

Title 58—RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 401, 440 AND 441]

Temporary Regulations; Management Companies

The Pennsylvania Gaming Control Board (Board), under authority of 4 Pa.C.S. § 1202(b)(14) (relating to general and specific powers), adopts temporary regulations to facilitate implementation of 4 Pa.C.S. Part II (relating to gaming), enacted by the act of July 5, 2004 (P.L. 572, No. 71) (Act 71). The Board's temporary regulations will be added to Part VII (relating to Gaming Control Board). Subpart B, entitled Licensing, Registering, Certifying and Permitting contains Chapter 440, entitled Management Companies.

Under the Board's Resolution No. 2005-3 REG, entitled Adoption of Temporary Regulations, dated June 16, 2005, and Resolution No. 2005-4, entitled Adopting of Draft Regulations as Temporary Regulations for the General Licensing Standards for Slot Machine License Applicants Temporary Regulations, dated July 21, 2005, the Board has the authority to amend the temporary regulations, adopted on June 16, 2005, and July 21, 2005, as it deems necessary in accordance with the purpose of Act 71 and to further the intent of Act 71. Therefore the Board has decided to make editorial changes to the temporary regulations, dated June 16, 2005, and July 21, 2005, as deposited with the Legislative Reference Bureau (Bureau) and published at 35 Pa.B. 4045 (July 15, 2005) and at 35 Pa.B. 4828 (August 6, 2005).

Therefore, the Board has deposited with the Bureau amendments to §§ 401.4 and 441.3. The amendments are effective as of January 19, 2006.

The temporary regulations of the Board, 58 Pa. Code Chapters 401 and 441, are amended by amending §§ 401.4 and 441.3 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

Purpose and Background

Under 4 Pa.C.S. § 1203 (relating to temporary regulations), the Board is required to promulgate temporary regulations to facilitate the prompt implementation of Act 71. The regulations are necessary to enhance the credibility of the licensed operation of slot machines and associated equipment in this Commonwealth and to carry out the policy and purposes of the Board. In adopting these temporary regulations, the Board has considered the public comments submitted to the Board. The Board has also reviewed the regulatory practices of other Commonwealth agencies and other gaming jurisdictions.

To promulgate the temporary regulations in accordance with customary rulemaking procedure, the Board published its draft regulations on its website at www.pgcb.state.pa.us on December 15, 2005. A 10-day public comment period was provided.

Under 4 Pa.C.S. § 1203, the temporary regulations adopted by the Board shall expire no later than 3 years following the effective date of Act 71 or upon promulgation of regulations as generally provided by the law. These temporary regulations are not subject to sections 201—205 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201—1205), known as the Commonwealth Documents Law (CDL), or to the Regulatory Review Act (71 P.S. §§ 745.1—745.15).

Comment

The Board received public comment from approximately three interested parties. The Board thoroughly reviewed and considered all comments submitted. Public comments received by the Board are available for review on the Board's website. These comments and the Board's responses are published on the Board's website.

Paperwork

The Board will publish management company applications and other necessary forms for the administration of licensing management companies. The Board is developing a docket process to monitor and track submitted applications.

Financial Impact

Act 71 and the regulations will provide for the implementation and management of gaming within this Commonwealth and the collection of fees and taxes from entities and individuals authorized by the Board to be employed by, provide gaming related services to or operate gaming facilities.

The appropriations from the Commonwealth for the implementation of Act 71 and costs of administering Act 71 will be reimbursed by the licensed gaming entities as specified within Act 71. Individuals and entities that wish to obtain licenses as gaming entities shall pay to the gaming fund significant licensing fees to obtain the authority to do business within this Commonwealth. Part of these fees shall reimburse the Board and the Pennsylvania State Police for licensing processes and background investigations. The licensing and registration of individuals and other classes of licensees will be reimbursed by the individuals and licensees through fees established by the Board.

It is anticipated that all expenses of the Board and all associated activities shall be reimbursed by the applicants and gaming entities as previously specified. The Board shall have no financial impact on the State budget.

Statutory Authority

Section 1203 of 4 Pa.C.S. provides the Board authority to adopt and publish temporary regulations to implement the policies and purposes of Act 71.

Regulatory Review

Under 4 Pa.C.S. § 1203, the Board may adopt temporary regulations that are exempted from the Regulatory Review Act and sections 201—205 of the CDL. Section 1203 of 4 Pa.C.S. provides that the Board's authority to adopt regulations expires 2 years from the effective date of Act 71.

Findings

The Board finds that:

(1) Under 4 Pa.C.S. § 1203, the temporary regulations are exempt from the requirements of the Regulatory Review Act and sections 201—205 of the CDL.

(2) A 30-day public comment period was held prior to the adoption of the temporary regulations. All comments received by the Board were reviewed and considered.

(3) The adoption of the temporary regulations provided by this order is necessary and appropriate for the administration of the authorizing statute.

Order

The Board, acting under the authorizing statute, orders that:

(a) The Board acting under the authority of Act 71, adopts as its final form temporary regulations the draft regulations and amendments adopted by resolution at the January 19, 2006, public meeting. The temporary regulations and amendments pertain to the licensing of management companies.

(b) The following temporary regulations of the Board, 58 Pa. Code, are added: §§ 440.1—440.4 to read as set forth in Annex A.

(c) The following temporary regulations of the Board, 58 Pa. Code, are amended: § 401.4 and § 441.3 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(d) The temporary regulations are effective January 19, 2006.

(e) The temporary regulations shall be posted in their entirety on the Board’s website and in the *Pennsylvania Bulletin*.

(f) The temporary regulations shall be subject to amendment as deemed necessary by the Board in accordance with the purpose of Act 71 and to further the intent of Act 71.

(g) The Chairperson of the Board shall certify the preceding order and deposit the regulations with the Bureau as required by law.

THOMAS A. DECKER,
Chairperson

Fiscal Note: 125-13. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart A. GENERAL PROVISIONS

CHAPTER 401. PRELIMINARY PROVISIONS

§ 401.4. Definitions.

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

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Collateral agreement—Any contract between a management company or its affiliates, intermediaries, subsidiaries or holding companies and a slot machine licensee or its affiliates, intermediaries, subsidiaries or holding companies that is related either directly or indirectly to a management contract or to any rights, duties, or obligations created between a management company and a slot machine licensee.

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Management company—Any person or legal entity which, through a Board-approved contract with a slot machine licensee, is responsible for the management of all or part of the operation of a licensed facility.

Management contract—Any contract, subcontract or collateral agreement between a management company and a slot machine licensee if the contract provides for the management of all or part of a licensed facility.

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**Subpart B. LICENSING, REGISTERING,
CERTIFYING AND PERMITTING
CHAPTER 440. MANAGEMENT COMPANIES**

- Sec.
- 440.1. Management company license.
- 440.2. Management company as agent.
- 440.3. Management contracts generally.
- 440.4. Required provisions in management contract.

§ 440.1. Management company license.

(a) Each management company shall be required to obtain a management company license from the Board, and pay the required license fee, prior to providing to a slot machine licensee any service under this chapter.

(b) Each management company license applicant shall complete the appropriate Conditional/Category 1, Category 2 or Category 3 application and disclosure information forms with the applicable appendices as if the management company license applicant were an affiliated entity of the slot machine licensee/applicant.

(c) Neither an applicant for or the holder of a management company license nor any of the applicant’s or holder’s affiliates, intermediaries, subsidiaries or holding companies, are eligible to apply for or hold a supplier license.

(d) Management company license applications shall be submitted by a slot machine licensee or applicant with a nonrefundable application processing fee prescribed by the Board.

§ 440.2. Management company as agent.

(a) Notwithstanding any provision to the contrary in the management contract, a management company will be deemed to be an agent of the slot machine licensee for purposes of imposing liability for any act or omission of the management company in violation of the act or this part.

(b) Notwithstanding any provision to the contrary in the management contract, each management company shall be jointly and severally liable for any act or omission by the slot machine licensee in violation of the act or this part, regardless of actual knowledge by the management company of the act or omission.

§ 440.3. Management contracts generally.

(a) A management contract between a slot machine licensee and management company licensee may not become effective until the Board has reviewed and approved the terms and conditions of the management contract, and any amendments thereto.

(b) The slot machine licensee shall notify the Board of any change or amendment to the management contract 30 days prior to the effective date of the proposed amendment.

(c) A management contract will not be approved by the Board unless the management company proves by clear and convincing evidence that the approval of the contracts would not create a monopoly on the control of licensed gaming facilities in this Commonwealth. A management company that seeks Board approval of a management contract shall disclose its financial interests in the slot machine licensee or applicant and, if applicable, proposed or contemplated change in ownership or control of a slot machine licensee

(d) Requests for approval of a management contract must include a business plan which sets forth the parties’ goals and objectives for the term of the management contract.

(e) Any management contract submitted for Board review and approval must enumerate with specificity the responsibilities of the slot machine licensee and management company under the terms and conditions of the management contract. At a minimum, the terms should address whether, and to what extent, the management company is involved in the following:

(1) Operation of the following departments: information technology, internal audit, slot accounting, slot management, security and surveillance.

(2) Design, construction, improvement or maintenance, or both, of the licensed facility.

(3) Provision of operating capital and financing for the development of the licensed facility.

(4) Payment of the slot machine license fee.

(5) Purchase or lease of slot machines or associated equipment.

(6) Design, implementation or amendment, or both, of the system of internal controls required under section 1322 of the act (relating to slot machine accounting controls and audits) and this part including the financial reporting requirements.

(7) Hiring, terminating, training and promoting of employees and the employment practices attendant thereto.

(8) The payment of local, State and Federal taxes and slot machine license deposit required pursuant to the act and this part and any penalties imposed by the Board for violations thereof.

(9) Advertising, player incentive or marketing programs.

(10) Compliance with section 1325(b)(1) of the act (relating to license or permit issuance).

(11) Obtaining and maintaining insurance coverage, including coverage of public liability and property loss or damage.

(12) Procurement of vendors and junkets.

(13) Selection of the licensed facility's independent auditor.

(f) Notwithstanding subsections (a)—(e), a slot machine licensee and licensed management company may not contract for the delegation of any benefits, duties or obligations specifically granted to or imposed upon the slot machine licensee by the act.

§ 440.4. Required provisions in management contract.

Each management contract, submitted to the Board for approval, must contain the following:

(1) A provision that provides the grounds and mechanisms for modifying or terminating the contract.

(2) A provision that states that the contract will not be effective unless it is approved by the Board.

(3) A provision that describes with particularity the method of compensating and reimbursing the management company.

(4) Provisions that contain a mechanism to resolve patron disputes and disputes between the slot machine licensee and the management company.

(5) A provision that indicates whether and to what extent contract assignments and subcontracting are permissible.

(6) A provision that specifies the duration of the management contract. A management contract may not contain a provision that provides for the automatic renewal of the management contract.

Subpart C. SLOT MACHINE LICENSING

CHAPTER 441. SLOT MACHINE LICENSES

§ 441.3. Slot machine license requirements.

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(d) Notwithstanding any provision to the contrary in the management contract, each slot machine licensee shall be jointly and severally liable for any act or omission by the management company in violation of the act or this part, regardless of actual knowledge by the slot machine licensee of the act or omission.

[Pa.B. Doc. No. 06-212. Filed for public inspection February 3, 2006, 9:00 a.m.]

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 423 AND 441]

Temporary Regulations; Applications and Slot Machine Licenses

Under the Pennsylvania Gaming Control Board's (Board) Resolution No. 2005-3 REG, entitled Adoption of Temporary Regulations, dated June 16, 2005, and Resolution No. 2005-4, entitled Adopting of Draft Regulations as Temporary Regulations for the General Licensing Standards for Slot Machine License Applicants Temporary Regulations, dated July 21, 2005, the Board has the authority to amend the temporary regulations, adopted on June 16, 2005, and July 21, 2005, as it deems necessary in accordance with the purpose of the act of July 5, 2004 (P. L. 572, No. 71) (Act 71) and to further the intent of Act 71. Therefore, the Board has decided to make editorial changes to the temporary regulations, dated June 16, 2005, and July 21, 2005, as deposited with the Legislative Reference Bureau (Bureau) and published at 35 Pa.B. 4045 (July 15, 2005) and at 35 Pa.B. 4828 (August 6, 2005).

Therefore, the Board has deposited with the Bureau amendments to 58 Pa. Code §§ 423.4 and 441.10—441.12. The amendments are effective as of January 19, 2006.

The temporary regulations of the Board, 58 Pa. Code Chapters 423 and 441, are amended by amending §§ 423.4, 441.10—441.12 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

Order

The Board, acting under the authorizing statute, orders that:

(a) The Board acting under the authority of the Act 71, adopts the amendments to the temporary regulations, adopted by resolution at the January 19, 2006, public meeting. The amendments to the temporary regulations pertain to definitions and the bond or letter of credit requirements.

(b) The following temporary regulations of the Board, 58 Pa. Code, are amended: §§ 423.4 and 441.10—441.12, to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(c) These amendments are effective on January 19, 2006, but apply retroactively to July 21, 2005.

(d) The amendments to the temporary regulations shall be posted in their entirety on the Board's website at www.pgcb.state.pa.us and in the *Pennsylvania Bulletin*.

(e) The Chairperson of the Board shall certify the preceding order and deposit the regulations with the Bureau as required by law.

THOMAS A. DECKER,
Chairperson

Fiscal Note: 125-12. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart B. LICENSING, REGISTERING, CERTIFYING AND PERMITTING

CHAPTER 423. APPLICATIONS

§ 423.4. Incomplete applications.

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(c) Refusal to provide information as required in subsection (a)(1) or (2) may result in the immediate denial of the application.

(d) Failure to provide documentation as required by section 1313(c) of the act (relating to slot machine license application financial fitness requirements) will result in the immediate denial of the application.

Subpart C. SLOT MACHINE LICENSING

CHAPTER 441. SLOT MACHINE LICENSES

§ 441.10. License fee payment bond or letter of credit requirements.

(a) Except as otherwise provided in § 443.3 (relating to Conditional category 1 licenses), an application for a slot machine license shall at all times throughout the period in which the application is on file with the Board include original payment bonds or original irrevocable letters of credit, or some combination thereof, that include draw instructions guaranteeing the applicant's payment of the slot machine license fee required by section 1209(c) of the act (relating to slot machine license fee) if the license is approved and issued.

(1) All payment bonds or irrevocable letters of credit shall be submitted and approved by the Board before an application may be deemed complete. The Board's review will include an assessment of both the proposed terms of the payment bond or irrevocable letter of credit and of the surety or financial institution that will issue the payment bond or irrevocable letter of credit. An application will be deemed incomplete if at any time during the period the application is on file with the Board payment bonds or letters of credit approved by the Board in the amounts required in paragraph (2) are not in full force and effect.

(2) Payment bonds or irrevocable letters of credit must aggregate to the following amounts:

(i) \$50,000,000 for each application for a Category 1 or Category 2 license.

(ii) \$5,000,000 for each application for a Category 3 license.

(3) It is not necessary for an applicant who has posted original payment bonds or original irrevocable letters of credit, or some combination thereof under § 443.3, to post

additional payment bonds or letters of credit in connection with its application for a Category 1 license if the application involves the same applicant at the same licensed facility.

(b) Unless otherwise required by the Board, a payment bond provided under this section must be issued by a surety company that is both licensed by the Insurance Department and assigned a credit rating within the three highest categories, without regard to numerics or other modifiers, by Moody's or Standard & Poor's, or upon the discontinuance of Moody's or Standard & Poor's, by another Nationally recognized rating service. Proof that the surety is licensed by the Insurance Department and has been assigned the required credit rating must accompany any payment bond submitted under this section.

(c) Unless otherwise required by the Board, a letter of credit must be issued by a bank, trust company, National banking association or corporation which is both subject to regulation by the Federal Reserve System under the Bank Holding Company Act of 1956 (12 U.S.C.A. §§ 1841—1849) and assigned a credit rating within the three highest rating categories, without regard to numerics or other modifiers, by Moody's or Standard & Poor's, or upon the discontinuance of Moody's or Standard & Poor's, by another Nationally recognized rating service. Proof that the bank, trust company, National banking association or corporation is subject to regulation by the Federal Reserve System under the Bank Holding Company Act of 1956 (12 U.S.C.A. §§ 1841—1849) and that the issuer has been assigned the required credit rating must accompany any letter of credit submitted under this section.

(d) The payment bond or irrevocable letter of credit provided under this section must state that it is payable to "The Commonwealth of Pennsylvania" as the obligee.

(e) The payment bond or irrevocable letter of credit provided under this section must provide that if the slot machine license has been approved and issued by the Board and the license fee has not been paid in full within 5 business days following the issuance of the license, the Commonwealth will have the right to request immediate payment under the payment bond or irrevocable letter of credit for payment of the slot machine license fee.

(f) The payment bond or irrevocable letter of credit provided under this section must state that it will expire upon the earlier to occur of the following:

(1) A specified expiry date or any automatically extended expiry date.

(2) Receipt by the issuer of the Board's signed statement that:

(i) The application has been denied.

(ii) The slot machine license has been issued and 10 business days have elapsed following the issuance of the license.

(iii) The license fee has been paid.

(iv) The applicant has been permitted by the Board to withdraw its application under § 423.5 (relating to application withdrawal).

(g) Any expiry date applicable to a payment bond or letter of credit provided under this section must be at least 12 months from the date of issuance of the payment bond or letter of credit. Any provision automatically renewing or extending a payment bond or letter of credit must do so at intervals of at least 3 months. Any notice

provisions to the Board in a payment bond or letter of credit applicable to an election by an issuer not to renew or extend a then current expiry date must provide that the Board will receive at least 60 days written notice, by registered mail or overnight courier service, of an election not to renew or extend.

(h) This section does not preclude a slot machine license applicant from substituting or replacing a payment bond or letter of credit during the period the application is on file with the Board provided the replacement payment bond or letter of credit is approved by the Board under to this section.

§ 441.11. Slot machine license issuance bond requirement.

(a) Upon the issuance of a slot machine license, a licensed gaming entity shall post an original payment bond in the amount of \$1,000,000.

(b) Unless otherwise required by the Board, the payment bond must comply with the following:

(1) The payment bond must be issued by a surety company that is both licensed by the Insurance Department and assigned a credit rating within the three highest categories, without regard to numerics or other modifiers, by Moody's or Standard & Poor's, or upon the discontinuance of Moody's or Standard & Poor's, by another Nationally recognized rating service. Proof that the surety is licensed by the Insurance Department and has been assigned the required credit rating must accompany any payment bond submitted under this section.

(2) A licensed gaming entity shall submit its proposed payment bond to the Board prior to the issuance of a slot machine license. The Board will investigate and approve both the proposed terms of the payment bond and the surety that will issue the payment bond.

(3) The payment bond must state that it is payable to "The Commonwealth of Pennsylvania" as the obligee for immediate payment of the licensed gaming entity's financial obligations to the Commonwealth under the act and as security to guarantee that the licensed gaming entity faithfully makes the payments, keeps its books and records, makes reports and conducts its operations in

conformity with the act, this part and the rules and orders promulgated by the Board.

(4) A payment bond issued in accordance with this section will remain in full force and effect throughout the period of time that the slot machine license is in effect. If a bond is canceled and the slot machine licensee fails to file a new bond with the Board in the required amount on or before the effective date of the cancellation, the licensee's license will be revoked or suspended.

(5) Any notice provision to the Board in a payment bond applicable to an election by a surety to cancel a then current payment bond must provide that the Board will receive at least 30 days written notice, by registered mail or overnight courier service, of the surety's election to cancel.

(c) The Board may demand that the licensed gaming entity post a new payment bond upon the occurrence of any of the following:

(1) Liability on the existing payment bond is discharged or reduced by judgment rendered, payment made or similar occurrence.

(2) The Board determines that the surety is no longer satisfactory.

(3) The licensed gaming entity requests the right to post a new payment bond.

(4) The Board receives notice that the payment bond will be cancelled.

§ 441.12. Public input.

(a) If the Board determines that there is substantial public interest in a slot machine licensing proceeding, it may conduct a public hearing in the region where the proposed facility is to be located.

(b) The Board will develop and publish a protocol establishing the procedure to be used in the conduct of a public hearing under this section.

[Pa.B. Doc. No. 06-213. Filed for public inspection February 3, 2006, 9:00 a.m.]

