COMMONWEALTH OF PENNSYLVANIA
GAMING CONTROL BOARD

In RE: Section 1901.1 Loan Repayment Schedule

ADMINISTRATIVE ORDER

On October 30, 2017, Governor Wolf signed into law Act 42 of 2017 (HB 271) which amended the Pennsylvania Race Horse Development and Gaming Act, 4 Pa.C.S. §§1101 et seq. Among other things, Act 42 amended Section 1901.1 of the Act relating to the repayment of loans to the Pennsylvania Gaming Control Board. The amount at issue is $36.1 Million which must be repaid by the slot machine licensees beginning January 1, 2018 resulting in that total amount being repaid by June 30, 2019.

Specifically, Section 1901.1, as amended, provides:

Newly-amended Section 1901.1(A) now provides as follows:

> (A) Establishment of repayment schedule.—
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> (1) no later than December 1, 2017, the Board, in consultation with all licensed gaming entities, shall establish a schedule governing the repayment by licensed gaming entities of loans provided under section 1901 (relating to appropriations).
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> (2) the repayment of loans provided under section 1901 by licensed gaming entities shall begin no later than January 1, 2018.
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> (3) the repayment schedule shall, at a minimum:
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> (i) specify the dates upon which the repayments shall be due. payments may be required on a quarterly, semiannual or annual basis.
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> (ii) assess each slot machine licensee's costs for repayment of loans under section 1901 in an amount that is proportional to each slot machine licensee's gross terminal revenue.
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> (iii) result in the total amounts loaned under section 1901 being repaid by June 30, 2019.

(B) Deposit.--payments received under subsection (a) shall be deposited into the general fund.

Pursuant to its obligation to consult with all licensed gaming entities, the Board sent a letter dated November 2, 2017 to each licensee providing an overview of the Section 1901.1 amendment and requesting input of each licensee concerning the establishment of a repayment schedule. Each licensee was provided until November 14, 2017 to provide written input into the preparation of a repayment schedule. As of that date, eight licensees provided written input to the Board which was then placed on the Board's public website.[1]

A. Background

By way of background, in July 2004, when initially enacted, the Act provided, in part, that the costs and expenses of the PGCB, the Department of Revenue and the Pennsylvania State Police which have statutory responsibilities relating to the regulation of gaming, are to be paid for by each licensee from the accounts established and maintained within the State Treasury for each licensee. *See generally* Section 1401 and 1402.

During the start-up phase of the gaming industry which included staffing these three regulatory agencies, creating regulations, applications, licensing, monitoring and enforcement processes which spanned into late 2006, no casinos were licensed and operating to generate funding for the Section 1401 accounts. Recognizing that there would be some lag in the generation of revenues, the original legislation provided for a total appropriated loan amount of $36.1 million for the period July 1, 2004 to June 30, 2006 to fund the oversight agencies. See 4 Pa.C.S. §1901. The $36.1 million was broken down as follows:

$7.5 million	- PGCB
$21.1 million	- DOR
$7.5 million	- PSP
$36.1 million	- Total

Under Section 1901.1 of the Act, as it existed prior to Act 42 of 2017, the $36.1 million was to be repaid when all of the licenses had been issued and begun operating. The Board was to establish a repayment schedule and the repayment

[1] Letters providing input were provided by Harrah's Philadelphia, Sands Bethlehem, the Meadows, Parx Casino, Mohegan Sun Pocono, Rivers Casino, SugarHouse Casino and Mount Airy Casino.

was specified to be in an amount proportional to each licensee's gross terminal revenue. *See* 4 Pa.C.S. §1901.1.

The Act 42 of 2017 amendment to Section 1901.1 now quickens the repayment and requires the Board to determine two separate issues: 1) the frequency of the payments, i.e. quarterly, semiannually or annually; and 2) the method by which "proportional to each slot machine licensee's gross terminal revenue" or "GTR" is to be calculated, and to do so by December 1, 2017 so that repayments begin January 1, 2018. This Order fulfills that obligation of the Board.[2]

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[2] In 2011, the Board was required to establish a repayment schedule for licensees which was based upon loans advanced by the General Assembly for the three year period representing Fiscal Years 2007-08, 2008-09 and 2009-1, and totaling $63.8M which were to pay Board expenses. The loans were necessitated because casinos, for a variety of reasons, were slower to open than generally anticipated by the General Assembly in 2004 and therefore the revenues flowing to the Section 1401 accounts which fund the regulatory agencies was insufficient to cover all regulatory costs during that period.

As in this case, the 2011 plan was required to assess repayment in proportion to GTR. In attempting to achieve a reasonable approach to the GTR calculation, the Board stated:

> The repayment schedule adopted herein recognizes two competing and counteracting theories. First, the majority of the loans were taken in fiscal years in which only a few facilities were in operation. The majority of the expenses of the Board (and therefore, the loans) were spent on the regulation and oversight of those few facilities. Consequently, those few facilities should bear a higher burden of the debt. Additionally, to ignore revenues earned during the time period in which only a handful of facilities were in operation would be counterintuitive, given the fact that they were enjoying very limited competition in legalized slot machine play in the Commonwealth. Using a proportional percentage based on cumulative gross terminal revenue reflects the idea that these facilities should pay an amount which recognizes that they enjoyed longer periods of operation than those facilities that opened later.
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> Conversely, those facilities that have been in operation the longest have also been paying the full cost of the Pennsylvania State Police, the Department of Revenue and the Office of Attorney General through the Section 1401 accounts during the relevant time period. It is unfair to effectively saddle these facilities with the full assessment based upon the years in which the loans were taken. The loans subject to this repayment plan were authorized by the General Assembly to defer full industry funding of the PGCB. In turn, the deferment allowed some facilities to be the first entrants to the gaming market in the Commonwealth with the assurance that they would not be laden with funding PGCB operations on their own. To then assess the early opening facilities for their entire cumulative gross terminal revenue would penalize the early opening facilities for simply taking advantage of being the first in the market.
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> Lastly, those facilities that opened later have benefited from the development of the regulatory system that began years before they opened. As a result of the initial expected inefficiencies necessarily associated with regulating, licensing and opening the first few facilities, the regulatory system developed into a more efficient licensing and opening process. This allowed later opening facilities to have a smoother progression towards their respective openings than enjoyed by the early opening facilities. Using a percentage based on a single fiscal year's gross terminal revenue reflects the idea that cost allocation must be considered by spreading out the proportion to every operating facility. Utilizing only a

B. The Current repayment schedule

1. The frequency of the payments

Recognizing that the amount subject to repayment is significant and must be fully recouped within 18 months, the Board determines that it is appropriate that the total amount assessed against each slot machine licensee be made payable in equal quarterly payments to assist each casino in paying the full amount in a timely manner. A quarterly repayment would result in seven equal payments due January 1, 2018, April 1, 2018, July 1, 2018, October 1, 2018, January 1, 2019, April 1, 2019 and June 28, 2019. In the case of a due date which falls on a Saturday, Sunday or federal holiday, the payment would be due on the next business day after the 1st. For any casinos which indicates a desire to make payments less frequently, each will be permitted to make the entire assessed payment amount in one payment on January 1, 2018.

2. The determination of GTR

In determining the calculation of GTR for this purpose, the Board has examined the nature of the loan and the circumstances requiring it and taken the equities involved in establishing a repayment schedule into consideration, as well as reviewed and considered the input received from the eight responding licensees. Having done so, the Board finds justification in determining GTR differently than it did in 2011 due to the differing nature of the loans at issue. Specifically, the loan at issue here was in place and covered a time-period when no casinos were open and operating. Instead, the money was spent hiring staff, creating regulations and generally establishing the PGCB's existence, as well as establishing the Department of Revenue's Central Control Computer System and supporting oversight staff, as well as initiating the Pennsylvania State Police's oversight role. The work done during that early time-period benefitted all casinos nearly equally,

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> single year's gross terminal revenue, however, fails to take into account the years of earnings of the early opening casinos.
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> Striking a balance between these two realities is essential to ensure fairness and equity to all facilities that must repay the loans. Assessing each operating facility based upon an averaged gross terminal revenue percentage represents the best option because it achieves a mid-line between two methods of calculation that affect two groups of operating facilities differently. Averaging the two percentages takes cumulative gross terminal revenue into account, yet offsets it against the gross terminal revenue for a single fiscal year, providing some relief from the entire burden. The result is consideration of both the cumulative gross terminal revenue and the facilities' current proportion of gross terminal revenue.

See Administrative Order, July 11, 2011 at pp. 3-5.

and the Board finds that the repayment should be shared equally, as opposed to the earlier 2011 loan repayment which acknowledged that while operating, some of the early opening casinos were receiving income and advantages during that loan period that other later-opening casinos did not receive.

On that basis, and since all operating casinos are now operating at or near a steady-state-of-operation, we believe it would be appropriate to base the loan payment assessment on a time-period such as the last fiscal year - 2016/17. To do so would recognize that all casinos benefitted from the early set-up of the three subject regulatory agencies and their processes, and all would pay based upon the same period of time when all have been open and operating with relative stability.

Using the 2016- 2017 fiscal year, the applicable GTR and percentages of total GTR for each casino are as follows:

Parx Casino	$386,589,505	16.55%
Sands Casino Resort Bethlehem	$304,160,285	13.02%
Rivers Casino	$265,345,394	11.36%
Meadows Racetrack and Casino	$217,910,016	9.33%
Hollywood Casino at Penn National	$209,682,586	8.98%
Mohegan Sun Pocono	$208,562,173	8.93%
Harrah's Philadelphia	$200,372,009	8.58%
SugarHouse Casino	$178,910,324	7.66%
Mount Airy Casino Resort	$142,220,078	6.09%
Presque Isle Downs and Casino	$112,001,403	4.79%

Valley Forge Casino Resort	$80,228,728	3.43%
Lady Luck Casino Nemacolin	$30,170,007	1.29%
STATEWIDE	*$2,336,152,508*	*100%*

Implementing the schedule under these terms results in total payment as set forth in the chart below. The first monetary column reflects the total payment for the indicated casino based upon that casinos percentage of Gross Terminal Revenue for the 2016 -2017 fiscal year and the second monetary column reflects the amount of each of the seven quarterly payments (1/7th of the total amount).

Parx Casino	$5,973,874	$853,411
Sands Casino Resort Bethlehem	$4,700,115	$671,445
Rivers Casino	$4,100,318	$585,760
Meadows Racetrack and Casino	$3,367,311	$481,044
Hollywood Casino at Penn National	$3,240,174	$462,882
Mohegan Sun Pocono	$3,222,861	$460,409
Harrah's Philadelphia	$3,096,300	$442,329
SugarHouse Casino	$2,764,658	$394,951
Mount Airy Casino Resort	$2,197,692	$313,956
Presque Isle Downs and Casino	$1,730,731	$247,247
Valley Forge Casino Resort	$1,239,755	$177,108
Lady Luck Casino Nemacolin	$466,210	$66,601
STATEWIDE	*$36,100,000*	*$5,157,143*

Finally, the Board notes that the Rivers Casino, SugarHouse Casino and Mt. Airy Casino each advocate assessing some amount of the loan repayment against Stadium Casino, which has not yet begun construction, let along commenced operations.[3] Despite those contentions, the language of Act 42 makes it clear that

[3] We note that the Board approved Stadium for a license in November 2014 and the reason Stadium has not been constructed and likely commenced operations generating GTR to be included in the repayment is largely due to the continued appeals of the grant of the license by another applicant (in part) and SugarHouse Casino. Thus, the Board finds SugarHouse's contention with respect to assessing Stadium Casino a portion of the repayment to be dubious and unavailing.

payments must commence by January 2018 and be completed by June 30, 2019, and must be based upon an amount proportional to each licensee's gross terminal revenue. There is no provision in Act 42 for assessing against a facility that has not been built, commenced operations, nor produced any GTR. Nor is there provision for basing a re-payment amount upon some speculative GTR projection into the future. As the Board is limited to assessing the repayment as provided for in the express language of the Act, no assessment will be made against Stadium Casino nor the yet to be determined Category 1 casino licensee.

FOR THE BOARD:

Kevin F. O'Toole 12/1/17

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