



April 28, 2011

Ms. Mickey Kane  
Board Secretary  
Pennsylvania Gaming Control Board  
P.O. Box 69060  
Harrisburg, PA 17106-9060

**Re: PGCB Loan Repayment**

Dear Ms. Kane:

Sands Bethworks Gaming LLC ("Sands") wishes to suggest an alternate proposal for the repayment of the Pennsylvania Gaming Control Board ("PGCB") loans. The same method should be used to repay both the 2004 Gaming Act funding totaling \$36,100,000 and the subsequent funding from the Property Tax Relief Reserve Fund totaling \$63,851,403. However, in light of the fact that the repayment of the Property Tax Relief Fund loans begins when the 11<sup>th</sup> licensee is open and operating, we will focus our proposal on those loans only at this time.

The total annual repayment amount that each Licensee would be responsible for paying should be based upon the *cumulative* gross terminal revenues ("GTR") of each Licensee since their individual opening dates as a percentage of total *cumulative* GTR of all Licensees beginning with the opening date of the first casino through the annual date of repayment. This calculation would be adjusted each due date to account for the *cumulative* GTR of all of the Licensees for each of the annual payments. The Sands further proposes that the loans should be repaid over a ten (10) year term.

Attached to this letter are charts outlining the proposed 10-Year loan repayment schedule.

Regards,

A handwritten signature in black ink, appearing to read "Holly L. Eicher".

Holly L. Eicher, Esq.  
Vice president – General Counsel

C: Robert J. DeSalvio  
Frederick H. Kraus, Esq.





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April 28, 2011

Via E-mail

Board Clerk

Office of the Clerk

Pennsylvania Gaming Control Board

2601 North 3<sup>rd</sup> Street, Suite 502

One Penn Center

Harrisburg, PA 17110-2060

**Re: *Repayment of PGCB Loans  
Rivers Casino and SugarHouse Casino***

Dear Madam Clerk:

We have reviewed the comments submitted by the other licensees and the loan repayment presentation made by Doug Sherman and Allison Cassel at the Board's April 14, 2011 meeting. Please accept the following additional comments on behalf of Rivers Casino and SugarHouse Casino regarding the repayment of the outstanding PGCB loans.

It is critical to note that there are two sets of PGCB loans outstanding: (1) \$36.1 million in loans received during fiscal years 2004-2006 and (2) the \$63.8 million in loans received during fiscal years 2007-2010.

Some licensees have suggested that the second set of loans were used primarily to benefit all licensees, e.g., to establish the central computer system and to establish PGCB administration. The reality is that the first set of loans were utilized primarily for these purposes. The initial PGCB infrastructure had to be established prior to the beginning of fiscal year 2007 since five casinos were already operating at that time.

The proceeds of the second set of loans were used primarily on the facilities that were operational during fiscal years 2007-2010. Moreover, the facilities that were operational during this period were generating cash flow and had the first-to-market advantage over those facilities that opened subsequently.



Thus, we respectfully recommend that the Board adopt the repayment proposal set forth in our letter dated January 28, 2011, which is identical to the proposal submitted by Sands, and is set forth below:

	<u>FY 07-08</u>	<u>FY 08-09</u>	<u>FY 09-10</u>	<u>Total</u>	<u>Payments Each Year for 10 yrs</u>
Mohegan	2,722,961	2,328,519	2,316,668	7,368,148	736,815
Parx	5,188,578	3,839,758	3,972,205	13,000,541	1,300,054
Chester	5,310,134	3,444,693	3,192,787	11,947,614	1,194,761
Presque	2,579,761	1,809,103	1,714,177	6,103,041	610,304
Meadows	3,689,227	2,850,690	2,717,220	9,257,136	925,714
Mt Airy	1,764,673	1,942,331	1,513,720	5,220,724	522,072
Penn	1,159,759	2,362,881	2,570,681	6,093,321	609,332
Sands	-	326,835	2,499,731	2,826,566	282,657
Rivers	-	-	2,034,311	2,034,311	203,431
SugarHouse Loan	-	-	-	-	-
Amounts	22,415,093	18,904,810	22,531,500	63,851,403	

Thank you for your consideration.

Very truly yours,



MICHAEL D. SKLAR

MDS/ch

cc: Kevin O'Toole  
R. Douglas Sherman  
Steve Cook  
Allison Cassel  
Greg Carlin  
Dave Patent  
Wendy Hamilton  
Joe Barrett  
Mary Cheeks

HOLLYWOOD  
Casino

at  
PENN NATIONAL RACE COURSE

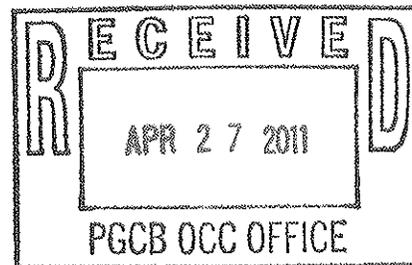
Frank E. Quigley  
Vice President & General Manager

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April 26, 2011

*Via Overnight Delivery*

R. Douglas Sherman, Esquire  
Chief Counsel  
Pennsylvania Gaming Control Board  
303 Walnut Street  
5th Floor, Verizon Tower  
Harrisburg, PA 17101-1825



Re: Repayment of Loans Pursuant to Section 1799-E(g) of the Fiscal Code

Dear Mr. Sherman:

Thank you for this opportunity to comment on the array of proposals for establishing a repayment schedule for the loans from the Property Tax Relief Reserve Fund that you presented to the Board on April 14, 2011. Specifically, we appreciate that each of the three Alternatives you presented take into account the history of revenue generation at each facility. As you explained in your presentation, if repayment of the three loans ignores historical gross terminal revenue, then the casinos that opened first will receive a significant windfall.

I write this letter to recommend that the Board implement Alternative 2 (repayment based on cumulative gross terminal revenue) because it is the only Alternative that would take into account the *full* history of revenue generation at each facility. Five facilities opened in fiscal year 2006-07 generating almost half a billion dollars in gross terminal revenue.<sup>1</sup> Ignoring this revenue would permit a windfall for these facilities, particularly the three most profitable facilities during that period.<sup>2</sup> In the alternative, the Board could consider implementing Alternative 1 (repayment based on annual gross terminal revenue) with one modification so that the first installment of the loan repayment is based on fiscal year 2006-07 gross terminal revenue instead of fiscal year 2007-08 gross terminal revenue.<sup>3</sup>

I also write to inquire about how the repayment schedule will account for the \$800,000 payment that was required at the time each facility opened. The \$800,000 payment was in addition to the assessed 1.5% of gross terminal revenue withdrawn from the facility's Section 1401 Account. For that reason, we believe that this payment should be treated as a credit against the future repayment of these loans.

Thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank Quigley".

Frank Quigley

<sup>1</sup> The Meadows, which opened in June 2007, generated only \$13.4 million in gross terminal revenue during fiscal year 2006-07.

<sup>2</sup> Parx Casino, Harrah's Chester Downs and Mohegan Sun generated \$144 million, \$127 million and \$107 million, respectively, during fiscal year 2006-07.

<sup>3</sup> Another potential modification of Alternative 1 would be to base the first installment of the loan repayment on the combined fiscal year 2006-07 and fiscal year 2007-08 gross terminal revenue for each facility.

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April 27, 2011

*Via E-mail*

R. Douglas Sherman, Esquire  
Chief Counsel  
Pennsylvania Gaming Control Board  
303 Walnut Street  
5th Floor, Verizon Tower  
Harrisburg, PA 17101-1825

Re: Repayment of Loans Pursuant to Section 1799-E(g) of the Fiscal Code

Dear Mr. Sherman:

As you know, Ballard Spahr represents Valley Forge Convention Center Partners, LP ("Valley Forge"), the first successful applicant for a Category 3 slot machine license. I am submitting this letter in response to the PGCB's invitation for additional comments regarding a repayment schedule for the three loans from the Property Tax Relief Reserve Fund (as mandated by Section 1799-E(g) of the Fiscal Code, 72 P.S. § 1799-E(g)) following your presentation of an array of proposals at the Board's April 14, 2011 meeting.

Before addressing the respective proposals, I wish to respond to a comment from your April 14<sup>th</sup> presentation. Specifically, when you presented the pros and cons of the Sands proposal, you mentioned that "late opening casinos [would] benefit from PGCB ramp-up and administrative development without paying toward those functions" and that "all 11 [facilities] have benefited from PGCB administrative and regulatory development and should share in [the] cost of [those] benefits."

However, all 11 facilities -- in fact, all 14 facilities, - will share in the reimbursement of the administrative and gaming regulatory development costs of the PGCB, the Department of Revenue and the Pennsylvania State Police when they repay the initial \$36.1 million loan from the General Fund which covered these regulatory agencies' initial expenditures during fiscal years 2004-05, 2005-06 and 2006-07 (4 Pa. C.S. § 1901.1). It is this initial loan which funded the creation of a gaming regulatory framework in the Commonwealth. As one illustration, the Board had already adopted a full set of permanent regulations by the end of fiscal year 2006-2007 (the temporary regulations expired on July 5, 2007). In addition, the Board had accepted and acted upon the applications for all major slot manufactures and slot operators by the end of 2006. The fact that five (5) slot operators were able to commence slot operations prior to the end of fiscal year 2006-07 is proof that the regulatory framework had been established by that time.

DMEAST #13631276 v4

In contrast, the three loans from the Property Tax Relief Reserve Fund financed the Board's regulatory activities after its initial start-up. These loans provided facilities temporary relief by reducing contributions to their Section 1401 Accounts during each loan period so that the facilities had a period of time to establish themselves and achieve a stabilized revenue base.

For these reasons, we feel that each licensed operator should only be required to share in the post-start-up regulatory costs to the extent that the operator benefited from the regulatory structure which allowed it to operate in the Commonwealth. Nonetheless, Valley Forge understands that the Board is seeking a compromise proposal that takes into consideration both historical gross terminal revenue and ongoing gross terminal revenue. All three of the "Alternatives" presented on April 14, 2011 represent different forms of such a compromise.

Ultimately, Valley Forge respectfully requests that the Board adopt **Alternative 2** because, among the three Alternatives, (i) Alternative 2 is the only proposal that would take into consideration the full history of each facility's gross terminal revenue, including fiscal year 2006-07, and (i) Alternative 2 is the only proposal that would treat each facility's first fiscal year of operations in the same manner. Five facilities opened in fiscal year 2006-07, generating almost half a billion dollars in gross terminal revenue. Under Alternatives 1 and 3, these facilities would receive a significant windfall because their first fiscal year of operations would be excluded from their historical gross terminal revenue. Moreover, their first fiscal year of operations would be excluded while the first fiscal year of operations for every other facility would not be excluded. There is no reason to permit these facilities a windfall by setting aside their initial fiscal year when the initial fiscal year for the other six facilities is not set aside.<sup>1</sup>

Valley Forge requests that Alternative 3 be rejected for three additional reasons. First, backloading the repayment installments does not reflect any strong policy. It is simply a means by which to shift an additional repayment amount from those facilities that opened first – and therefore benefited from the regulatory structure during the relevant loan periods – to those facilities that opened subsequently. Second, Alternative 3 assumes that all 11 facilities are of equal size although a Category 3 licensed facility is a fraction of the size of Category 1 and 2 licensed facilities. Finally, Alternative 3 fails to recognize that Category 3 licensees do not have the ability to recoup regulatory costs by placing additional slot machines and table games on the gaming floor, as they are capped at 600 slot machines and 50 tables.

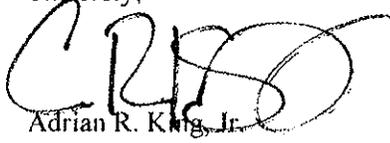
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<sup>1</sup> Alternatively, the Board may consider adopting Alternative 1 with the modification that the first installment would be based on fiscal year 2007 instead of fiscal year 2008.

R. Douglas Sherman, Esquire  
April 27, 2011  
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We appreciate this opportunity to provide comment and thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "AR King, Jr.", with a large, stylized flourish at the end.

Adrian R. King, Jr.



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April 27, 2011

**VIA EMAIL**

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Harrisburg, PA 17106-9060  
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**Re: Washington Trotting Association, Inc.  
License No.: F-1316  
Comments to Loan Repayment Proposals**

Dear Secretary Kane:

As you are aware, we represent Washington Trotting Association, Inc., a Category 1 License No. F-1316. On behalf of WTA, we are submitting the following comments to the Pennsylvania Gaming Control Board (the "Board") Loan Repayment as presented on April 14, 2011 (the "Proposal").

The Presentation summarized three (3) repayment options. WTA respectfully submits that Alternative 3 best meets that Board's goals of fairness, accountability, and equity and is the most fair repayment plan for all licensed facilities. It allows open casinos to pay the Board starting after the facility opens and begins to generate revenue, while still holding all facilities accountable. Further, it alleviates the burden of repayment on the facilities that opened earlier, making it equitable for all facilities.

WTA believes the other alternatives results in disproportionate benefits to certain licensees.

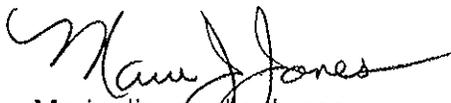


Fox Rothschild LLP  
ATTORNEYS AT LAW

Mickey Kane, Board Secretary  
April 27, 2011  
Page 2

Thank you and please contact me if you have any questions.

Very truly yours,

  
Marie J. Jones

cc: R. Douglas Sherman, Esq. (via email)  
Guy Hillyer, President (via email)  
Sean Sullivan, General Manager (via email)



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April 28, 2011

**VIA ELECTRONIC FILING**

Mickey Kane, Secretary  
PA Gaming Control Board  
Strawberry Square  
Verizon Tower, 5<sup>th</sup> Floor  
Harrisburg, PA 17106

RE: Establishment of Repayment Schedule for Loans from Property Tax Relief Reserve Fund Under Section 1799-E(G) of the 2010 Fiscal Code

Dear Secretary Kane:

Enclosed are the Joint Comments of Downs Racing L.P. and Greenwood Gaming and Entertainment, Inc. for filing in the above matter.

Sincerely,

Alan C. Kohler

ACK/jls  
Enclosure

cc: Doug Sherman (via email w/enc)  
Allison Cassel (via email w/enc)

**BEFORE THE  
PENNSYLVANIA GAMING CONTROL BOARD**

**Establishment of Repayment Schedule** :  
**For Loans From Property Tax** :  
**Relief Reserve Fund Under Section** :  
**1799-E(G) of the 2010 Fiscal Code** :

**JOINT COMMENTS OF  
DOWNS RACING L.P. AND  
GREENWOOD GAMING AND ENTERTAINMENT, INC.**

Downs Racing, LP d/b/a Mohegan Sun at Pocono Downs ("MSPD") and Greenwood Gaming and Entertainment, Inc. d/b/a Parx Casino ("Parx") (jointly "MSPD/Parx") submit these Joint Comments to address the Fiscal Code loan repayment issues, as captioned above.

**INTRODUCTION AND BACKGROUND**

At the Board's Public Meeting of April 14, 2011, Chief Counsel Doug Sherman and Assistant Chief Counsel Allison Cassel made a presentation outlining the issue and various alternative proposals pertaining to repayment of loans from the Property Tax Relief Reserve Fund provided for Fiscal Years ("FY") 07-08 through 09-10 used to fund the Board's regulatory costs and to defer gaming industry repayment of the loans until 11 licensed facilities are opened and operational. The total outstanding amount of the three loans is \$63,851,403.

The presentation of the Chief Counsel followed the receipt of letters from gaming facilities in late January 2011, setting forth their respective positions regarding how the loans should be repaid as outlined by the Board at a December 7, 2010 Industry Meeting. Pursuant to the Board's directive, the various letters addressed the issues of 1) the frequency of payments; 2) allocation of payment obligations between casinos; 3) timing of commencement of payments;

and 4) length of repayment period. At the Chief Counsel's April 14, 2011 presentation, he summarized the positions of the casino parties and outlined three alternatives in an attempt to have the parties consider compromise positions. At the close of the presentation, an additional comment period was established under which interested parties were provided the opportunity to submit formal comments to the Board by April 28, 2011. These Joint Comments are submitted by MSPD/Parx in response to that directive.

### SUMMARY

MSPD/Parx applaud the Board for promoting compromise and attempting to bring the licensed facilities together on loan repayment issues. The three alternatives developed by the Chief Counsel are creative and merit the appropriate analysis. Unfortunately, they are also flawed in that they do not reflect the legislative intent or underlying purpose of the regulatory cost loan program.

The General Assembly developed the regulatory cost loan program in order to equitably spread out the cost of development and ramp-up of Pennsylvania's gaming regulatory system until such time as all or most casinos were opened and operational. The purpose was to defer these costs until a critical mass of facilities could commence repayment in proportion to their piece of the Pennsylvania Gross Terminal Revenue ("GTR") pie at the time of loan repayment. In other words, loan repayment would not be linked to the time of opening, but the casino's proportion of GTR at a date certain when eleven facilities became operational. There was one and only one objective of the program – that being to relieve early opening casinos, like MSPD and Parx, from paying a disproportionate share of the portion of regulatory costs funded by the loans, because they opened (and started generating tax dollars for the Commonwealth) early.

The General Assembly first adopted the key phrase “proportional to each slot machine licensee’s gross terminal revenue” through enactment of Section 1901.1 of the Gaming Act which governs the original \$36.1 million loan, and was funding the ramp-up costs of all four gaming agencies and the central control computer – all of which provide equal benefit to early and late opening casinos and should be funded by all casinos regardless of when they opened. While the words in the Fiscal Code could have been clearer, the intent of the General Assembly was abundantly clear given the underlying purpose of the program.

Accordingly, the MSPD/Parx allocation methodology represents the only outcome which is consistent with the legislative intent,<sup>1</sup> in that it utilizes a contemporaneous approach to allocate repayment obligations based on proportion of GTR at the time loan repayment becomes ripe. All of the other proposals, including the Chief Counsel’s three alternatives, depart from the purpose of the loan program – that being to protect early opening casinos, and also include other flaws as specifically described below.

With this said, Alternative 3 is far more equitable and closer to the legislative intent than other alternatives – particularly if Alternative 3 were modified to reflect the comments of Commissioner Trujillo at the April 14 Public Meeting and accelerate the commencement of late opening casino payments so that all facilities commence payment in the first loan repayment year.<sup>2</sup> Although, Alternative 3, even with modifications consistent with Commissioner Trujillo’s

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<sup>1</sup> The MSPD/Parx allocation methodology proposal should be distinguished from the issue of when loan repayment should be commenced. In its January 20, 2011 letter, MSPD/Parx recommended that loan repayment be commenced in 2014 after the 11<sup>th</sup> casino developed a GTR record. However, the MSPD/Parx allocation methodology could be implemented with any start date directed by the Board. MSPD/Parx agree that the repayment start date is well within the Board’s discretion, however, the allocation methodology must reflect the legislative intent and the underlying purpose of the loan program.

<sup>2</sup> All three Chief Counsel alternatives suffer from a common illegality – that being that under the Fiscal Code language, loan repayment for all operating casinos must commence simultaneously at some point in time after the 11<sup>th</sup> casino becomes operational, and no authority is provided to the Board to further defer the repayment commencement date of some of the operating casinos. Accordingly, Commissioner Trujillo’s comments could, if implemented properly, cure an illegality in Alternative 3.

comments,<sup>3</sup> is not compliant with the legislative intent in the 2010 Fiscal Code, however, it is closer to compliant than any of the other Chief Counsel alternatives.

Further, as recognized by the Chief Counsel in his April 14 presentation, there is no disagreement about the duration of the loan term, which all parties agree should be ten years, and the Board should implement the ten year term without further consideration. Next, the Board should address an issue not previously raised – that being the structure of loan repayments. While MSPD/Parx have recommended a quarterly loan repayment frequency (to allow for better cash flow management), regardless of the frequency, the Board should implement loan repayments as a surcharge to 1401 account drawdowns. This is important, because such a structure will assist licensed facilities in accounting for the payments, and may potentially avoid or reduce booking of liability in the near term – a scenario which could have a detrimental effect on further financing and financial statement auditing (particularly for public and quasi-public companies).

Finally, the Board should address two scenarios in which the Industry either loaned money to fund regulatory costs or in which regulatory costs were apparently over-collected from the Industry. These monies should be accounted for through offsets or payment towards outstanding Reserve Fund loan balances.

## **DISCUSSION**

### **A. The MSPD/Parx Allocation Methodology is the Only Option Consistent with the Legislative Intent and the Underlying Purpose of the Loan Program.**

In reviewing this issue, the Board has to keep in mind that the sole purpose of the regulatory loan program was to protect the casinos that opened early and to prevent them from

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<sup>3</sup> MSPD/Parx understand that Commissioner Trujillo's comments were for discussion purposes only and may not reflect the Commissioner's final position on this matter.

paying a disproportionate amount of regulatory costs. As the Board will recall, it was the early opening casinos, like MSPD and Parx, that requested and were provided relief by the General Assembly in the form of a loan program, to ensure that they did not bear the entire cost burden of initial industry regulation.

Some later entrants to the industry may not recall that at the onset, the Commonwealth wanted licensed facilities to open early to start the flow of tax dollars into the Commonwealth coffers. To make this possible, and in recognition of the fact that all casinos, no matter when they opened, benefitted from the regulatory system development in the early years, a portion of the regulatory cost pot was deferred until later years when a critical mass of casinos were open and could pay for the development of the regulatory system – albeit in relation to their relative GTR at the time of repayment. There was no other purpose in enactment of the loan program.

Accordingly, the characterization of the MSPD/Parx proposal as an extreme position is unfounded. Indeed, it is the most reasonable solution, because it accurately reflects the underlying intent of the Fiscal Code and the underlying purpose of the program.

In the April 14 presentation, the Chief Counsel identifies two “cons” of MSPD/Parx proposal.<sup>4</sup> The first “con” is that repayment would not begin until 2014. This con is misplaced. It is true that MSPD/Parx proposed that repayments not be commenced until the eleventh casino not only becomes operational, but also develops a GTR track record. This proposal only makes sense, since it appears the General Assembly expected all operational facilities, including the eleventh casino, to simultaneously commence repayment at the time repayment because ripe. However, the repayment commencement date issue is completely unrelated to the allocation methodology issue which forms the heart of the MSPD/Parx proposal. Stated differently, the

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<sup>4</sup> The presentation accurately identifies as a “pro” of the MSPD/Parx proposal that it spreads out the payments more evenly across all facilities while still reflecting the percentage of GTR.

MSPD/Parx proposal can be implemented with any repayment commencement date selected by the Board – which commencement date is only relevant to treatment of the eleventh casino.<sup>5</sup> Accordingly, focusing on the repayment commencement date misses the point. If the Board favors earlier repayment commencement, it should so order within the context of the MSPD/Parx allocation methodology.

The second “con” of the MSPD/Parx proposal identified by the Chief Counsel is that it gives facilities that opened first a windfall because gross terminal revenue from their most profitable period would not be considered in the calculations. However, this claim is incorrect, and, in fact, distorts the central issue.

MSPD and Parx do not receive a windfall from their proposal, since they both paid approximately 1.5% of their respective GTR out of their Section 1401 accounts to fund regulatory costs from the day they first opened their doors for business, and for years before late opening casinos commenced operations.<sup>6</sup> Indeed, as broken down on page 15 of the MSPD/Parx January 28, 2011 Letter, together MSPD and Parx paid over \$20 million in regulatory costs prior to the time that Sands and Rivers opened and over \$35 million prior to the time SugarHouse became operational.

The Chief Counsel may be misled by the fact that, from an accounting perspective, the loans were assigned to fund PGCB regulatory costs, rather than the costs of the other three Commonwealth gaming agencies which were funded directly out of the 1401 accounts. However, as discussed on pages 6-7 of the MSPD/Parx January 28, 2011 Letter, the assignment

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<sup>5</sup> Likewise, any of the other proposals of Chief Counsel alternatives could be implemented with a 2014 repayment commencement date.

<sup>6</sup> This is in addition to millions of dollars paid in regulatory costs invoiced directly by the Board to MSPD and Parx.

of loan monies to fund PGCB costs was nothing more than an accounting adjustment to efficiently maintain the previously agreed to 1.5% drawdown rate for the 1401 accounts.

Placed in context, the over \$20 million (or \$35 million) paid by MSPD and Parx prior to the time the late opening casinos started operations represents an equitable contribution to all regulatory costs out of its GTR since opening. This hardly represents a windfall.

A windfall would exist only if one takes the view that MSPD and Parx have contributed nothing to PGCB costs since opening. However, such a view (and regardless of the accounting of the assignment of funds from the loans) is wrong and inequitable. Under such a view, the early opening casinos would have been forced to fund, in its entirety, the ramp-up and development of the other three regulatory agencies, the State Police, the Attorney General, and the Department of Revenue, and in particular, the installation and development of the central control computer system<sup>7</sup> – a multi-million dollar project which provides equal benefit to early opening and late opening casinos, alike. Such an outcome would indeed provide a windfall, but to the late opening casinos who would receive the ongoing benefit of the central control computer (and the costs of the development of the regulatory system of the other three agencies) without paying a single penny towards its procurement, installation and development.

The fact of the matter is that MSPD, Parx and the other early opening casinos paid their fair share towards all regulatory costs from their 1401 accounts on an ongoing basis from the time of opening. The amounts funded through the regulatory loans represented those amounts that would be deferred until all or a critical mass of casinos could contribute to funding, not by reaching back to historic GTR which had already been assessed, but on a pro rata basis at the

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<sup>7</sup> Although one could argue that the installation and implementation of the central control computer system was funded by the original \$36.1 million Gaming Act loan, under Section 1901.1 of the Gaming Act, the repayment of that loan (when all 14 casinos are in operation) is governed by the exact same “proportional to each slot machine licensee’s gross terminal revenue” language which governs Fiscal Code loan repayment obligation allocation.

time loan repayment became due. Such an outcome is the only fair and equitable outcome, which provides no windfall to anyone. Furthermore, the MSPD/Parx proposal is the only proposal or alternative which reaches this equitable result. Accordingly, it should be adopted by the Board.

**B. None of the Other Proposals or Alternatives Comport with the Legislative Intent or the Underlying Purpose of the Loan Repayment.**

As argued above, only the MSPD/Parx allocation methodology comports with the legislative intent underlying Section 1799-E(g) of the Fiscal Code and the purpose of the loan program. MSPD/Parx will briefly address the flaws in each of the other proposals and alternatives below.

**1) Sands Proposal**

Under the Sands proposal, only the licensed facilities that were opened for the FY in which a given loan was issued participate in repayment in proportion to those licensed facilities GTR for that FY.<sup>8</sup> The Sands proposal is noncompliant with the statute and would defeat the purpose of the regulatory cost loan program.

The policy rationale for the loan program initiative was recognition of the fact that a very significant portion of the regulatory costs incurred by the Gaming Agencies were to construct and implement regulatory agencies, regulatory structures, and regulatory schemes necessary to regulate the new gaming industry in Pennsylvania. The Board had to be formed from scratch. The other three Gaming Agencies had to develop expertise in gaming matters. Hundreds of state employees had to be hired. A central control computer system had to be bid, retained,

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<sup>8</sup> In the MSPD/Parx January 28, 2011 Letter, the Sands proposal (and variations thereof) were referred to as the Historic Approach, in direct contrast to the MSPD/Parx Contemporaneous or Forward Looking Approach.

constructed and paid for. Hundreds, if not thousands, of pages of temporary regulations had to be promulgated and then administered through processes to make them permanent regulations. Lawsuits had to be defended. These activities, and many others, were not for casinos that opened early or opened late, they were necessary for all Pennsylvania casinos, no matter when they opened. The fact of the matter is that no Pennsylvania casino can operate for one hour of one day without a Board, a taxing authority (the DOR), a comprehensive administrative structure with gaming expertise, a central control computer system or governing regulations.

In fact, all of the initial \$36.1 million loan was expended for these types of activities for all casinos, including those that still have not opened, virtually all of which was expended before any casino opened for business. Furthermore, these general administrative activities continue to this day, and represent a very significant portion of overall regulatory costs on an ongoing basis.

With this in mind, if the Board were to adopt the Historic Approach advocated by Sands, it would completely destroy the underlying purpose of the regulatory loan program, that being to require all or a critical mass of casinos to fund these common regulatory costs, deferred by the loans, based on the relative revenue size of the casino, and without regard to when they opened for business. Essentially, under the Historic Approach, the net result is that each casino would pay the same amount of the loans that it would have paid if repayment had not been deferred at all<sup>9</sup> and repayment had began over some term at the time of opening or at the time the loan was issued. Deferral would have served no purpose.<sup>10</sup> And, of course, the net result would be that the early opening casinos would have loan repayment obligations in disproportion to late

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<sup>9</sup> In fact, under the Sands proposal, only eight casinos participate at all in loan repayment, and the other three operating casinos, and all future casinos are completely left off the hook – completely defeating the purpose of the loans, which was to have all casinos fund the development and ramp-up of the statewide gaming regulatory system, regardless of when a given casino opened.

<sup>10</sup> Yet, for each of the four loans, the General Assembly deferred all repayments until all, or a critical mass, of casinos were opened for business.

opening casinos for repayment of costs incurred for all casinos, including the original \$36.1 million loan, which has the same loan repayment allocation language. At the end of the day, early opening casinos, which provided the value of early tax revenue streams to the Commonwealth, would be penalized for opening early – the exact result that the regulatory loan program was intended to avoid.

## **2) The Chief Counsel's Alternatives**

At the April 14, 2011 Public Meeting presentation, the Chief Counsel described three alternatives which were apparently designed to represent middle ground between the MSPD/Parx Proposal and the Sands proposal. Each alternative is addressed below, however, all three alternatives share a common flaw resulting in departure from both compliance with the Fiscal Code and loan purpose. That flaw is that each of the alternatives defers the commencement of loan repayment by late opening casinos for 2-4 years – deferral resulting in an illegal outcome.

Section 1799-E(g)(1) of the Fiscal Code requires that repayment of all of the loans in question “by licensed gaming entities shall begin at such time as at least 11 slot machine licensees” are open for business. The statutory provision requires that repayment commence for all operational licensed gaming entities simultaneously and does not give the Board discretion to defer or delay repayment commencement for individual casinos by staggering repayment start dates. Furthermore, staggering repayment start dates would be inconsistent with the underlying purpose of the loan program to defer repayment until all or a critical mass of casinos could participate in repayment. Delaying repayment participation for late opening casinos would throw things in reverse, and impede the maximum participating repayment scenario the loan program was intended to achieve. Finally, delaying repayment commencement for late opening casinos would penalize early opening casinos – the result the loan program was intended to avoid

– and place these casinos at a competitive disadvantage by imposing a very significant cost for several years, that would not be imposed on late opening competitors. Again, it was this exact type of result that the General Assembly was trying to avoid – not achieve.

At the April 14, 2011 Public Meeting, Commissioner Trujillo identified and discussed this problem and suggested that simultaneous loan repayment commencement for operational facilities should be considered. Commission Trujillo is correct and not only is simultaneous repayment commencement appropriate, it is legally required. Accordingly, before seriously considering any of the Chief Counsel’s alternatives, the staggered start approach must be eliminated.

a) *Alternatives 1 and 2*

Alternatives 1 and 2 are variations of the Sands proposal in that the starting point for repayment allocation is the proportion of total GTR from casino opening. As argued comprehensively on pages 8-13 of the MSPD/Parx January 28, 2011 Letter, such an approach departs from the language and intent of Section 1799-E(g) of the Fiscal Code and must be rejected.

Furthermore, any of these “calculate proportion of GTR from opening” approaches undercut the purpose of the loan program by penalizing early opening casinos which are required to pay a disproportionate amount of the regulatory costs required to build and implement the statewide gaming regulatory system. Essentially, the late opening casinos would pay little, but yet receive the full benefit of the development of comprehensive gaming regulatory system. This was not what the General Assembly intended, and, accordingly, these two alternatives, like the Sands proposal, cannot be adopted by the Board and, if adopted, would almost certainly be subject to both judicial review and legislative challenge.

c) *Alternative 3*

Under Alternative 3, repayment calculation would include carryovers in the first four years to move a portion of the costs to later years when all operating licensed facilities commence repayment.<sup>11</sup> Alternative 3 represents a step in the right direction in that it makes some attempt to be more equitable to early opening casinos. Alternative 3 also has some attractiveness on a net present value basis because it defers the majority of the repayment obligation to the back end of the ten year term.

However, Alternative 3, while certainly better than Alternatives 1 and 2, remains seriously flawed and cannot be adopted by the Board. First, as discussed by Commissioner Trujillo, before seriously considering Alternative 3, it would have to be fixed to accelerate commencement repayment by late opening casinos without disabling the allocation methodology.<sup>12</sup> Second, while including some variation, Alternative 3 still relies on casino opening as the starting point for repayment allocation. As argued throughout the MSPD/Parx January 28, 2011 Letter and these Comments, such an approach is inconsistent with the legislative intent and the underlying purpose of the loan program. While the overpayments by early opening casinos are back end loaded – which is of course preferable to front end loaded from a net present value perspective – early opening casino still overpay.

Overall, while MSPD/Parx commend the Chief Counsel for developing the three alternatives in an attempt to bring the parties together, the alternatives remain flawed and only the MSPD/Parx proposal can be adopted by the Board. Understood within the context of development of the statewide regulatory system, including all four gaming agencies and the

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<sup>11</sup> As discussed previously, under all three Chief Counsel alternatives, including Alternative 3, repayment commencement for late opening casinos is delayed for 2-4 years.

<sup>12</sup> This would also alleviate or resolve the “con” identified by the Chief Counsel for Alternative 3 – that being that less money is paid back to the Property Tax Relief Reserve Fund in the first four years of repayment.

central control computer system, and the underlying purpose of the loan program, the MSPD/Parx proposal provides no windfall to anyone and is fair and equitable to all.

**C. The Board Should Adopt a Ten Year Repayment Term Without Further Consideration**

Section 1799-E(g)(2)(iii) of the Fiscal Code provides the Board with discretion to require repayment of the loans on a term no less than five years, but no more than ten years. All parties participating in this matter agree that a ten year repayment term is appropriate. In fact, adopting a ten year term will ease the pain of repayment on licensed facilities, regardless of the outcome of the repayment allocation debate. Furthermore, a ten year term has no downside – it is critical that it be adopted by the Board.

**D. The Board Should Structure Repayment Through Surcharges to 1401 Account Drawdowns**

Now that the time for loan repayment is approaching, concerns are arising regarding the accounting treatment of the loan obligations. To the best of the knowledge of MSPD and Parx, no licensed facility reserved projected liabilities for loan obligations as the loans were made for the simple reason that, although the repayment obligation was clearly with the “Industry,” there was no way to identify any liability on a property-specific basis.<sup>13</sup>

With this background, it is far preferable for MSPD and Parx, and presumably other facilities, to account for the loan repayments as an operating expense. It will provide assistance in achieving this accounting treatment and avoiding the near term recording of liability.

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<sup>13</sup> Depending on the methodology selected by the Board, this inability will continue even after loan repayment commences as obligations are adjusted as new facilities come on line.

Otherwise, the implementation of loan repayment could have an impact on pending and future financing and audits.<sup>14</sup>

To assure this is possible in the context of the applicable accounting rules, the Board should structure loan repayments as a surcharge to Section 1401 account drawdowns.<sup>15</sup> Such a proposal should assist all casinos and harm no one. Accordingly, it should be adopted by the Board.

**E. Over-collections from 1401 Accounts Should be Offset from or Paid Towards Outstanding Loan Balances**

As explained previously, an assessment of approximately 1.5% of GTR is drawn down from each operating casino's Section 1401 account. For the three FYs for which there was a loan from the Reserve Fund, those draw downs were intended to fund the gaming budgets of the PSP, the Attorney General and the Department of Revenue. Prior to that time and in this last FY, those draw downs were intended to fund the gaming regulatory costs of these three agencies and the Board.

It is the understanding of MSPD and Parx that there have been some very significant over-collections over the years resulting from this 1401 account drawdown process and that these over-collections continue to accrue and grow.<sup>16</sup> These over-collections have resulted in the overpayment of regulatory costs by operating casinos and represent dollars that need to be applied for that purpose.<sup>17</sup>

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<sup>14</sup> This is of particular concern to public and quasi-public companies, like MSPD.

<sup>15</sup> Depending on the frequency of payments selected by the Board, a mechanism may have to be adopted to assure that the 1401 account has an adequate balance to make the loan repayment.

<sup>16</sup> These over-collections were discussed by a group of legislators on a panel at the recent Pennsylvania Gaming Conference. Although MSPD and Parx do not know the specific details of the over-collections, it is their understanding that at some point in the last year the over-collections reached \$26 million, and apparently have continued to grow since then.

<sup>17</sup> Under Section 1401 of the Gaming Act, the 1401 accounts are administered by the Department of Revenue.

It is also important to recognize that, depending on the accounting for those monies and the timing of over-collections, it is likely that a disproportionate amount of these dollars were paid by early opening casinos which have been subject to the 1.5% weekly drawdown for a much longer period of time. Accordingly, it is appropriate that an audit and accounting of the 1401 accounts be produced that identifies the over-collections, and quantifies the proportion of over-collections drawn from each individual casino. Upon completion of such an analysis, the over-collections should then either be offset from or paid towards the outstanding loan account balances. Finally, the 1401 account drawdown system should be adjusted to avoid such over-collections in the future. Such an approach will assure that the Industry appropriately funds the regulatory costs of the four gaming agencies without overpaying, both retroactively and prospectively.

**F. Penn's Proposal to Offset the Original \$800,000 Loan to the PGCB Should be Adopted**

Page 6 of the MSPD/Parx January 28, 2011 Letter, in describing the chronology of events leading up to the regulatory loan program, accurately portrays that in January of 2007, an arrangement was reached under which \$800,000 was drawn down from each casino's 1401 account at the time of opening. That \$800,000 drawdown was to be considered a loan to the PGCB, the original purpose of which was to fund PGCB operations until the end of that FY.<sup>18</sup>

In Penn's January 27, 2011 Letter to Chief Counsel Sherman on the loan repayment issue, it requested as follows:

- 5) Each facility's obligation to repay these loans should be reduced by the facility's \$800,000 payment that was required at the time the facility opened. This \$800,000 payment was in addition to the assessed 1.5% of gross terminal

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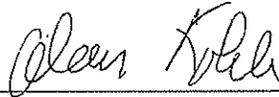
<sup>18</sup> At the time, the original \$36.1 million had been depleted, and the PGCB was quickly running out of cash to fund its daily operations until additional monies could be appropriated by the General Assembly.

revenue withdrawn from the facility's Section 1401 Account and should be treated as a credit against the future repayment of these loans.

Penn is correct. The original \$800,000 loans from casino operators, like the subsequent loan from the General Fund and the three subsequent loans from the Property Tax Reserve Fund, were also to the PGCB to fund regulatory costs. Accordingly, it is completely appropriate to offset the \$800,000 from each casino's loan repayment obligation. If the Board finds that such an offset is inappropriate, it should determine and announce when and how the original \$800,000 loans will be repaid.

**CONCLUSION**

Consistent with the forgoing discussion, and the MSPD/Parx Letter of January 28, 2011, the Board should issue an Order adopting the MSPD/Parx proposal governing casino loan repayment.



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Dated: April 28, 2011

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*[Faxed and Hand Delivered]*

April 27, 2011

Mickey Kane, Secretary  
Pennsylvania Gaming Control Board  
P.O. Box 69060  
Harrisburg, PA 17106-9060

**RE: Public Comments Regarding Loan Repayment Terms**

Dear Ms. Kane:

The Fiscal Code (per Act 46 of 2010) instructs the Pennsylvania Gaming Control Board (PGCB), in consultation with all licensed gaming entities, to establish by no later than June 30, 2011, a repayment schedule governing the repayment by licensed gaming entities of loans provided to PGCB in relation to its past gaming budgets. In relation to PGCB efforts to establish a repayment schedule, its Office of Chief Counsel recently provided the PGCB board members, during the board's public meeting on April 14, 2011, with an overview of some options available to the board in establishing a repayment schedule. It was further indicated that the board will receive written public comments from operators, the Legislature and other interested persons relative to the loan repayment issue so long as such comments are received by April 28, 2011.

Therefore, I would like to formally request on behalf of myself as the Majority Chair of the committee with oversight of gaming issues that PGCB also consider and prepare some alternative options for the board to consider in relation to establishing the required repayment schedule. One of our concerns is that none of the options presented to the board during its April 14<sup>th</sup> public meeting provide for payments to be made by all of the licensed gaming entities in the initial years of the proposed repayment schedules. I would note that The Fiscal Code requires repayment of these loan amounts to commence once at least 11 slot machine licenses have been issued and 11 licensed gaming entities have commenced operation of slot machines. This provision anticipates that each operating licensed gaming entity commence repayment at the same time.

I would also ask that the board consider how the approximate \$26.4 million carryover amount generated from excess section 1401 account withdrawals by the PA Department of Revenue based on 1.5% of gross terminal revenue (slots) and gross table game revenue (table games) factors into and impacts the outstanding loan balance of \$63.4 million and/or the loan repayment terms.

The committee looks forward to maintaining an open dialogue relating to the loan repayment issue. If you should have any questions or comments, please contact Jason R. Brehouse, Esq. at 717-787-8927 or [jbrehouse@pasen.gov](mailto:jbrehouse@pasen.gov).

Sincerely,

Senator Jane M. Earl

cc: Honorable Wayne D. Fontana, Minority Chair  
Gregory C. Fajt, Chairman (PGCB)  
Kevin F. O'Toole, Executive Director (PGCB)  
R. Douglas Sherman, Chief Counsel, Office of Chief Counsel (PGCB)

**BEFORE THE  
PENNSYLVANIA GAMING CONTROL BOARD**

**Establishment of Repayment Schedule** :  
**For Loans From Property Tax** :  
**Relief Reserve Fund Under Section** :  
**1799-E(G) of the 2010 Fiscal Code** :

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**POSITION STATEMENT OF  
PENNSYLVANIA TREASURER ROBERT M. MCCORD**

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Pennsylvania Treasurer Robert M. McCord, as a statutorily identified *ex officio*, non-voting member of the Pennsylvania Gaming Control Board and as legal custodian of the Pennsylvania Property Tax Relief Fund, hereby submits this statement as a formal expression of his opinion as to the appropriate resolution of the above captioned matter currently before this Board.

Introduction.

Last year, the Pennsylvania General Assembly amended the Fiscal Code to direct this Board to establish, by the end of the current fiscal year, a schedule for the purpose of restoring funds loaned to the Gaming Board from the Property Tax Relief Reserve Fund for start-up and operating expenses of the Board. *See*, Act 46 of 2010. Significantly, the legislature directed the repayment of the loans to commence when at least eleven slot machine facilities have been issued a license by the Board and have commenced gaming operations. *Id.*

It is the position of Treasurer McCord that no repayment schedule is valid unless it assesses each and every operating gaming facility an annual repayment amount that is in

proportion to each facility's gross terminal revenue as compared to the total statewide gross slot machine terminal revenue for the same period. It would be inconsistent with the legislative directive within the Fiscal Code for any operating gaming facility not to make an annual payment during each year of the loan repayment period – in particular the beginning years. Furthermore, any repayment schedule that provides for smaller payments in the beginning years and larger payments in the final years of the repayment period would adversely impact the income investment opportunity of the Property Tax Relief Fund and thereby deprive Pennsylvania property owners, as beneficiaries of the Fund, of future investment income.

Lastly, it is the strong recommendation of Treasury that the Fiscal Code be amended to begin the repayment period immediately, July 1, 2011 (with ten operating gaming facilities). Waiting until the eleventh facility begins gaming operations risks delaying the repayment of the loan for another fiscal year – representing another year of lost investment opportunity and jeopardizing the viability of the Fund to support future disbursements.

#### Interest of Treasurer McCord.

As a member of the Gaming Control Board and as the custodian of the Property Tax Relief Reserve Fund, Treasurer McCord's interest in the loan repayment schedule is both unique and substantial. The Treasurer is charged with the custodial care of all Commonwealth funds. 72 P.S. § 301. In particular, the Property Tax Relief Fund is established as a separate account in the State Treasury. Into the Property Tax Relief Reserve Fund the Secretary of the Budget is directed to transfer money from the Property Tax Relief Fund. 53 P.S. § 6926.504. The purpose of the Reserve Fund is to ensure that adequate funds are available to provide property tax relief to property owners each year, without interruption. Only when the Secretary of the Budget

certifies the sufficiency of deposits in the Property Tax Relief Reserve Fund are funds transferred for property tax relief.

All Commonwealth money, including money for property tax relief, is kept under the custody of the Treasurer – a statutorily designated fiduciary of the Commonwealth. 72 P.S. § 302.<sup>1</sup> The Treasurer has the important function of ensuring that Commonwealth funds are placed in safe and sound depositories. 72 P.S. §§ 303 and 505. Furthermore, the Treasurer is obligated to ensure that all Commonwealth money is secured by adequate collateral. *Id.* Thus, under the legislative scheme of this Commonwealth, it is the Treasurer, who is required to keep and protect the moneys of the Commonwealth in general, and funds for Property Tax Relief in particular. As custodian, the Treasurer is responsible for the immediate charge and control of ownership, protection and preservation of the funds. *See, Black’s Law Dictionary*, at 347 (5<sup>th</sup> Ed. 1971); *Bloomberg v. Board of Governors of the Federal Reserve System*, 649 F.Supp. 262, 273 (U.S. Dist. Ct. SDNY 2009) (custodian is one that “guards and protects or maintains.”).

In addition to his role as custodian, the Treasurer also possesses the exclusive authority to invest money accumulated beyond the ordinary needs of the various funds of the Commonwealth in short-term and long-term obligation, subject to the “Prudent Investor” standard. 72 P.S. § 301.1. Though directed to protect the principal, the Treasurer is also charged with maximizing investment returns on behalf of the beneficiaries of the various funds – including the Property Tax Relief Reserve Fund. Since 2009, the Reserve Fund has experienced an annual rate-of-return average of 2.11%. Accordingly, the Treasurer has a substantial interest in ensuring the timely repayment of funds to the Property Tax Relief Reserve Fund in order to provide

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<sup>1</sup> The Treasurer is statutorily charged with the custodianship, management and investment of 20 separate portfolios that are comprised of hundreds of different public funds. The total amount of these funds exceeded \$90 billion as of June 30, 2010, allocated between short term cash investments and longer term securities based investments. The Treasurer’s investment responsibilities comprise over 245,000 transactions per year.

maximum investment opportunity for the benefit of Pennsylvania Property owners and future viability of the Fund.

While the Gaming Control Board is directed by the Fiscal Code to establish a schedule for repayment of the loan to the Reserve Fund, the Board does not statutorily represent the interests of the Reserve Fund or its beneficiaries. For example, the materials prepared by the Board reflect the “pros” and “cons” from the perspective of the industry and its impact on business operations. No mention is made as to the investment opportunity impact on the Reserve Fund or its impact on the ability of the Budget Secretary to certify availability of sufficient funds for future property tax relief disbursements. While industry considerations are appropriate from the Board’s perspective, these considerations are not reflective of the financial stability and growth of the Reserve Fund and its support for continued property tax relief payments from the Property Tax Relief Fund.<sup>2</sup>

#### Legislative History of Loan Repayment.

Any repayment schedule that fails to include assessments to each operating facility each year during the loan repayment period, falls short of the clear legislative mandate in Section 1799-E of the Fiscal Code (Act 46 of 2010). *See*, Letter of Pennsylvania Senator Jane Earl, Chairwoman of the Senate Committee on Community, Economic and Recreational Development (April 27, 2011) (“This provision anticipates that each operating licensed gaming entity commence repayment at the same time.”)

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<sup>2</sup> It is worth noting that the loans authorized by the General Assembly for the Board’s operations are not subject to interest payments. As such, the Reserve Fund’s lost investment opportunity is compounded by the fact that repayment of the fund will not compensate the Fund for lost dollar time-value.

Since the passage of the Pennsylvania Race Horse Development and Gaming Act, the General Assembly had ample opportunity to impose a funding mechanism that relied exclusively upon those licensed gaming companies that had begun slot machine operations – Category 1 facilities.<sup>3</sup> In addition, once the loans from the General Fund, Gaming Fund or the Property Tax Relief Reserve Fund were incurred, the legislature could have required their immediate repayment by these same facilities. Significantly, neither of these options was chosen by the General Assembly. Recognizing the disparate impact that would result by exclusively placing the financial burden of paying for the administrative oversight of gaming on those venues that began operations first, the legislature has consistently adopted a policy that calls for the repayment of the loans for the operation of the Board to occur when a critical mass of gaming facilities begun slot machine operations – thereby ensuring the financial burden was shared by as many facilities as practically possible, thus lessening each facility’s loan costs.

The original version of the Gaming Act (Act 71 of 2004) which established the Gaming Control Board appropriated initial funds for the Department of Revenue, Pennsylvania State Police and the Gaming Board. The appropriations totaled \$36.1 million for start-up and operating costs. Of that amount, only \$7.5 million was allocated to the Gaming Board for fiscal years July 1, 2004 to June 30, 2006 in order to implement and administer the Act. 4 Pa.C.S.A. § 1901. This appropriation was characterized as a loan from the General Fund, its repayment was to be made quarterly “commencing on the date the slot machines began operation.” *Id.*

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<sup>3</sup> It should be noted that all Category 1 licenses were issued and gaming operations begun at these facilities before any other category of licenses. This was not the result of a common business strategy of the applicants, but a reflection of the fact that the Gaming Act was drafted in a manner that provided the opportunity to apply for a gaming license to each person that held a horse racing license (equal number of available licenses to those who could qualify to apply for the license), thereby eliminating a competitive application process and thus dramatically minimizing the likelihood that appeals from disappointed applicants could delay financing and the start of gaming operations for the Category 1 facilities, as compared to Category 2 and 3 licensees.

Unfortunately, the amount appropriated to the Board was found to be grossly inadequate to cover start-up expenses associated with the housing, equipping, training, and staffing of a new public agency. In addition, two years following the passage of Act 71, it became apparent to policy makers that slot machine licenses would not begin gaming operations in a predictable frame – thereby creating the likelihood that the repayment of the loan from the General Fund would be assessed to only a limited few slot machine operations, in this case Category 1 licensed facilities.<sup>4</sup>

Faced with this possibility, the General Assembly amended the Gaming Act in 2006 to, among other things, direct the Board to “defer assessing slot machine licenses for payments to the State Gaming Fund” until “all licensed gaming entities have commenced the operation of slot machines.” (Emphasis added) 4 Pa.C.S.A. § 1901. Act 135 of 2006 explicitly stated the intention of the legislature to ensure that the cost of the loan repayment was shared by as many slot machine operations as practically possible, in this case all fourteen venues. It has been the consistent objective of the legislature to avoid any loan repayment scenario that fails to spread the cost of the loan among as many operating gaming venues as possible, not simply those Category 1 venues that were able to begin gaming operations quickly.<sup>5</sup> A repayment schedule that places a disproportionate burden on those Category 1 facilities that began operations first is

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<sup>4</sup> The legislature would eventually authorize three additional loans to the Gaming Board, each credited against the Property Tax Relief Reserve Fund. *See*, Act of 2007, 72 P.S. § 1720-G; Act 53 of 2008, 72 P.S. § 1720-I; and, Act 50 of 2009, 72 P.S. § 172-K.

<sup>5</sup> It is important to note that as a matter of public policy, both the General Assembly and the Gaming Board, adopted rules and regulations that favored, encouraged and facilitated the timely start of gaming operations in an effort to begin raising revenue for local property tax relief without undue delay. *See, e.g.*, 4 Pa.C.S.A. § 1203 (granting the Board the authority to adopt “temporary” regulations in order to “facilitate the prompt implementation” of gaming.); 4 Pa.C.S.A. § 1204 (grant to the Pennsylvania Supreme Court exclusive jurisdiction to consider licensing appeals from the Board, bypassing the intermediate appellate court, Commonwealth Court.); 4 Pa.C.S.A. § 1322 (grant the Department of Revenue the authority to bypass the Procurement Code requirements for the initial acquisition of the central control computer in order to “facilitate the prompt implementation” of gaming.) In other words, the timely commencement of gaming operations was viewed as benefiting the objectives of the Commonwealth to provide a “significant new source of revenue” for local property tax relief. 4 Pa.C.S.A. §1102(3).

contrary to the consistent goal of the General Assembly to encourage the timely allocation of property tax relief to Pennsylvanians.

As a result of delays, financial challenges and changing development plans, by 2007 it became apparent to most policy makers that all fourteen gaming licenses would not be operational in the near future. As a consequence, the legislature again amended the Fiscal Code to reduce the number of operating facilities that would trigger the loan repayment from fourteen to eleven. *See*, Act of July 17, 2007 (P.L. 141, No. 42) (Section 1720-G provides that the Gaming Board shall assess slot machine licenses for loan repayment “at such time as at least 11 slot machine licenses have been issued” and have “commenced operations.”). As before, when faced with the option of requiring the immediate repayment of the loan or deferring the repayment until such time as a critical mass of venues were operational, the General Assembly favored the policy of spreading the loan repayment burden on as many gaming venues as possible.

Since 2007, the legislature has revisited the Fiscal Code each year and each year the legislature has purposefully delayed triggering the repayment of the loan until such time there would be a substantial number of operating gaming facilities, (in this case eleven facilities), thereby ensuring as many facilities as possible shared in the cost of repaying the loan as well as lowering each operator’s repayment cost. *See*, Act of July 4, 2008 (P.L. 629, No.53); Act of October 9, 2009 (P.L. 537, No. 50); Act of July 6, 2010 (P.L. 279, No. 46). The primary difference, among the various amendments to the Fiscal Code related to the directives to the Board to begin the loan assessment schedule, was last year’s mandate that the repayment schedule be adopted (but not implemented) by June 30, 2011. *See*, Act of July 6, 2010 (P.L. 279, No. 46).

Act 46 of 2010, which amended the Fiscal Code, explicitly directed the Gaming Board to establish a loan repayment schedule that “assesses to each slot machine licensee costs for repayment of the loans . . .”. (Emphasis added) Act 46 of 2010, §1799(G)(2)(ii). The Fiscal Code directs that the costs of the loan repayment are to be assessed by the Board to “each” slot machine “licensee” – not just Category 1 facilities or those facilities that have been operational for a year.<sup>6</sup> Rather, the direct and intentional use of the term “each” to include all venues that have been licensed by the Board, underscores the objective of the General Assembly to assess all operating venues for the start-up and operating costs of the Board. Accordingly, any proposed repayment schedule that fails to assess an annual repayment cost to each operating licensee that is in proportion its gross terminal revenue is contrary to the clear legislative directives of the Fiscal Code.

#### Treasury Repayment Proposal.

The outstanding balance of the three loans associated with the start-up and operational costs of the Board is approximately \$63.9 million. While Section 1799 of the Fiscal code leaves to the discretion of the Board the decision to spread the repayment costs of the loans over a five - ten year period, the common element of all the current proposals before the Board is the adoption of a 10 repayment period. Treasury does not object to this longer repayment period as an equitable means of reducing the yearly cost shared by the assessed gaming operations.

Rather, Treasury proposes a repayment schedule that assesses each and every operating gaming facility, for each and every year during the repayment period, an amount that is

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<sup>6</sup> The legislature is capable of including statutory language that would trigger the immediate repayment of the loan and thereby assessing a much smaller number of operators for the cost of the loan when deemed appropriate. *See, e.g.,* Act 46 of 2010, § 1799-E(E) (requiring the Gaming Board to “immediately” assess the slot machine licensees if the Budget Secretary determines there are insufficient funds in the Property Tax Relief Reserve Fund to transfer for property tax relief).

proportional to each facility's gross slot machine terminal revenue to the total repayment amount of the loan at the time the assessment is made. This approach would apportion the repayment costs among the ten facilities currently operating in the Commonwealth and remain consistent with the directives of the legislation. *See*, Legislative Recommendation (Treasury recommends immediately implementing the loan repayment schedule). This apportionment would be based on each facility's share of statewide Gross Slot Machine Terminal Revenue (GTR) in the previous fiscal year. For illustrative purposes, data from fiscal year 2010-11 was used in order to capture information on all currently operating facilities. However, since fiscal year 2010-11 data is incomplete, the totals for GTR were extrapolated by calculating the average monthly GTR for each facility for the months that had available data. This average was then multiplied by twelve in order to project total FY 2010-11 GTR. Statewide GTR is the sum of the extrapolations of the GTRs for all facilities. Additionally, for proposals that apportioned repayments based on a rolling period of GTRs and that only calculated repayments based on historical GTR data, repayments for the last period calculated were assumed to stay constant for the remainder of the ten year repayment period.

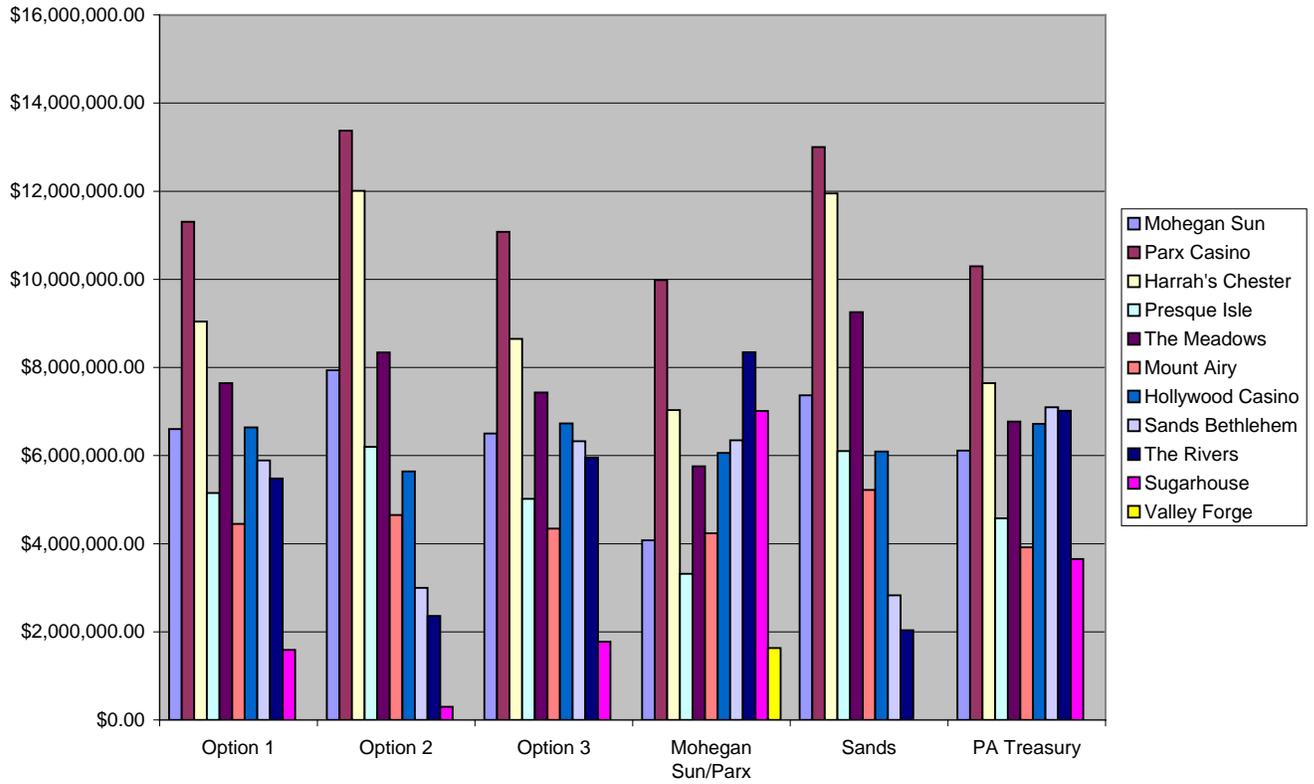
Treasury's repayment proposal may be expressed as a formula as follows:

Each facility would pay an amount equal to X. Whereby X is equal to A multiplied by B.

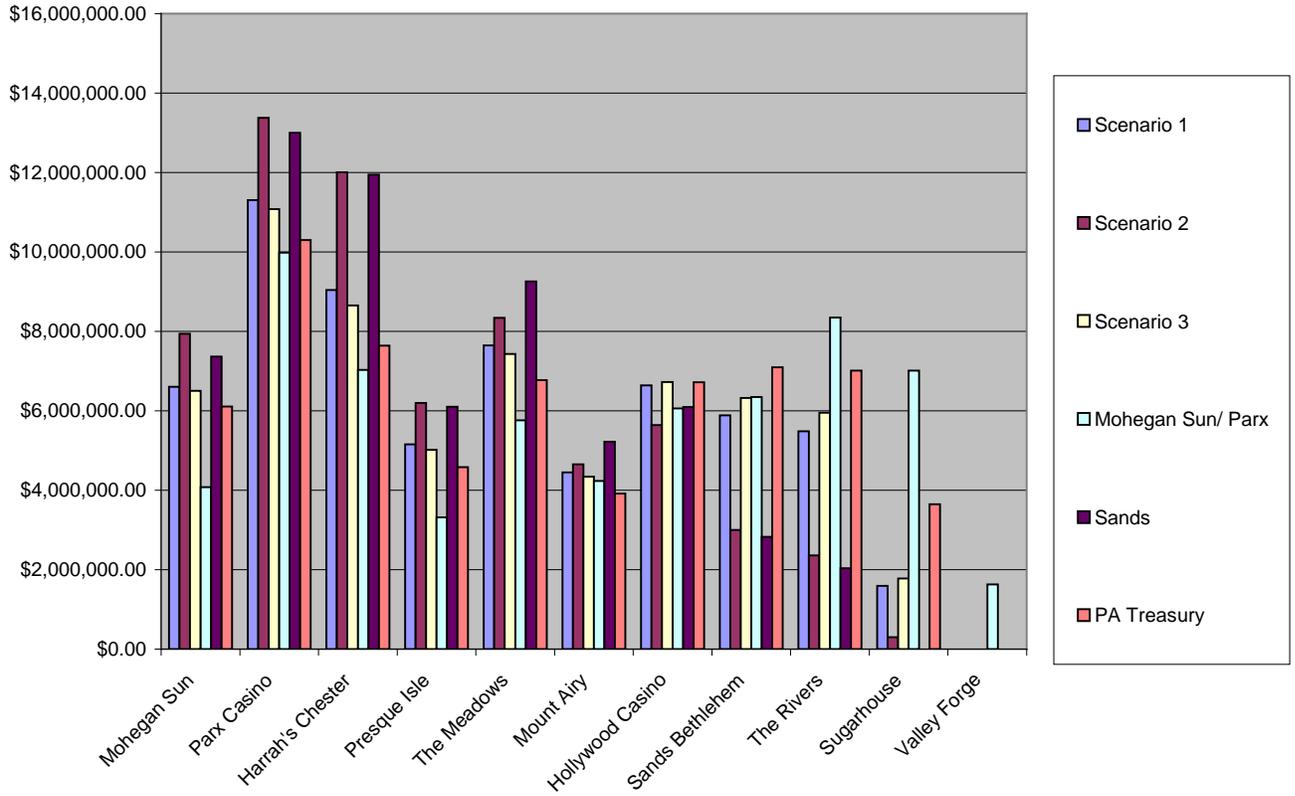
- A is equal to each individual facility's annual gross slot machine terminal revenue, divided by the annual statewide total gross terminal revenue for all operating slot machine facilities; and,
- B is equal to the total outstanding loan amount due to the Property Tax Relief Reserve Fund.

The following two charts illustrate the projected total repayments for each facility under six different proposals: Options 1, 2, and 3 as presented by the Gaming Board; The Mohegan Sun/Parx Proposal; the Sands Proposal; and a proposal by the Treasury.

**Total Repayments Over Ten Year Period In Each Scenario (by facility)**

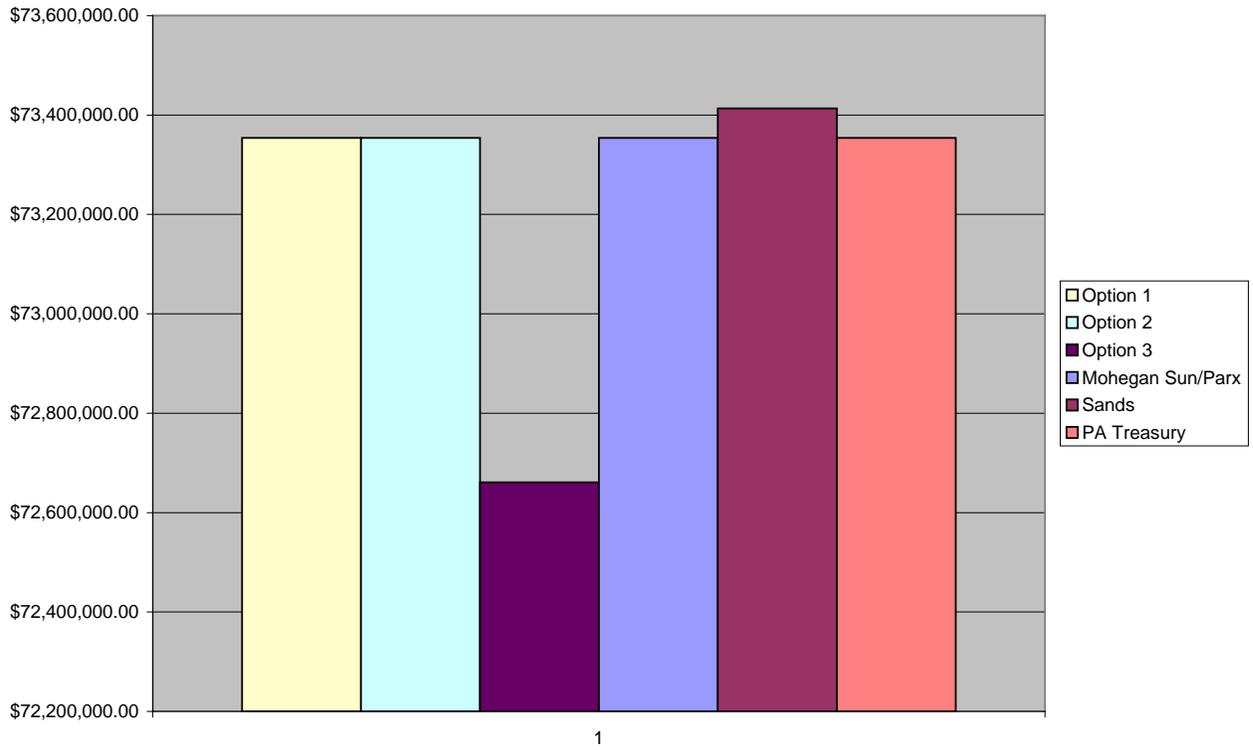


**Total Repayments Over Ten Year Period for Each Facility (by scenario)**

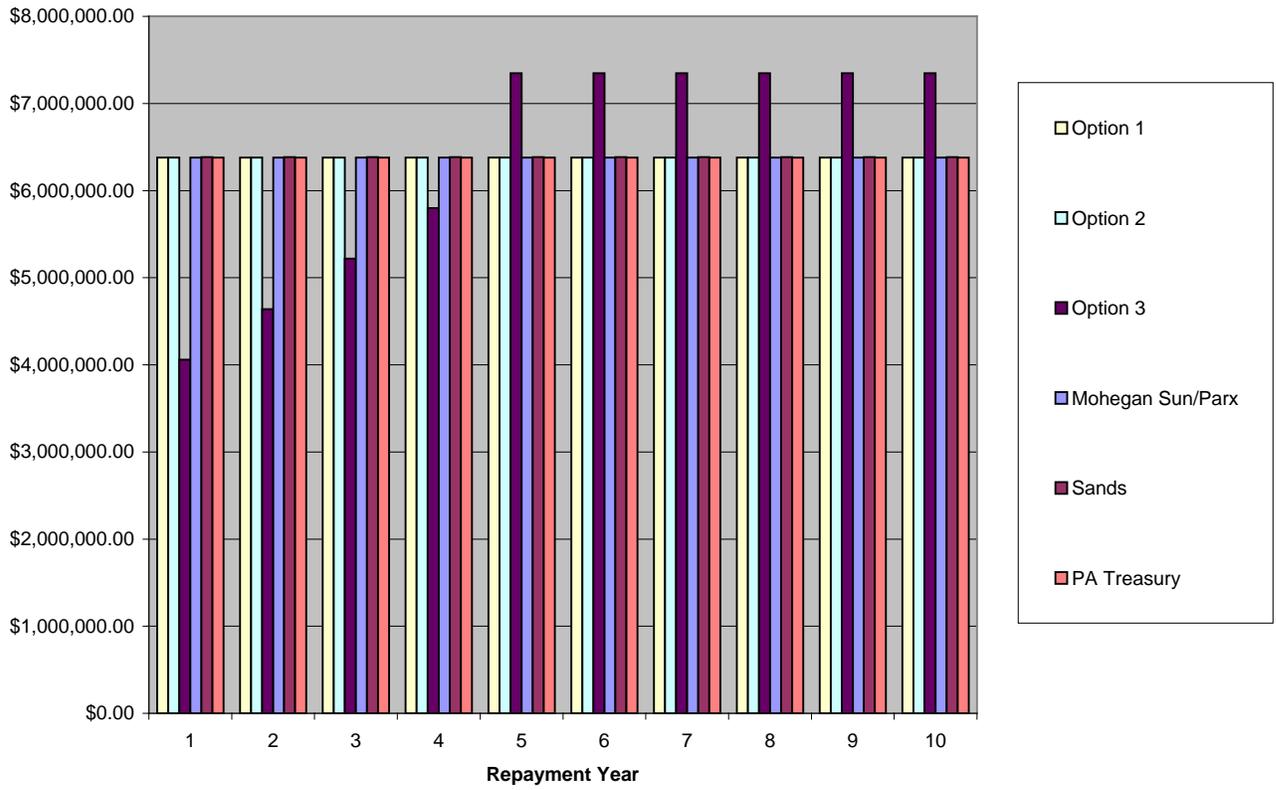


The structure and timing of payments will have an impact on the total amount of deposits, plus investment returns, which will accrue to the Reserve Fund. This is illustrated in the charts below. The first chart shows the total of repayments and investment returns that would accrue to the Fund under each proposal. The differences are negligible with the exception of Option 3 from the Gaming Board, which skewed the repayments to later years. As a result of having fewer funds deposited earlier in the ten year repayment period, any option with back loaded repayments would forego future investment opportunity. For demonstrative purposes, annual investment returns to the Fund for the ten year repayment period were forecasted by the PA Treasury Investment Office. The average return for this period was projected to be 2.11%, with potentially higher yields in later years. Option 3 presented by the Gaming Board would have foregone approximately \$6 million in investment returns after the first four repayment years during which it would collect less each year than the other plans. Some of these foregone gains could be made up in later years if investment yields increase as projected. However, the aggregate returns would remain lower as compared to a repayment schedule that did not have lower repayments in the earlier years. The second chart shows the total repayments to the Fund from all facilities combined for each repayment year.

**Total Repayments & Investment Returns Accruing to Fund (by proposal)**



**Total Annual Repayments for All Facilities Combined (by proposal)**



The following chart shows the average annual repayment amount for each facility under each of the six proposals.

Average Annual Repayment Amount for Each Facility (by proposal)						
	Option 1	Option 2	Option 3	Mohegan Sun/Parx	Sands	PA Treasury
Mohegan Sun	\$660,383.40	\$793,795.20	\$650,123.95	\$407,886.00	\$736,815.00	\$611,037.31
Parx Casino	\$1,130,487.40	\$1,337,500.70	\$1,107,584.50	\$998,299.00	\$1,300,054.00	\$1,029,804.03
Harrah's Chester	\$904,292.50	\$1,200,591.40	\$865,072.46	\$703,092.00	\$1,194,761.00	\$764,218.98
Presque Isle	\$515,279.70	\$619,649.00	\$501,942.45	\$331,468.00	\$610,304.00	\$457,839.74
The Meadows	\$764,577.10	\$833,846.20	\$743,027.79	\$575,811.00	\$925,714.00	\$677,433.95
Mount Airy	\$444,928.10	\$465,151.90	\$434,389.02	\$423,462.00	\$522,072.00	\$391,734.56
Hollywood Casino	\$663,814.90	\$564,017.30	\$672,725.59	\$606,232.00	\$609,332.00	\$671,947.23
Sands Bethlehem	\$588,894.30	\$299,841.80	\$632,292.79	\$634,949.00	\$282,657.00	\$709,585.49
The Rivers	\$548,214.50	\$235,942.60	\$595,091.80	\$834,755.00	\$203,431.00	\$701,478.41
Sugarhouse	\$159,138.70	\$29,663.20	\$177,741.84	\$700,902.00	\$0.00	\$364,920.31
Valley Forge	\$0.00	\$0.00	\$0.00	\$163,145.00	\$0.00	\$0.00

The chart below shows the estimated total GTR for FY 2010-11 and the proposed annual repayments as a share of that year's GTR. As this chart illustrates, the Treasury proposal would ensure that each facility pays approximately the same proportion of its GTR.

Average Annual Repayment as Share of FY2009-10 GTR (by proposal)							
Facility	FY09-10 GTR	Option 1	Option 2	Option 3	Mohegan Sun/Parx	Sands	PA Treasury
Mohegan Sun	\$227,353,274.28	0.29%	0.35%	0.29%	0.18%	0.32%	0.27%
Parx Casino	\$383,166,974.12	0.30%	0.35%	0.29%	0.26%	0.34%	0.27%
Harrah's Chester	\$284,348,733.78	0.32%	0.42%	0.30%	0.25%	0.42%	0.27%
Presque Isle	\$170,351,893.21	0.30%	0.36%	0.29%	0.19%	0.36%	0.27%
The Meadows	\$252,057,974.09	0.30%	0.33%	0.29%	0.23%	0.37%	0.27%
Mount Airy	\$145,755,640.48	0.31%	0.32%	0.30%	0.29%	0.36%	0.27%
Penn National	\$250,016,485.67	0.27%	0.23%	0.27%	0.24%	0.24%	0.27%
Sands Bethlehem	\$264,020,839.21	0.22%	0.11%	0.24%	0.24%	0.11%	0.27%
Rivers	\$261,004,375.96	0.21%	0.09%	0.23%	0.32%	0.08%	0.27%
Sugar House	\$135,778,658.19	0.12%	0.02%	0.13%	0.52%	0.00%	0.27%

Treasury's Legislative Recommendation.

In its present form, the Fiscal Code does not permit the Board to begin assessing the cost of the loan repayment to occur until eleven facilities have begun slot machine operations. Act 46 of 2010, 72 P.S. § 1799-E(G)(1). Though the board has approved twelve slot machine licenses, it has not been able to issue either the eleventh or the twelfth license as of this date. In fact, there is substantial risk that neither the eleventh nor the twelfth licenses will be able to begin slot

machine operations within the next fiscal year (2011-2012). As a consequence, there exists risk to the Property Tax Relief Reserve Fund that loan repayments may be further delayed.

The eleventh and twelfth licenses have been approved by the Board for Valley Forge Convention Center Partners and Woodlands Fayette, both Category 3 “resort” licensees. Though the approval of the twelfth license is still within the statutory appeal period, the Board’s decision to approve the Valley Forge license is final and no longer appealable. However, there remains another administrative proceeding to which Valley Forge must submit prior to its commencement of gaming operations.

Prior to the Board’s final issuance of a gaming license to Valley Forge and its commencement of slot machine operations, the Board is required to approve the applicant’s “Amenities Plan” in order to ensure its compliance with the Gaming Act’s requirement that only “overnight guests” or “patrons of the amenities” may access the gaming floor of a Category 3 License. 4 Pa.C.S.A. § 1305(a); *Greenwood Gaming and Entertainment, Inc. v. Pennsylvania Gaming Control Board*, 15 A.3d 884, 891 (Pa. 2011) (“ . . . the Board still has ultimate authority to issue or deny a gaming license upon final review of the amenities plan.”). As of this date, Valley Forge has not filed an application for approval of its amenities plan.

The administrative proceeding to approve Valley Forge’s gaming floor access plan will have significant precedential effect as it will define the parameters of future Category 3 licensees’ gaming floor access. The amenities proceeding, which will determine the manner and cost by which customers will be able to access the gaming floor, will also inherently define the size and access to potential customer base for both licensees and thus influence the future business models and gaming operations. As a consequence, until such time as the amenities

proceeding is completed and the Board's decision is final and non-appealable, it will be challenging for either facility to complete financing and begin slot machine operations. These risks, while beyond the control of either the Board or policy makers, could foreseeably delay the eleventh gaming facility's slot machine operations until late fiscal year 2011-2012 or the next year, thus further delaying repayment to the Property Tax Relief Reserve Fund.

For these reasons, it is the recommendation of Treasury that the Fiscal Code be amended to provide for the immediate repayment of the outstanding loans to the Reserve Fund. Further delay risks leaving the Reserve Fund without a sufficient balance to support future withdrawals for local property tax relief and continues to deprive the Fund of future investment income opportunity.

Respectfully submitted,



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