS = 12,664

Current Status of Facilities

Next In Line to Open:

- n Hollywood Casino at Penn National
 - n Opening date tentatively set for January 2008
 - n 2,000 Slot Machines

Continuing Developments

- n Continued discontent among citizens regarding gaming, slot machines and the location of gaming facilities in PA
- n Tension between Bureau of Investigations and Enforcement (BIE), branch of Gaming Board established to conduct background checks in connection with application process, and the state police who maintain criminal enforcement powers and extensive resources to conduct background checks
 - n Some members of the state House are considering whether to transfer the BIE to the Attorney General's office or the state police
- n Board denied requests from Philadelphia casinos for extension to pay \$50 million licensing fees:
 - n HSP Gaming, LP (Sugarhouse Casino)
 - n Philadelphia Entertainment and Development Partners, LP (Foxwoods Casino)

Additional Information

- n See the Pennsylvania Gaming Control Board's website at www.pgcb.state.pa.us for more information including:
 - n Current statute and final regulations
 - n News articles and press releases
 - n Board meeting minutes
 - n Gaming revenue information
 - n Gaming forms and filing instructions
 - n Members and executive staff
 - n Current updates