



# **THE PENNSYLVANIA GAMING CONTROL BOARD**

**A SPECIAL PERFORMANCE AUDIT**

**MAY 2009**

**JACK WAGNER, AUDITOR GENERAL**

**PENNSYLVANIA DEPARTMENT OF THE AUDITOR GENERAL  
BUREAU OF SPECIAL PERFORMANCE AUDITS**

May 27, 2009

The Honorable Gregory C. Fajt  
Chairman  
Pennsylvania Gaming Control Board  
303 Walnut Street  
5th Floor, Verizon Tower  
Harrisburg, Pennsylvania 17106

Dear Chairman Fajt:

Enclosed is the report of our special performance audit of the Pennsylvania Gaming Control Board. Our audit covered the Board's activities from its inception in July 2004 through August 2008, with updates through May 2009 where applicable.

We conducted this special performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained does indeed provide a reasonable basis for our findings and conclusions based on our audit objectives. The audit report presents 6 findings and 20 recommendations. Each finding is broken down into discussion points that include the relevant details.

The Department of the Auditor General intends to play an important role in Pennsylvania's gaming industry to ensure that state residents receive all the benefits promised by gaming proponents, such as job creation, property tax relief, and the revitalization of the horse racing industry so important to the state's economy. To that end, we started this special performance audit as gaming was just beginning in Pennsylvania, and we therefore focused on evaluating various aspects of the hiring process, including whether jobs were filled primarily by Pennsylvanians.

Fortunately for state residents, we report in Finding Four that gaming jobs were indeed filled primarily by Pennsylvanians, and that diversity in hiring (i.e., women and minorities) has been positive. Unfortunately for state residents, however, the pace at which gaming jobs have been filled is slower than initially expected. While 12 of 14 possible casino licenses were awarded as of the date of this letter, only 8 casinos were open and operating; as a result, Pennsylvanians have not seen the state reach its full potential related to job creation.

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In addition, as we note in Finding Three of the report, public confidence in gaming oversight was damaged when the Gaming Control Board faced jurisdictional struggles with regard to investigating casino owners for licensure. With regard to investigating its own employees, the Board improved its process but can still improve further, as we note in Finding One. Finding Two discusses needed improvements in the Board's credentialing of casino employees. Please note, however, that our testwork regarding Board investigations of all parties—casino owners, casino employees, and Board employees—was limited. As we explain in our report, the limitations were based on the Board's position that actual investigation documents are confidential and that our direct examination of those documents was therefore prohibited. Nevertheless, without examining the content of the investigative documents, we did review the investigation process and have based our recommendations on that work.

Finding Five discusses the Board's efforts in assisting compulsive and problem gamblers, and Finding Six addresses Board administrative/personnel practices.

The operational issues that we discuss throughout the report, coupled with the public's concerns about the licensing of casino owners, have led to our related recommendations, most of which the Board could implement immediately. We are not alone in calling for change, as evidenced by the introduction of at least 20 bills seeking various reforms.

In its written response included in this report, the Board concurs with the majority of our findings and recommendations. We appreciate the Board's acknowledgement of our work, and we look for the implementation of our recommendations as the Board continues its regulatory efforts. Effective oversight will help to ensure a successful industry that, in turn, should result in meaningful tax relief for Pennsylvania property owners.

We also thank the Board and its staff for the cooperation and professionalism shown to our audit team. The Gaming Control Board has been given an enormous responsibility to oversee gambling, and we recognize the significance of the Board's time in responding to our audit requests. Ultimately, it is time well spent by all parties. We therefore intend to continue evaluating the Board's performance, either by issuing special reports focused on specific topics, or by conducting additional special performance audits in which we will also follow up on the findings and recommendations of each prior audit.

Sincerely,

**JACK WAGNER**  
Auditor General

Enclosure

cc: The Honorable Edward G. Rendell, Governor of Pennsylvania  
Members, Pennsylvania Gaming Control Board



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## **Results**

### **in Brief**

*with introductory  
information about  
the expected  
benefits of  
legalized gaming*

#### **Introduction: Expected benefits of legalized gaming**

A responsible and successful gaming industry is vital to creating jobs, revitalizing the horse racing industry, and ultimately providing property tax relief. The Pennsylvania General Assembly authorized limited gaming based on such objectives and determined that, in total, there could be 14 licenses awarded for slot machine gaming in Pennsylvania—7 for casinos with licensed racetracks, 5 for stand-alone casinos, and 2 for existing hotel resorts.

As of May 2009, when this report was issued, 2 of the 14 total licenses were not awarded: for **racetrack casinos**, 6 of the possible 7 licenses were awarded, and all 6 licensees were open for business; for **stand-alone casinos**, all 5 possible licenses were awarded, and 2 of those licensees were open; for **existing hotel resorts** looking to add casino gaming, one of the possible 2 licenses was awarded, but gaming had not yet begun at that licensee's location.

Although not the subject of this report, the last available license for a racetrack casino (known as a Category 1 license) is particularly significant, especially to the horse racing industry and horse breeders. The six Category 1 licenses already awarded resulted in racetrack casinos in Bucks, Dauphin, Delaware, Erie, Luzerne, and Washington counties. The seventh license was widely expected to result in a Lawrence County casino after the applicant received a harness racing license from the Pennsylvania Harness Racing Commission.<sup>1</sup> But that final casino racetrack license has not been awarded.

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<sup>1</sup> For example, the Pennsylvania Gaming Control Board's 2007 annual report noted that "Valley View Downs in Lawrence County is expected to begin operations in 2009 pending licensing approval by the [Gaming Control Board] this year." It appears that Section 1302(a)(3) of the Gaming Act, 4 Pa.C.S. § 1302(a)(3), pertaining to the award of a casino racetrack license (a Category 1 license), anticipated that such a license could be awarded to an eligible facility in Beaver County or Lawrence County. Entities in both counties had harness horse racetrack plans under way when the Gaming Act was enacted in July 2004. See *Bedford Downs Management Corporation et al. v. State Harness Racing Commission*, 592 Pa. 475, 479, 926 A.2d 908, 911 (2007).

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It is important to note that, if the Lawrence County applicant does not receive a casino racetrack license by July 5, 2009, or if that remaining license is not applied for by that date, the Gaming Control Board has the discretion to convert the available Category 1 racetrack casino license to a possible Category 2 stand-alone casino license.<sup>2</sup> Such action would provide no benefit to the horse racing industry, which gaming was supposed to help. In a future audit, we expect to evaluate the degree to which this and other legislative objectives were met.

### **Our audit results: The role and performance of the Pennsylvania Gaming Control Board**

The Pennsylvania Gaming Control Board is responsible for ensuring the integrity of the gaming industry in order to protect the public's interest. Our special performance audit found areas in which the Board should make improvements.

Our audit work covers the period of July 5, 2004, through August 31, 2008, with updates through May 2009, and was conducted in accordance with generally accepted government auditing standards as issued by the Comptroller General of the United States. Overall, we developed 6 findings and present 20 recommendations, summarized as follows:

#### **Background Investigations of Board Employees (pages 9 – 23)**

Finding One: *In hiring its own employees, the Board initially did not fully investigate the backgrounds of new hires but has since improved the investigation process.*

To address Finding One, we recommend that the Board should (1) ensure it completes background investigations of every

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<sup>2</sup> See Section 1307 of the Gaming Act, 4 Pa.C.S. § 1307. This conversion would increase the number of possible Category 2 licenses from 5 to 6.

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employee prior to the employee's date of hire; (2) ensure that its staff mark each item on every employee's investigative checklist to indicate that the investigation was completed, the date it was completed, and which employee completed the checklist items; (3) not hire temporary employees in order to offer them interim employment until they pass the full background investigations required of permanent employees. Further, we recommend that, if the Board maintains its position that it will not allow us to review the background investigation documents, then the Board should (4) request a comprehensive review and audit of the employee background investigations by an independent agency (such as the Pennsylvania State Police or the Office of Attorney General) with the required authority, knowledge, skills, and resources for such an endeavor.

**Background Investigations of Casino Employees  
(pages 24 – 39)**

*Finding Two: The Board decreased the intensity of its background investigations when credentialing certain types of casino employees, but it did not balance that decrease with procedures such as periodic case sampling. The Board also did not have a single automated system to manage the investigation caseload. Therefore, improvements are needed.*

To address Finding Two, we recommend that the Board should (5) strengthen its background investigation process for casino employees by incorporating a supervisory level of review and final approval into the process for gaming and non-gaming employees or, if it is too time-consuming to be done for each applicant, then the Board should incorporate this level of review on a sample basis, and by establishing an automated case management system for maintaining the case files on background investigations, and this case management system should be accessible by all regional staff of the Board as well as the Bureau of Investigations and Enforcement staff located at the Board's headquarters. Further, we recommend that, if the Board maintains its position that it will not allow us to review the background investigation documents, then the

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Board should (6) request a comprehensive review and audit of the casino employee background investigations by an independent agency (such as the Pennsylvania State Police or the Office of Attorney General) with the required authority, knowledge, skills, and resources for such an endeavor.

**Background Investigations of Casino Owners  
(pages 40 – 49)**

Finding Three: *In licensing casino owners, the Board faced jurisdictional struggles in the investigation process that resulted in wide-ranging public criticisms and questions, still unresolved, thereby damaging public confidence in the state's ability to regulate casino gambling.*

To address Finding Three we recommend that the Board should (7) take the lead in seeking an immediate legislative change to clarify and better define the roles of all entities involved in sharing investigative information for licensing casino owners and principals.

**Diversity and Residency of Board and Casino Employees  
(pages 50– 58)**

Finding Four: *The Board achieved diversity while hiring mostly Pennsylvania residents, and it checked to see that casinos also achieved diversity and hired state residents. Pennsylvanians can therefore be satisfied with the diversity and residency of Board and casino employees.*

To address Finding Four, we recommend that the Board (8) must continue to give preference to Pennsylvania residents when seeking individuals to fill new positions or vacancies within the Board's complement; (9) must continue to encourage casinos to hire Pennsylvania residents and to monitor the casinos' employment data to ensure that they are committed to creating jobs in the Commonwealth; (10) should continue to monitor and promote diversity in the work force, both at the licensed facilities and at the Board itself.

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### **Compulsive and Problem Gambling (pages 59 – 71)**

*Finding Five:* *The Gaming Board did not take enough initiative to coordinate the state's fragmented efforts to help problem gamblers, thereby contributing to the inadequacy of those efforts.*

To address Finding Five, we recommend that the Board should (11) allocate more of its annual budget to the Office of Compulsive and Problem Gambling so that it can establish and provide the programs and services to Pennsylvania residents as intended with its creation; (12) encourage continuous communication between the Office of Compulsive and Problem Gambling and the Bureau of Investigations and Enforcement so all entities are aware of casinos' compliance or noncompliance with their compulsive and problem gambling plans, and require the director of the Office of Compulsive and Problem Gambling be placed on the distribution list for the financial investigations division's annual audit reports; (13) appoint a representative from the Office of Compulsive and Problem Gambling to be a member of the opening team for all future casino openings; (14) heighten its collaborative efforts with the Department of Health and the Council on Compulsive Gambling to ensure effective management of all state compulsive and problem gambling programs; (15) reevaluate with the Department of Health the need for that department's hotline in an effort to more prudently use funds from the Compulsive and Problem Gambling Treatment Fund.

### **Administrative Practices (pages 72 – 86)**

*Finding Six:* *The Board had some administrative and personnel advantages that were more generous than those of typical state government agencies. These practices created questions about whether the Board was elevated above other Commonwealth agencies.*

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To address Finding Six, we recommend that the Board (16) should seek an amendment to the Gaming Act so that board members cannot receive both a salary as a board member and hold another job, or if a salary is to be paid to board members, then the law should be amended to eliminate the opportunity for holding another job so that all of the board members' attention can be given to their position on the Board. Further, the law should be amended to require the board members to work a minimum number of hours each week for the payment of that salary. We also recommend that the Board should (17) modify its compensation structure for its staff to be more in line with the compensation of other state agencies even if the enabling legislation does not mandate such a practice and, enforce the use of this pay scale to prevent the awarding of excessive salaries; (18) establish a system to ensure that staff salaries are equitable among each job position; (19) enter into employment agreements cautiously, and only if deemed necessary. However, if deemed necessary, the term of the employment agreements should be for only one year at a time. Finally, we recommend that if the Board enters into any future employment agreements, (20) then the Board should ensure that the terms of the original employment contract are followed and that no new separation agreements are negotiated by any parties.

**Response from the Pennsylvania Gaming Control Board  
(pages 99 – 112)**

In responding to this audit, the Board agreed with many of our recommendations. The response and our evaluation of the Board's response can be found beginning on page 99.

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## **Introduction and Background –**

## **Understanding the nature and profile of the Pennsylvania Gaming Control Board.**

The Pennsylvania Gaming Control Board (which we will also refer to as “Gaming Board” or “Board”) is responsible for licensing and regulating the state’s gaming industry, and for taking appropriate enforcement actions. The Board was established in 2004 and consists of seven voting members, three non-voting members, and a staff of 268 as of December 17, 2008.

The Department of the Auditor General intends to play an important role in Pennsylvania’s gaming industry to ensure that state residents receive all the benefits promised by gaming proponents, such as job creation, property tax relief, and the revitalization of the horse racing industry so important to the state’s economy. To that end, we began this special performance audit in March 2007 as gaming was just beginning in Pennsylvania, and we therefore focused on evaluating various aspects of the hiring process, including whether jobs were filled primarily by Pennsylvanians.<sup>3</sup>

Fortunately for state residents, we found that gaming jobs were indeed filled primarily by Pennsylvanians, and that diversity in hiring (e.g., women and minorities) has been positive. Unfortunately for state residents, however, the pace at which gaming jobs have been filled is slower than initially expected. As of May 2009, 12 of the possible 14 casino licenses were awarded and 8 casinos were open and operating. Accordingly, Pennsylvanians have still not seen the state reach its full potential related to either property tax relief or job creation.

The Gaming Board was created by Act 71 of 2004, titled the Pennsylvania Racehorse Development and Gaming Act (which we will also refer to as the Gaming Act), to ensure the integrity of casino gambling in Pennsylvania, thereby protecting the public interest.<sup>4</sup> This mission takes on added importance because a responsible and successful industry is

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<sup>3</sup> “Auditor General Jack Wagner Says Jobs for Pennsylvanians will be Focus of First Audit of State’s Slots Casino Industry,” news release, Pennsylvania Department of the Auditor General, December 2006.

<sup>4</sup> 4 Pa.C.S. § 1202(a)(1).

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critical to achieving the job creation and property tax relief referenced above. At the same time, a successful gaming industry can help to revitalize the state's horse racing industry.<sup>5</sup>

As we have already indicated, our audit began just as casino gambling was starting in the state and focused on various aspects of the hiring process. For example, we evaluated how the Gaming Board performed in conducting background investigations, ensuring gender and racial diversity in the workforce, and hiring Pennsylvania residents. We also reviewed the Board's efforts in addressing compulsive and problem gambling. We explain our objectives further in our Objectives, Scope and Methodology narrative, which appears in Appendix A.

### **What is the organizational structure of the Gaming Board?**

As already noted, the Gaming Board has seven voting members, three non-voting members, and—as of December 17, 2008—268 employees. The Governor appoints three of the voting members, and the General Assembly appoints the remaining four voting members.<sup>6</sup> The three non-voting members are Pennsylvania's Secretary of Revenue, Secretary of Agriculture, and State Treasurer, or their designees, all of whom are ex-officio members, meaning they serve by virtue of holding their positions.<sup>7</sup>

Beyond the ten voting and non-voting board members, the Board has an executive director and is divided into six bureaus and nine specialized offices as depicted in the organizational chart shown in Appendix B.

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<sup>5</sup> 4 Pa.C.S. § 1102(4).

<sup>6</sup> 4 Pa.C.S. § 1201(b). The seven members' general and specific powers are outlined in Section 1202 of the Gaming Act, 4 Pa.C.S. § 1202. In general, the members have responsibility to ensure the integrity of the acquisition and operation of slot machines and associated equipment and have sole regulatory authority over every aspect of the authorization and operation of slot machines (See 4 Pa.C.S. § 1202(a)(1)).

<sup>7</sup> 4 Pa.C.S. § 1201(e).

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**How is gaming revenue supposed to be divided,  
and how much has been generated so far?**

The Gaming Act permits the operation of slot machines in up to 14 locations throughout the Commonwealth.<sup>8</sup> The money generated by these casinos is subject to Pennsylvania's 55 percent tax rate on gross terminal revenue,<sup>9</sup> and the resulting proceeds are deposited into the State Gaming Fund (which includes the local and county governments' shares),<sup>10</sup> the Pennsylvania Race Horse Development Fund,<sup>11</sup> and the Pennsylvania Economic Development and Tourism Fund.<sup>12</sup>

Stated another way, for every net dollar that a slot machine generates, 55 cents should be returned to Pennsylvanians and designated for property tax relief, economic development and tourism, local community support, compulsive and problem gambling programs, and the horse racing industry.

In addition to the 55 percent tax rate, casino operators must also reimburse the state for the related oversight costs incurred by the Board, the Pennsylvania State Police, the Department of Revenue, and the Office of Attorney General.<sup>13</sup> In this way, those regulatory costs are paid directly by casino operators and not by taxpayers via state budget allocations.

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<sup>8</sup> 4 Pa.C.S. § 1307.

<sup>9</sup> Under Section 1103 of the Gaming Act, 4 Pa.C.S. § 1103, "Gross terminal revenue" is defined as the difference between the cash or cash equivalent wagers received by a slot machine, "minus the total of: (1) Cash or cash equivalents paid out to patrons as a result of playing a slot machine which are paid to patrons either manually or paid out by the slot machine. (2) Cash paid to purchase annuities to fund prizes payable to patrons over a period of time as a result of playing a slot machine. (3) Any personal property distributed to a patron as a result of playing a slot machine. This does not include travel expenses, food, refreshments, lodging or services."

<sup>10</sup> 4 Pa.C.S. § 1403.

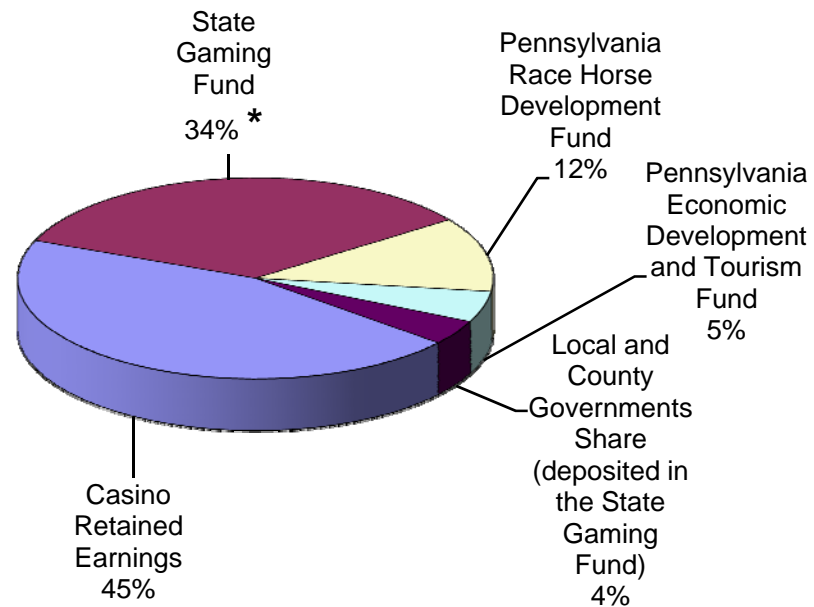
<sup>11</sup> 4 Pa.C.S. § 1405.

<sup>12</sup> 4 Pa.C.S. § 1407.

<sup>13</sup> 4 Pa.C.S. § 1402(a)(1),(4),(6).

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The distribution of state gaming revenues is illustrated by the chart below.



*\*These proceeds are disbursed annually as follows: (1) the Compulsive and Problem Treatment Fund; (2) payments in lieu of taxes by the Department of Conservation and Natural Resources, the Fish and Boat Commission, and the Game Commission; (3) the Volunteer Fire Company Grant Program; and (4) local law enforcement grants. The remaining balance is used to fund property tax relief.*

According to the Gaming Board, Pennsylvania's operating casinos generated more than \$1 billion in revenues from November 2006, when the state's first casino opened, to the end of calendar year 2007.<sup>14</sup> By the end of calendar year 2008, the Board reported that the state's gaming industry had generated more than \$2 billion since that first casino opened in 2006.<sup>15</sup>

<sup>14</sup> 2007 Annual Report, Pennsylvania Gaming Control Board.

<sup>15</sup> 2008 Annual Report, Pennsylvania Gaming Control Board.

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**How many casinos does the state allow,  
and how are they categorized?**

As stated earlier, the law allows the Board to license no more than 14 casinos in Pennsylvania.<sup>16</sup> There are three distinct classifications of licenses, designated by category,<sup>17</sup> each with a maximum number of licensed casinos as shown in the chart that follows:

<b>Pennsylvania is permitted to license no more than 14 casinos overall</b>	<i>Maximum number of casinos in specified category</i>	<i>Types of casino by category</i>	<i>Maximum number of slot machines by category</i>
	<i>Category 1</i>	7	These facilities, sometimes called “racinos,” are slot machines at licensed racetracks.
	<i>Category 2</i>	5	
	<i>Category 3</i>	2	Up to 5,000 slot machines may be operated at any single Category 1 or Category 2 facility. <sup>18</sup>
		Stand-alone casinos.	
		Slot machines at existing hotel resorts.	Up to 500 slot machines allowed at each facility. <sup>19</sup>

From March 30, 2007, when our audit period began, through May 22, 2009, the Board regulated eight casinos as shown in the chart on the next page. Four other casinos had not yet opened as of that date.

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<sup>16</sup> 4 Pa.C.S. § 1307.

<sup>17</sup> 4 Pa.C.S. § 1301.

<sup>18</sup> 4 Pa.C.S. § 1210.

<sup>19</sup> 4 Pa.C.S. § 1305(c).

*Introduction and  
Background*

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**Number of Pennsylvania casinos as of May 2009**

	<b>Name of Casino</b>	<b>County</b>	<b>Opening Date</b>
<b>Category 1</b>	Mohegan Sun	Luzerne	Nov. 14, 2006
	Philadelphia Park	Bucks	Dec. 19, 2006
	Harrah's Chester	Delaware	Jan. 23, 2007
	Presque Isle Downs	Erie	Feb. 28, 2007
	The Meadows	Washington	Jun. 11, 2007
	Hollywood at Penn National	Dauphin	Feb. 12, 2008
	License not awarded	<i>See results in brief on pages iii-iv</i>	
<b>Category 2</b>	Mount Airy	Monroe	Oct. 22, 2007
	SugarHouse	Philadelphia	Not yet open
	Foxwoods	Philadelphia	Not yet open
	Rivers Casino	Allegheny	Not yet open
	Sands	Northampton	May 22, 2009
<b>Category 3</b>	Valley Forge	Montgomery	Not yet open
	License not awarded	--	--

**How does the state assist compulsive gamblers?**

Evidence suggests that casino openings contribute to an increase in the proportion of community members with problem or pathological gambling disorders. It is estimated that pathological gambling is a problem for one or two percent of the United States population.<sup>20</sup>

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<sup>20</sup> This information was obtained from a report titled "Raising the Stakes", released by the University of Pittsburgh in January 2008. This report was posted on-line at [www.socialwork.pitt.edu/downloads/Raisingthestakes.pdf](http://www.socialwork.pitt.edu/downloads/Raisingthestakes.pdf), accessed on January 23, 2008, re-accessed on March 30, 2009.

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To address the need for compulsive gambling-related services beyond those already in existence, the Gaming Act established the Compulsive and Problem Gambling Treatment Program and Fund.<sup>21</sup> As a result, an annual payment of \$1.5 million or an amount equal to .001 multiplied by the total gross terminal revenue of all active and operating casinos, whichever is greater, is deposited into the Compulsive and Problem Gambling Treatment Fund.<sup>22</sup>

It is the Pennsylvania Department of Health—not the Gaming Board—that is responsible for the development of program guidelines as well as for administering funds for the prevention and treatment of gambling addiction and other gambling-related emotional and behavioral problems.<sup>23</sup> For example, the Department of Health contracted for a toll-free telephone hotline for crisis counseling and referral services for individuals and families who experience difficulties related to problem gambling. Because the hotline was not established or administered by the Gaming Board, which is the subject of this audit, we did not focus on the issue of the Department of Health's hotline and the process by which it was established; however, later in this report, we do discuss the obvious inefficiencies and mixed messages resulting from the existence of *four different* Pennsylvania hotline programs.

In addition to the hotline established through the Department of Health, there are three other hotlines maintained by the Pennsylvania Council on Compulsive Gambling, a non-profit gambling awareness organization. The four toll-free telephone numbers are explained in the following table:

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<sup>21</sup> 4 Pa.C.S. § 1509(a),(b).

<sup>22</sup> 4 Pa.C.S. § 1408(a).

<sup>23</sup> 4 Pa.C.S. § 1509.

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Toll-Free Phone Number	Name of Toll-Free Phone Number	Call Center Location	Registered to	Information Managed by <sup>a/</sup>	Casino(s) that post this number	
					On Web site	On Signage
(877) 565-2112	PA Gambling Addiction 24 Hour Hotline	Chicago, Illinois	Pennsylvania Department of Health	Pennsylvania Department of Health	Presque Isle Downs Hollywood at Penn National	None
(800) 848-1880	Statewide Helpline	Shreveport, Louisiana	Pennsylvania Lottery	CCGP <sup>b/</sup>	Mohegan Sun Presque Isle Downs The Meadows Mount Airy Hollywood at Penn National	The Meadows Hollywood at Penn National
(800) GAMBLER (426-2537)	Helpline	Shreveport, Louisiana	New Jersey's Council on Compulsive Gambling	CCGP	Philadelphia Park Presque Isle Downs Mount Airy	Mohegan Sun Philadelphia Park Harrah's Chester Presque Isle Downs Mount Airy
(800) 522-4700	24 Hour Confidential National Hotline	Shreveport, Louisiana	National Council on Problem Gambling	CCGP	Harrah's Chester	None

<sup>a/</sup>Each of these agencies provides the call center with updated information on problem gambling services, such as approved treatment providers and Gamblers Anonymous meetings. In turn, the call center provides Pennsylvania call data to the agency for data collection and analysis.

<sup>b/</sup>The Council on Compulsive Gambling of Pennsylvania (CCGP) is also known as the Pennsylvania Council on Compulsive Gambling.

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## **Finding One**

**In hiring its own employees, the Board initially did not fully investigate the backgrounds of new hires but has since improved the investigation process.**

In the pages that follow, we present the details that led to this finding. In particular, we discuss the following points:

1. The Board initially did not fully investigate some of its new hires.
2. The Board subsequently improved the way it conducted background investigations of its own employees.

In accordance with government auditing standards, our discussion will show how our audit work provided reasonable assurance that evidence is sufficient and appropriate to support this finding, as well as our conclusion that the Board must improve the current process further.

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### **Understanding the nature and profile of background investigations required of the Gaming Board.**

Background investigations are important to protect the integrity of gaming in the Commonwealth, whether for casino employees or for the Gaming Board employees who regulate the casinos. In fact, the primary objective of the Gaming Act is “to protect the public through the regulation and policing of all activities involving gaming and practices that continue to be unlawful.”<sup>24</sup> Further, the development, growth, and success of gaming are dependent upon public trust and confidence and the assurance that licensed gaming is free from criminal and corruptive elements.

The definition of “[b]ackground investigations” under the Gaming Act is as follows:

A security, criminal, credit and suitability investigation of a person as provided for in [the Gaming Act]. The investigation shall include the status of taxes owed to the United

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<sup>24</sup> 4 Pa.C.S. § 1102(1).

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States and to the commonwealth and its political subdivisions.<sup>25</sup>

Finding Two discusses the background investigations for casino employees. This finding discusses the background investigations for Gaming Board employees only.

In response to our question asking for a description of security, criminal, credit, and suitability investigations, Board officials provided us with a written explanation as shown below:

1. Security Investigation. A security investigation refers to each applicant's reputation in his/her neighborhood, character references, drug or alcohol addictions, and associations with notorious individuals. A security investigation intends to ensure that the applicant will not pose a threat to the public interest or to the effective regulation and control of slot machine operations.
2. Criminal Investigation. A criminal investigation requires each applicant to submit a full set of fingerprints and a photograph to the Pennsylvania State Police.<sup>26</sup> Using these fingerprints and the photograph, the police must verify the identity of the applicant and access state and federal criminal history information, including records of arrests and convictions.<sup>27</sup> A criminal investigation also involves information from local police on any incident reports involving the prospective employee.
3. Credit Investigation. A credit investigation examines the financial history of an applicant, including liens, debts, bankruptcies, and judgments from civil lawsuits. In

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<sup>25</sup> 4 Pa.C.S. § 1103. See also 4 Pa.C.S. § 1202(b)(9) (regarding background investigations of Board employees).

<sup>26</sup> 4 Pa.C.S. § 1802. Under this section of the Gaming Act, an applicant must also be photographed by the Pennsylvania State Police or by a local law enforcement agency capable of submitting fingerprints and photographs electronically to the Pennsylvania State Police.

<sup>27</sup> 4 Pa.C.S. § 1801.

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addition, a credit history report for each applicant is obtained from a private contractor.

4. Suitability Investigations. Once the criminal, credit, and security investigations are completed, the results of these investigations are considered all together to determine if the applicant is suitable to be recommended for employment.

Although the Gaming Board conducts the investigations,<sup>28</sup> it receives assistance and information from various other entities (including the Pennsylvania State Police) as necessary, depending on the level of investigation required. These entities and the activities they conduct are described in the table on the next page.

Please note that the procedures in the next table apply to both casino employees **and** Gaming Board employees. However, as we noted earlier, this finding (Finding One) discusses investigations of Gaming Board employees only, while Finding Two discusses investigations of casino employees.

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<sup>28</sup> Prior to the creation of the Gaming Board's Bureau of Investigations and Enforcement in July 2005, the Pennsylvania State Police conducted background investigations on prospective Board employees.

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<b>Other entities assist the Gaming Board in conducting background investigations</b>	
<b>Agency/company</b>	<b>Investigative activities/reviews</b>
Pennsylvania State Police	Fingerprinting <sup>1/</sup> Photographing Criminal History Reports Warrants
Local police departments	Incident reports
Department of Transportation	Driving Records
Newport Alliance <sup>2/</sup>	Drug Tests
Choicepoint <sup>3/</sup>	Credit History Reports Social Security Verifications Judgments/Liens Verifications Civil/Criminal Litigation Verifications Bankruptcy Verifications Education/ Diploma Verifications
<p><sup>1/</sup> Fingerprints are used to verify identity, to run various database checks, and to process the criminal history record check. Originally, applicants had to travel to the field offices of the Pennsylvania State Police to be fingerprinted, but now there are troopers present at each casino who can obtain fingerprints on-site using <i>Livescan</i>, an electronic fingerprinting device. <u>See also</u> 4 Pa.C.S. § 1802.</p> <p><sup>2/</sup> The Board has a contract with Newport Alliance, a division of Newport Hospital, Newport, Rhode Island, to perform controlled substance testing. According to its Web site at <a href="http://www.lifespan.org/newport/services/occhealth/alliance/">http://www.lifespan.org/newport/services/occhealth/alliance/</a>, which we accessed most recently on March 16, 2009, the Newport Alliance is “a non-profit occupational health provider that specializes in delivering drug-free workplace programs and worksite immunization services.”</p> <p><sup>3/</sup> Choicepoint, headquartered near Atlanta, Georgia, conducts employment screening that, according to its Web site at <a href="http://www.choicepoint.com/business/employment_screening.html">http://www.choicepoint.com/business/employment_screening.html</a>, and accessed most recently on March 16, 2009, helps to “automate . . . and speed the hiring process while ensuring a candidate meets a company’s employment standards.” In a <i>Washington Post</i> story, dated January 20, 2005, entitled “In Age of Security, Firm Mines Wealth of Personal Data,” which we accessed most recently on March 16, 2009, staff writer Robert O’Harrow Jr. notes that Choicepoint began in 1997 by selling credit data to the insurance industry but grew to become “an all-purpose commercial source of personal information about Americans, with billions of details about their homes, cars, relatives, criminal records and other aspects of their lives.” <a href="http://www.washingtonpost.com/wp-dyn/articles/A22269-2005Jan19.html">http://www.washingtonpost.com/wp-dyn/articles/A22269-2005Jan19.html</a>.</p>	

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**Discussion point 1:  
The Gaming Board  
initially did not fully  
investigate some of  
its new hires.**

All prospective Board employees must undergo background investigations to obtain Board employment. But such investigations were not required when the Board was created. As a result, when the Board first began to operate and found itself inundated with applications, it initially hired some employees prior to the completion of background investigations. We discuss some examples in this section as we describe the three phases through which the Board's investigative processes have evolved.

**First phase:**

**No investigations at all**

*July 2004 through December 2004*

Originally, the Gaming Act did not require applicants seeking employment with the Board to undergo background investigations. The Board began accepting employment applications during this time period. The first Board employees did not officially begin employment until January 2005, although employees of other state agencies were on loan to the Board to assist it in building its operations.

**Second phase:**

**Board required an investigation**

**but not necessarily *prior* to employment**

*December 2004 through September 2006*

During a December 15, 2004, public meeting, the Board unanimously voted to require each candidate for employment to undergo a background investigation after noting the following:

A continuing theme throughout the meeting has been the need to ensure integrity in all aspects of gaming in Pennsylvania. The need for such integrity will be particularly important

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for the Gaming Board's own staff;  
especially for those in management  
positions.<sup>29</sup>

This change, while requiring background investigations of all employees, did not require the completion of investigations prior to employment.

Although the Board attempted to safeguard itself by saying it would not continue to employ such early hires if they failed the subsequent background investigation, the flaws in that hire-first investigate-later process soon became public knowledge, especially in 2006 when news stories began accumulating about some troubling employee incidents. We summarize some examples here to illustrate the news coverage that led to widespread public questioning about the thoroughness of the Board's background investigations.

- In February 2006, published reports discussed a senior Board employee whose background investigation continued for more than five months *after* he began his position until the investigation was completed. As of December 31, 2008, this employee still holds a senior position with the Board.
- Also in February 2006, it was widely publicized that another employee was charged with homicide in the death of his girlfriend. According to the Board, this employee was suspended without pay and benefits shortly after his arrest, and he later resigned his position at the Board. Public court records note that the employee was found guilty of involuntary manslaughter and sentenced to prison. It was after this incident—in which the employee was also found guilty of possessing drug paraphernalia—that the Board decided to require pre-employment drug testing.

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<sup>29</sup> December 15, 2004, Board Chairman, transcript, Pennsylvania Gaming Control Board public hearing.

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- In April 2006, published reports revealed that a Board employee—hired prior to the completion of his background investigation—was charged with falsifying information on the Board’s background investigation questionnaire. According to the Board, this employee was suspended without pay with benefits shortly after his arrest. Following an internal investigation by the Board, the employee was reinstated to active employment but restricted to administrative duty. More than ten months later, his charges were dismissed and he was returned to his original position, which he continued to maintain as of September 2008.
  - Also in April 2006, it was reported that two high-ranking employees faced charges related to public drunkenness. In one case, the employee entered a plea of no contest, and the Board offered him continued employment conditional on attending counseling offered through the State Employee Assistance Program. Almost ten months after the employee completed counseling, he resigned from his position at the Board. In the case of the other employee, the Board took no disciplinary action after the employee’s arrest, but the employee resigned from his position about nine months later.
  - In May 2006, it was reported that yet another Board employee was arrested and charged with numerous crimes such as public drunkenness, disorderly conduct, and resisting arrest. Less than a week after his arrest, the Board conducted an investigation and terminated the employee for multiple violations of the Board’s code of ethics.<sup>30</sup>

Despite the nature of the incidents just described, we acknowledge that even an extensive investigation cannot

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<sup>30</sup> This refers to the Board’s code of ethics that was in existence at that time. The current code was issued after Act 135 of 2006 added a requirement to the act for the Board to adopt a “comprehensive code of conduct” (see 4 Pa.C.S. § 1202.1).

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guarantee that a person with a troubled background will repeat negative behaviors, or that a person without a record will remain trouble free. However, the Board must be able to state unequivocally that it has fully investigated all the areas it is required to investigate; in that way, the Board will not put itself into a defensive position unnecessarily. Unfortunately, the Board could not offer that assurance during the times that these publicly reported incidents occurred.

**Third phase:  
Investigations with suitable findings  
are conditions of employment**  
*September 2006 to present*

One result of the incidents just described was that, in September 2006, the Board modified its investigation process yet again. At that time, the Board began to require completed background investigations of its employees prior to the date of hire (which we refer to as the hiring-after-investigation policy). Following suit, in November 2006, the General Assembly amended the Gaming Act to require that background investigations be conducted for all prospective employees as a condition of employment with the Board.<sup>31</sup> Stated another way, not only did the Board have to complete investigations prior to hiring employees, but it also had to ensure that the investigations did not turn up negative results. The following requirements must be met:

1. What each prospective employee must do:
  - Submit an application and personal disclosure form.
  - Undergo testing to detect the presence of illegal substances.
2. What the Board must do to investigate each prospective employee:
  - Obtain fingerprints and photographs for each prospective employee.

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<sup>31</sup> 4 Pa.C.S. § 1802, as amended by Act 135 of 2006.

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- Verify the identification, employment, and education of each prospective employee, including legal name and any alias; all educational institutions attended; places of residence for the past ten years; and employment history for the past 15 years.
3. Whom the Board may not hire:
- Any persons convicted of a crime that bears a close relationship to the duties and responsibilities of the position for which employment is sought.
  - Any persons dismissed from other employment for gross misconduct.
  - Any person who intentionally made a false statement concerning a material fact in connection with the application to the Board.<sup>32</sup>
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**Discussion point 2:  
The Board  
subsequently  
improved the way it  
conducted  
background  
investigations of its  
own employees.**

As part of our audit, we tested the investigative process that was modified in 2006 and that continues today. We conducted our testing by reviewing the Board's available file data for 100 percent of the Board employees hired between May 2006 and May 2007. It is important to note that our testwork in this area was limited because the Board took the position that we could not review the actual documents in the employees' background investigation files due to the Board's interpretation of the Gaming Act.

Based on our audit work—and within the limitations explained above—we found the Board had indeed strengthened the *process* itself, but we make a significant distinction between *process* and *actual results*. Specifically, although we found that the Board improved its investigative *process*, we could not confirm independently that it achieved the actual results it has described. Therefore, going forward, the Board not only should continue the improved process and add further refinements, but it should also provide the public with independent proof that its staff actually performs the process in

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<sup>32</sup> 4 Pa.C.S. § 1201(m).

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every case, without errors in fact or judgment in every case, and that the results are documented.

In using the term “independent proof,” we mean that any such proof can be offered only by an independent entity that is also designated as a law enforcement agency. A law enforcement agency is empowered to view confidential criminal history records firsthand and would thereby be enabled to examine and analyze every investigation-related document. Accordingly, by not having to work with Board-redacted or Board-shielded confidential information, as we did, a law enforcement agency can more directly evaluate if the Board’s investigation process was carried out as fully and precisely as required, if judgments were made appropriately, and if results and conclusions were stated correctly.

**Details of our testing:  
What we did and what we found**

Within the confines of the confidentiality restrictions just described, we evaluated the Board’s revised investigation process by asking the Board for documentation that, on one hand, would not violate its confidentiality requirement but, on the other hand, would allow us to test the process. We can divide our testing into four components, each more intensive and detailed than the one before to compensate for our inability to view certain documents directly.

**(1) What we did: We tested a year’s worth of hiring following the start of Board-revised procedures.** We conducted our testing for the period of May 1, 2006, through May 1, 2007. We started with the date of May 1, 2006, because that was when the Board began using a new investigative checklist as an administrative/management tool to maintain better control over the background investigations. The checklist was a single page with itemized testing requirements, each of which a Gaming Board investigator or employee could check off as it was completed.

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**What we found: We found checklists consisting of standardized requirements on which we could base our evaluation.** We concluded that the checklists had undergone three revisions but that the itemized requirements were essentially the same on all three revisions. Accordingly, we were comfortable that our testing was based on essentially the same itemized criteria and that, more important, it was based on documented criteria. If we had attempted to test files dated prior to May 1, 2006, we would have had no document available to us containing itemized criteria.

**(2) What we did: We asked the Board to supply us with an investigative checklist for 100 percent of the employees hired after May 1, 2006.** For each of the 93 employees hired after May 1, 2006, through May 1, 2007, we requested that the Board provide to us the standardized cover-sheet checklist. It was our intention to confirm that the Board maintained a checklist for each employee's file and had noted that each item on the checklist had been completed, as well as the date of completion and the identity of the Board employee who had made that notation.

**What we found: The Board produced 93 checklists, and we determined that all 93 had been completed, but with little or no detail.** There were 93 checklists, one for each employee. Every applicable investigative item on each employee's checklist was notated as having been completed, but not every item showed a date of completion. In addition, there were no initials or names to show who had made each of the notations. Therefore—without seeing dates and without knowing who notated each item—we were unable to determine the actual *validity* of the checklist. At the same time, while we cannot call the checklist *invalid*, we found that—in its unsupported

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condition—it had limited utility as an after-the-fact tool for management or auditors to confirm what investigators had done.

**(3) What we did: We conducted more detailed testing of 10 of the 93 files to determine if the Board had documentation to show that every item on the checklist had been investigated.** For 10 files randomly selected from the sample of 93, we conducted further testing by requesting that Board officials present documentation within each file—file by file, item by item—as evidence that each investigative area had been completed successfully. Each checklist contained as many as 30 investigative items.

**What we found: The Board verified that the 10 files contained all supporting documentation, but again we could not independently confirm that documentation.** Because of the confidentiality constraints that we faced, we could not view each file's supporting documents firsthand. However, in a lengthy process during which auditors sat with Board officials to review the 10 voluminous files, the officials showed us cover pages or top portions of each confidential document so that we could verify the name and apparent existence of these documents. In the final step for this test, we asked the Board officials to verbally confirm to us—which they did—that every item on the checklist was supported by specific and confidential documentation. The officials also explained to us in general terms how each investigative test had been performed.

Without viewing the supporting documentation for ourselves, we cannot make an unqualified judgment that each of the 10 files contained nothing that would have prohibited employment with the Board. However, according to the work we did, and combined with the

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confirmations of the responsible Gaming Board officials, we were as comfortable as we could be that each of the 10 files contained the information required as part of the background investigation process.

To resolve any questions going forward, the Board could seek a legislative change to ensure that our auditors have direct access to the necessary information; another potential resolution is for the Board to request a review and audit by an independent agency (such as the Pennsylvania State Police or the Office of Attorney General).

**(4) What we did: We narrowed the sample of 10 selected files to 7 to test for timeliness factors.** We used the same sample of the 10 investigative checklists to determine if the applicants were hired for Board employment only after the completion of the background investigation. We then narrowed the sample of 10 files to 7 after determining that 3 of the employees had been hired after the implementation of the checklist but prior to the September 2006 implementation of the hiring-after-investigation policy.

**What we found: We found that 6 of the 7 employees were hired after their investigations were completed.** Of the 7 employees in our narrowed sample, we found one who was hired before the background investigation was complete. By way of explanation, Board officials said they initially hired this person as a temporary employee in December 2006, and that they were required to conduct only a basic background check for temporary employees. However, the problem with this explanation is that a “basic” background check was supposed to have included the criminal background check, and a criminal check was not completed until after the employee had begun her temporary position.

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In late March 2007, the Board subsequently completed a full criminal history record check and then hired this employee full time the next day.

The preceding case made it appear that the criminal history check requirement had been circumvented by the hiring of employees part-time or temporarily until an investigation was completed successfully, at which point the employment status would be changed to full-time or permanent. Therefore, we asked the Board if there had been similar instances and found that, yes, the Board had hired one other person initially as a part-time employee, conducted a full background investigation later, and subsequently hired the employee full-time.

Although we did not see other instances to show that this practice was routine, the potential for this circumvention does exist as a way to offer favored applicants an early start to full-time Board employment at the expense of other applicants who are not given that advantage. The Board must be cautious in appearing to circumvent a full investigation in this manner. Furthermore, not conducting a complete background investigation for temporary employees may cause the Gaming Board to hire an employee who may have disqualifying criminal convictions.

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**Conclusion:  
Improvements  
were made,  
but more are  
needed.**

Again, as we stated at the start of this finding, the Board has changed its investigative *process*, but we were unable to measure the *effectiveness* of the changes because of confidentiality restrictions. Our own judgment that the process has actually improved is based on (1) our comparison of past investigative activities with the changed activities and (2) the lack of negative public incidents involving Board employees as contrasted with the incidents publicized initially. However, going forward, if the Board maintains its position that we cannot examine the background investigation documents, then the Board should seek to have a law

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enforcement agency conduct an independent examination of the investigation documents, and the Board and that agency should then pursue a way to share the success or shortcomings of the results publicly. In the meantime, with the Board now in operation for several years, it must further strengthen its investigative activities, ensure that it does not send a message that investigations can be circumvented or delayed with the hiring of temporary employees, and be careful that its own employees embody the highest standards themselves so they set an example for the casinos to follow.

### **Recommendations**

1. The Board should ensure it completes background investigations of every employee prior to the employee's date of hire. *Target date: Immediately*
2. The Board should ensure that its staff mark each item on every employee's investigative checklist to indicate that the investigation was completed, the date it was completed, and which employee completed the checklist items. *Target date: Immediately*
3. The Board should not hire temporary employees in order to offer them interim employment until they pass the full background investigations required of permanent employees. *Target date: Immediately*
4. If the Board maintains its position that it will not allow us to review the background investigation documents, then the Board should request a comprehensive review and audit of the employee background investigations by an independent agency (such as the Pennsylvania State Police or the Office of Attorney General) with the required authority, knowledge, skills, and resources for such an endeavor. *Target date: Immediately*

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## **Finding Two**

**The Board decreased the intensity of its background investigations when credentialing certain types of casino employees, but it did not balance that decrease with procedures such as periodic case sampling. The Board also did not have a single automated system to manage the investigation caseload. Therefore, improvements are needed.**

In presenting the details that led to the above finding, we discuss the following two points:

1. The Board decreased the intensity of its background investigations when credentialing certain types of casino employees, but it did not balance that decrease with procedures such as periodic case sampling.
2. The Board did not have a single automated system to manage the investigation caseload.

As required by government auditing standards, our discussion of these points will show how our audit work provided reasonable assurance that evidence is sufficient and appropriate to support the finding, as well as our conclusion that the Board must make improvements.

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### **Understanding the nature and profile of the Board's process to credential casino employees.**

As with Finding One, we preface our discussion with an explanation of the nature and profile of the Board's process as it relates to this finding.

One of the most important specific powers and duties of the Gaming Board is "[to] require background investigations on applicants, licensees, principals, key employees or permittees under the jurisdiction of the board."<sup>33</sup>

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<sup>33</sup> 4 Pa.C.S. § 1202(b)(9).

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As we said in Finding One, the definition of “[b]ackground investigations” under the Gaming Act is as follows:

A security, criminal, credit and suitability investigation of a person as provided for in [the Gaming Act]. The investigation shall include the status of taxes owed to the United States and to the commonwealth and its political subdivisions.<sup>34</sup> [Page 10 of Finding One provides more detail about security, criminal, credit, and suitability investigations.]

While each casino establishes its own hiring procedures and determines its own requirements for employees to follow (for example, drug testing), the Gaming Board also conducts background investigations of various casino employees as required by the Gaming Act.<sup>35</sup>

Regarding these investigations of employees, please note that our use of the term “casino employees” means the personnel who work in the casinos, not the casino *principals* (i.e., owners, directors, and operators).<sup>36</sup>

There are three types of casino employees: key employees, gaming employees, and non-gaming employees. (Definitions of the types of employees are provided in the table on page 31.) The Board issues licenses to key employees,<sup>37</sup> occupation permits to gaming employees,<sup>38</sup> and registrations to non-gaming employees.<sup>39</sup> Upon issuing these licenses, permits, or

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<sup>34</sup> 4 Pa.C.S. § 1103.

<sup>35</sup> 4 Pa.C.S. § 1202(b)(9).

<sup>36</sup> In the case of principals, we faced another obstacle in addition to the same confidentiality restrictions that limited our review of casino employees. Specifically, as discussed in Finding 3, a widely publicized case related to a Pennsylvania casino principal has raised serious questions about how the investigation and licensing responsibilities of the Board intertwine with the investigating responsibilities of law enforcement agencies. Thus, until those questions are resolved legislatively or otherwise, there is no point in us attempting to audit the investigation and licensing of principals.

<sup>37</sup> 4 Pa.C.S. § 1311.

<sup>38</sup> 4 Pa.C.S. § 1318.

<sup>39</sup> 4 Pa.C.S. § 1202.1(b).

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registrations, the Board also provides a physical credential to each licensee, permittee, or registrant to carry on his or her person while on duty at a casino.<sup>40</sup> This credential, which serves as a form of identification, includes the following information:

- The individual's license, permit, or registration number
- The individual's name, birth date, sex, height, weight, hair color, and eye color
- The individual's photograph
- The inscription "Pennsylvania Gaming Control Board"
- The seal of the Commonwealth
- An expiration date
- The individual's signature
- Other security features that the Board requires<sup>41</sup>

In calendar years 2006 and 2007, the Board approved the following applicants:

- 145 key employee applicants
- 4,088 gaming employee applicants
- 4,560 non-gaming employee applicants

An official for the Board's Bureau of Investigations and Enforcement stated that approximately 200 other applicants were turned down during those same calendar years.

In the case of a non-gaming employee, registration has no renewal, meaning that a non-gaming employee remains credentialed unless his/her registration is revoked or surrendered. However, registration information must be updated on an on-going basis.<sup>42</sup>

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<sup>40</sup> Credentials are not needed by licensed casino principals unless they perform duties at casinos for more than 12 days in a 12-month period. See 58 Pa. Code § 435a.6(a)(1). However, casino principals still undergo full background investigations to become licensed. See 4 Pa.C.S. § 1311.1. Other persons who must obtain Board credentials are state employees who have duties that require the employee's presence at a licensed facility more than once a month. See 58 Pa. Code § 435a.6(a)(5).

<sup>41</sup> 58 Pa. Code § 435a.6(b).

<sup>42</sup> 4 Pa.C.S. § 1201.1(b)(2).

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For either a key employee or a gaming employee, renewals are required. A key employee's license must be renewed annually, as must a gaming employee's permit.<sup>43</sup> However, the renewal investigation is not as extensive as the initial one. For example, even though employees seeking renewals undergo a criminal history record check and a credit history check every year, according to Board policy, the employees undergo a full background investigation only once every three years.

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**Discussion point 1:  
The Board decreased  
the intensity of its  
background  
investigations when  
credentialing certain  
types of casino  
employees, but it did  
not balance that  
decrease with  
procedures such as  
periodic case sampling.**

Although different from casino owners and principals, **key employees** are still top decision-makers whom the law empowers "to make discretionary decisions that regulate slot machine operations" in this Commonwealth.<sup>44</sup> For that reason, prior to issuing licenses to key employees, the Board requires them to undergo the same extensive inquiries it makes during the licensing of principals. According to the Board, this practice has continued since the Board's inception, and we agree it makes sense for the Board to continue in that way.

The requirements for **gaming** and **non-gaming** employees are different, although initially these two groups underwent the same type of investigations. However, effective on or before June 1, 2007, the Board revised the investigation process for non-gaming employees, citing an investigation backlog created in 2006 and 2007 (when casinos first opened) and determining that the same level of investigation was not as necessary for non-gaming employees as for gaming employees. Accordingly, as shown in the table later in this finding, the Board now conducts less extensive background investigations for the non-gaming employees than it conducts for the gaming employees—i.e., conducting only a criminal history background investigation for the non-gaming employees.

It is difficult to evaluate the actual effects of the preceding change until it has been in place for a longer period of time.

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<sup>43</sup> 4 Pa.C.S. § 1326(a).

<sup>44</sup> 4 Pa.C.S. § 1103.

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Preliminarily, our judgment is that, at a minimum, the Board's decision was reasonable when we view it against the procedural realities of time and efficiency factors. Even if the time factor is less significant now that the crush of initial applications has passed, the efficiency factor remains relevant when considering that the Board *might* be unnecessarily duplicating work by conducting background investigative procedures of gaming employees that are already conducted by the casinos.

In the case of non-gaming employees, the Gaming Act is not specific in itemizing the areas that the Board must investigate. Therefore, without a compelling reason to the contrary, the Board should not need to impose investigation requirements beyond those suggested by law for these employees with only limited access to the gaming floor.

We have developed a table (see page 31) to summarize the investigation activities of the Board by type of employee. First, however, it is helpful to understand the information asked of each potential employee in his/her application, and to remember that the Board is asking for this data in attempting to preserve the integrity of gaming.

#### **Information that potential casino employees are asked to provide**

When applying for either a **key employee license** or a **gaming employee occupation permit**, an applicant must provide information and pass a background investigation to prove that he/she is of good character, is honest, has integrity, and is eligible and suitable to hold either the applicable license or permit.<sup>45</sup> The key employee licenses and the gaming employee occupation permits are valid for one year from the date the Board approves them, after which they must be renewed.

- **Key employees** must include application information pertaining, for example, to family, habits, character, reputation, criminal history background, business activities,

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<sup>45</sup> 4 Pa.C.S. §§ 1311.2, 1318.

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financial affairs and business, professional and personal associates, covering at least the ten-year period immediately preceding the filing date of the application.<sup>46</sup>

- Examples of application information required of **gaming employees** are employment history, criminal history background, nature and duty of proposed employment and evidence of an employment offer, details of any other permit or licensure either granted or denied in other jurisdictions, and any other information that the Board may require.<sup>47</sup>

Application requirements for the registration of **non-gaming employees** are not stated as specifically in the law as those for key and gaming employees. Nonetheless, the regulations do discuss some important general requirements applicable to *all* employee categories. We have summarized several of these general requirements as follows:

- By filing an application with the Board, applicants agree to an investigation of their general and financial suitability, character, integrity, and ability to be associated with gaming to the extent that the Board deems appropriate.
- A license, permit, registration, or other such approval is a revocable privilege, and no person holding such a credential is considered to have any property rights related to it.
- By filing an application with the Board, applicants agree to comply with the law, to waive any liability to the Board and the Commonwealth for damages that might result from any lawful disclosure of information acquired during the investigation, and to execute all releases the Board requests.
- An applicant for or a holder of a license, permit, or registration has a duty to inform the Board of any action related to the applicant or holder that would be a violation of the law and therefore make the individual ineligible for his or her credentials. The applicant also has a continuing

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<sup>46</sup> See 4 Pa.C.S. § 1311(a).

<sup>47</sup> 4 Pa.C.S. § 1318(b).

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duty to inform the Board of changed circumstances or changed information that would constitute a violation of the law and make the individual ineligible for credentials.

As already noted, the Board approved nearly 8,800 casino employees in 2006 and 2007, and it denied credentials to approximately 200 casino employee applicants. The table on the next page shows the investigation activities that the Board is required to complete for persons who apply for licenses, permits, or registrations in order to become credentialed.

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<b>Background investigation procedures the Gaming Board conducts for casino employees</b>	<b>Areas of investigation/inquiry</b>
<p><b><u>A key employee receives a Board-issued license.</u></b></p> <p><i>Key employees include the decision-makers who work daily at the casino, such as managers, department heads, and comptrollers.<sup>1/</sup></i></p>	<ul style="list-style-type: none"> <li>▪ Tax compliance</li> <li>▪ Credit history/judgments/liens/collection accounts</li> <li>▪ Criminal history<sup>2/</sup></li> <li>▪ Employment</li> <li>▪ Social security number</li> <li>▪ Political contributions</li> <li>▪ Family history</li> <li>▪ Education</li> <li>▪ Ownership interests</li> <li>▪ Any licenses/permits</li> </ul> <p>The Board also makes inquiries of each applicant's local police department and local tax office, and also conducts a personal interview with the applicant.</p>
<p><b><u>A gaming employee receives a Board-issued occupation permit.</u></b></p> <p><i>Gaming employees include employees involved in day-to-day operations and who have substantial access to the gaming floor, such as cashiers, change persons, counting room employees, slot machine attendants, machine mechanics, and security personnel.</i></p>	<p>By June 2007, the Board reduced its full-scale investigations of these employees to cover these areas only:</p> <ul style="list-style-type: none"> <li>▪ Tax compliance</li> <li>▪ Credit history/judgments/liens/collection accounts</li> <li>▪ Criminal history<sup>2/</sup></li> <li>▪ Employment</li> <li>▪ Social security number</li> <li>▪ Any licenses/permits</li> </ul>
<p><b><u>A non-gaming employee receives a Board-issued registration.</u></b></p> <p><i>These include employees with only limited access to the gaming floor, such as bartenders, valet parking attendants, and janitorial personnel.</i></p>	<p>By June 2007, the Board reduced its full-scale investigations of these employees to check this area only:</p> <ul style="list-style-type: none"> <li>▪ Criminal history<sup>2/</sup></li> </ul>

<sup>1/</sup> A principal—which includes a casino owner, director, and officer—also receives a Board-issued license following an investigation covering the same areas as those listed for a key employee.

<sup>2/</sup> The Gaming Board's investigative personnel obtain criminal history records from the Pennsylvania State Police. No principal, key, or gaming applicant who has been convicted of a felony or a gambling offense shall be issued a license or permit unless 15 years has elapsed from the date of expiration of the sentence for the offense. See 4 Pa.C.S. § 1213. According to Board officials, any non-gaming applicant with a similar felony conviction may be qualified for employment pending a meeting of three members of Gaming Board staff.

*Source: The Board's Bureau of Investigations and Enforcement written background investigation procedure, effective June 1, 2007.*

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**Limits to our audit testing**

As part of our audit, we intended to test whether the Board had investigated the casino-hired employees as required, and according to its revised procedures. However, as discussed in Finding One, our testing was limited by the Board. The Board showed us that various documents existed in each file but prohibited us from reviewing documents firsthand.

Without this firsthand review, we were unable to determine whether a casino employee may have had a matter in his/her record that should have prohibited the person from being hired at one of Pennsylvania's casinos.

Despite the audit constraints caused by the confidentiality of investigative information, we still attempted to obtain at least a minimal level of assurance regarding the Gaming Board's investigation process related to the ultimate credentialing. Therefore, without looking at the confidential investigative results specifically, we reviewed the Board's investigative process in general by interviewing Bureau of Investigations and Enforcement staff, conducting site visits to the operating casinos, and reviewing Board policies, procedures, and other background investigation documentation.

**Our review found  
internal control weaknesses**

Based on our review, we identified two internal control weaknesses: (1) the Board's lack of supervisory review for gaming and non-gaming background investigations, and (2) the Board's lack of a centralized database for maintaining the case files on background investigations. The lack of a centralized database is significant enough to merit a discussion of its own and, as such, is addressed in our Discussion Point 2 of this finding.

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Before proceeding further, it is helpful to understand how individuals apply for positions and how that process leads to an investigation.

A potential key employee completes a paper application for a casino position, while a potential gaming or non-gaming employee applies to a casino primarily via computer through an automated application process called *SlotsLink*. Upon finding a potential employee it wishes to consider further, the casino forwards the application to the Board, either by mail for paper applications or via the *SlotsLink* for the electronic applications.

Upon receipt of the application, the Board's Bureau of Investigations and Enforcement assigns an agent to conduct the background investigation of the applicant. Again, depending on the type of employee, the agent conducts the appropriate level of investigation activities as shown in the table on page 31.

For the parts of the investigations performed by entities other than the Board itself—for example, the Pennsylvania State Police—such entities complete their work and submit the results to the Board. It is only when the Board's investigating agent receives, compiles, and/or completes all the required information that the process reaches its final stage, depending on the type of applicant:

- For key employee applicants, the Board's investigating agent prepares a written report. This report is reviewed at several higher Board levels, including supervisory and management reviews, before the final licensing/credentialing decision is made.
- Conversely, for gaming and non-gaming employee background checks, the Board's investigating agents do not prepare investigation reports that circulate through several levels for approval. Instead, the investigating agents themselves recommend to the Board's director of licensing that the applicable

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permits or registrations be approved. Upon hearing no objection from the investigators or licensing staff and ensuring that the application process is complete, the director then issues the credentials pursuant to a delegation of authority from the Board. The credentials are printed and mailed—along with a statement of conditions—to the casinos to give to the applicant. It is not until the seven voting Board members next meet that they get to see a list of casino employees whom the director has already credentialed. By virtue of that meeting, the Board is able to say that the members have “approved” the credentialing of gaming and non-gaming employees.

With regard to our concern about the lack of supervisory review of the process for gaming and non-gaming applicants, Board officials told us that agents can seek supervisory guidance during the investigation process—including guidance from the Board’s legal staff—before deciding on whether or not to recommend the credentialing. These officials went on to say that “the importance of the investigation and the scope of the investigation would dictate whether the investigation warranted a supervisory review or whether it falls within the discretion of what we pay our [investigating] agents to do.”

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**Discussion point 2:  
The Board did not  
have a single  
automated system to  
manage the  
investigation caseload.**

In further defending the existing process, officials from the Board’s Bureau of Investigations and Enforcement pointed to the Board’s denial of credentials to approximately 200 applicants during calendar years 2006 and 2007.<sup>48</sup> However, these same officials stated they could not provide a more exact statistic because of “database limitations.” These limitations represented a performance weakness, as we will explain, and

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<sup>48</sup> When an investigating agent finds a matter in the applicant’s record that may warrant a credentialing denial, the agent refers the application to the Board’s Office of Enforcement Counsel. The attorneys from that office can concur with the agent’s recommendation or can override it. Denied applicants may appeal that decision to the Board.

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occurred because those officials—at least at that time—had no centralized, automated system to record and track investigation case files.<sup>49</sup> Instead, investigation case files were maintained separately at the regional offices, and there were no uniform standards from region to region by which files were to be maintained.

Without knowing how many applicants were denied employment as the result of background investigations, we cannot determine the significance, if any, of the number of denials or the reasons for the denials. If the Board did indeed deny credentials to about 200 of the more than 9,500 casino employee applicants for whom it conducted background investigations, then about 2 percent of the employees were not credentialed based on those investigations. But unless we (or the Board itself, for that matter) know whether or not the number of denials is accurate, further analysis is seriously compromised and leads to our conclusion of a performance weakness.

On the other hand, if the Board had an accurate database to track how many employees had been denied credentials, as well as the reasons for the denials, the Board could better evaluate its own performance in several ways. Three examples follow:

- The Board could seek numbers from other states to compare and analyze the percentage of its denials.
- The Board could manage and monitor its investigation caseload more effectively by doing so on ongoing basis and according to uniform standards.

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<sup>49</sup> When we met with the Gaming Control Board prior to the issuance of this report, officials said that another bureau within the organization—the Bureau of Licensing—did have an automated database to track applications. However, the degree to which the investigating bureau and the licensing bureau shared information is not clear.

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- The Board could immediately see the status of investigations, and it would also be able to analyze and compare investigation outcomes agent by agent.

Overall, a centralized and automated system to manage the investigation caseload would provide information far more efficiently, would likely lead to even more ideas for improvement, and would enhance the Board's performance. To further examine the credentialing process for gaming and non-gaming applicants, we observed the Board's monitoring of casino employees when those employees were actually on the job. Specifically, we confirmed during our on-site visits to casinos that agents from the Board's Bureau of Investigations and Enforcement were stationed there to enforce various gaming requirements, including the requirement that on-duty casino employees display their credentials visibly. We observed the agents at work conducting their enforcement activities, both as they walked the gaming floor and as they utilized security and surveillance equipment such as security cameras.

By experimenting with the on-line applications by which job applicants could apply directly to the casinos, we were able to view the casinos' on-line application process just as job applicants would view it. We could then determine what if any controls the casinos built into their job application process from the very beginning. As the result of our work, we found that six of the seven operating casinos as of March 2009 allowed applicants to complete an on-line application versus a paper application. For the remaining casino, applicants had to print out a paper application, complete it, and return the paper application to the casino.

Of the six on-line casino applications we tested, five would not allow us to finish the on-line application if we said "yes" to a question about having a criminal background or "no" to a question such as whether we would agree to a drug test. This method of control at the casino level is helpful, but it is also dependent on the honesty of the applicant. The Board's

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application process does not rely on that method of control, according to Board officials. The officials asked us to make clear that the Board's process to credential casino employees is independent from the process by which job applicants apply to casinos directly.

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**Conclusion:  
The Board should  
do more to  
improve the  
credentialing  
process of casino  
employees.**

At the casino level, casinos themselves reject certain job applicants, meaning that those applicants do not reach the Gaming Control Board for review and credentialing. The Board's process to credential casino employees begins only after the casinos submit applications for licenses, permits or registrations to the Board, at which time the Board utilizes its separate and independent credentialing process. It is during this process that we found the Board could do more to supervise the credentialing investigation process as a way to decrease the potential risk of mistakes, errors in judgment—and most troubling of all—potential abuse by dishonest applicants, dishonest investigating agents, or both. Compounding this problem is the lack of an automated case management system that would allow the Board to quantify in real time the status of investigation cases and provide a tool for comparative analyses of the cases and agents. In short, these conditions illustrate weaknesses in the Board's internal control process.<sup>50</sup>

The Board should also be concerned that it has chosen not to conduct full-scale investigations on at least a sample of cases periodically. Although it may have been a matter of increasing

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<sup>50</sup> Employees are critical assets and resources of casinos. In auditing terms, an objective of internal controls is the safeguarding of assets and resources (the employees in this case) to decrease the risk of fraud, for example, or to decrease the risk of unintentional but undetected mistakes. This objective can be met only with the implementation of policies and procedures that reasonably prevent or promptly detect unauthorized acquisition, use, or disposition of the assets and resources. Accordingly, to safeguard the employee assets/resources of the casinos, the Board should adopt stronger procedural controls such as further reviews when conducting background investigations and additional levels of supervision when performing the credentialing process.

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efficiency and productivity measures when the Board reduced the intensity of background investigations in credentialing certain levels of casino-hired employees, the Board could have done more to counterbalance those reduced investigations. Such compensatory measures become even more important when considering the annual renewal requirement for credentialing, the high turnover of gaming and non-gaming positions, and the projected opening of more gaming facilities in the future.

To monitor compliance with various requirements at the casinos, including the requirement that casino employees actually displayed their credentials visibly, compliance representatives from the Gaming Board were stationed at the casinos. We observed these compliance representatives performing their jobs when we conducted our on-site visits.

### **Recommendations**

5. The Board should strengthen its background investigation process for casino employees in the following ways:
  - A supervisory level of review and final approval should be incorporated into the process for gaming and non-gaming employees. If it is too time-consuming to be done for each applicant, then the Board should incorporate this level of review on a sample basis.  
*Target date: Immediately*
  - An automated case management system should be established for maintaining the case files on background investigations. It should be accessible by all regional staff of the Board as well as the Bureau of Investigations and Enforcement staff located at the Board's headquarters. *Target date: Immediately*
6. If the Board maintains its position that it will not allow us to review the background investigation documents, then the

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Board should request a comprehensive review and audit of the casino employee background investigations by an independent agency (such as the Pennsylvania State Police or the Office of Attorney General) with the required authority, knowledge, skills, and resources for such an endeavor. *Target date: Immediately*

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## **Finding Three**

**In licensing casino owners, the Board faced jurisdictional struggles in the investigation process that resulted in wide-ranging public criticisms and questions, still unresolved, thereby damaging public confidence in the state's ability to regulate casino gambling.**

In presenting the details about the above finding, we address the finding's single point:

- In licensing casino owners, the Board faced jurisdictional struggles in the investigation process that resulted in wide-ranging public criticisms and questions, still unresolved.

As required by government auditing standards, our discussion of this point will show how our audit work provided reasonable assurance that evidence is sufficient and appropriate to support the finding, as well as our conclusion that the public portrayals of the process to license casino owners have damaged public confidence in the state's ability to regulate casino gambling.

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**Discussion point:  
In licensing casino owners, the Board faced jurisdictional struggles that resulted in wide-ranging public criticisms and questions, still unresolved.**

Only eight casinos have opened since the enactment of the Gaming Act in July 2004. In one well-publicized casino owner licensing matter during our audit period, the casino owner was the subject of a criminal investigation. That criminal investigation became a matter of public knowledge after the commencement of this audit and was not the focus of this audit; therefore, we do not address the specifics of that investigation in this report.

In reviewing the licensing process for casino owners, the Board again restricted our access to background investigation documents, for the same reasons that we discussed in both Finding One and Finding Two. Board officials informed us

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that the investigative process for casino owners and principals is the same as the process for key employees, which is discussed in detail in Finding Two.

The Board's restrictions positioned us to view the licensing of casino owners exactly as the public could view it—that is, through media reports<sup>51</sup> and public hearing testimony. Compared to the licensing of casino employees, the licensing of casino owners was publicized far more extensively, and the investigative process was therefore more visible. As a result, the hundreds of public reports and testimony about owner licensing led to this finding that, without question, is relevant to the integrity of casino gambling and the Board's duty to protect the public interest.

In auditing terms, we identified an existing condition by which the Board became subject to wide-ranging public criticisms and questions caused by an investigation process portrayed (by other entities, the media, and the Board itself) as contested. The public criticisms and questions have had the clear effect of compromising public confidence in the state's ability to regulate casino gambling.

### **Disputed roles at the root of the problem**

The public's perspective is especially significant because a successful casino industry—as the Gaming Act envisioned—is ultimately dependent on the public's participation. Earlier in this report, in Finding Two, we noted that casino principals<sup>52</sup>

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<sup>51</sup> Please note that we make no judgment on the accuracy of facts in the media stories, but rather on the fact that the stories existed, that they portrayed the process as broken, and that the public had obvious access to the numerous stories.

<sup>52</sup> Under Section 1103 of the Gaming Act, 4 Pa.C.S. § 1103, the definition of “principal” is as follows: “An officer; director; person who directly holds a beneficial interest in or ownership of the securities of an applicant or licensee; person who has a controlling interest in an applicant or licensee, or has the ability to elect a majority of the board of directors of a licensee or to otherwise control a licensee; lender or other licensed financial institution of an applicant or licensee, other than a bank or lending institution which makes a loan or holds a mortgage or other lien acquired in the ordinary course of business; underwriter of

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—i.e., casino owners, officers, and directors—must undergo an extensive background investigation as part of the licensing process. Casino owners/principals are not employees in the traditional sense of that word by nature of their position and their holdings in the corporate structure of licensed gaming facilities. As such, the Board must not only investigate and license the individual casino owners/principals, but it also must approve the issuance of a gaming license to the facility itself.

The problem with the licensing of casino owners arises with the process of investigating those owners and, more specifically, with the overlapping roles of the investigating entities involved. More specifically, even though the Gaming Act designated the Gaming Board’s Bureau of Investigations and Enforcement as a “criminal justice agency,”<sup>53</sup> that designation is not accepted by criminal justice agencies such as the Pennsylvania State Police and the FBI. As a result, the Gaming Board could be left unaware of certain critical investigative information about potential licensees even though that information is known by and/or available to the State Police, the FBI, or to other criminal justice agencies such as the state’s Office of Attorney General.

The public importance of this issue—and the state’s desire for the public to have confidence in the licensing process—might be best illustrated by the convening of an informational hearing in October 2007 by the Pennsylvania Senate Committee on Community, Economic, and Recreational Development to receive testimony about the sharing of investigative information. The hearing’s stated purpose was to educate the public on the investigative practices, given the questions that were being raised publicly, in order to ensure and maintain “a

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an applicant or licensee; or other person or employee of an applicant, slot machine licensee, manufacturer licensee or supplier licensee deemed to be a principal by the Pennsylvania Gaming Control Board.”

<sup>53</sup> 4 Pa.C.S. § 1517(a.1)(9).

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high level of integrity and public confidence in the PA Gaming Industry and the regulation of that industry.”<sup>54</sup>

Testifying were at least nine individuals, including five officials from the Gaming Board, two from the Governor’s Office, and two (one retired) from the Pennsylvania State Police. Particularly relevant testimony came from the Governor’s Office of General Counsel, known as OGC, which explained its own involvement in mediating the dispute between the various entities—in particular the Gaming Board’s belief that the Gaming Act did not require the State Police to conduct the background investigations and the belief of the State Police that it was the *only* entity that could do so.

The OGC offered three conclusions based on its review of the issue: (1) The Gaming Act contained “no clear cut mandate” that the State Police, and only the State Police, would investigate the backgrounds of applicants; (2) The Gaming Act did not require the State Police to conduct entire background investigations if it did any portion of them; and (3) a delineation of responsibilities was needed so that the State Police and the Gaming Board “were not tripping over each other.”<sup>55</sup>

According to the OGC testimony just cited, a December 2005 interagency agreement between the State Police and the Gaming Board (specifically its Bureau of Investigations and Enforcement) appeared to work well initially. That agreement, which the OGC had drafted, clarified which entity would do what with regard to investigations. However, in the spring of 2006, yet another disagreement had arisen between the State Police and the Gaming Board because the State Police (now citing supporting information from the FBI related to federal

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<sup>54</sup> Agenda, *Criminal Background Investigations and Sharing of Information* (Informational Gaming Hearing), Monday, October 22, 2007, Main Capitol, Senate Community, Economic and Recreational Development Committee, Senator Jane M. Earll, Chairwoman.  
<http://www.senatorearll.com/committee/community/102207/102207-agenda.htm>.

<sup>55</sup> Testimony of Nora Winkelman, Executive Deputy General Counsel, Governor’s Office of General Counsel, before the Senate Committee on Community, Economic, and Recreational Development, October 22, 2007.

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law) reasserted its position that it could not share information with the Gaming Board's Bureau of Investigations and Enforcement. Once again, the OGC mediated. In summary, in June 2006, the State Police agreed to convey (to the Gaming Board) that it might possess information relevant to a Board licensing decision, but that the information itself could not be shared. Instead, the State Police would provide the Board with certain general information, including relevant jurisdictions and related contact information, so that the Board could follow up with those contacts on its own.

The OGC's October 2007 testimony concluded that the relationship between the State Police and the Gaming Board "had never been better," that there was no evidence to suggest that the cooperation between the two entities had "resulted in anything but the thorough investigation of all applicants for gaming licenses," and that the problems had been only "bumps in the road." However, that conclusion is contradicted when compared with the information that the public was offered via media reports as at least one owner licensing process unfolded, as we describe next.

**The dispute played out in the media,  
offering the public little confidence**

In the most visible licensing case thus far, the public learned from statewide media reports that various investigating entities were not fully communicating with each other. This publicized case began in December 2004 when a Lackawanna County businessman purchased a former well-known resort site in the Poconos for \$25.1 million. The businessman applied to the Gaming Board for a casino license in December 2005, which was the same month that the State Police and Gaming Board signed their interagency agreement that we referenced earlier.

The Gaming Board approved the owner's license in December 2006, a year after the owner had applied. In winning the license, he beat a rival corporate applicant who then appealed

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the decision. The Supreme Court of Pennsylvania rejected the rival's appeal on July 12, 2007, and the Gaming Board subsequently licensed the new facility in the Poconos about two weeks later on July 24.

It was around that time that media coverage became heightened, particularly after reports surfaced in July 2007 that a Dauphin County grand jury was investigating whether the casino owner had lied when he told the Gaming Board he had no ties to organized crime. The publicity continued through the events that followed: the casino opened in October 2007; the Supreme Court of Pennsylvania rejected the owner's request to block the grand jury's investigation in December 2007; and the grand jury's report was released in January 2008, at which time the casino owner was charged with perjury. At that same time, the Gaming Board suspended the owner's license and appointed a trustee and an accountant to oversee the continued operation of the casino until the criminal charges are resolved.

Primarily from mid-2007 through at least mid-2008, extensive media interest continued, particularly based on reports that appeared when the Gaming Board chose between licensing the Lackawanna County businessman and his rival applicant. It is important to keep in mind that the State Police-Gaming Board interagency agreement was then in effect, as was the subsequent agreement dated June 2006, and that the entities were supposedly working well together according to the previously cited testimony. However, Pennsylvanians and others were reading instead about jurisdictional struggles and, accordingly, a process that appeared ineffective:

On April 4, 2007, the Associated Press reported, "Spurned suitors for a license to operate a slot-machine casino in Pennsylvania claimed that state regulators illegally made their decisions in private, ignored one winning applicant's financial troubles and allowed another to skirt the rules to help him

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win.”<sup>56</sup> On July 25, 2007, the same Associated Press journalist reported that the Dauphin County prosecutor’s office had recently subpoenaed the Gaming Board. The report also said that the prosecutor’s office would not comment on a grand jury meeting taking place on that date or on the nature of the subpoena.<sup>57</sup>

“Probe tests Pa. casino oversight” headlined a story in the *Philadelphia Inquirer* on September 2, 2007, citing “an embarrassing breakdown in how the state handed out casino licenses” because the Gaming Board did not know what the state police knew.<sup>58</sup>

On October 23, 2007, an editorial in *The Morning Call*, Allentown, advised the state to “Clear up gap in public confidence regarding casino background checks. . . .”

“Slots licensing methods questioned,” said *The Patriot-News*, Harrisburg, in the headline of a story also on October 23, 2007, about whether the Gaming Board and the State Police shared important information.<sup>59</sup> Only two days later, the editorial board of that newspaper opined, “Flawed investigation process requires changes in jurisdiction,” and suggested the passage of legislation to give the attorney general more jurisdiction over the investigative arm of the Gaming Board.

On January 31, 2008, *The Times-Tribune*, Scranton, editorialized that the Dauphin County grand jury’s investigation was “an indictment of the state government’s poor stewardship” and discussed what it called “a long-running dispute over whether the state police or the Gaming Board

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<sup>56</sup> Marc Levy, Associated Press, “Spurned slots-seekers critical of Pa. gaming board,” as reported on the on-line edition of the *Akron Beacon Journal* at Ohio.com.

<sup>57</sup> Marc Levy, Associated Press, “Reputed mobster, object of slots inquiry, goes before grand jury,” as reported on the on-line edition of *The Patriot-News*, Harrisburg, at pennlive.com.

<sup>58</sup> Craig R. McCoy, *Philadelphia Inquirer*, at philly.com.

<sup>59</sup> Sharon Smith, *The Patriot-News*.

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itself should conduct background investigations of potential licensees.”<sup>60</sup>

Both February and March 2008 were especially noteworthy for those who followed the media’s news and opinions. On February 2, 2008, *The Morning Call*, Allentown, ran a story headlined “bad hand for state gaming” while discussing the various roles of the Gaming Board, the state police, the Dauphin County district attorney, the FBI, and even bringing in the procedural involvement of a federal judge and the governor.<sup>61</sup> A day later, on February 3, 2008, *The Pocono Record* said “Who’s minding the state’s slots license process?” in an editorial asking whether the attorney general, the U.S. Attorney’s office, or local authorities should have taken action, and asking the “state’s key political figures” what they will do “to make the licensing process more thorough and transparent[.]”

Finally, more editorials in the *Philadelphia Inquirer*,<sup>62</sup> *The Patriot-News*,<sup>63</sup> and *The Morning Call*,<sup>64</sup> plus stories in the *Pittsburgh Post-Gazette*,<sup>65</sup> the *Pittsburgh Tribune-Review*,<sup>66</sup> and Scranton’s *The Times-Tribune*,<sup>67</sup> were critical of at least one of the involved entities. The pieces either suggested a loss of public confidence or said so outright.

Interestingly, in the middle of this February-March 2008 coverage, state officials were again stating publicly that the process was working well. The then-commissioner of the state police said that the Gaming Board acted appropriately

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<sup>60</sup> “Gaming Board rolls snake eyes,” at the times-tribune.com.

<sup>61</sup> Matt Birkbeck, “[Mt. Airy] case a bad hand for state gaming,” at themorningcall.com.

<sup>62</sup> Two editorials about the Gaming Board: “Profile in lack of courage,” February 11, 2008; and “Coulda, shoulda,” February 23, 2008.

<sup>63</sup> “Casino licensing system needs to come under attorney general,” February 5, 2008.

<sup>64</sup> “Legislature, Governor must face fact that gaming regulators have lost trust,” February 12, 2008.

<sup>65</sup> Tom Barnes, “Gaming board faulted for picking owner under probe,” March 5, 2008.

<sup>66</sup> Brad Bumsted, “Gaming board member says he was ‘misled’,” February 28, 2008; and “Pennsylvania’s ‘black eye’,” March 2, 2008.

<sup>67</sup> Robert Swift, “Top cop: BIE [the Gaming Board’s Bureau of Investigations and Enforcement] told of [Mt. Airy] Inquiry,” March 5, 2008.

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in issuing a gaming license to the Lackawanna County businessman, and that the outcome would not have been different if the Board's investigative arm reported to the state police or the attorney general.<sup>68</sup> The Gaming Board's chairman also defended the process and, in support of her position, cited the state police commissioner's comments.<sup>69</sup>

As of early 2009, the case itself remained unresolved, but the public was still provided with occasional updates critical of the process. For example, on February 1, 2009, *The Morning Call* reported that "the case hasn't moved an inch."<sup>70</sup> On March 1, 2009, the newspaper reminded the public how the previous stories had "created a statewide uproar, blowing the lid off any semblance of [Gaming Board] respectability."<sup>71</sup>

Such public judgment has done little to instill confidence in the state's regulation of the gambling industry.

Finally, on April 14, 2009, just as this audit report was being finalized, the Office of the District Attorney in Dauphin County announced an agreement by which the casino owner in question would be removed "from any ownership role in Pennsylvania's gaming industry in exchange for the withdrawal of criminal charges" against him.<sup>72</sup> The same announcement also made reference to the "numerous problems in the gaming application process that must be corrected to avoid recurrence."<sup>73</sup>

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<sup>68</sup> "[Colonel Jeffrey] Miller: Agencies Involved in [Mt. Airy] Background Check Acted Appropriately, Professionally," press release, Pennsylvania State Police, Harrisburg, PA, February 3, 2008.

<sup>69</sup> Letter to *The Morning Call*, Allentown, from Mary DiGiacomo Colins, Chairman, Pennsylvania Gaming Control Board, Harrisburg, PA, February 18, 2008.

<sup>70</sup> Matt Assad, "[Mt. Airy] case stalled in top state court."

<sup>71</sup> Paul Carpenter, "The focus of [Mt. Airy] story was on a tempest in a teapot."

<sup>72</sup> News release, "D.A. Agreement Removes [Owner] of Mount Airy," Office of the District Attorney, Dauphin County, PA.

<sup>73</sup> Office of the District Attorney, Dauphin County, PA.

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Note: Another case involving the licensing of a casino owner in Pittsburgh also was the subject of media scrutiny, but to a lesser extent, and did not focus on the jurisdictional struggles of the investigating entities that are the subject of this finding. Instead, the reports addressed a lack of Board transparency and are summarized in an August 2008 *Pittsburgh Post-Gazette* story faulting the Board's "shroud of secrecy" that undermines public confidence.<sup>74</sup>

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**Conclusion:  
Public portrayals  
of the process to  
license casino  
owners has  
damaged public  
confidence in the  
state's ability to  
regulate casino  
gambling.**

Based on the preceding samples of media coverage, the public has had continued access to stories and editorials discussing casino licensing controversies and the finger-pointing by various regulators. Despite the claims of state officials to the contrary, the investigative/licensing process has been shown to suffer from a lack of clarity about the lines of authority. Whether the faults are the result of flawed legislation, flawed administration, flawed cooperation, or a combination of these factors, the process must be fixed. As Pennsylvania casino gambling enters its fifth year, the state must not allow the public's confidence to be damaged further.

### **Recommendation**

7. The Gaming Board should take the lead in seeking an immediate legislative change to clarify and better define the roles of all entities involved in sharing investigative information for licensing casino owners and principals. *Target date: Immediately.*

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<sup>74</sup> Mark Belko, "Lawmakers decry casino 'secrecy,'" August 1, 2008.

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## **Finding Four**

**The Board achieved diversity while hiring mostly Pennsylvania residents, and it checked to see that casinos also achieved diversity and hired state residents. Pennsylvanians can therefore be satisfied with the diversity and residency of Board and casino employees.**

In presenting our information about the above finding, we discuss the two points separately:

1. The Board achieved diversity while hiring mostly Pennsylvania residents.
2. The Board checked to see that casinos also achieved diversity and hired state residents.

As required by government auditing standards, our discussion of these two points will show how our audit work provided reasonable assurance that evidence is sufficient and appropriate to support the finding, as well as our conclusion that Pennsylvanians can be satisfied with the diversity and residency of Board and casino employees.

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### **Understanding the Board's role in achieving diversity and the hiring of Pennsylvania residents at the Board and casinos.**

Since the opening of the first casino in 2006 through December 31, 2008, more than 15,000 employees have been hired to work at the seven licensed gaming facilities and the Gaming Board. As the remaining licensed facilities open for operations, thousands of additional jobs will be created in Pennsylvania.

It is vitally important to the state's economy that these jobs be filled with Pennsylvania residents. The economic effects of employing such a vast number of Pennsylvania residents would reverberate throughout other sectors of the state, including health care and education. Furthermore, in addition to the promise of property tax relief, part of the "sell" of Pennsylvania casino gambling was job creation.

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With those facts in mind, we note that it is incumbent on the Board and the casinos to provide optimal job opportunities for Pennsylvanians.

In addition to employing Pennsylvania residents, it is just as important for the Board and the licensed gaming facilities to employ a diverse work force that includes women and minorities. Diversity in the work place provides a wide array of perspectives, ideas, talents, experiences, and skills for the employer.

“Each licensed gaming [casino] shall prepare a hiring plan for employees of its respective licensed facility which promotes a diverse work force, minority participation and personnel from within the surrounding geographical area,” as stated in the Gaming Act.<sup>75</sup> Although there is no similar provision regarding the work force of the Gaming Board, the Board is responsible for monitoring the hiring and diversity plans of the casinos and would send the wrong message if it did not place the same hiring expectations on itself.

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**Discussion point 1:  
The Board  
achieved diversity  
while hiring mostly  
Pennsylvania  
residents.**

To ascertain the extent to which the Board hired a diverse work force while hiring mostly Pennsylvania residents, we obtained employment statistics, examined the Board’s annual reports, and reviewed the Board’s 2007 and 2008 diversity studies prepared according to requirements in the act.<sup>76</sup> Our testing of this matter used a snapshot of Board employee data as of May 10, 2007.

**Diversity.** Regarding the Board’s diversity as of our snapshot date, we found that 46.5 percent of the Board’s employees were women, or 101 women of the 217 employees in total. Twenty of those 101 women were minorities as well. Overall, the Board had 36 minority employees on its work force as of our snapshot date, or 16.6 percent of the total.

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<sup>75</sup> 4 Pa. C.S. § 1510(a).

<sup>76</sup> 4 Pa. C.S. § 1212(b).

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When the percentage of women and minorities employed by the Board are compared to those percentages of other state agencies, we found that the Board is on par with these other agencies. Specifically, we found that out of 34 total agencies, eight of them employed a higher percentage of minorities than the Board. With regard to hiring women, half of the 34 state agencies had a higher percentage of women on staff than the Board.<sup>77</sup>

**Residency.** Regarding the Board's residency statistics, we found that 203 of the 217 employees as of May 10, 2007, or 93.6 percent, were Pennsylvania residents prior to their hire date. The 14 remaining employees resided in other states prior to their hire date<sup>78</sup> and included nine management employees and five non-management employees. We did not find it unreasonable that some positions were filled by out-of-state individuals who already had gaming experience.

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**Discussion point 2:  
The Board checked  
to see that casinos  
also achieved  
diversity and hired  
state residents.**

Each casino is required by the Board's regulations to submit its diversity-related employment data to the Board on a quarterly basis,<sup>79</sup> but the regulations do not mandate the submission of residency-related data. However, the Board requires casinos to submit employee residency data at the same time they submit information regarding the performance of their diversity plan. Accordingly, the Board presented both diversity and residency data in its annual diversity reports. We used the Board's diversity reports dated December 2007 and December 2008 in developing this finding.

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<sup>77</sup> The 2008 Governor's Annual Work Force Report lists 2007 employment data for 34 state government agencies.

<sup>78</sup> Those states included Delaware, Indiana, Louisiana, Mississippi, New Jersey, and Virginia.

<sup>79</sup> See 58 Pa. Code § 481a.5(b).

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**Diversity.** The Board appointed its first chief diversity officer in April 2005.<sup>80</sup> The primary responsibility of this officer is to promote and ensure diversity in all aspects of gaming at both the Board and at the casinos.

To ensure that casinos attained and maintained work force diversity, the Board's chief diversity officer monitored the casinos' hiring practices. As part of the gaming license application process, each casino had been required to submit its diversity plan to the Board, including hiring policies and procedures, and the chief diversity officer and Board attorneys reviewed and assessed all plans to determine whether the stated goals set forth in each diversity plan were reasonable and represented a good faith effort to attain and maintain a diverse work force. Ultimately, the Board approved each plan as part of the licensing process, after which the Board's chief diversity officer followed up in many ways, including on-site visits, to determine compliance.

We obtained and reviewed the casinos' diversity plans as submitted to the Board as well as the Board's assessment of these plans. We determined that the plans included all the provisions required by law. According to the Board, casinos provide mandatory diversity training for their employees, and the Board's chief diversity officer attends each training session. In fact, the chief diversity officer is often a speaker at these training sessions.

We attended one such training session and determined that, overall, the training was very informative and appeared to meet its goal of educating the work force on important diversity issues.

To determine the work force diversity at the licensed casinos, we analyzed the employment statistics as presented in the 2007 and 2008 diversity reports. The Board's chief diversity officer

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<sup>80</sup> The Board appointed a new chief diversity officer in September 2006, and that person remains in this position.

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prepared these diversity reports based on quarterly statistics submitted to the Board by the licensed casinos. The chief diversity officer used these numbers to monitor diversity and to encourage the casinos to continue hiring employees with diversity in mind, but did not use these numbers to encourage the casinos to attain a certain percentage of women or minority employees.

2007 Diversity at the Casinos. As of December 31, 2007, diversity employment statistics were available for four of the seven operating casinos: Mohegan Sun, Presque Isle Downs, The Meadows, and Mount Airy.<sup>81</sup> At that time, the percentage of women employed at the four casinos ranged from 48.8 percent to 58.0 percent, and the percentage of minorities ranged from a low of 6.0 percent to a high of 36.4 percent. The percentage of minorities hired by the casinos generally exceeded the overall percentage of minorities residing in the host county and in the surrounding counties.

2008 Diversity at the Casinos. As of December 31, 2008, the Board's diversity report contained diversity statistics for six of the seven operating casinos: Mohegan Sun, Presque Isle Downs, The Meadows, Mount Airy, Philadelphia Park, and Hollywood Casino at Penn National. The 2008 data is summarized on the table on the next page.

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<sup>81</sup> In 2007, Harrah's Chester declined to provide employment data to the Board, citing two different federal court cases. Philadelphia Park had also declined to provide employment statistics for 2007 to the Board, citing one of the same court cases referenced by Harrah's Chester. Information from Hollywood Casino at Penn National was not available because it did not open until February 2008.

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<b>The percentage of women and minorities employed at casinos compared to those percentages residing in the host and surrounding counties December 31, 2008</b>					
<b>Name of Casino</b>	<b>Women</b>			<b>Minorities</b>	
	<b>Percent employed at the casino</b>	<b>Percent residing in host and surrounding counties</b>		<b>Percent employed at the casino</b>	<b>Percent residing in host and surrounding counties</b>
<b>Mohegan Sun</b>	47.9%	50.6% to 52.8%		8.9%	2.2% to 11.8%
<b>Philadelphia Park</b>	40.6%	50.9% to 53.5%		29.2%	7.5% to 55.0%
<b>Harrah's Chester<sup>1/</sup></b>	--	--		--	--
<b>Presque Isle Downs</b>	48.8%	51.0% to 51.3%		17.3%	1.3% to 9.1%
<b>The Meadows</b>	53.7%	48.5% to 52.6%		6.2%	4.7% to 15.7%
<b>Mount Airy</b>	49.9%	49.8% to 52.1%		36.9%	3.3% to 11.8%
<b>Hollywood Casino at Penn National</b>	49.8%	50.2% to 52.0%		12.8%	3.4% to 22.9%
<b>Source:</b> Developed by the Department of the Auditor General staff from information obtained from the Pennsylvania Gaming Control Board's 2008 Gaming Diversity Report.					
<sup>1/</sup> Harrah's Chester declined to provide the Board with employment data citing federal court cases.					

Aside from monitoring the diversity of casino employees, the Board's diversity officer also reviewed contracts, invoices, and other data related to the diversity of contractors and subcontractors used by casinos during 2008. The Board reported this usage as part of its 2008 diversity report. Although verifying these numbers was not within the scope of this audit, we present the Board-reported numbers for informational purposes on the next page:

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- Of the total casino expenditures for goods and services, the percentage paid to minority- and women-owned businesses ranged from less than one percent to 11 percent.
  - Of the total casino expenditures for construction costs, the percentage paid to minority- and women-owned businesses ranged from less than one percent to about 48 percent. According to the Board, licensees have said they anticipate an increase in these numbers as construction projections increase.

Based on our audit work in this area, we believe the Board and the chief diversity officer's efforts in promoting and monitoring diversity in the work force at the licensed facilities are good ones.

**Residency.** During our audit period, seven casinos were operational. Of these seven casinos, five of them are located within close proximity to a bordering state. Given this fact, we wanted to ascertain the extent to which casinos hired Pennsylvania residents versus persons from neighboring states. We obtained and reviewed the hiring plans and employment data as reported in the annual diversity reports for each of the seven casinos, and residency data for these facilities is shown in the table on the next page.

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<b>Residency Data for Casino Employees For 2007 and 2008</b>		
Name of Casino	December 31, 2007	December 31, 2008
Mohegan Sun	99.6%	99.4%
Philadelphia Park	84.5%	86.6%
Harrah's Chester	84.9%	84.6%
Presque Isle Downs	96.9%	98.6%
The Meadows	91.6%	91.2%
Mount Airy	99.1%	98.0%
Hollywood Casino at Penn National	97.7%	98.9%
<b>Source:</b> Developed by the Department of the Auditor General staff from information obtained from the Pennsylvania Gaming Control Board's 2007 and 2008 Gaming Diversity Reports, and information obtained from the Gaming Board on March 31, 2008.		

With regard to Harrah's Chester and Philadelphia Park employing fewer Pennsylvania residents than the other casinos, Gaming Board officials explained that the Philadelphia job market traditionally attracts employees from neighboring states because of the city's rail lines, bridges, and diverse employment opportunities. The Board also explained that the two facilities are located near each other, thus competing for applicants within the same geographic area.

### **Recommendations**

8. The Board must continue to give preference to Pennsylvania residents when seeking individuals to fill new positions or vacancies within the Board's complement.  
*Target date: Immediately*
9. The Board must continue to encourage casinos to hire Pennsylvania residents and to monitor the casinos' employment data to ensure that they are committed to

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creating jobs in the Commonwealth. *Target date:  
Immediately*

10. The Board should continue to monitor and promote diversity in the work force, both at the licensed facilities and at the Board itself. *Target date: Immediately*

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## **Finding Five**

**The Gaming Board did not take enough initiative to coordinate the state's fragmented efforts to help problem gamblers, thereby contributing to the inadequacy of those efforts.**

This discussion focuses on the point extracted from the above finding:

- The Gaming Board did not take enough initiative to coordinate the state's fragmented efforts to help problem gamblers.

Our discussion will show how our audit work provided reasonable assurance that evidence is sufficient and appropriate to support our finding, as well as our conclusion that the Board's lack of stronger initiative contributed to the inadequacy of the state's efforts to help problem gamblers.

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**Discussion point:  
The Gaming Board  
did not take enough  
initiative to  
coordinate  
Pennsylvania's  
fragmented efforts  
to help problem  
gamblers.**

According to the National Council on Problem Gambling, problem gambling behavior is that which causes disruptions in any major life area—psychological, physical, social, or vocational. “Problem gambling” includes but is not limited to the condition known as “pathological” or “compulsive” gambling, defined by the National Council as follows:

. . . a progressive addiction characterized by increasing preoccupation with gambling, a need to bet more money more frequently, restlessness or irritability when attempting to stop, ‘chasing’ losses, and loss of control manifested by continuation of the gambling

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behavior in spite of mounting,  
serious, negative consequences.<sup>82</sup>

Responsibility for providing help to problem gamblers is shared by several entities, including the Board, the Pennsylvania Department of Health, advocacy organizations, and private providers. However, no one entity has taken control as a leader, thereby leaving compulsive and problem gamblers unassisted, millions of dollars untapped, hotlines underused and uncoordinated, and no one with overall accountability.

Each of the aforementioned entities plays a different role in assisting problem gamblers:

- The Gaming Board ensures that casinos comply with the Gaming Act and regulations that require the casinos to identify problem gamblers and post notices about where to get help.
- The Pennsylvania Department of Health receives an annual budget allocation of \$1.5 million to pay for treatment programs for compulsive and problem gamblers, and also for outreach, including hotline referral services.<sup>83</sup> Additionally, the Gaming Act requires the Department of Health to develop program guidelines for public awareness, education, and training regarding compulsive and problem gambling and its treatment and prevention.<sup>84</sup>
- Advocacy organizations such as the Council on Compulsive Gambling of Pennsylvania and the National Council on Problem Gambling also provide hotline referral

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<sup>82</sup> <http://www.ncpgambling.org>. Accessed on April 8, 2009.

<sup>83</sup> Under Section 1408(a) of the Gaming Act, 4 Pa.C.S. § 1408(a), the Compulsive and Problem Gambling Treatment Fund, as established in the State Treasury, receives an annual payment of \$1.5 million or an amount equal to .001 multiplied by the gross terminal revenue of all active casinos, whichever is greater. See also 4 Pa.C.S. § 1509(b) (establishing the Compulsive and Problem Gambling Treatment Fund).

<sup>84</sup> 4 Pa.C.S. § 1509(a).

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services and counseling for gamblers, as well as training and certification programs for providers.

- Private providers administer the actual counseling and treatment services.

It is important to state up front that, although we spoke to officials from the Department of Health and interviewed persons and groups familiar with the Department of Health's program, we did not conduct an audit of that agency as it administered compulsive and problem gambling programs. Such an audit may be necessary soon. In the meantime, based on our research of the state's problem gambling efforts overall, not just the efforts of the Gaming Board, we identified two major problems:

- Although \$3 million of casino-generated revenues was set aside for the Department of Health to pay for problem gambling treatment in fiscal years 2006-07 and 2007-08 (\$1.5 million each year), virtually none of that money was used for that purpose through June 30, 2008.
- Although a single problem gambling assistance helpline telephone number would create awareness, enable better recall, promote efficiencies in operations and communications, and allow easier implementation and monitoring of uniform customer service standards, there is no single number.<sup>85</sup> Instead, depending on the casino, there are four different numbers to which problem gamblers might be directed. Information about the four hotlines is presented in the chart on page 8. Advocacy groups promote the use of some of the numbers, while the Department of Health has promoted the use of another number.

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<sup>85</sup> Under Section 1509(c) of the Gaming Act, 4 Pa.C.S. § 1509(c), each casino is required to obtain and post a toll-free telephone number to provide persons with information on assistance on compulsive or problem gambling. However, neither the statute nor the regulations specify which toll-free number the casinos should advertise.

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**The role of the Gaming Board: What it does now  
versus what it could do to strengthen the state's  
overall efforts to help problem gamblers**

The Gaming Board established its Office of Compulsive and Problem Gambling in September 2006 to make sure that casinos comply with requirements designed to help problem gamblers. The Board's 2007 annual report<sup>86</sup> lists six specific initiatives for this office:

- Ensures that every slot machine operator has established, and maintains meaningful compliance with, an approved compulsive and problem gambling plan.
- Creates problem gambling materials.
- Heightens public awareness of the dangers of compulsive, problem, intoxicated and underage gambling through outreach programs.
- Researches and develops prevention programs and harm reduction tools for gamblers.
- Establishes education programs for residents of all ages.
- Directs problem gamblers and their families to compulsive gamblers assistance organization toll-free helplines for crisis counseling, referral services and treatment.

In fiscal year 2006-07, the Board allocated \$132,587 of its \$37 million budget for the Office of Compulsive and Problem Gambling; in fiscal year 2007-08, the Board allocated \$231,562 for this office, which included the salaries of both the director and a program coordinator. The budget for this office is just a small fraction of the Board's overall budget, yet the Board promotes the creation of this office as playing an important role in addressing problem and compulsive

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<sup>86</sup> [http://www.pgcb.state.pa.us/files/communications/2007\\_PGCB\\_Annual\\_Report.pdf](http://www.pgcb.state.pa.us/files/communications/2007_PGCB_Annual_Report.pdf).

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gambling. According to the Board, “We are the only jurisdiction in the nation that has someone at a director level who is charged with the responsibility of overseeing compliance with our problem and compulsive gambling regulations.”<sup>87</sup>

While that statement is nearly true (at least one other state, Arizona,<sup>88</sup> has responsibilities related to compulsive and problem gambling), and while it seems worthwhile to devote a high-level official to such a cause, we found that the Gaming Board could be doing far more with its Office of Compulsive and Problem Gambling. Stated another way, the Gaming Board limited the duties of its Office of Compulsive and Problem Gambling primarily to one area—overseeing the casinos’ compliance with compulsive gambling laws. The Board would have added more value to its compulsive and problem gambling efforts in the following ways:

- 1. The Board could have ensured that the Office of Compulsive and Problem Gambling was an integral part of all the Board’s compulsive and problem gambling activities.**

**What happened instead:**

We found that the Office of Compulsive and Problem Gambling was not included in all aspects of the Board’s compulsive and problem gambling activities. Instead, the Gaming Board directed two additional internal areas to assume responsibilities for problem and compulsive gambling activities. In addition to the Office of Compulsive and Problem Gambling, responsibility for some activities were handled by various Gaming Board officials who made up an “opening team” for casinos, and

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<sup>87</sup> House of Representatives, Commonwealth of Pennsylvania, February 19, 2008, Appropriations Committee Budget Hearing, testimony by Mary DiGiacomo Colins, Chairwoman, Pennsylvania Gaming Control Board.

<sup>88</sup> There has been a director for Arizona’s Office of Problem Gambling since the office began its operations in September 2003.

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also by the financial investigations division of the Gaming Board's Bureau of Investigations and Enforcement.

In the case of the opening team of Board officials, the team included representatives from the Board's legal staff, Office of Gaming Operations, and other areas, but it did not include the director of the Office of Compulsive and Problem Gambling. These officials inspected each casino prior to and during its opening to ensure it was meeting all requirements, including those related to problem and compulsive gambling. It would have been a natural fit to include representation from the Office of Compulsive and Problem Gambling to confirm that the casinos actually implemented the provisions of their compulsive and problem gambling plans. For example, during our visits to the casinos, we noticed that signs at two different casinos were not in compliance with the law. We brought this deficiency to the attention of the Office of Compulsive and Problem Gambling for follow-up. Had that office been part of the opening team, however, the deficiency might have been noted earlier.

Once a casino opened, the financial investigations division of the Board's Bureau of Investigations and Enforcement became responsible for conducting annual audits to determine each casino's continuing compliance with laws related to problem and compulsive gambling. Again, however, we found that the Office of Problem and Compulsive Gambling was detached from this process. Specifically, we found that the Office of Compulsive and Problem Gambling had not even known the results of five casino audit reports developed by the Bureau of Investigations and Enforcement. In fact, it was our own team of auditors who brought the five Board-conducted audits to the attention of the Office of Problem and Compulsive Gambling's director. Had the director been included on the distribution list for those five audits, she would have been able to review any deficiencies that were

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identified and any recommendations that were made as a result.

**2. The Board should have ensured that the Office of Compulsive and Problem Gambling carried out *all* its intended initiatives related to problem gambling assistance, and that it had the resources to do so.**

**What happened instead:**

With the exception of ensuring that casino operators had established mandated compulsive and problem gambling plans, we found that the Office of Compulsive and Problem Gambling did not fully address its other intended compulsive and problem gambling initiatives.

Looking at the previously listed functions from the Board's 2007 annual report, we found limited evidence to demonstrate that the Office of Compulsive and Problem Gambling heightened public awareness of the dangers of problem gambling, developed prevention programs for gamblers, or established education programs for residents of all ages.

Based on our interviews with the director of the Office of Compulsive and Problem Gambling, we determined that sufficient resources may not have been available to carry out the intended functions. In fact, most of the financial resources allocated by the Board to its Office of Compulsive and Problem Gambling paid for the salaries of the director and the program coordinator. According to the director, if more funds were available in the Office's budget, the funds could have been used for developing public service announcements and educational programs about problem gambling, providing interactive computer programs for self-identified problem gamblers, partnering with treatment providers to address problem gambling issues, and sponsoring outreach programs.

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A lack of funding also limited the Office of Compulsive and Problem Gambling's efforts to participate significantly in National Problem Gambling awareness week, an annual effort (typically in March) in which states attempt to create public awareness about problem gambling. According to the director of the Office of Compulsive and Problem Gambling, "There were no newspaper ads or other advertisements for problem gambling awareness week because [this Office] does not have the funds. . . ."<sup>89</sup> However, the director did note that the Board issued a press release regarding National Problem Gambling awareness week.

Overall, we found the lack of printed materials and other publicly visible efforts in support of outreach and education to represent a serious deficiency in the Board's commitment to compulsive and problem gambling. Whether this deficiency was caused by insufficient funding or by an inefficient use of available resources, the Gaming Board did not develop the full potential of its Office of Compulsive and Problem Gambling.

- 3. The Board could have directed its Office of Problem and Compulsive Gambling to attempt to play a more aggressive leadership role in working with, persuading, and monitoring the Department of Health as that agency began to administer assistance to problem and compulsive gamblers, and in making sure that all involved entities worked together toward a common goal.**

**What happened instead:**

Coordination and agreement among state agencies, local advocacy groups, treatment providers, as well as the casinos is critical to the effective administration of any program intended to provide assistance to problem

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<sup>89</sup> March 6, 2008, interview conducted by the Department of the Auditor General with the Pennsylvania Gaming Control Board's director of the Office of Compulsive and Problem Gambling.

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gamblers. However, the Board told us it was not within its authority to require such coordination or to dictate certain actions. Although we recognize the Board's position that it could not actually place *requirements* on the other entities, and that it had no actual control on how entities like the Department of Health could run their programs or spend their funding, we believe strongly that the Board could have been more aggressive *in attempting to take the lead* in coordinating certain important efforts for the sake of compulsive gamblers in the Commonwealth and their families.

One example of a lack of coordination is the existence of four different hotline telephone numbers intended to assist problem gamblers in obtaining crisis counseling, referral services, and treatment. The opportunity for coordination existed based on routine meetings that included the Office of Problem and Compulsive Gambling, the Department of Health, and other entities such as the Pennsylvania State Harness Racing Commission and the Pennsylvania Lottery Commission to discuss public awareness, training for treatment providers, and gambler self-exclusion efforts (i.e., gamblers' efforts to exclude themselves from casino gambling). It would have been ideal for those meetings to result in a plan to consolidate the four hotlines based on the logic that the existence of four separate and uncoordinated hotline numbers could cause confusion and decrease consumer recall. To that end, the director of the Office of Problem Gambling provided us with documentation to show that she made the case for such a plan as the Department of Health was about to implement the fourth hotline. Unfortunately, however, the plan did not materialize.

Again, the Board could have been more aggressive even when faced with these setbacks. There can be greater success in reaching problem gamblers statewide if the contributing entities combine and coordinate their efforts. Stated another way, the entities will have one stronger

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voice working together than they will have speaking alone. By virtue of its role as the regulator of Pennsylvania's gambling industry, the Gaming Board is the obvious entity to show it can lead the effort to coordinate the state programs for problem gamblers.

- 4. The Board should have ensured that the compulsive and problem gambling hotlines provided accurate assistance to callers before it directed problem gamblers to these hotlines.**

**What happened instead:**

The Board's annual reports for 2006 and 2007 state that the Office of Compulsive and Problem Gambling "directs problem gamblers and their families to compulsive gamblers assistance organizations' toll-free help lines for crisis counseling, referral services and treatment."

Accordingly, the Board posted the following statement on its Web site:

If you or someone you know has a gambling problem, call the Council on Compulsive Gambling of Pennsylvania's helpline (800) 848-1880 or the Pennsylvania Department of Health's Gambling Addiction Hotline (877) 565-2112. For more information regarding compulsive and problem gambling, please visit this page.

Additionally, the Board listed both the Council on Compulsive Gambling of Pennsylvania and the Department of Health hotline telephone numbers in its brochures which it distributed to state prisons, probation and parole offices, and at special events such as the problem gambling awareness week and the Pennsylvania Racetrack Gaming Expo.

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However, in spite of publishing these hotline numbers, the director of the Office of Compulsive and Problem Gambling had not tested these or the other two toll-free telephone numbers for fear of skewing the data.<sup>90</sup>

During the course of our audit, we called each of the four hotlines to determine whether the toll-free telephone numbers were operational, if the lines were operational 24/7, and to learn what type of assistance the helpline operators provided.<sup>91</sup> On November 12, 2007, we called each line anonymously for information about what steps should be taken to help someone with a gambling problem.

We found all four toll-free telephone numbers were operational 24/7. Three of the four hotlines were initially answered with a pre-recorded message and then within four rings, an actual operator assisted with the call. The toll-free number, 1-800-848-1880 (Council on Compulsive Gambling of Pennsylvania toll-free telephone number), went directly to an actual operator after only two rings.

Three of the four toll-free telephone number operators referred the auditor to exact locations in or close to Harrisburg for both Gamblers Anonymous meetings and counseling, while the remaining helpline—the Department of Health toll-free telephone number (1-877-565-2112)—provided no such information. Instead the operator, located at the call center in Chicago, Illinois, was unfamiliar with Pennsylvania counties and had difficulty providing locations for Gamblers Anonymous meetings. She also stated that there were no counseling services in Pennsylvania.

When we called the Department of Health's toll-free telephone number again on November 13, 2007, there was

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<sup>90</sup> June 12, 2007, interview conducted by the Department of the Auditor General with the Pennsylvania Gaming Control Board's director of the Office of Compulsive and Problem Gambling.

<sup>91</sup> Auditors called the four toll-free telephone numbers at varying times of the day, including daytime, evening and nighttime hours.

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a similar response from the operator. On December 20, 2007, we made a third call to the Department of Health toll-free telephone number. Initially, we were put on hold for several minutes with no operator returning to assist us. We terminated the call and immediately dialed again, at which time an operator answered and ultimately referred us to a treatment provider and informed us of local Gamblers Anonymous meetings.

### **Conclusion**

While the Board lauds the creation of its Office of Compulsive and Problem Gambling, this office plays a limited role in addressing compulsive and problem gambling issues in Pennsylvania. Both the Board and the enabling legislation are responsible for the inadequate role played by the Office of Compulsive and Problem Gambling. The Board has allocated minimal funding to this office, has provided minimal staff to this office, and has not aligned this office with the staff that has compliance, monitoring, and enforcement authority. Further, the enabling legislation provides funding to the Department of Health for the implementation of compulsive and problem gambling programs. As a result, there are disjointed efforts both within the Board and throughout Commonwealth entities with regard to implementing effective compulsive and problem gambling programs.

### **Recommendations**

11. The Board should allocate more of its annual budget to the Office of Compulsive and Problem Gambling so that it can establish and provide the programs and services to Pennsylvania residents as intended with its creation.  
*Target date: Immediately*
12. To ensure a coordinated effort with regard to enforcement duties, the Board should:

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- a. Encourage continuous communication between the Office of Compulsive and Problem Gambling and the Bureau of Investigations and Enforcement so all entities are aware of casinos' compliance or noncompliance with their compulsive and problem gambling plans. *Target date: Immediately*
  - b. Require that the director of the Office of Compulsive and Problem Gambling be placed on the distribution list for the financial investigations division's annual audit reports. *Target date: Immediately*
13. The Board should appoint a representative from the Office of Compulsive and Problem Gambling to be a member of the opening team for all future casino openings. *Target date: Immediately*
14. The Board should heighten its collaborative efforts with the Department of Health and the Council on Compulsive Gambling to ensure effective management of all state compulsive and problem gambling programs. *Target date: Immediately*
15. The Board should reevaluate with the Department of Health the need for that department's hotline in an effort to more prudently use funds from the Compulsive and Problem Gambling Treatment Fund. *Target date: Immediately*

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## **Finding Six**

**The Board had some administrative and personnel advantages that were more generous than those of typical state government agencies. These practices created questions about whether the Board was elevated above other Commonwealth agencies.**

Within our audit period, we selected the date of May 10, 2007, to take a “snapshot” of the Board’s complement of full-time staff for our review and analysis. As of that date, the Board employed 217 individuals; for the entire 2006-07 fiscal year, the Board paid \$17.8 million in personnel costs. Of that \$17.8 million, \$12.9 million was for salaries and wages. According to the Board, there were no bonuses paid either to Board members or Board employees.

Our analysis of certain administrative practices which applied to both the voting board members, and the staff of the Gaming Board, has resulted in three specific points that led to our finding. The three separate points are these:

1. The Board’s seven voting members had salaries totaling more than \$1 million, not including benefits, even though some members held full-time paid positions elsewhere.
2. The Board set salary ranges that exceeded those of other Commonwealth agencies.
3. The Board paid its executive director even more than the already-generous employment contract required when she stepped down before her term ended.

Our discussion in the following pages will show how our audit work provided reasonable assurance that evidence is sufficient and appropriate to support our finding, as well as our conclusion that certain practices created questions about whether the Gaming Board was elevated above other Commonwealth agencies.

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**Discussion point 1:  
The seven voting  
Board members had  
salaries totaling more  
than \$1 million, not  
including benefits,  
even though some  
members held full-  
time paid positions  
elsewhere.**

The seven voting members of the Pennsylvania Gaming Control Board each are paid an annual salary even though the Gaming Act does not require members to work any particular number of hours. These salaries were not set by the Gaming Board itself but rather by the Commonwealth's Executive Board, which is not related to the Gaming Board.<sup>92</sup>

Other Commonwealth boards, such as the Tobacco Settlement Investment Board, the Pennsylvania Game Commission, and the State Employees' Retirement System, do not provide a salary to their members. Each Gaming Board member is also eligible to receive retirement benefits under the State Employees' Retirement Code.<sup>93</sup> The salaries and retirement benefits are all in addition to the compensation that Board members receive for their necessary and actual expenses.

What makes this entire practice unusual is that Board members may also hold paid positions elsewhere at the same time, as long as that outside employment is not associated with the Board.<sup>94</sup>

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<sup>92</sup> Section 1201(i)(1) of the Gaming Act, 4 Pa.C.S. § 1201(i)(1), requires that the compensation of the members of the Gaming Board are to be established by the Executive Board. The Commonwealth's Executive Board, which was created by Section 204 of the Administrative Code of 1929 (Code), 71 P.S. § 64, is made up of the Governor as the chairman and the heads of six administrative departments as designated by the Governor for the main purpose of establishing uniform standards and regulations regarding, among others, compensation, job classifications, and employment qualifications, within the executive branch. This excludes the Office of Attorney General, the Department of the Auditor General, the Treasury Department, and certain other independent agencies, boards, authorities, and commissions as allowed or required by other statutes. The Executive Board is empowered "[t]o standardize the qualifications for employment, and all titles, salaries, and wages, of persons employed by the administrative departments, boards, and commissions, except the Office of Attorney General, the Department of the Auditor General and the Treasury Department." See 71 P.S. § 249(a). Based on our recent discussions with Gaming Board management, it is uncertain to what extent the Gaming Board members had input in to the Executive Board's compensation-setting procedures when the Board was first established.

<sup>93</sup> 4 Pa.C.S. § 1201(i)(3).

<sup>94</sup> Under Section 1201(h)(5) of the Gaming Act, 4 Pa.C.S. § 1201(h)(5), "No member shall be paid or receive any fee or other compensation other than salary and expenses provided by law for any activity related to the duties or authority of the board. *Nothing in this part shall prohibit a member from engaging*

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In our analysis of how the preceding practices were applicable to the Board as of our snapshot date of May 10, 2007, we found that the Board's chairman was paid an annual salary of \$150,006, while the remaining six members each had annual salaries of \$145,018. These salaries approached that of the Pennsylvania Governor's salary of \$164,500 to serve as the full-time top executive for the entire Commonwealth.

Three of the Board members held other paid positions as well: a college president, a senior vice president for a consulting firm, and an adjunct faculty member at a university. The latter two members also served as board members for other organizations.

It is important to note that the Gaming Act allows the payment of salaries and the holding of concurrent paid positions. The Gaming Act also allows each of the Board members to employ one special assistant who can perform administrative duties for the members.<sup>95</sup>

At the time of our audit work, we were able to confirm that the gaming entities in 20 other states had a type of administrative or governing board. Of those 20 states, we found six that paid salaries to their governing board members while the remaining fourteen paid these individuals a per diem amount or reimbursed them for actual and necessary expenses for attending meetings.<sup>96</sup>

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*in any employment or receiving any compensation for such employment that is not connected to or incompatible with his service as a member of the board."* [Emphasis added.]

<sup>95</sup> See 4 Pa.C.S. § 1202(a)(3).

<sup>96</sup> The fourteen states that paid members of their governing board a per diem or actual expenses are: Colorado, Connecticut, Delaware, Illinois, Indiana, Kansas, Maine, Michigan, Minnesota, Mississippi, Missouri, North Dakota, South Dakota and Washington.

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The six states that paid annual salaries include California, Iowa, Louisiana, Nevada, New Jersey, and New Mexico, as shown in the table on the next page.

Our further analysis revealed the following:

- None of the six states paid salaries as high as those in Pennsylvania.
- Unlike Pennsylvania, the other six states all allowed additional types of gambling, meaning that their governing board had additional responsibilities.
- Only Iowa allowed all members of its governing board to hold other employment.
- Louisiana did not allow outside employment for the board chair (who, at \$100,067, was paid about one-third less than Pennsylvania's chair) but did allow the other members of its governing board to hold outside employment.

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In addition to Pennsylvania, we found six other states that paid annual salaries to members of their administrative or governing board		
	Pennsylvania	\$145,018 to \$150,006
	California <sup>a</sup>	\$79,122 to \$81,635
	Iowa <sup>b</sup>	\$10,000
	Louisiana <sup>c</sup>	\$15,000 to \$100,067
	Nevada <sup>d</sup>	\$131,242 to \$141,147
	New Jersey <sup>e</sup>	\$125,000 to \$141,000
	New Mexico <sup>f</sup>	\$105,000
<sup>a/</sup> Salary as of July 2008 for the 5 commissioners. Source: <a href="http://law.onecle.com/california/government">http://law.onecle.com/california/government</a> . <sup>b/</sup> Salary as November 2008 for the 5 commissioners. Source: Telephone interview with official from Iowa Racing and Gaming Commission. <sup>c/</sup> Salary as of August 2008 for the 9 Board members. Source: <a href="http://www.legis.state.la.us/lgcb">www.legis.state.la.us/lgcb</a> . <sup>d/</sup> Salary as of June 2008 for the 3 Board members. Source: <a href="http://leg.state.nv.us/NRS/NRS-463.html">http://leg.state.nv.us/NRS/NRS-463.html</a> . <sup>e/</sup> Salary as of August 2008 for the 5 Commission members. Source: <a href="http://www.state.nj.us/casinos/actreg/act">www.state.nj.us/casinos/actreg/act</a> . <sup>f/</sup> Salary as of August 2008 for the 3 Board members. Source: Telephone interview with official from New Mexico Gaming Control Board.		

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**Discussion point 2:  
The Board set salary  
ranges that exceeded  
those of other  
Commonwealth  
agencies.**

The Gaming Act allows the Board to develop a classification and compensation system for its employees that was not subject to the same practices and procedures of other Commonwealth agencies.<sup>97</sup> However, in 2006, following an amendment to the Gaming Act, the Board employees were admitted to the same retirement plan as other Commonwealth employees.<sup>98</sup>

By establishing its own employees' salary structure as required by the Gaming Act, but while still part of the Commonwealth, the Board ultimately placed a greater financial value on individual gaming employees than on other Commonwealth employees. It is therefore reasonable for other Commonwealth agencies, and for the general public, to question why Gaming Board employees should have that elevated status. Some examples, along with our evaluation of those examples, follow:

- **Example.** As of May 10, 2007, at an annual salary of \$180,011, the board's executive director was paid a salary greater than that of the Governor of Pennsylvania at \$164,500.

**Our evaluation.** As noted previously, the Governor of Pennsylvania is the chief executive of the entire Commonwealth and is on duty 24/7. It is difficult to justify why the executive director of the Gaming Board is paid more than the Governor.

- **Example.** Among 28 Pennsylvania state government agencies, the Board had the highest percentage of employees that earned an annual salary of more than \$100,000 in 2007. In fact, 11.6 percent of the board's workforce earned more than

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<sup>97</sup> 4 Pa.C.S. § 1202(a)(4).

<sup>98</sup> 4 Pa.C.S. § 1202(a)(2).

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\$100,000 in 2007, while most other Commonwealth agencies had 5.9 percent or fewer employees earning more than \$100,000.<sup>99</sup>

**Our evaluation.** We reviewed the education and experience required for job positions at the Board, and we found that most Board positions did not require exceptional experience or even gaming expertise. The results of this analysis contradicted our initial expectation that, because the gaming industry was new to Pennsylvania, the Board might have paid higher salaries to employ a staff with significant gaming experience.

- **Example.** As of May 10, 2007, some bureau directors at the Gaming Board were paid significantly different salaries than others for no obvious reason. For example, the director of the Office of Compulsive and Problem Gambling earned a salary of \$128,763; the director of the Bureau of Licensing earned a salary of \$119,609; and the director of Administration earned a salary of \$104,020.

**Our evaluation.** We initially expected that conditions such as overall responsibility, number of staff supervised, level of education, or even years of experience might be the cause of this differential in salaries for individuals considered bureau directors. However, regarding the number of staff supervised, for example, we found that the highest-paid bureau director—compulsive and problem gambling—supervised one person. The licensing director, whose salary was about \$10,000 less, supervised a staff of 37. Finally, the administration director, who was paid \$25,000

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<sup>99</sup> We looked at 27 other agencies, based on an April 2, 2007, news story, by *The Patriot-News*, which published a list of Commonwealth employees whose annual salary exceeded \$100,000, and information in the 2008 Governor's Annual Work Force Report that lists the total number of employees for each agency for 2007.

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and \$15,000 less, respectively, than the previously cited directors, supervised a staff of 18.

While the highest paid director did have prior gaming experience, we could find no other apparent or significant differences in education or experience to explain the preceding disparities.

- **Example.** As of May 10, 2007, within the same bureau (investigations and enforcement), we found two deputy directors paid differently—one at \$133,908, the other at \$99,013, or about 26 percent lower than his peer. Each of these two deputy directors supervised regional directors; however, the regional director reporting to the lower-paid deputy director earned more than his boss, or \$133,908. The other regional director earned 27 percent less, or \$97,859, an amount that was slightly lower than his own boss.

**Our evaluation.** Again, we could find no apparent conditions to account for these significant differences. Board officials did provide an explanation for the difference in salaries for the deputy director positions, saying that the higher salary was justified for the deputy director because of the greater amount of law enforcement experience. While we recognize that salaries are often based on prior experience, the wide disparity between these two salaries, given the fact that the two individuals are both deputy directors, is another example of the discretionary personnel practices carried out by the Board.

During a meeting we held with Board management just prior to the finalization of this report, the officials told us of the Board's March 2009 hiring of a Philadelphia-based consulting organization to evaluate all staff positions at the Gaming Board "relative to duties, staff hierarchy, salary and related

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concerns.”<sup>100</sup> The Board provided us with a copy of the agreement signed on various dates in March 2009, as well as a copy of the fully executed purchase order dated May 4, 2009.

According to the procurement justification form submitted by Gaming Board officials to the Commonwealth’s Department of General Services, this procurement of services priced at \$120,000 is necessary to ensure that Gaming Board job classifications have both internal and external equity. The justification form notes that “[f]ailure to approve this procurement will result in continued inconsistencies among [Gaming Board] classifications and the agency would miss an opportunity to validate its classification structure.”<sup>101</sup>

An evaluation of Gaming Board job classifications and salaries is the first step in addressing our recommendation #17 in this report. However, we caution that we have not audited the procurement of these services and therefore have not judged (1) whether it was appropriate to procure them through a sole source procurement rather than through a competitive process; (2) if the procured services are properly priced; and (3) if the expenditure of \$120,000 is prudent at this time. During a subsequent audit, we will examine these issues and review the contractor’s deliverables, which are scheduled for completion as of June 8, 2009.

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<sup>100</sup> Agreement dated March 12, 2009, between the Board and the Hay Group, Inc., and signed by all parties except the Commonwealth Comptroller as of March 23, 2009.

<sup>101</sup> *Source Justification Form* for submission to the Bureau of Procurement, Department of General Services, and signed by Gaming Board management officials on March 24, 2009.

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**Discussion point 3:  
The Board paid its  
executive director  
even more than the  
already-generous  
employment  
contract required  
when she stepped  
down before her  
term ended.**

The Gaming Board's first executive director stepped down on June 6, 2008, after serving approximately two years and nine months. At that time, the Board appointed an acting executive director and announced a nationwide search for a permanent replacement. As of the date of this audit report, the acting executive director still holds that position.

This discussion point addresses the employment agreement of the first executive director, whom the Board agreed to pay \$120,000 after her exit. However, the payment arrangements remain open to question based on our analysis of the circumstances:

- The initial employment agreement between the executive director and the Board ran for two years, from September 6, 2005, to September 6, 2007, at an annual base salary of \$180,000, or \$15,000 a month. There would be a one-year extension unless the Board chose not to renew the agreement, or unless either party terminated it.
- If the Board chose not to renew the agreement, the executive director would receive \$45,000, an amount equal to three months of the annual base salary.
- If either party chose instead to terminate the agreement before it expired, the agreement discussed four scenarios. We have simplified those scenarios:
  - (1) Termination for cause. The Board dismisses the executive director for a cited reason (such as fraud or negligence), and pays no further compensation.
  - (2) Involuntary termination without cause. The Board dismisses the executive director for no particular reason, and pays any remaining salary until the end of the agreement.
  - (3) Voluntary termination without cause. The executive director resigns for no particular reason,

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thereby freeing the Board from having to provide further compensation.

- (4) Voluntary termination for good reason. The executive director resigns for a “good reason,”<sup>102</sup> and therefore receives any salary as yet unearned between the termination date and the end of the agreement.

- The Board amended the agreement at the end of two years so that, in addition to the one-year extension, the contract also allowed an automatic month-to-month renewal effective at the end of the year-long extension. The annual base salary of \$180,000 stayed the same, but at least two other provisions were added:
  - The Board agreed to give the executive director more notice than before to end the contract (four months rather than 60 days).
  - To terminate the executive director involuntarily without cause *during the last four months of the third year*, the Board would continue to pay the base salary for four months, not three as in the original agreement. For example, if the board asked the executive director to leave in June for no particular reason, she would receive four monthly payments of \$15,000 each.

On June 6, 2008, when the executive director was terminated involuntarily without cause and before finishing her third year, the Board agreed to pay her **\$120,000, or twice the amount originally required by the agreement**. This significant change included a one-time, lump-sum payment of \$60,000 pursuant to yet another agreement dated May 29, 2008. The new agreement superseded all prior ones but did not explain the one-time \$60,000 payment.

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<sup>102</sup> “Good reason” includes, but is not limited to, the reduction of the executive director’s duties and responsibilities, the assignment of duties and responsibilities that would not allow the executive director to perform her job, or a material decrease in the annual salary of the executive director.

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We have simplified the provisions of that newest agreement:

- The executive director would leave on June 6, 2008.
- The Board would continue to pay for the executive director's health, accident, disability, and life insurance benefits over the next three months, until September 6, 2008.
- The Board would continue to pay the executive director her base salary of \$15,000 a month over the next four months, or \$60,000 in total.
- The Board would pay an additional \$60,000 as a lump-sum payment prior to October 6, 2008.
- The executive director would be "reasonably available to and cooperate fully with employer for purposes of transition planning and assisting in regulatory matters."

Various media outlets subsequently reported the Board's explanation that the \$60,000 lump-sum payment was for future consulting services.<sup>103</sup> To confirm those reports, we asked the Board for evidence to show it had made the consulting arrangements *before* agreeing to pay for them.

Unfortunately, the Board could produce no such evidence, but only a brief letter to the executive director, who by then had stepped down. In evaluating the letter, we found various problems.

- The letter was dated almost a full month *after* the final separation agreement.<sup>104</sup>

**Problem: No verification of Board's intentions.** The Board clearly had signed the separation agreement *before* documenting any justification for the unexplained \$60,000 it later said was for consulting services. Therefore, we

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<sup>103</sup> "Gambling chief got \$120,000 despite early resignation," *The Morning Call*, June 12, 2008; "\$120,000 sendoff for gambling official raises ire," *The Pittsburgh Tribune-Review*, June 12, 2008.

<sup>104</sup> Chronology (all dates in 2008): Final separation agreement, May 29. Executive director's exit, June 6. Brief letter from Board Chairman with vague descriptions of expected consulting work, July 1.

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had no verification that the Board had actually planned to require any work for the \$60,000.

- The letter was also dated almost two weeks *after* we asked for it.<sup>105</sup>

**Problem: Appearance of impropriety.** The possibility exists that the Board created the letter only in response to our request for evidence. In other words, by creating a letter only after we asked for it, the Board might have been attempting to cover itself and thereby escape further criticism.

- The letter included only three vague sentences to describe three consulting assignments that the then-former executive should complete.

**Problem: No accountability.** If a government agency agrees to pay someone \$60,000 for consulting services, it should clearly define the details of expectations and outcomes up front.

In summary, the Board should have allowed the executive director's contract to terminate according to the initial agreement, without the one-time addition of \$60,000 ostensibly for consulting services, and without the addition of a fourth month of salary (another \$15,000). Instead, the Board's poorly explained actions resulted in negative effects, including poor public relations, questions from legislators who cited a potential violation of state ethics laws,<sup>106</sup> and

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<sup>105</sup> Our request to the Board for evidence of consulting arrangements, June 20, 2008. Brief letter from Board Chairman with vague descriptions of expected consulting work, July 1, 2008.

<sup>106</sup> Section 1103(g) of the Public Official and Employee Ethics Act, 65 Pa.C.S. § 1103(g), states that "[n]o former public official or public employee shall represent a person, with promised or actual compensation, on any matter before the governmental body with which he has been associated for one year after he leaves that body." Further, the Gaming Board's Code of Ethics has the same provision, but extends the time period to two years. (*The Pennsylvania Gaming Control Board's Code of Ethics*, Section 2.f., approved on December 13, 2006. Accessed on July 31, 2007, at [www.pgcb.state.pa.us/employment](http://www.pgcb.state.pa.us/employment), and accessed again on April 3, 2008.)

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action by the Pennsylvania Treasury Department to initially withhold payment of the \$60,000 until all concerns were addressed. In December 2008, the Office of Attorney General approved the separation agreement, and the Treasury Department issued the final \$60,000 payment on January 22, 2009.

One final note regarding employment contracts: Most state agencies do not enter into employment contracts with their agency heads, so we asked the Board why it entered into a contract with the executive director. The Board responded to us in writing (in October 2008) that an agreement was deemed appropriate in that particular case “for the simple reason that it had conducted a nation-wide search for an Executive Director with sufficient experience to move to Pennsylvania and undertake the complex tasks of not only setting up an agency but laying the groundwork for the wide-ranging implementation of gaming in Pennsylvania. In order to provide certainty to that relationship under these circumstances, a contract was deemed appropriate.”

## **Recommendations**

16. The Board should seek an amendment to the Gaming Act so that board members cannot receive both a salary as a board member and hold another job. If a salary is to be paid to board members, then the law should be amended to eliminate the opportunity for holding another job so that all of the board members’ attention can be given to their position on the Board. Further, the law should be amended to require the board members to work a minimum number of hours each week for the payment of that salary. *Target date: Immediately*
17. The Board should modify its compensation structure for its staff to be more in line with the compensation of other state agencies even if the enabling legislation does not mandate

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such a practice. In addition the Board should enforce the use of this pay scale to prevent the awarding of excessive salaries. *Target date: Immediately*

18. The Board should establish a system to ensure that staff salaries are equitable among each job position. *Target date: Immediately*
19. The Board should enter into employment agreements cautiously, and only if deemed necessary. However, if deemed necessary, the term of the employment agreements should be for only one year at a time. *Target date: Begin planning immediately; implement this recommendation in full at the time the new director is hired.*
20. If the Board enters into any future employment agreements, the Board should ensure that the terms of the original employment contract are followed and that no new separation agreements are negotiated by any parties. *Target date: When applicable.*

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## **Appendix A**

### **Objectives, Scope, and Methodology**

The Department of the Auditor General conducted this special performance audit in order to provide an independent assessment of the Board and its oversight of Pennsylvania's casinos. We conducted our work according to *Government Auditing Standards* as issued by the Comptroller General of the United States.

#### **Objectives**

We began this special performance audit of the Board with the following objectives:

1. Evaluate whether the Board is effectively monitoring the compulsive gambling programs at the casinos
2. Evaluate the Board's collaboration with the Department of Health in implementing and funding compulsive gambling programs at the state and local levels
3. Evaluate the Board's oversight of its own personnel practices and those of the casinos in the Commonwealth
4. Evaluate the diversity plans in place at the Board and all casinos

Our draft report was made available to the Board's management on April 27, 2009. An exit conference took place on May 7, 2009. The Board's response to the draft report was sent to the Department of the Auditor General on May 13, 2009. The entire Board response is presented beginning on page 99.

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## **Scope**

Our audit covered the Board activities from its inception in July 2004 through August 2008, with updates through May 2009 where applicable.

## **Methodology**

To accomplish our objectives, we:

- Conducted interviews with key officials of the Board, the Department of Health, the Council on Compulsive Gambling of Pennsylvania, and the Office of Problem Gambling in Arizona
- Reviewed and analyzed pertinent laws, regulations, policies, and procedures
- Toured the Board's office location in Harrisburg, including the gaming laboratory
- Conducted site visits to the seven operational casinos which included observation of the gaming floors and surveillance areas
- Attended board meetings, legislative hearings, and other legislative committee meetings related to gaming
- Attended a diversity training program sponsored by a casino for its employees
- Reviewed and analyzed the Board's employment data to evaluate the Board's hiring practices
- Reviewed and analyzed 93 investigative checklists to test the Board's background investigation process for its employees

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- Conducted detailed testing on a sample of 10 board employee files to review the Board's background investigation process
- Reviewed and analyzed the casino's employment data and related documentation to evaluate the Board's oversight of the casino's personnel practices
- Reviewed and analyzed the Board's policies and procedures for investigating casino employees

### **Findings and Recommendations**

We developed **6 findings** during our review of the Board's performance for the audit period, and we present **20 recommendations** to address the issues we identified. We urge the Board to implement each of our recommendations immediately and we will follow up within the next 12 to 24 months to determine the status of the recommendations. In so doing, we will work collaboratively with the Board to meet an important government auditing standard that promotes government accountability:

Providing continuing attention to significant findings and recommendations is important to ensure that the benefits of audit work are realized. Ultimately, the benefits of an audit occur when officials of the audited entity take meaningful and effective corrective action in response to the auditors' findings and recommendations. Officials of the audited entity are responsible for resolving audit findings and recommendations directed to them and for having a process to track their status. If the audited entity does

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not have such a process, auditors may wish  
to establish their own process.<sup>107</sup>

At the time of our follow-up, we will determine a subsequent course of action. For example, we may issue a status update jointly with the audited entity, issue an update independently, or conduct a new audit entirely.

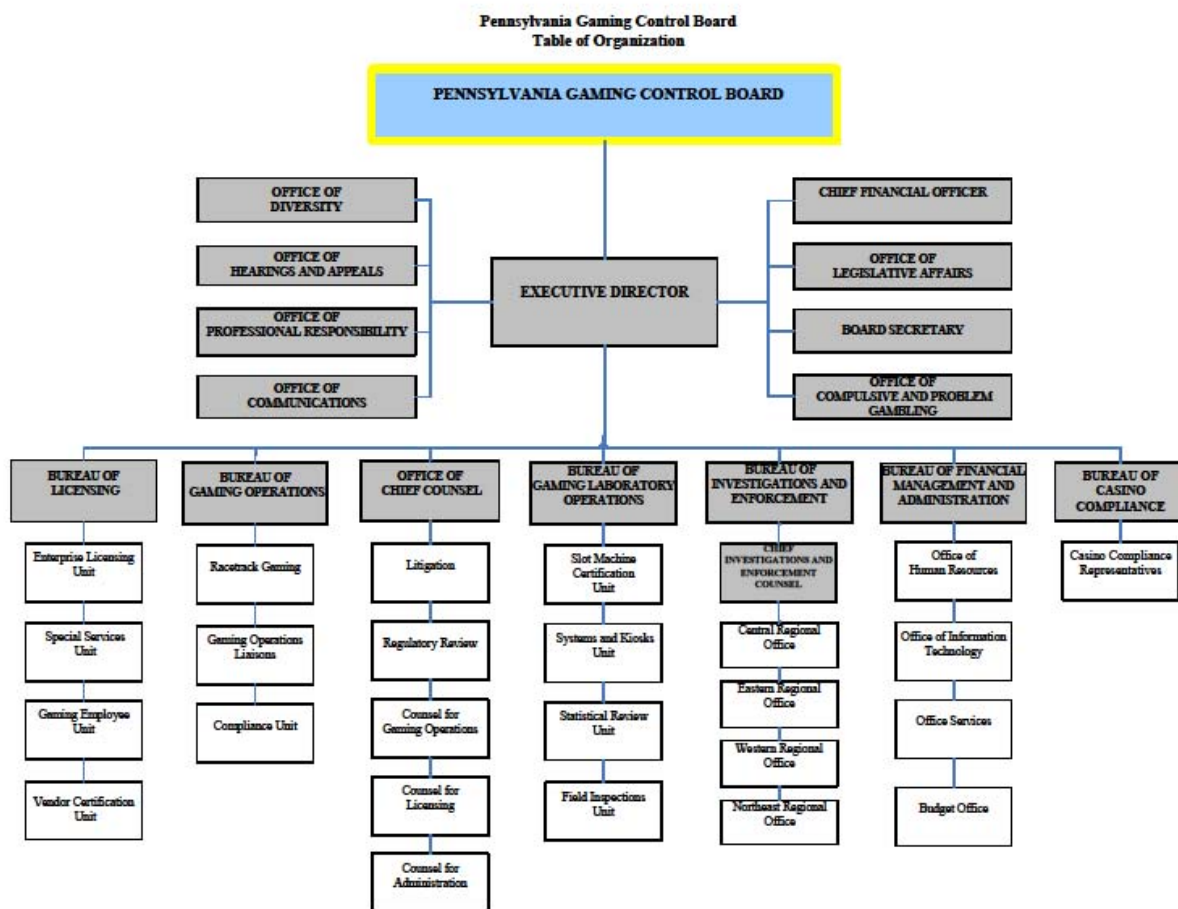
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<sup>107</sup> Standard 7.30, *Government Auditing Standards*, 2007 revision, U.S. Government Accountability Office.

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## Appendix B

## The Gaming Board's Organization Chart



Source: The Gaming Board's Web site address at <http://www.pgcb.state.pa.us/?task=search>. Accessed March 16, 2009.

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## **Appendix C**

### **Questions and answers related to compulsive and problem gambling.**

The following is information that we obtained during the course of our audit that is helpful in understanding how the Board operates and also serves to raise questions that may be looked at in future audits.

**Q: What are the compulsive and problem gambling signage requirements for casinos and have there been any instances of noncompliance?**

**A:** Each casino's compulsive and problem gambling plan must include a strategy for posting problem gambling signs within the casino. These signs must be conspicuously posted and must state the following:

If you or someone you know has a gambling problem, help is available. Call: (Toll-free telephone number).<sup>108</sup>

The director of the Office of Compulsive and Problem Gambling determines the complete text of all signs. In addition, all casinos must post signs within 50 feet of each entrance and exit and within 50 feet of each automated teller machine within the licensed facility. Each casino must also prohibit persons on a self-exclusion list<sup>109</sup> and persons less than 21 years of age from gambling.<sup>110</sup>

During audits conducted in 2007 by the Board's financial investigations division within the Bureau of Investigations and Enforcement, three casinos were cited for noncompliance with compulsive and problem gambling signage requirements.

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<sup>108</sup> 4 Pa.C.S. § 1509(c)(1).

<sup>109</sup> 4 Pa.C.S. § 1516.

<sup>110</sup> 58 Pa. Code § 513.a.2.(b).

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As part of our field work, we also found instances of noncompliance with signage requirements. While all the casinos did have compulsive and problem gambling signs posted, one casino did not have the correct signage related to self-excluded persons, and another casino did not have signs posted at an entrance/exit to the facility. We also noticed that the signs posted at one casino were a dark red color and were posted on walls that were of a maroon shade, thereby rendering the signs neither prominent nor conspicuous as required by law.

**Q: What are the compulsive and problem gambling advertisement requirements for casinos and have there been any instances of noncompliance?**

**A:** Each casino is required to print statements related to obtaining compulsive or problem assistance on all marketing or advertising materials that are offered to the general public by the casino, including signs, billboards, print, radio or television advertisements.<sup>111</sup>

The Board's financial investigations division conducted audits in 2007 and found the advertising materials of two casinos to be deficient. During our field visits, we did not note any deficiencies in the advertising materials of the casinos.

However, with regard to billboards, during our site visits, we noticed five different billboards advertising casinos in Pennsylvania. Only two of these billboards were readable from the car. In addition, these two billboards contained a compulsive and problem gambling hotline number to telephone for assistance. We could not determine if the other billboards contained information regarding compulsive and problem gambling because the sign was either not clearly visible from the car or because the words on the billboard were too small to read from a car.

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<sup>111</sup> 58 Pa. Code § 501a.5(b).

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Since the time of our field visits, the Board has adopted a “statement of policy” that now requires that the height of the print used for the gambling assistance message on a billboard should be at least five percent of the height or width, whichever is greater, of the face of the billboard.

**Q: Do casinos list compulsive and problem gambling information on their Web sites?**

A: Five out of the seven Pennsylvania casinos operating as of March 2009 post a problem gambling toll-free telephone number on their Web site home pages. For the other two operating casinos, an individual has to click on a link for “responsible gaming” in order to arrive at a Web site that includes a problem gambling toll-free telephone number. Further, we found that, on some of the casinos’ Web sites, the problem gambling information is in small text or in a light color so that it is difficult to read. Web sites are not specifically listed as a form of advertisement in the gaming regulations; therefore, a casino is not required to list compulsive and problem gambling information there.

**Q: What is Self-Exclusion?**

A: Self-exclusion is a process by which an individual can request to be banned from all gaming activities at any casino for one year, five years, or a lifetime. An individual who wants to be placed on the self-exclusion list voluntarily completes an application with the assistance of Board personnel. According to the Board’s 2008 annual report, since the beginning of the program, 507 individuals have voluntarily requested to be excluded from gaming activities at all casinos within Pennsylvania.

If a person goes to a licensed casino after being placed on the self-exclusion list, the facility must refuse to accept any wagers from that person and must ask the person to leave the gaming floor. If the self-excluded individual does not leave the gaming floor as requested by casino personnel, the licensed facility

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must notify the Pennsylvania State Police and the person can be arrested and prosecuted for trespassing.

If a self-excluded individual gambles while on the self-exclusion list, the casino must ensure that person does not collect any winnings or recover any losses from that gambling.

**Q: Can the Board exclude persons from the licensed facilities?**

**A:** The Board's enforcement agents make the determination to place an individual on an "exclusion" list, and such a person is referred to as an "excluded" person, that is, one that has been involuntarily banned from all the state's licensed gaming facilities. The Board's regulations<sup>112</sup> outline the specific criteria by which a person can be excluded, and these include reasons such as cheating, posing a threat to the safety of the patrons or employees, persons whose gaming privileges have been suspended by the Board, and persons whose Board permits, licenses, or other approvals have been revoked.

In order to exclude an individual from the licensed facilities, a Board agent from the Bureau of Investigations and Enforcement must file a petition for the exclusion with the Board, identifying the candidate and setting forth a factual basis for the petition. The individual is granted a hearing before being placed on the list. If an excluded person were to enter a licensed gaming facility, the Bureau of Investigations and Enforcement agents assigned to the casino would be responsible for asking that person to leave the premises.

The Board maintains this list of excluded persons, and it must also provide this list to each licensed facility as well as make it available to members of the public on the Board's Web site. As of May 7, 2009, no persons were listed on the exclusion list.

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<sup>112</sup> 58 Pa. Code § 511a.3.

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If an excluded individual gambles while on the exclusion list, the casino must ensure that person does not collect any winnings or recover any losses from that gambling.

**Q: Can the casinos exclude other persons from their gaming floors?**

**A:** Each licensed gaming facility can establish its own excluded persons list separate from the exclusion list maintained by the Board. Any exclusion lists that the casinos establish on their own fall outside the scope of the Bureau of Investigations and Enforcement and the Gaming Board. In such a case, the casino would need to work with the Pennsylvania State Police (and not the BIE agents assigned to the casino) to remove the casino-excluded person from the licensed facility.

**Q: Why are there four uncoordinated compulsive and problem gambling hotlines?**

**A:** Prior to the passage of Act 71 of 2004, three problem gambling hotlines were already in existence. The Council on Compulsive Gambling in Pennsylvania operated (and continues to operate) the three lines, one of which was already supported by state funding.<sup>113</sup> None of those three hotlines was managed by either the Board or the Department of Health.

On December 8, 2006, the Department of Health established the fourth compulsive and problem gambling hotline. The Department of Health created this hotline despite efforts by both the Gaming Board and the Council on Compulsive Gambling of Pennsylvania to deter it from doing so. In fact, the director of the Office of Compulsive and Problem Gambling advised the Department of Health not to create a fourth hotline or enter into a contract for another hotline

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<sup>113</sup> These numbers are 1-800-Gambler, 1-800-522-4700, and 1-800-848-1880. The 1-800-848-1880 hotline is funded with monies from the Pennsylvania State Lottery.

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because it would “create confusion and inconsistent treatment.”<sup>114</sup>

Initially, Department of Health staff answered hotline calls only during normal business hours. After four months of operation, the hotline received a total of 79 calls, of which only 20 were related to problem gambling.

By June 2007, and despite the low usage, the Department of Health contracted with an out-of-state vendor to operate the hotline 24 hours a day, 7 days a week. According to that contract, the Department of Health agreed to pay the vendor a total of \$102,000 over three years, from July 1, 2007, through June 30, 2010, to maintain the hotline.

The Department of Health’s contracted hotline logged only 103 calls from July 1, 2007, through March 30, 2008. That number stands in stark contrast to the 9,486 calls logged in during that same period by the three existing hotlines operated by the Council on Compulsive Gambling.

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<sup>114</sup> Written correspondence dated December 4, 2006, from the Gaming Board to the Department of Health.

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<b>Number of calls to problem gambling hotlines in Pennsylvania</b>		
Month/year	Hotline managed by the Department of Health	Three hotlines managed by the Council on Compulsive Gambling
July 2007	18	1,037
August 2007	6	1,059
September 2007	2	828
October 2007	23	749
November 2007	10	718
December 2007	9	774
January 2008	10	1,344
February 2008	6	1,531
March 2008	19	1,446
	<b>103</b>	<b>9,486</b>
<i>Sources: Department of Health and the Council on Compulsive Gambling.</i>		

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## **Response from the Gaming Control Board**

The Pennsylvania Gaming Control Board's letter of response to this audit report is reproduced on pages 104 to 112. In its response, the Board has acknowledged each of the audit recommendations directly. Below is our evaluation of the Board's response.

### ***Our evaluation of the Gaming Board's response***

*The Board has agreed with the majority of our recommendations. In some cases, the Board has already taken action to implement our recommendations, such as in the development of an automated case management system and the sampling of gaming and non-gaming employee applications.*

*With regard to our recommendations and/or findings with which the Board took exception, our evaluation follows:*

- ***Recommendation 4 (Finding One) and Recommendation 6 (Finding Two).*** *The Board notes it does not agree it should request an independent review and audit of its investigation processes for Board and casino employees. However, we stand firmly by this recommendation as long as the Board restricts us—as an independent audit organization—from reviewing background investigation documents ourselves. We also wish to make clear that we do not necessarily agree that the Gaming Act supports the Board's restrictive position.*
- ***Recommendation 7 (Finding Three):*** *The Board has noted its agreement that the perception of the investigative and regulatory process must be improved to instill public confidence in the Board's role as a strong regulator. We emphasize the importance of this needed improvement. We add only that the Board must take a leadership role in seeking legislative and regulatory changes to enhance the investigative process, particularly to ensure that the Board has all needed information to make informed decisions on licensing and other matters. If the Board cannot*

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*accomplish that result, then background investigations should be conducted by an independent agency that does have complete access to all needed information.*

- ***Finding Five (overall).*** *In its response, as well as during our field work, the Gaming Board has maintained that the Gaming Act did not provide the Board with duties, responsibilities, or oversight concerning problem gambling. While we acknowledge the Board's position, we also note that the Board itself took a step beyond the Gaming Act by creating a high-level Office of Compulsive and Problem Gambling and promulgating regulations about related responsibilities. Furthermore, the Board has touted publicly that Pennsylvania is the only jurisdiction in the nation with a high-level office to oversee compliance with problem and compulsive gambling regulations. Now, however, the Board repeatedly cites that office's lack of authority, leading us to question why the Board would create such a high-level office and then cite its lack of authority to justify an inability to lead. Our position remains that the Board could take the same initiative to strengthen the impact of this office as it took to create it. Alternatively, if the Board continues to say it lacks authority to be more of a leader, then it should seek appropriate amendments to the Gaming Act.*
- ***Recommendation 11 (Finding Five).*** *The Board appears to agree in theory with our recommendation to allocate more of the budget to activities related to assistance with compulsive and problem gambling. However, the Board notes that it also must allocate its limited funds among many other agency functions as well. We agree that the Board must allocate its funding judiciously; however, in keeping with our comments in the preceding paragraph, the Board's creation of this high-level office should be followed by sufficient funding.*

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- ***Recommendation 13 (Finding Five).*** *The Board responded that it should not be mandatory to appoint a representative from the Office of Compulsive and Problem Gambling to join the team of Board officials who inspect casinos prior to and during their openings to ensure they meet all requirements. The response clarified that it does not need to require mandatory participation but that it will encourage the Office of Compulsive and Problem Gambling to participate as appropriate. Overall, whether future inclusion of the Office of Compulsive and Problem Gambling in the opening team is “mandatory,” or whether participation is “encouraged,” such participation is important for the reasons stated in our finding.*
  
- ***Recommendation 15 (Finding Five).*** *The Board agrees to continue to engage in discussions with the state Department of Health and other entities with regard to the need for Health’s own hotline when there are three others already in existence. Once again, however, the Board cites a lack of statutory authority to direct or require entities like the Department of Health to take certain actions. As we have made clear both in our report and in our discussions, we have not said that the Office of Compulsive and Problem Gambling should impose requirements on entities like the Department of Health, but that it should be more aggressive in taking the lead to coordinate the various compulsive and problem gambling programs. Again, it is not reasonable for the Gaming Board to say it went beyond requirements by creating a high-level office while, at the same time, saying it cannot go beyond requirements to make that office more persuasive, or more of a leader. To the extent the Board continues to maintain it is not authorized to do more, it should seek appropriate amendments to the Gaming Act.*

*We agree with the Board that the Gaming Act does not mandate one telephone hotline number for problem gamblers to call for assistance. However, just as the*

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*Board does not need a mandate for other initiatives it has taken, it does not need a mandate for this initiative.*

- ***Finding Six (Discussion Point 2).*** Regarding our discussion point about the Board's setting of salary ranges that exceeded those of other Commonwealth agencies, the Board points out that the average salary for staff has been reduced by 2.4 percent since July 2008. However, we note here that an obvious reason for this decrease in average salaries can be linked to the loss of several high-salaried officials, including the executive director, two bureau directors, and at least one attorney.
- ***Recommendation 16 (Finding Six).*** The Board disagrees with our recommendation that it should seek an amendment to the Gaming Act so that Board members cannot receive both a salary as a Board member and hold a full-time job elsewhere. We stand by our recommendation for the reasons stated in our finding.
- ***Recommendation 17 and Recommendation 18 (Finding Six).*** The Board did not disagree with our two recommendations regarding Gaming Board staff salaries. In fact, as we noted in Finding Six, the Board recently contracted with a human resources consultant to evaluate staff compensation. Even so, we re-emphasize the importance of ensuring that staff salaries are more in line with those at other Commonwealth entities, and we repeat that we will review both the procurement of the human resources contract and the contractor's deliverables.
- ***Recommendation 19 (Finding Six).*** The Board disagrees with our recommendation that any employment contracts—if deemed necessary at all—should be limited to a term of one year. We stand by our recommendation.

*Furthermore, we take issue with the assertion that the Gaming Act “provides that the Board may enter into contracts for two year periods” with regard to employment*

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*agreements. Of the three provisions of the Gaming Act that could arguably support the Board's ability to enter into such contracts, one provision is no longer in effect,<sup>115</sup> one applies only to procurement contracts,<sup>116</sup> and the other makes no reference to the applicable term of the contract.<sup>117</sup>*

*Overall, we appreciate the Board's acceptance of the majority of our recommendations, and we again express our appreciation to the Board for its cooperation during our audit, and for its continuing evaluation of its operations as it regulates gambling and thereby protects the public.*

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<sup>115</sup> Under Section 1202(b)(22) of the Gaming Act, 4 Pa.C.S. § 1202(b)(22), "Except for contracts related to the central control computer, all contracts entered into by the board **during the two-year period following the effective date of this part** [which went into effect on November 1, 2006 and expired two years later or on November 1, 2008] shall not exceed a term of two years." [Emphasis added.]

<sup>116</sup> Section 1202(b)(4) of the Gaming Act, 4 Pa.C.S. § 1202(b)(4), provides as follows, "...**Contracts for the purchase of supplies, services and construction** shall be for a term not to exceed two years." [Emphasis added.]

<sup>117</sup> Section 1207(15) of the Gaming Act, 4 Pa.C.S. § 1207(15), provides that the Gaming Control Board may "[e]nter into contracts with any person for the purposes of carrying out the powers and duties of the board under this part."



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May 13, 2009

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Auditor General Jack Wagner  
Office of the Auditor General  
229 Finance Building  
Harrisburg, PA 17120-0018

RE: Special Performance Audit of the Pennsylvania Gaming Control Board ("PGCB")  
PGCB's Response to Auditor General Report

Dear Mr. Wagner:

Thank you for the opportunity to respond to the Findings contained in your Special Performance Audit Report of the Pennsylvania Gaming Control Board. Attached you will find the PGCB's Responses to each of the Findings in the Report.

The PGCB has worked diligently since its formation to lay the foundation for the development of a vibrant new industry for Pennsylvanians that has created thousands of jobs, and we continue to be committed to refining our regulatory environment. Throughout this learning process, the agency has used its experiences to re-evaluate and improve our operations, policies and procedures for the better. It is the stated goal of the agency to continue to make progress in our mission to protect the public through the strict regulation of gaming.

Sincerely,

A handwritten signature in black ink, appearing to be "F. Donaghue", with a long horizontal flourish extending to the right.

Frank T. Donaghue  
Acting Executive Director

FTD:pll  
Attachment

**Finding One:**            **In hiring its own employees, the Board initially did not fully investigate the backgrounds of new hires but has since improved the investigative process.**

**Recommendations:**

1. All applicants seeking employment with the PGCB (interns, interim employees, part-time, full-time/permanent employees, etc.) are required to submit to and pass a full background investigation before employment may commence at the PGCB.
2. In those instances where the PGCB has considered the recommendations of the Auditor General's office to be helpful, the agency has made changes to the employee background investigative process. In October of 2007, the agency instituted a policy that requires that all PGCB employee background investigative checklists include the date of receipt of each document (i.e. drug test results, driving records, credit history, education/diploma verifications, social security verifications, marriage licenses, fingerprints, etc.) as well as the printed initials of the name of the investigator acknowledging receipt of the documents.
3. See response # 1.
4. While the PGCB is respectful of the Auditor General's recommendation that the agency "should request a comprehensive review and audit of the employee background investigations by an independent agency (such as the PSP or the Office of the Attorney General)" we do not agree that such a review is warranted and/or necessary. The PSP, local police departments and other third parties currently participate in critical portions of the agency's employee background investigative process. As evidenced by your report, the agency has a process in place that works.

**Finding Two:**            **The Board decreased the intensity of its background investigations when credentialing certain types of casino employees, but it did not balance that decrease with procedures such as periodic case sampling. The Board also did not have a single automated system to manage the investigation caseload. Therefore, improvements are needed.**

**Discussion point 1:**    **The Board decreased the intensity of its background investigations when credentialing certain types of casino employees, but it did not balance that decrease with procedures such as periodic case sampling.**

The report states that the Board might be unnecessarily duplicating work by conducting background investigative procedures of gaming employees that are already conducted by

the casinos. It should be noted that facilities may or may not conduct background checks. Under the Act, the PGCB is given the responsibility for the background investigations of gaming employees. Further the PGCB does not rely on background investigations conducted by casinos. The PGCB conducts its own independent investigations which provide access to information beyond what is available to a casino, including FBI fingerprint results and Pennsylvania Department of Revenue tax clearance information.

**Discussion point 2: The Board did not have a single automated system to manage the investigation caseload.**

The Board acknowledges that database limitations caused the event in which BIE employees did not have full automated access to certain information to the same and full extent as did employees from BOL and OHA. In the example cited, while BIE could not provide a precise number of applicants denied a casino credential, that information was available through other Bureaus.

The case management system presently being implemented will integrate various data and file registry systems to provide a more fully integrated system accessible by multiple Bureaus. However, we must caution that even with such a comprehensive data base, access to certain information must be restricted to assure certain confidentialities are maintained. For example, investigative information of a current nature cannot be shared with other Board staff to avoid contamination of the Board's processes designed to assure due process to licensees and applicants.

From the very first casino opening, all gaming and non-gaming applications submitted by facilities have been maintained in the SLOTSlink database. The SLOTSlink database contains extensive information on the applicants.

In addition, the agency does have a centralized database to record information on case files, including application status, outcome and significant dates and activities in the application process. The agency also utilizes Sharepoint for the storing of all application and investigation related documents and materials. The agency is currently working with a vendor on the development of a case management system to store case related information and manage workflows.

The casino job application process needs to be separated completely from the PGCB license, permit or registration application process. The PGCB does not allow the submission of a gaming or non-gaming application through SLOTSlink unless the applicant has been offered a job by the casino. Once that step has been taken, the PGCB application can be completed through SLOTSlink and will trigger an investigation into the applicant's background independent of any casino background investigation.

**Recommendations:**

5. The Board agrees that a random sampling process to assure consistency and accuracy in the processing of gaming and non-gaming employee applicants will

assist in maintaining the integrity of these investigations. BIE is presently implementing this recommendation.

As stated, an automated case management system is being developed. However, it should be noted that all BIE regional staff do have access to information generated within that region. Upgrades to the informational data bases to ensure security of the system will permit more uniform access. These upgrades are under way.

6. While the PGCB is respectful of the Auditor General's recommendation that the agency "should request a comprehensive review and audit of the employee background investigations by an independent agency (such as the PSP or the Office of the Attorney General)" we do not agree that such a review is warranted and/or necessary. The PSP, local police departments and other third parties currently participate in critical portions of BIE's investigative process.

**Finding Three:**        **In licensing casino owners, the Board dealt with jurisdictional struggles in the investigational process that resulted in wide-ranging criticisms and questions, still unresolved, thereby damaging public confidence in the state's ability to regulate casino gambling.**

**Recommendation:**

7. The Gaming Board agrees that the perception of the investigative and regulatory process must be improved to instill confidence in the Board's role of a strong regulatory body. Those perceptions, whether based upon fact or simply perpetrated by misinformation and misunderstanding of the myriad processes and interrelationships between Pennsylvania agencies and jurisdictions outside of Pennsylvania must be changed. The Board is committed to supporting efforts to seek legislative and regulatory changes to effectuate this goal.

**Finding Four:**        **The Board achieved diversity while hiring mostly Pennsylvania residents, and it checked to see that casinos also achieved diversity and hired state residents. Pennsylvanians can therefore be satisfied with the diversity and residency of Board and casino employees.**

**Recommendations:**

8. The Board will continue to strive to employ qualified Pennsylvania residents when seeking individuals to fill new positions or vacancies within the Board's complement.

9. The Board will continue to encourage casinos to hire qualified Pennsylvania residents and to monitor the casinos' employment data to ensure that they are committed to creating jobs in the Commonwealth.
10. The Board will continue to monitor and promote diversity in the work force, both at the licensed facilities and at the Board itself.

**Finding Five:**            **The Board did not take enough initiative to coordinate the state's fragmented efforts to help problem gamblers, thereby contributing to the inadequacy of those efforts.**

**Discussion point:**      **The Gaming Board did not take enough initiative to coordinate Pennsylvania's fragmented efforts to help problem gamblers.**

Pursuant to § 1509 of the Gaming Act, the Department of Health (DOH) shall develop program guidelines for public education, awareness, training, treatment and prevention of compulsive and problem gambling. The Gaming Act provides that DOH may consult with the Board and licensed gaming entities to develop such strategies.

Pursuant to its regulatory authority, the PGCB has created the Office of Compulsive and Problem Gambling (OCPG), promulgated regulations related to the oversight of slot machine licensee requirements and activities related to compulsive and problem gambling and provided the OCPG with tools to enable it to carry out its intended initiatives. The Board believes it has made great strides to assist in the development of a coordinated strategy to deal with compulsive and problem gamblers. The Board will continue in its efforts in this regard to coordinate with the Department of Health to move this effort forward.

**Discussion point:**      **The role of the Gaming Board: What it does now versus what it could do to strengthen the state's overall efforts to help problem gamblers.**

As stated above, neither § 1509 nor any section of the Gaming Act provides the Board or OCPG with duties, responsibilities or oversight concerning problem gambling. Nonetheless, the Board is committed to continuing to work with other agencies to assist problem gamblers in Pennsylvania.<sup>1</sup>

**Discussion point:**      **The Board could have ensured that the Office of Compulsive and Problem Gambling was an integral part of all the Board's compulsive and problem gambling activities.**

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<sup>1</sup> Unlike the OCPG, Arizona's Office of Problem Gambling does not have regulatory oversight of casinos, but rather, it has responsibilities similar to DOH and receives funding for programs for the prevention, treatment and education concerning problem gambling.

The regulatory oversight of slot machine licensee requirements and activities related to compulsive and problem gambling are addressed by employees of the opening team. It is not imperative that an employee of the OCPG be on-site as part of the opening team to assure this function is fulfilled. Nevertheless, the Board will consider this point as one more tool to assure compliance by operators.

**Discussion point:**     **The Board should have ensured that the Office of Compulsive and Problem Gambling carried out all its intended initiatives related to problem gambling assistance, and that it had the resources to do so.**

The Board has engaged in numerous undertakings related to problem gambling assistance. In addition to ensuring that every slot machine licensee has established a compulsive and problem gambling plan prior to the commencement of operations, the OCPG has created 18 problem gambling awareness handouts, utilized 2 self-help brochures, and developed 4 video Frequently Asked Questions related to compulsive and problem gambling - all of which are available on the Board's website and have been provided to numerous offices, agencies and associations in the Commonwealth.

Further, the Board has acted to heighten public awareness of problem gambling through numerous press releases as well as the conducting of media interviews and speaking engagements.

**Discussion point:**     **The Board could have directed its Office of Problem and Compulsive Gambling to play an aggressive leadership role in working with, persuading, and monitoring the Department of Health as that agency began to administer assistance to problem and compulsive gamblers, and in making sure that all involved entities worked together towards a common goal.**

The Board's statutory duty and authority is limited in the Gaming Act, and certainly does not provide the Board with regulatory oversight of the activities of the DOH. Notwithstanding, in November 2006, the OCPG coordinated an agency consortium consisting of representatives from the Board, DOH-Bureau of Drug and Alcohol Programs (BDAP), Horse Racing Commission, Harness Racing Commission and Pennsylvania Lottery, and has been engaged in various efforts since that time to work toward the goal of assisting problem gamblers.

**Discussion point:**     **The Board should have ensured that the compulsive and problem gambling hotlines provide accurate assistance to callers before it directed problem gamblers to these hotlines.**

The Board agrees that having accurate assistance to callers of the Hotline is important to fulfilling the goals of problem gaming assistance. The Board though has no authority to

oversee phone lines outside of its control. The OCPG has been involved in efforts to coordinate consolidation of these numbers and will continue to do so.<sup>2</sup>

The Board, itself, directs problem gamblers and their families to the “compulsive gamblers assistance organization’s<sup>3</sup> toll-free problem gambling telephone number” and also provides the DOH helpline number on its website.

**Recommendations:**

11. The Board recognizes that with a greater allocation of funding, it could enhance the programs and services that it already provides. The Board’s funding is appropriated by the general assembly and its spending limited to the appropriation. Hence, the Board is required to allocate limited funds among many functions performed by the agency.
12. The communications between and among various offices and bureaus within the Board have and will continue to improve.
13. The Board does not agree that appointing an OCPG representative to the opening team is mandatory but will encourage said representative to participate in site visits as he or she deems appropriate in each circumstance.
14. The OCPG has and will continue to collaborate with the Council on Compulsive Gambling of Pennsylvania and the agencies that comprise the agency consortium.
15. The Board has no authority, under the Gaming Act, to direct or require actions of DOH. However, the Board will continue to engage in such discussion. Additionally, it should be noted that the Gaming Act does not mandate one telephone number; it provides that the slot machine licensees “shall obtain a toll-free telephone number.” The slot machine licensees have requested to utilize, and have received Board approval to utilize, the following numbers:  
  
1-800-848-1880 (Meadows, Mohegan Sun, Hollywood)  
  
1-800-GAMBLER (Sands, Mt. Airy, Philadelphia Park, Presque Isle)  
  
1-800-522-4700 (Harrah’s, due to national marketing)

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<sup>2</sup> At a meeting on Wednesday, November 29, 2006, all agencies in the agency consortium agreed to utilize the 3 helpline numbers and 1 call center then in existence and also agreed to transition to one gambling helpline telephone number within 6 to 9 months. The agencies were to notify their respective licensees and vendors regarding the transition. Thereafter, on December 7, 2006, DOH created and announced a 4<sup>th</sup> helpline number with a separate and new call center.

<sup>3</sup> The Council on Compulsive Gambling of Pennsylvania is such an organization.

**Finding Six:**           **The Board had some administrative and personnel advantages that were more generous than those of typical state government agencies. These practices created questions about whether the Board was elevated above other Commonwealth agencies.**

**Discussion point 1:**   **The seven voting board members had salaries totaling more than \$1 million, not including benefits, even though some members held full-time paid positions elsewhere.**

The Gaming Act expressly permits board members to hold other paid employment that is not incompatible with his service as a Board member. 4 PA.C.S. §1201(h)(5)

**Discussion point 2:**   **The Board set salary ranges that exceeded those of other Commonwealth agencies.**

The report states that “By being authorized to establish its own salary structure as required by the Gaming Act...,” the Board ultimately placed a greater financial value on individual gaming employees than on other Commonwealth employees.

Salaries in part recognize not only experience in key positions but also the tremendous commitment and effort needed to create a new agency which sought to install a controversial industry (gaming) in Pennsylvania against a number of legal challenges, and other opposition.

Since July 2008, the PGCB’s average salary has been reduced by 2.4%, while the average salary of all other state agencies has climbed by 4.1%.

The Executive Director’s salary is established at its current level because of the level of expertise required in gaming.

With respect to issues of perceived pay disparities, the report does not take into account factors such as years of experience or other relevant background. Nevertheless, the Board has commissioned a study currently being conducted by the Hay Group to analyze the pay and classification system of the PGCB.

**Discussion point 3:**   **The Board paid its executive director even more than the already-generous employment contract required when she stepped down before her term ended.**

The executive director was entitled under the circumstances of her contract to a payment of \$60,000 in satisfaction of her contract. In addition, it was determined that an additional payment was appropriate to assure confidentiality of certain information as well as to obtain a complete and general release of any claims.

We are gratified to see that the report recognized that the Pennsylvania Office of Attorney General approved the separation agreement as being valid and legal.

While we disagree with the portrayal of the Board's actions in the report, we do recognize that the resolution of this contractual matter which is common in the private sector, created undue public scrutiny and questions. Therefore, the contract to be entered into with the new executive director will not have similar termination terms resulting in the payment of monies to the executive director upon the termination of the employment relationship.

**Recommendations:**

16. With all due respect, the Board suggests that it is not for the Board to recommend amending the Gaming Act to alter the employment relationship.
17. The Board is in the process of having a Hay Evaluation study done with respect to compensation of staff employees. The Board will await completion of that study to determine what future action may be contemplated.
18. See response to # 17.
19. We agree that contracts should be entered into cautiously and that certain modifications will be made in future contracts as compared to prior contracts. However, the Board disagrees that contracts should be limited to one year as a time, and that a two year contract provides for a more stable workplace environment. The Gaming Act provides that the Board may enter into contracts for two year periods.
20. See response to #19.

*Pennsylvania Department of the Auditor General  
Jack Wagner, Auditor General  
May 2009*

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