

Comments of the Independent Regulatory Review Commission

on

Pennsylvania Gaming Control Board Regulation #125-46 (IRRC #2562)

Recordkeeping and Fees

November 9, 2006

We submit for your consideration the following comments on the proposed rulemaking published in the September 9, 2006 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Pennsylvania Gaming Control Board (Board) to respond to all comments received from us or any other source.

1. Determining whether the regulation is in the public interest.

The Pennsylvania Horse Race Development Act (Act) (4 Pa.C.S.A. §§ 1101-1904) allowed the Board to promulgate temporary regulations until July 5, 2006. The temporary regulations were not subject to two statutes that guide agencies when promulgating regulations. Those statutes are the Commonwealth Documents Law (CDL) (45 P.S. §§ 1201-1208) and the Regulatory Review Act (RRA) (71 P.S. §§745.1-745.15). The Act requires all temporary regulations to be promulgated as permanent regulations by July 5, 2007. The conversion of temporary regulations to permanent regulations requires compliance with both the CDL and the RRA.

Section 5.2 of the RRA (71 P.S. § 745.5b) directs this Commission to determine whether a regulation is in the public interest. When making this determination, the Commission considers criteria such as economic or fiscal impact and reasonableness. To make that determination, the Commission must analyze the text of the proposed rulemaking and the reasons for the new or amended language. The Commission also considers the information a promulgating agency is required to provide under §745.5(a) in the regulatory analysis form (RAF).

The Preamble to this rulemaking states that the Board proposes to replace two chapters of its temporary regulations with permanent regulations. The explanation of the regulation in the Preamble and the information contained on the RAF is not sufficient to allow this Commission to determine if the regulation is in the public interest. While we commend the Board for involving the regulated community in the development of the temporary regulations, we note that a complete explanation of the need for each chapter and section was not provided in that process. Furthermore, there is no detailed fiscal impact and cost benefit analysis in the RAF. Without this information, we cannot determine if this proposed regulation is in the public interest. In the Preamble and RAF submitted with the final-form rulemaking, the Board should provide more detailed information required under §745.5(a) of the RRA.

2. Section 471.1. Fees generally. – Implementation procedures; Fiscal impact.

Subsection (d) states that each application submitted to the Board must be accompanied by a fee to cover the cost of the initial investigation and processing of the application. Subsection (e) states that an applicant may be subject to additional fees, which are based on the actual expenses incurred by the Board in conducting the background investigations. The procedures for determining the additional fee amount and for requesting the additional fee are not included in the regulation. We recommend that these procedures be included in the final-form rulemaking.

3. Section 471.2. Schedules of fees and Section 471.3. Adjustment of fees. – Implementation procedures.

Section 1208(1) of the Act (4 Pa.C.S.A. § 1208(1)) provides the Board the power to levy and collect fees. These fees are in addition to the fees set by §§ 1208, 1209 and 1305 of the Act (4 Pa.C.S.A. §§ 1208, 1209 and 1305). Section 1208(2) of the Act (4 Pa.C.S.A. § 1208(2)) states the following:

Two years following enactment of this part, the board shall have the authority to increase each year any fee, charge, cost or administrative penalty, but not any criminal fine or penalty, **provided in this part** by an amount not to exceed an annual cost-of-living adjustment calculated by applying the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for the Pennsylvania, New Jersey, Delaware and Maryland area for the most recent 12-month period for which figures have been officially reported by the United States Department of Labor, Bureau of Labor Statistics, immediately prior to the date the adjustment is due to take effect. (Emphasis added.)

Under § 471.2, the Board proposes to establish fees and publish those fees in the *Pennsylvania Bulletin* and on its website. Those fees are not set by regulation. Section 471.3 allows the Board to adjust fees, charges, costs or administrative penalties specified *in the Act* by an amount not to exceed an annual cost-of-living calculation provided in the Act.

We have three suggestions. First, we question how the Board will increase the fees under § 471.2. All fees, whether established by the Act or set by the Board, can only be increased by the mechanism found in §1208(2) of the Act. To avoid any confusion on how the fees in § 471.2 will be increased, we recommend that § 471.3 be amended to state that *all* fee increases will be calculated using the mechanism contained in § 1208(2) of the Act. Second, the final-form regulations should indicate when the fee schedule will be published in the *Pennsylvania Bulletin*. Third, the Board's website should be included in the final-form regulation.