

Comments of the Independent Regulatory Review Commission



Pennsylvania Gaming Control Board #125-82 (IRRC #2676)

Independent Audit Committee

April 30, 2008

We submit for your consideration the following comments on the proposed rulemaking published in the March 1, 2008 *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. Statutory authority; Consistency with intent of the General Assembly.

The Board has cited § 1202(b)(30) of the Pennsylvania Horse Development and Gaming Act (Act) (4 Pa. C.S.A. § 1202(b)(30)) as the statute that provides them the authority to promulgate this rulemaking. This section of the Act provides the Board with the power and duty to promulgate regulations that are necessary for the administration and enforcement of the Act.

A current slot machine licensee commented that “the Board does not have enabling authority from the General Assembly to promulgate this regulation.” The commentator notes that independent audit committees are not mentioned or authorized under the Act, and that general authority to promulgate regulations is not without limitations.

In the Preamble to the final-form regulation, we ask the Board to explain why § 1202(b)(30) of the Act provides them the authority to require certain licensees to establish independent audit committees when the Act is silent on this issue.

2. Economic or fiscal impact of the regulation.

The Board has indicated that the estimated cost for the one non-publicly traded slot machine licensee that currently has an independent audit committee is \$250,000 per year. Several slot machine licensees commented that the cost to establish an independent audit committee and meet the requirements of the regulation would far exceed that estimate. It was also

noted that there is no explanation of how the estimate of cost was calculated. We agree that the Preamble and Regulatory Analysis Form submitted with the proposed rulemaking lack the necessary detail to allow us to determine if the regulation is in the public interest. We request that more detailed information on cost to the regulated community be included when the Board submits the final-form rulemaking.

3. Need for the regulation; Reasonableness; Legality, desirability and feasibility of exempting or setting lesser standards of compliance for individuals or small businesses.

The Board has stated that this rulemaking “will provide additional protection of the integrity of gaming in the Commonwealth.” Several commentators have questioned the need for this rulemaking. They believe that the requirements of the Act and the Board’s regulations provide more than adequate protection of the integrity of slot machine gaming in the Commonwealth. Examples of the safeguards in place include: extensive applicant approval processes for slot machine licensees; internal controls and audit protocols approved by the Board; audited financial statements; Department of Revenue control of all active slot machines through a computer system that allows the Board to monitor all play; and Board personnel presence at each slot machine facility.

With all of these protections and the extensive requirements already imposed on slot machine licensees, why are independent audit committees needed for non-publicly traded licensees? Has the Board considered requiring independent audit committees for certain licensees on a case-by-case basis instead of imposing a blanket requirement for all non-publicly traded licensees? This approach would also lessen the potential burden the regulation would place on Category 3 slot machine applicants that are limited to 500 slot machines by the Act. If this approach is adopted, we suggest that the criteria used to determine if a licensee will be required to form an independent audit committee be included in the final-form regulation.

Given the concerns raised by the regulated community pertaining to need for the rulemaking and the costs it will impose, we recommend that the Board issue an advanced notice of final rulemaking. This would allow the Board and the regulated community an opportunity to resolve as many remaining concerns as possible prior to submittal of the final-form regulation.

4. Implementation procedures and timetables for compliance by the public and private sector.

The Preamble to this proposal states that the rulemaking will become effective when the final-form regulation is published in the *Pennsylvania Bulletin*. Given the extensive requirements contained in the rulemaking, we recommend that the effective date be delayed six to 12 months after the final-form regulation is

published. This would provide slot machine licensees time to appoint members to the audit committee and fulfill the other requirements of the rulemaking.

5. Section 441a.24. Independent audit committee. - Consistency with intent of the General Assembly; Possible conflict with statutes; Reasonableness; Clarity.

Paragraphs (3), (4) and (8)

These paragraphs require Board approval of certain documents prepared by an independent audit committee or action taken by the independent audit committee or a slot machine licensee. The regulation is silent on how the approval process associated with each paragraph will work. We recommend that the final-form regulation provide more detail on how the Board will administer these provisions. Timeframes, criteria for reviewing the documents or action and appeal rights should be included.

Paragraph (4)

Why is the Board requiring independent audit committees to consist of at least three but no more than five members? As suggested by commentators, we ask the Board to allow licensees the flexibility to determine the number of committee members that would be most appropriate for their organization while still ensuring that the integrity of gaming in the Commonwealth is protected.

Paragraphs (5), (6) and (7)

Several slot machine licensees commented that provisions requiring audit committee members to be independent, without ownership interest and without a material relationship to the licensee, are not sound policy and contrary to the traditional role of independent audit committees. We question why the Board is limiting the types of relationships that can exist between a committee member and licensee, when independent audit committees of publicly traded corporations under the jurisdiction of the Securities and Exchange Commission allow those affiliated with a corporation to serve on that corporation's independent audit committee. In addition, has the Board considered following the example of New Jersey's independent audit committee regulations, which allow committee members to have some form of relationship with the licensee?

Paragraph (11)

Under this paragraph, independent audit committees are required to appoint an independent certified public accountant that has a "Nationally recognized and respected reputation." A commentator has noted there are only four

public accounting firms with national reputations and this requirement is contrary to the diversity requirements of the Act. In addition, it would be difficult for a Pennsylvania accounting firm to qualify as an independent certified public accountant. We agree with the commentator and question the need for an independent certified public accountant to be “Nationally recognized.” We also question if this requirement conflicts with § 1212 of the Act, which pertains to diversity goals of the Board. In particular, the Board should explain why this requirement does not conflict with § 1212(a), which states the following:

It is the intent and goal of the General Assembly that the board promote and ensure diversity in all aspects of the gaming activities authorized under this part. The board shall work to enhance the representation of diverse groups in the ownership, participation and operation of licensed entities and licensed facilities in this Commonwealth and through the ownership, participation and operation of business enterprises associated with or utilized by licensed entities and licensed facilities and through the provision of goods and services utilized by slot machine licensees under this part.

6. Miscellaneous clarity.

- Under Paragraph (5), the phrase “or might appear to affect” is vague. We recommend that it be deleted from the final-form regulation.
- Subparagraph (7)(i) is a duplicate of Subparagraph (7)(ii). One of these subparagraphs should be deleted from the final-form regulation.