



Senate of Pennsylvania

August 12, 2008

MEMORANDUM

TO: All Senators

FROM: Senator Jane C. Orie
Senator Vincent J. Furno

SUBJECT: Proposed Revisions to the Pennsylvania Gaming Act (4 Pa.C.S.A. § 1101, *et seq.*)

Attached for your consideration and co-sponsorship is proposed legislation that will make several important revisions to the Pennsylvania Gaming Act. This proposal is unique – it is the product of a bipartisan effort between two members of the Senate, one who actively developed and supported the legalization of slot machine gaming, and one who opposed the expansion of gambling activities in the Commonwealth. Though we have differed in our perspectives on the public policy merits of legalized slot machine gaming, we agree that the experience of the past two years have highlighted several unintentional deficiencies in the existing legal framework.

Accordingly, our proposed legislation, if enacted, would make the following changes (not in order of priority):

- (1) Gaming Board members – full time / no outside income. As a result of the intensity of work and the complexity of matters that routinely come before the Board, the member position shall be full time. In addition, in order to prevent actual or perceived conflicts of interest, members of the Board shall be prohibited from any outside employment. It should be noted that each Board currently receives a salary that is reflective of the full time nature of the position.
- (2) Provide for 2/3rds confirmation of Gaming Board members. In an effort to provide for a public review of the background and qualification of each member of the Board, all future members shall be required to go through a Senate confirmation process that would require a 2/3rds vote to confirm their appointment to the Board.

on sound financial ground in the first instance to include requirements that an applicant cannot borrow the \$50 million fee for a slot machine license and requiring a surety bond from of the licensee if the licensee is also the developer of a project approved by the Board.

- (8) Require True Information on Controlling Interests in Gaming Facilities. Both the General Assembly and the public are entitled to know who, in fact controls the activities of any licensee beyond merely a list of holding companies, and this information should be posted on the Internet.
- (9) Campaign Contributions from Casino Lobbyists. This provision would expand the current ban on campaign contributions from licensed casino operators to those persons who have registered with the Gaming Board as "licensed casino representatives." There exists a concern that casino operators are still able to use money to influence the political process by using their paid lobbyists to make campaign contributions.
- (10) Co-Mingling of Prosecutorial and Adjudicatory Functions. Pennsylvania courts have provided that administrative agencies must maintain objectivity and avoid the appearance of bias in its proceedings. Accordingly, the courts have directed all state agencies to separate their prosecutorial functions, such as investigations and recommendations for enforcement actions, from their adjudicatory functions in order to ensure fair and adequate due process protections to persons subject to agency jurisdiction. Though the current version of the Gaming Act clearly separates these functions, this amendment would require the Board to adopt additional administrative regulations ensuring this separation.
- (11) Provide for Stronger Enforcement Of Ethics and Related Issues. In line with the above, the Board should be authorized and encouraged to seek assistance and advice from the State Ethics Commission and the Attorney General when issues arise under the ethics laws such as conflict of interest and ex parte communications. And, if necessary, the Attorney General should be authorized to intervene and investigate.
- (12) Prohibit Employment in Gaming Industry of Gaming Board Officials for two years. Notwithstanding Title 65, gaming industry promises of employment or compensation have a unique influence. As such, no former member or officer of the board should be entitled to accept employment with, or represent a person, who has matters before the board, for two years after termination of employment with the board.

While this is obviously a comprehensive proposal, we would like to note that no attempt was made to address concerns related to the efficacy of the Board's Bureau of Investigations and Enforcement which is currently the focus of other proposals.

If you are interested in co-sponsoring this legislation, please contact Senator Orié's office at 787-6538 or Senator Fumo's office at 787-5662.

- (3) Removal of direct appeals to the Supreme Court. A unique feature of the existing law is the provision that vests the Pennsylvania Supreme Court with the exclusive appellate jurisdiction over all slot license appeals, or zoning appeals. Though intended to expedite license appeals that may delay the implementation of casino gaming in the Commonwealth, this provision also had the effect of eliminating an important appellate record that is traditionally created by the Commonwealth Court. This change would treat appeals of Board decisions in the exact same manner as all other Commonwealth departments, agencies and commissions.
- (4) Remove the oral hearing exception to the Administrative Agency Law. In an effort to facilitate the timely implementation of casino gaming, the Board was exempted from the provisions of the Administrative Agency Law that requires oral hearings, with the right to cross-examination, for any contested matter before the Board. The utility of this provision has expired, as it is appropriate for the Board to conform its proceedings to all provisions of the Administrative Agency Law.
- (5) Confidentiality of Information. Though the Act includes a narrow definition of confidential information (trade secrets, personal information such as medical and financial records, security records, or such information that may be harmful to any person), the Board has taken a very broad interpretation of this provision and has deemed all information provided to the Board pursuant to an license application to be confidential. The result of this policy has been to deprive the public and other governmental officials of access to information pertinent to the public interest. The provision makes it clear that information that is otherwise public cannot be considered confidential.
- (6) Slot Operations in the City of Philadelphia. The two casinos proposed to be developed within the City of Philadelphia are partially located upon the riverbed of the Delaware River – land that is owned by the public. Traditionally, any development of public land must be authorized by a specific act of the General Assembly setting forth the terms and conditions of the land usage. Neither of the two casinos have sought legislative permission and both are attempting to occupy and develop public land without legislative authorization or making any payment to the Commonwealth. The provision would simply prohibit any commencement of slot operations until such time as the General Assembly has authorized the use and occupancy of the public lands and the casino operators have paid the Commonwealth for such use.
- (7) Affirm Board's Powers and Rights in Instances of Default or Failure of a Licensee. It is clear that failures and defaults of licensee can have broad implications, and the board must clearly have the power to require forfeitures of fees paid in default or revocation situations. It is similarly clear that the Board must have the power to avert negative consequences by requiring and conditioning their grants of licenses



Senate of Pennsylvania

NEWS RELEASE

For Immediate Release – August 12, 2008

FUMO, ORIE PROPOSE REVISIONS TO GAMING ACT

HARRISBURG, August 12, 2008 – Two state Senators have developed bipartisan legislation that would make several important amendments to Pennsylvania's 2004 slot machine gambling law, including prohibiting outside income by Gaming Control Board members, expanding the prohibition on campaign contributions from casino interests, and increasing public disclosure of previously confidential information supplied by license applicants.

Vince Fumo (D-Philadelphia) and Jane C. Orié (R-Allegheny) plan to introduce the bill in time for it to be considered when the Senate returns to session in September. Fumo was an early supporter of legalizing slot machines and was one of the chief authors of the legislation to do so. Orié opposed the expansion of gambling in the state.

"We disagreed on the overall public policy merits of the legalizing slots, but we agree now that the experience of the past several years compels us to make changes," Orié said.

"The past two years have highlighted several unintentional deficiencies of the existing law. We created a new industry in this state and adopted the best practices that we could find from other states, but the law was not perfect and we can improve upon it," Fumo said.

The proposed legislation would make Gaming Control Board members full time, and ineligible for outside income. They are already paid a salary reflective of the full-time nature of the position – \$150,000 per year for the chairman and \$145,000 for the other six members.

Fumo and Orié said the intensity and complexity of the work argue for it being a full-time job, and the need to prevent actual or perceived conflicts of interest suggests a need for prohibiting outside employment.

Another key provision would clarify the limited nature of confidentiality of information about license applicants. Although the existing Gaming Act contains a narrow definition of confidential information, the Board has taken a very broad interpretation of this provision and has deemed all information provided by an applicant to be confidential. This bill would open up all information that is not specifically designated as confidential, such as trade secrets or personal medical and financial data about applicants.

Fumo and Orié also propose to eliminate the section of the law that gives jurisdiction over all slots license appeals and slots-related zoning appeals directly to the Supreme Court. Intended to expedite appeals that may have delayed the opening of the casinos, it has had the effect of eliminating the important appellate record that is typically created at the Commonwealth Court level.

Another measure within the bill expands the ban on campaign contributions from licensed casino operators to those who have registered with the Gaming Board as "licensed casino representatives." This would prevent casino operators from making contributions indirectly through paid lobbyists.

"All of these provisions would create greater public confidence in Pennsylvania's Gaming Act and Gaming Control Board," Orié said. "That confidence has been shaken recently, and we must restore the complete integrity of the process in the public eye."

The bill would also require the two casinos licensed for Philadelphia to obtain authorization from the General Assembly, and to compensate the taxpayers of Pennsylvania, for the use of public land before they are allowed to commence gambling operations. Currently, the two licensed casinos plan construction on land that is partially within the river bed of the Delaware River. To date, they have not sought a grant of these riparian rights from the Commonwealth.

Among the other amendments in the Fumo/Orie proposal, the bill would:

- Require a two-third Senate confirmation of all future members of the Gaming Board.
- Require oral hearings with the right of cross examination for all matters before the Board.
- Prevent an applicant from borrowing the initial \$50 million license fee and require a surety bond from the licensee when the licensee is also the developer of the project.
- Require disclosure and posting on the Internet of information concerning the true identity of the controlling interest in a gaming facility.
- Require the board to adopt regulations, in addition to those already in place, maintaining the separation of prosecutorial and adjudicatory functions.
- Authorize and encourage the Board to seek the advice of the Ethics Commission and the Attorney General on ethics and related issues.
- Prohibit Gaming Board officials from gaining employment in gaming related fields for two years.

"We have learned a lot in the four years since we passed the original law. We have casinos that are running smoothly and have been very successful in generating revenue that is reducing taxes for our citizens. But we have also encountered some problems, and it is critical that we correct them now while Pennsylvania's gaming industry is still young," Fumo said.

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