

# PROPOSED RULEMAKING

## PENNSYLVANIA GAMING CONTROL BOARD

[ 58 PA. CODE CH. 441a ]  
Independent Audit Committee

The Pennsylvania Gaming Control Board (Board), under the general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) proposes to amend Chapter 441a (relating to slot machine licensing) to read as set forth in Annex A.

### *Purpose of the Proposed Rulemaking*

This proposal adds new provisions related to independent audit committees.

### *Explanation of Amendments to Chapter 441a*

Section 465a.11(c) requires the supervisors of the surveillance and internal audit departments to report directly to some form of an independent audit committee. While publicly traded corporations have Security and Exchange Commission requirements that must be met concerning independent audit committees, nonpublicly traded entities do not.

To ensure the financial integrity of gaming in this Commonwealth, the Board has developed criteria that must be met for independent audit committees of nonpublicly traded slot machine licensees. These criteria are similar to those that must be met by publicly traded slot machine licensees.

### *Affected Parties*

This proposed rulemaking will affect any slot machine licensee that is not a publicly traded corporation. Currently, three slot machine licensees would be affected by this proposed rulemaking.

### *Fiscal Impact*

#### *Commonwealth*

There will be no new costs or savings to the Board or other Commonwealth agencies as a result of this proposed rulemaking.

### *Political Subdivisions*

This proposed rulemaking will have no fiscal impact on political subdivisions of this Commonwealth.

### *Private Sector*

Slot machine licensees that are not publicly traded corporations will have to establish independent audit committees that meet these standards. The annual cost for the one nonpublicly traded slot machine licensee that has established an independent audit committee that meets these criteria is estimated to be approximately \$250,000.

### *General Public*

This proposed rulemaking will have no fiscal impact on the general public.

### *Paperwork Requirements*

The independent audit committee will be responsible for filing certain financial reports and annual certifications with the Board.

### *Effective Date*

The proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*.

### *Public Comments*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking, within 30 days after the date of publication in the *Pennsylvania Bulletin* to Paul Resch, Secretary, Pennsylvania Gaming Control Board, P. O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation No. 125-82.

### *Contact Person*

The contact person for questions about this proposed rulemaking is Richard Sandusky, Director of Regulatory Review, at (717) 214-8111.

### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 20, 2008, the Board submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final-form publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

MARY DIGIACOMO COLINS,  
*Chairperson*

**Fiscal Note:** 125-82. No fiscal impact; (8) recommends adoption.

### **Annex A**

#### **TITLE 58. RECREATION**

#### **PART VII. GAMING CONTROL BOARD**

#### **Subpart C. SLOT MACHINE LICENSING**

#### **CHAPTER 441a. SLOT MACHINE LICENSES**

#### **§ 441a.24. Independent audit committee.**

Slot machine licensees that are not publicly traded corporations or whose holding or intermediary companies are not publicly traded corporations shall establish an independent audit committee as required under § 465a.11(c) (relating to slot machine licensee's organization) which meets the following requirements:

(1) Be established with the general purpose and duty to monitor and report to the Board on the operations and financial control of the slot machine licensee.

(2) Be established by a charter which outlines its purpose, objectives and organization. The charter must, at a minimum:

(i) Set fixed terms for the members.

(ii) Set a minimum number of meetings to be held throughout the year.

(iii) Set the number of members required to be in attendance to conduct business.

(iv) Address situations in which there is a tie vote on a matter before the independent audit committee.

(v) Require the independent audit committee to establish a code of conduct for the independent audit committee.

(vi) Require the independent audit committee to review and approve the code of conduct for the slot machine licensee.

(3) The charter required under paragraph (2), any amendments thereto and the code of conduct required under paragraph (2)(v) must be approved by the Board.

(4) The independent audit committee shall consist of at least three, but no more than five, members appointed by the slot machine licensee, approved by the Board and licensed as principals.

(5) Members of the independent audit committee shall be independent in character and judgment, and there may be no relationships or circumstances which could affect, or might appear to affect, the member's independent judgment.

(6) A member of the independent audit committee may not have any ownership interest in the slot machine licensee or any entity owned by the slot machine licensee.

(7) A member of the independent audit committee may not have a material relationship with the slot machine licensee or any of the slot machine licensee's principals beyond membership on the independent audit committee. A member of the independent audit committee has a material relationship with the slot machine licensee or a principal of the slot machine licensee if:

(i) The member of the independent audit committee receives any compensation from the slot machine licensee or any of the slot machine licensee's principals, other than the compensation received for serving as a member of the independent audit committee.

(ii) The member of the independent audit committee receives any compensation from the slot machine licensee or any of the slot machine licensee's principals, other than the compensation received for serving as a member of the independent audit committee.

(iii) The member of the independent audit committee is, or has been within the last 3 years, employed by the slot machine licensee or any of the slot machine licensee's principals, or any company affiliated with the slot machine licensee or any of the affiliated company's principals.

(iv) The member of the independent audit committee is, or has within the last 3 years, served as an executive officer in any firm or business engaged by the slot machine licensee or any of the slot machine licensee's principals to perform any external or internal auditing functions.

(v) The member of the independent audit committee is, or has within the last 3 years, been employed by any company that has made payments to or received payments from the slot machine licensee or any of the slot machine licensee's principals, or any company affiliated with the slot machine licensee or any of the affiliated company's principals, exceeding \$1 million in any of the last 3 years.

(8) Members of the independent audit committee shall have contracts for the fixed term specified under the charter required under paragraph (2) and may not be terminated, except for "good cause." Any termination of a member of the independent audit committee must be approved by the Board.

(9) At least one member of the independent audit committee shall be an "audit committee financial expert," as that term is defined by the Securities and Exchange Commission under the Sarbanes-Oxley Act of 2002, the act of July 30, 2002 (Pub. L. No. 107-204, 116 Stat. 745).

(10) The independent audit committee shall have the resources, as determined by the independent audit committee and provided or funded by the slot machine licensee, necessary to fully execute its powers and duties established in the charter.

(11) The independent audit committee is directly responsible for the appointment, compensation, retention and oversight of the independent certified public accountant required by § 465a.5 (relating to annual audit; other reports; suspicious activity and currency transaction reporting). The independent certified public accountant shall report directly to the independent audit committee. The independent certified public accountant shall have a Nationally recognized and respected reputation and have expertise in the gaming industry. Within 30 days of the approval of the charter required under paragraph (2) and approval of the independent audit committee members, the independent audit committee shall:

(i) Notify the Board of its selection of the independent certified public accountant.

(ii) Certify that the independent certified public accountant has sufficient expertise in auditing in the gaming industry.

(iii) Certify that the independent certified public accountant is independent of the slot machine licensee, the slot machine licensee's principals, and any company affiliated with the slot machine licensee or the affiliated company's principals.

(12) The independent audit committee members shall individually review the reports required under § 465a.4 (relating to standard financial and statistical reports) and individually prepare a statement to accompany the annual audit required under § 465a.5 certifying that the member has reviewed the audit and, based on the member's knowledge, the audited financial statements do not contain any untrue statement of a material fact or omission of a material fact necessary to make the statements made, in light of the circumstances under which the statements were made, not misleading, and the financial statements in the audit fairly present in all material respects the financial condition, results of operations and cash flows of the slot machine licensee as of, and for, the periods presented.

(13) The independent audit committee is directly responsible for the appointment or approval of the appointment, compensation, retention and oversight of the department heads of the departments of internal audit and surveillance. These department heads shall report directly to the independent audit committee for matters of policy, purpose, responsibility and authority.

(14) The department heads of the departments of internal audit and surveillance shall report to the slot machine licensee's chief executive officer for matters of daily operation. The reports of these department heads must

include an assessment of any significant risks to the general operations of the slot machine licensee and how these are being managed.

(15) The independent audit committee shall approve the slot machine licensee's program for compliance with Chapter 465a (relating to accounting and internal controls), and monitor and report directly to the Board on the slot machine licensee's continuing compliance with those regulations.

(16) The independent audit committee shall report or cause to be reported to the Board any violations of the act, this part or other law.

(17) The independent audit committee shall establish adequate procedures for handling complaints regarding corporate and regulatory compliance and internal controls, including a system for handling anonymous complaints.

(18) The independent audit committee shall annually submit an annual report to the Board in which the independent audit committee evaluates its adherence to its purpose and duties, as established by the charter.

(19) Each member of the independent audit committee shall annually sign and submit to the Board a statement certifying that the member:

(i) Meets the independence standards contained in the charter establishing the independent audit committee.

(ii) Is in compliance with the code of conduct required under paragraph (2)(v).

[Pa.B. Doc. No. 08-349. Filed for public inspection February 29, 2008, 9:00 a.m.]

**[ 58 PA. CODE CH. 441a ]**  
**Slot Machine Licensing**

The Pennsylvania Gaming Control Board (Board), under the general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. § 1202(b)(12) and 4 Pa.C.S. § 1326 (relating to license renewals) proposes to amend Chapter 441a (relating to slot machine licensing) to read as set forth in Annex A.

*Purpose of the Proposed Rulemaking*

This proposal amends the provisions related to renewal of slot machine licenses.

*Explanation of Amendments to Chapter 441a*

Section 1301 of 4 Pa.C.S. (relating to authorized slot machine licenses) required the Board to consider the initial applications for slot machine licenses collectively and together. Accordingly, the Board approved the initial slot machine licenses on December 20, 2006.

Most licenses issued by the Board expire 1 year from the date that the license application is approved by the Board. However, for slot machine licenses, the Board tied the term of the initial licenses to the date that the licenses were issued. This was done for two reasons. First, because the statements of conditions for each of the successful applicants are unique and licenses are not issued until all of the conditions are met, the term of the initial licenses would have been for much less than 12 months. For example, Pocono Downs, which was the first licensed facility to open, did not receive its permanent license until October of 2007. If the December 20, 2006,

approval date had been used for the starting date for the term of its license, Pocono Downs would have had to file its renewal application in the same month it received its license. This would have placed an unreasonable administrative burden on Pocono Downs and the rest of the slot machine licensees.

The second reason the Board elected to use the issuance date instead of the approval date was to stagger the due dates of the slot machine license renewals. This allows the Board to more effectively allocate the staff that are needed to conduct the comprehensive renewal application reviews.

Now that the renewal dates have been staggered, the Board is proposing to tie the 12 month term of slot machine licenses that are renewed to the date that the Board approves the renewal application. This will allow the Board to continue to take advantage of the staggered renewal dates and to coordinate the renewal date of a slot machine licensee with the renewal dates of its principals and key employees. Additionally, the Board does not anticipate that there will be major changes in the statements of conditions for the renewals, so the time period between approval and issuance should be much shorter.

*Affected Parties*

The renewal dates for all slot machine licenses will be affected by this proposed rulemaking.

*Fiscal Impact*

*Commonwealth*

There will be no new costs or savings to the Board or other Commonwealth agencies as a result of this regulation.

*Political Subdivisions*

This proposed rulemaking will have no fiscal impact on political subdivisions of this Commonwealth.

*Private Sector*

The due dates for renewals of slot machine licenses will change but the costs associated with completing a renewal application will not change.

*General Public*

This proposed rulemaking will have no fiscal impact on the general public.

*Paperwork requirements*

There are no new paperwork or reporting requirements associated with this proposed rulemaking.

*Effective Date*

The proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*.

*Public Comments*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking, within 30 days after the date of publication in the *Pennsylvania Bulletin* to Paul Resch, Secretary, Pennsylvania Gaming Control Board, P. O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation No. 125-81.

*Contact Person*

The contact person for questions about this proposed rulemaking is Richard Sandusky, Director of Regulatory Review, at (717) 214-8111.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 15, 2008, the Board submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

MARY DIGIACOMO COLINS,  
*Chairperson*

**Fiscal Note:** 125-81. No fiscal impact; (8) recommends adoption.

**Annex A****TITLE 58. RECREATION****PART VII. GAMING CONTROL BOARD****Subpart C. SLOT MACHINE LICENSING****CHAPTER 441a. SLOT MACHINE LICENSES****§ 441a.16. Slot machine license term and renewal.**

(a) **[ A ]** **The initial slot machine license issued to a slot machine licensee under this chapter will be valid for 1 year from the date of the issuance of the license by the Board. Renewals of a slot machine licensee's license will be valid for 1 year from the date of the approval of the renewal of the license by the Board.**

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