



# Gaming Facility Location Board

## REPORT AND FINDINGS OF THE NEW YORK GAMING FACILITY LOCATION BOARD

January 26, 2016



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## DISCLAIMER

In determining whether an Applicant (as defined herein) shall be eligible for a gaming facility license, the Gaming Facility Location Board's determinations are made, in part, subject to the commitments, assurances, representations and other statements the Applicant made in its submission to the Request for Applications to Develop and Operate a Gaming Facility in Upstate New York issued on March 23, 2015 ("2015 RFA"), any updates to the 2015 RFA submission and the Applicant's public presentations.

This report is for the benefit of the public and has been prepared by New York State Gaming Commission staff ("Commission staff") at the direction of the Gaming Facility Location Board ("Board"). The Board, in making its determination, has relied on the information and materials the Applicant submitted in response to the 2015 RFA, any updates to the 2015 RFA submission and the Applicant's public presentation (together, an "Application"). To the extent that this report contains any errors or omissions, Commission staff is solely responsible for such errors or omissions, and such errors and omissions are not findings adopted by the Board. To the extent that any summary or description in this report of information or material submitted in an Application differs from the actual information or material submitted in such Application, those differences are the results of Commission staff's summaries or descriptions. In reaching its determinations, the Board has relied on the actual information or material submitted in such Application.

The Board's evaluation of the Applicant's gaming revenues were reviewed by the Board's gaming consultants, who compared such revenues to the consultants' estimates of revenues for a hypothetical facility at the same location that was assumed to be neither exceptional nor unappealing. Accordingly, any reference in this report and the appendices to gaming revenues, recapture rates and tax revenues based on gaming revenues should be viewed in light of this difference.

# RESOLUTION

## **RESOLUTION OF THE NEW YORK GAMING FACILITY LOCATION BOARD TO SELECT AN APPLICANT FROM ZONE TWO, REGION FIVE TO BE CONSIDERED FOR GAMING FACILITY LICENSURE BY THE NEW YORK STATE GAMING COMMISSION**

WHEREAS, the New York legislature passed, in two consecutive legislatures in 2012 and 2013, concurrent resolutions to amend the State constitution to permit casino gaming; and

WHEREAS, the people of the State of New York voted to amend section 9 of Article I of the Constitution of the State of New York to permit casino gaming as authorized and prescribed by the legislature; and

WHEREAS, the legislature passed, and the governor approved, the Upstate New York Gaming Economic Development Act ("Act") in 2013, authorizing and prescribing casino gaming in New York State upon appropriate amendment of the State constitution; and

WHEREAS, the Act authorized up to four destination casinos to boost upstate economic development, create thousands of well-paying jobs and provide added revenue to the State located in three defined regions of the State: Hudson Valley/Catskill area (Region One, Zone Two), Capital Region (Region Two, Zone Two), and Eastern Southern Tier (Region Five, Zone Two), with a second license to a qualified applicant to be awarded, if at all, in no more than a single region; and

WHEREAS, the New York State Gaming Commission ("Commission") established the Gaming Facility Location Board ("Board"), as prescribed by Racing Pari-Mutuel Wagering and Breeding Law ("PML") section 109-a, to select up to four Applicants, following a competitive Application process, to be considered for gaming facility licensure; and

WHEREAS, on December 17, 2014, the Board selected three applicants to be considered for licensure by the Commission; and

WHEREAS, on March 23, 2015 the Board issued a second Request for Applications to develop and operate a gaming facility in New York State ("RFA"), limited to applicants from Zone Two, Region Five; and

WHEREAS, by July 6, 2015, the Board received one set of application materials (the "Application") from an entity ("Applicant") in response to the RFA; and

WHEREAS, on September 10, 2015, the Applicant made an informational introductory presentation of its Application to the Board; and

WHEREAS, at a public comment event convened on September 18, 2015 in Binghamton, the Board heard comments on the Application from 50 speakers; and

WHEREAS, the Board received and catalogued more than 2,860 pieces of unique communications relating to the siting of a casino following the RFA; and

WHEREAS, the Board is required to evaluate the RFA submissions pursuant to the statutory criteria of PML section 1320; and

WHEREAS, the Board is authorized under subdivision 3 of PML section 1306 to develop additional criteria to assess whether the Application provides the highest and best value to the State; and

WHEREAS, the Board is required under subdivision 7 of PML section 1306 to issue detailed findings of fact and conclusions demonstrating the reasons supporting its decision to select Applicants for licensure and to issue a finding on how each Applicant proposes to advance the criteria of PML section 1320;

NOW, THEREFORE BE IT RESOLVED, that the Board evaluated the Application based on the statutory criteria of PML section 1320 and the additional criterion developed by the Board under subdivision 3 of PML section 1306 as to whether the proposal best fulfills the intent of the Act in regard to providing economic assistance to disadvantaged areas of the State while enhancing upstate New York's tourism industry; and

BE IT FURTHER RESOLVED, that based on the Board's evaluation, the Board selects the Applicant to apply to the Commission for a gaming facility license:

BE IT FURTHER RESOLVED, that the Board hereby adopts as its initial findings, the attached "Selection of the New York Gaming Facility Location Board" dated October 14, 2015, which summarizes the Board's evaluation and selection of the Applicant to apply to the Commission for a gaming facility license; and

BE IT FURTHER RESOLVED, that the Board hereby shall issue the findings required by subdivision 7 of PML section 1306 and PML section 1320, with the intention of issuing such findings on or about 30 days following adoption of this resolution; and

BE IT FURTHER RESOLVED, that the aforesaid resolutions shall be effective immediately; and

BE IT FURTHER RESOLVED, that the chair of the Board be authorized to sign this resolution indicating the assent of the Board to the contents herein.

Kevin S. Law	<input checked="" type="checkbox"/> Aye	<input type="checkbox"/> Nay
Dennis E. Glazer	<input checked="" type="checkbox"/> Aye	<input type="checkbox"/> Nay
Stuart Rabinowitz	<input checked="" type="checkbox"/> Aye	<input type="checkbox"/> Nay

A handwritten signature in black ink, appearing to read 'K. Law', with a large, sweeping flourish that loops back under the name.

Kevin S. Law  
Chair  
Gaming Facility Location Board

New York, New York  
October 14, 2015

## INTRODUCTION

In 2012, New York State Governor Andrew M. Cuomo proposed an amendment to the State constitution to permit casino gaming. The constitutional amendment process—passage of legislation by two consecutive Legislatures followed by a public referendum—culminated in November 2013, when voters overwhelmingly approved the constitutional amendment.

Governor Cuomo and the Legislature reasoned that New Yorkers spend more than \$1 billion per year at out-of-state casinos. As those dollars leave the State, so do good jobs, tourism and economic development that could be kept and grown within New York's borders.

On July 30, 2013, Governor Cuomo signed into law The Upstate New York Gaming Economic Development Act of 2013 ("Act"). The Act authorized up to four Upstate destination gaming resorts with at least one gaming facility located in each of three defined regions of the State: Catskills/Hudson Valley (Region One, Zone Two), Capital (Region Two, Zone Two), and Eastern Southern Tier/Finger Lakes (Region Five, Zone Two). Pursuant to the Act, the New York State Gaming Commission ("Commission") established the Gaming Facility Location Board ("Board") to select up to four Applicants, following a competitive bid process, to be considered for a gaming facility license.

On March 31, 2014 the Board issued a Request for Applications to develop and operate a gaming facility in New York State ("RFA"). The RFA required Applicants to specify how they would meet certain criteria as specified in the Act. On June 30, 2014, the Board received 17 Applications seeking to develop and operate commercial gaming facilities in New York State. After public applicant presentations, public comment events and thorough evaluation of the Applications, the Board selected three Applications—one from each of Regions One, Two and Five in Zone Two—to be considered for licensure by the Commission. In Region Five, the Board selected the Lago Resort & Casino application for a facility in Tyre, Seneca County, which is in the Finger Lakes portion of Region Five.

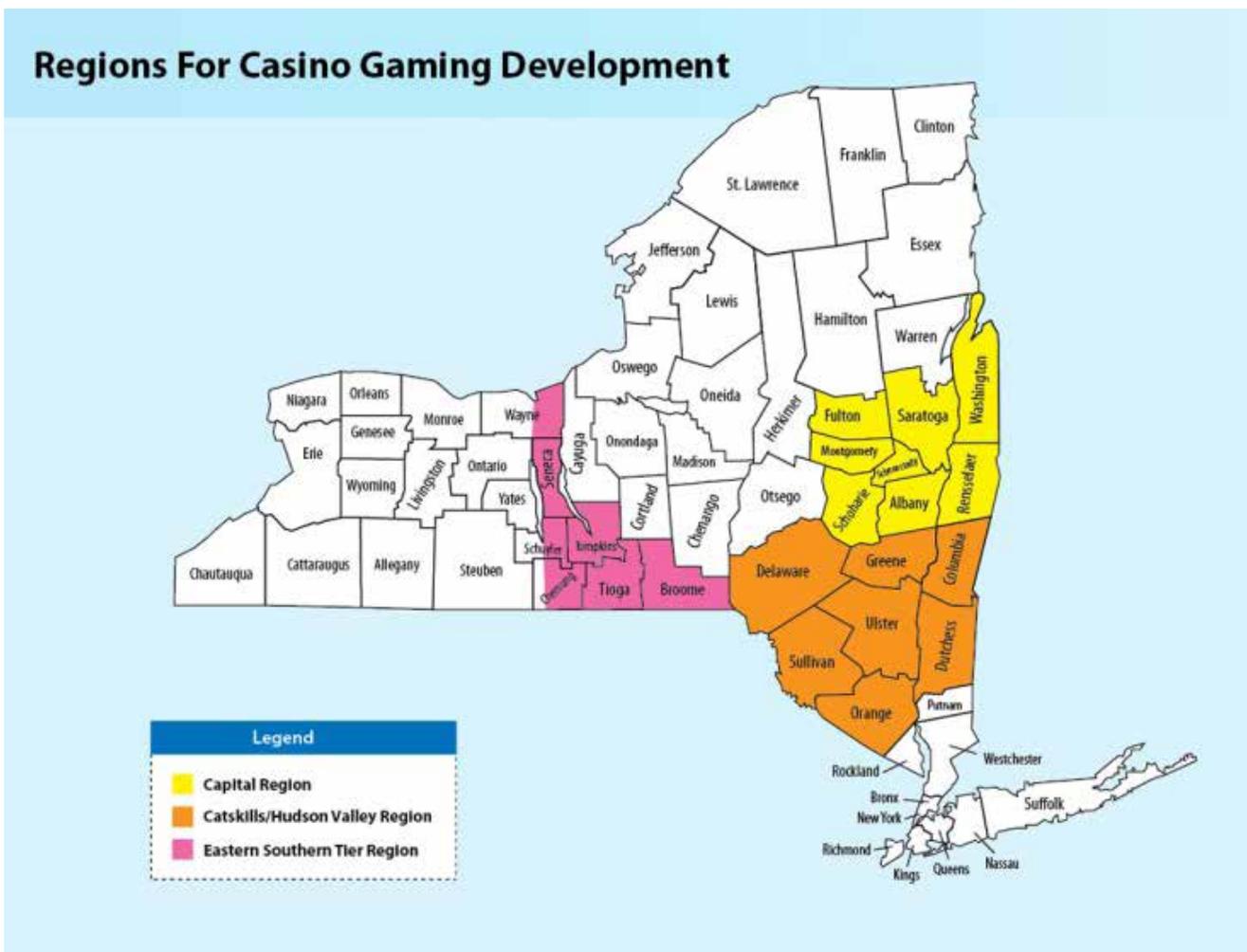
On March 23, 2015, the Board issued a second RFA, the 2015 RFA for potential selection of an applicant for the fourth authorized gaming facility license. The Board limited applications to Region Five, and, in particular, emphasized that it wished to see applications from the Eastern Southern Tier portion of Region Five, an area with an acute need for economic development. By the July 6, 2015 deadline, the Board received one application: Tioga Downs Casino, Racing & Entertainment for a facility in Nichols, Tioga County, which is in the Eastern Southern Tier portion of Region Five (the "Tioga Applicant" and the "Tioga Application").

The Board evaluated the Tioga Application. As with the initial RFA responses in 2014 that resulted in the selection of the first three applicants, the Board treated the Tioga Application as a public record and has made it available to the public on the Commission's Web site with applicable exemptions pursuant to the Freedom of Information Law ("FOIL").

On September 10, 2015, the Tioga Applicant was required to make an informational presentation of the Tioga Application to the Board. The presentation was intended to afford the Tioga Applicant an opportunity to provide the Board with an overview of the contents of the Tioga Application, explain any particularly complex information and highlight any specific areas it desired, particularly in regard to changes from its 2014 application. The Board had the opportunity to ask the Tioga Applicant questions during the presentation.

On September 18, 2015, the Board convened a public comment event in Binghamton to provide the Board with the opportunity to receive questions and concerns from the public in regard to the Tioga Applicant proposal, including the scope and quality of the gaming area and amenities, the integration of the gaming facility into the host municipality and nearby municipalities and the extent of required mitigation plans and to receive input from members of the public and impacted communities. The Board heard 50 individual speakers at the event, all of which expressed support of the Tioga Application.

In addition to the public comment event, the Board received more than 2,860 pieces of unique communications relating to the siting of a casino in the Eastern Southern Tier portion of Region Five. All but five of these communications were in support of the project. Board members also visited the proposed site.



## EVALUATION

The Board reviewed and evaluated the Tioga Application submitted in response to the 2015 RFA issued on March 23, 2015. The Board was impressed by the Tioga Applicant's strong interest in investing in the development of Upstate New York and continuing its charitable efforts in the region. The Board appreciates the effort, care, time and skill that went into the preparation of the extensive responsive submission on an aggressive response schedule.

In evaluating the Application, the Board followed the statutory criteria of Racing, Pari-Mutuel Wagering and Breeding Law ("PML") section 1320 set forth below, which requires the evaluation of economic activity and business development (70 percent weight), local impact and siting (20 percent weight) and workforce enhancement (10 percent weight) including but not limited to the following factors:

### **Economic Activity & Business Development Factors**

- Realizing maximum capital investment exclusive of land acquisition and infrastructure improvements
- Maximizing revenues received by the state and localities
- Providing the highest number of quality jobs in the gaming facility
- Building a gaming facility of the highest caliber with a variety of quality amenities to be included as part of the gaming facility
- Offering the highest and best value to patrons to create a secure and robust gaming market in the Region and the State
- Providing a market analysis detailing the benefits of the site location of the gaming facility and the estimated recapture rate of gaming-related spending by residents travelling to an out-of-state gaming facility
- Offering the fastest time to completion of the full gaming facility
- Demonstrating the ability to fully finance the gaming facility
- Demonstrating experience in the development and operation of a quality gaming facility

### **Local Impact and Siting Factors**

- Mitigating potential impacts on host and nearby municipalities which might result from the development or operation of the gaming facility
- Gaining public support in the host and nearby municipalities which may be demonstrated through the passage of local laws or public comment received by the board or gaming Applicant
- Operating in partnership with and promoting local hotels, restaurants and retail facilities so that patrons experience the full diversified regional tourism industry
- Establishing a fair and reasonable partnership with live entertainment venues that may be impacted by a gaming facility under which the gaming facility actively supports the mission and the operation of the impacted entertainment venues

## Workforce Enhancement Factors

- Implementing a workforce development plan that utilizes the existing labor force, including the development of workforce training programs that serve the unemployed
- Taking additional measures to address problem gambling including, but not limited to, training of gaming employees
- Utilizing sustainable development principles
- Establishing, funding and maintaining human resource hiring and training practices that promote the development of a skilled and diverse workforce and access to promotion opportunities
- Purchasing, whenever possible, domestically manufactured slot machines for installation in the gaming facility
- Implementing a workforce development plan that<sup>1</sup>:
  - Incorporates an affirmative action program
  - Utilizes the existing labor force in the state
  - Includes specific goals for the utilization of minorities, women and veterans on construction jobs
  - Identifies workforce training programs
  - Identifies the methods for accessing employment
- Demonstrating that the Applicant has an agreement with organized labor, including hospitality services, and has the support of organized labor for its Application, which specifies:
  - The number of employees to be employed at the gaming facility
  - Detailed plans for assuring labor harmony during all phases of the construction, reconstruction, renovation, development and operation

In addition to the specific economic activity and business development factors set forth above, the Board developed an additional criterion as permitted under PML section 1306, subdivision 3. This criterion was that the Board consider whether the proposal fulfills the intent of the Act in regard to providing economic assistance to disadvantaged areas of the State while enhancing Upstate New York's tourism industry. This additional criterion supports the legislative intent of the Act, namely that selected proposals capitalize on economic development potential, boost economic development, create well-paying jobs, and enhance Upstate tourism. (PML section 1300, subdivisions 3, 5 and 6).

While all of these factors were considered, no single factor was determinative in the Board's evaluation. The Board received advice and assistance from Commission staff, expert consultants and various State agencies with expertise in particular aspects of the topics covered in the 2015 RFA. The Board expresses its gratitude to the Commission staff for their extensive and effective work. Similarly, numerous State agencies provided useful input regarding the Applicants and the Applications, work for which the Board is grateful.

The Board received expert analyses in regard to the revenue-generating capabilities of the Tioga Applicant as well as proposed financing and capital structures, credit support, impacts

<sup>1</sup> As stated in the Addendum to the 2015 RFA, the Board recognizes the importance placed upon minority and women-owned business enterprises (MWBE) business participation by the State and encourages contract opportunities for all small businesses including State-certified MWBEs. To this end, the Board recommends that the Gaming Commission implement conditions to licensure requiring the three successful Applicants to match or exceed Governor Andrew M. Cuomo's policy establishing a 30 percent goal for MWBE contracting.

and mitigation plans. The Board directed expert analyses of revenue projections, potential cannibalization of existing gaming facilities, potential impact of competing new casinos within a single region and qualitative factors that might affect the attractiveness of the new gaming facility, including development and operating experience and project design.

In particular, the Board studied projections under various assumptions of gross gaming revenue and impacts to State revenue after accounting for potential cannibalization of revenue from existing video lottery gaming and Native American facilities and the potential impact of competing new casinos within a single region.

The Board considered proposed debt and equity financing structures of the Tioga Applicant and the reliability and sustainability of proposed financing plans. The Board considered debt-to-equity ratios, projected earnings relative to proposed debt levels and projected debt service requirements, as well as the sensitivity of earnings potential in various economic climates and in the event of earnings before interest, taxes, depreciation and amortization (EBITDA) margin compression.

Finally, the Board considered data provided by the New York State Division of Budget in regard to various indicators of economic distress within Tioga County. According to the New York State Division of Budget, in Tioga County the median family income is \$70,272.03; percent with a bachelor's degree or higher is 23.7 percent, median home prices is \$107,140, the unemployment rate is 5.8 percent and the poverty rate is 10.2 percent. The Board finds that Tioga County could benefit from economic development.

## SELECTION

After careful evaluation of the Tioga Applicant's proposal, the Board has selected the Tioga Application to be considered for licensure by the Gaming Commission.

This Tioga Application is improved considerably from the one that the Tioga Applicant submitted in 2014 in response to the first gaming facility RFA. In contrast to the 2014 unsuccessful application, this Tioga Application commits substantially more equity to the project and decreases debt, which significantly improves the financial stability of the proposal. There is a greater than nine percent increase in proposed new investment, including a larger hotel, an enhanced outdoor concert venue and additional outdoor parking. The increased scope of the project is anticipated to create more construction job opportunities. The Tioga Applicant now commits to completing all phases of the project. The Tioga Applicant will guarantee grant funding to not-for-profit organizations and loans to small businesses in the Southern Tier.

As summarized below, the Board has determined that the Tioga Applicant has very strong local support, will provide a good environment for its workforce and is of the appropriate scope and quality to fulfill the intent of the Act to bring jobs and economic development to a long-distressed region of the State. The Tioga Applicant has a significant operational track record as a video lottery gaming vendor at the proposed location, which has enabled it to gather important information about the regional gaming market and its potential customers. The gaming facility has the potential to capture gaming revenue in-state that may currently be spent in a neighboring state.

Given the appropriate scope of the project for its market, the Board believes that the gaming facility is viable, will increase tax revenue to New York State and contribute to its tourism industry, becoming a benefit to the State economy in an area in great need of further economic development. Finally, the Board believes that the Tioga Application will meet the statutory criteria for measuring the potential for long term economic growth and sustainability.

The Board expects that before issuing a license in connection with the Tioga Applicant's proposal, the Commission will take appropriate steps to ensure that the Tioga Applicant substantially fulfill the commitments and execute the development plans that the Tioga Applicant has presented as part of this 2015 RFA process. The Board also expects that the Commission will take appropriate steps to ensure that the Tioga Applicant reaches agreements to not take actions to increase debt-to-equity ratios beyond the levels presented in the Tioga Applicant's proposals and/or standard industry practices.

The Board unanimously selects Tioga to apply to the Commission for a gaming facility license in Region Five, Zone Two.

A discussion of the Applicant follows, including the conclusion and findings of the Board. In addition, the Board directed staff to prepare an appendix showing how the Applicant proposed to advance each of the statutory objectives set forth in PML section 1320, including input from the Board's experts and various State agencies that reviewed and commented upon aspects of the Application within their respective areas of expertise. The Board adopts the appendix as part of its findings.

The Board unanimously selects Tioga to apply to the Commission for a gaming facility license in Region Five, Zone Two.



### **Tioga's Proposed Gaming Facility**

Tioga proposes to convert its current video lottery facility at Tioga Downs racetrack into a commercial casino and further develop the facility with other amenities.

Tioga's facility is proposed to include a 32,590-square-foot casino with 1,000 slot machines and 50 gaming tables, 161 hotel rooms, multiple restaurants and lounges, a spa, an outdoor concert venue and a new Tioga Country Club clubhouse.

### **Board's Evaluation**

Tioga's total proposed capital investment is \$107 million toward the minimum capital investment requirement, excluding the recently completed parking garage. This capital investment exceeds the proposed capital investment required for this Region. The Board observes that Tioga's proposal is projected to generate significant tax revenues to the State. Further, the Board finds Tioga will provide opportunities for enhanced economic impact and increased tourism in the Eastern Southern Tier region. Tioga proposes to complete all proposed phases of construction within 23 months of award of license. Tioga projects gross gaming revenues and gaming tax revenues in 2019 of \$107 million and \$31 million, respectively, and expects to recapture gaming-related spending by residents travelling to out-of-state gaming facilities.

The Board finds that Tioga has a substantial existing player reward program and existing player database that will be an asset to its marketing plans.

Tioga anticipates creating more than 1,100 new jobs. Tioga has an experienced construction manager and plans to use a significant number of New York-based subcontractors and vendors.

The Board finds that Tioga proposes a facility that appears to be an appropriate size and scope for the market.

The Board finds that Tioga has proposed a reasonable and credible financing plan. Tioga proposes to finance the gaming facility through a combination of equity and third-party debt. Tioga has already achieved a \$32 million equity contribution in July 2015 toward the financing of the project.

Tioga is owned principally by Jeff Gural, an owner of Southern Tier Acquisition II, LLC, which wholly owns Tioga. Mr. Gural has participated in multiple gaming and racing projects. Tioga intends to manage gaming operations internally, while racing operations would be managed by a third party. Mr. Gural has substantial experience operating video lottery facilities in New York, at Tioga Downs and Vernon Downs, as an agent of the New York Lottery. Tioga's nine years of video lottery operating

experience at the site demonstrates experience with the local market.

The Board finds that Tioga presents a satisfactory analysis of the anticipated local impacts of its facility and provides reasoned strategies for mitigating those impacts. Tioga has demonstrated overwhelming local support. Tioga intends to partner with local businesses and promote regional tourism, including impacted live entertainment venues in the area.

Regarding workforce enhancement factors: The Board concludes and finds, in regard to workforce enhancement factors, that Tioga committed to implement a workforce development program that used the existing labor force in the Region, including the unemployed. The Board finds that Tioga presented reasonable measures to address problem gambling, including training employees in recognizing problem gambling. The Board finds that Tioga committed to use sustainable development principles in construction and operation of the gaming facility. The Board finds that Tioga intended to establish a hiring and training program that promotes a skilled and diverse workforce. The Board finds that Tioga listed a number of domestic slot machine manufacturers and implied that it would purchase only domestically manufactured slot machines, but did not explicitly state as much. The Board finds that Tioga committed to establish and implement an affirmative action program that identifies specific goals for the engagement of minorities, women, persons with disabilities and veterans, in order to increase the diversity of the gaming industry workforce. The Board finds that Tioga demonstrated organized labor's support of the project through signed agreements.

The Board finds that Tioga presents reasonable measures to address problem gambling, including training employees in recognizing problem gambling.

Tioga proposes using sustainable development principles in construction and operation of the gaming facility.

In regard to providing economic assistance to disadvantaged areas of the State while enhancing Upstate New York's tourism industry, the Board considered the additional criterion it established: determining whether a proposal best fulfills the intent of the Act in regard to providing economic assistance to disadvantaged areas of the State while enhancing Upstate New York's tourism industry. In this regard, the Board considered several indicators of economic distress in counties in the Region, including a variety of data, such as median family income, percent of population with a bachelor's degree or higher, per capita personal income, home prices, the unemployment rate and the poverty rate. According to the New York State Division of Budget, in Tioga County the median family income is \$70,272.03; percent of population with a bachelor's degree or higher is 23.7 percent, median home price is \$107,140, the unemployment rate is 5.8 percent and the poverty rate is 10.2 percent. The Board concludes and finds that Tioga County had lower levels of median family income and residents with a bachelor's degree or higher below the New York state average. Additionally, median home prices were far below the New York State average. The Board finds that Tioga County could benefit from the economic development proposed, which is consistent with the intent of the Act.

## CONCLUSION

The members of the Board volunteered to serve on the Board with full appreciation of the importance and gravity that comes with their decisions. Individual opinions on gambling and related issues were set aside and each member applied the statutory criteria to the best of his abilities. The members have taken their role very seriously: they have traveled the State, visited locations, heard from hundreds of concerned citizens, consulted with renowned industry experts and thoroughly digested voluminous materials, all while applying their individual and collective experience and expertise to make the appropriate choice for the region and the entire State of New York.

The Tioga Applicant has an important charge at hand. It is expected to act and perform with the utmost integrity and accountability to the State and taxpayers. The Board congratulates the Tioga Applicant and the local residents who support it and wishes the project success on its development.

## NOTABLE MILESTONES

March 14, 2012	First passage by the State Legislature of a bill to amend the New York State constitution to allow no more than seven casinos as authorized and prescribed by the Legislature.
June 21, 2013	Second passage by the State Legislature of a bill to amend the New York State constitution to allow no more than seven casinos as authorized and prescribed by the Legislature.
July 31, 2013	The Upstate New York Gaming Economic Development Act of 2013 (Chapters 174 and 175 of the Laws of 2013) is signed into law by Governor Andrew M. Cuomo.
November 5, 2013	Voters of New York overwhelmingly approve (57 percent) an amendment of the State Constitution, allowing no more than seven casinos as authorized and prescribed by the Legislature.
January 1, 2014	The Upstate New York Gaming Economic Development Act of 2013 becomes law, authorizing up to four upstate destination casinos with at least one casino located in each of three defined regions of the State: Hudson Valley/Catskill area, Capital Region, and Eastern Southern Tier/Finger Lakes Region. One region may host two facilities. For a period of at least seven years from the issuance of the first license, no facility may be located in Putnam, Rockland or Westchester Counties, nor on Long Island or within the City of New York.
March 12, 2014	The NYS Gaming Commission appoints Gaming Facility Location Board Members Paul Francis, Stuart Rabinowitz and William Thompson.
March 24, 2014	The New York Gaming Facility Location Board selects the firm of Taft Stettinius & Hollister LLP as a statutorily mandated gaming advisory services consultant.
March 31, 2014	The Gaming Facility Location Board issues a Request for Applications (RFA) to develop and operate a gaming facility in New York State, formally opening the bidding period for commercial casino Applicants.
April 11, 2014	Commercial casino Applicants' first round of questions on the RFA are due.
April 23, 2014	Application fees of \$1 million each to help defray the costs associated with the processing of the Application and investigation of the Applicant are received from 22 entities seeking to develop and operate a gaming facility in New York State. The Gaming Facility Location Board issues answers to the first round of questions.
April 30, 2014	A mandatory Applicant conference is held in Albany for entities seeking to submit Applications to develop and operate commercial gaming facilities in New York State.

May 2, 2014	The Gaming Facility Location Board issues a written summary of the Applicant conference.
May 7, 2014	Applicants' second round of questions on the RFA are due.
May 12, 2014	The Gaming Facility Location Board determines the minimum capital investment to be expended by successful Applicants to construct their gaming facilities.
May 13, 2014	Rolling Hills Entertainment, LLC requests and receives a full refund of the application fee.
May 14, 2014	The Gaming Facility Location Board issues answers to the second round of questions.
May 16, 2014	PNK Development 33, LLC requests and receives a full refund of the application fee.
June 5, 2014	Trading Cove New York, LLC requests and receives a full refund of the application fee.
June 12, 2014	CRCR Enterprises, LLC (joint venture of Cordish Co./Penn National) requests and receives a full refund of the application fee.
June 24, 2014	Grossinger Development Corporation requests and receives a full refund of the application fee.
June 30, 2014	Applications are received from 17 entities seeking to develop and operate commercial gaming facilities in New York State.
July 7, 2014	NYS Gaming Commission appoints Gaming Facility Location Board members Dennis Glazer and Kevin Law.
July 28, 2014	NYS Gaming Commission names Kevin Law as chair of the Gaming Facility Location Board.
August 7, 2014	The Gaming Facility Location Board disqualifies an application by Florida Acquisition Corporation to develop a gaming facility within the Town of Florida, Montgomery County as its application was incomplete and did not conform to RFA requirements.
August 28, 2014	The Gaming Facility Location Board issues an application fee refund of \$991,216 to Florida Acquisition Corporation.
September 8-9, 2014	Applicant public presentations are held in Albany to afford each remaining Applicant an opportunity to provide the Gaming Facility Location Board with an overview of the contents of its Application, explain any particularly complex information and highlight any specific areas it desires.

September 22–24, 2014	Public comment events are held in Albany, Poughkeepsie and Ithaca to provide the Gaming Facility Location Board with the opportunity to hear public sentiment, support and concerns in regard to commercial gaming facility proposals, and to receive input from potentially impacted communities.
October 20, 2014	The Gaming Facility Location Board meets to discuss the financial viability of each Applicant.
November 10, 2014	The Gaming Facility Location Board meets to discuss the financial viability of each Applicant.
November 21, 2014	The Gaming Facility Location Board meets to discuss the financial viability of each Applicant.
December 9, 2014	The Gaming Facility Location Board meets to discuss the financial viability of each Applicant.
December 17, 2014	The Gaming Facility Location Board unanimously approves its selections for three entities to apply for commercial gaming facility licenses in New York State.
March 23, 2015	The Gaming Facility Location Board issues a Request for Applications to develop and operate a gaming facility in New York State for Region Five, formally opening the bidding period for commercial casino Applicants.
April 6, 2015	Commercial casino Applicants' first round of questions on the Region Five RFA are due.
April 13, 2015	The Gaming Facility Location Board issues answers to the first round of questions.
April 27, 2015	Applicants' second round of questions on the RFA are due. None are received.
July 6, 2015	An Application is received from a single entity - Tioga Downs Racetrack, LLC - seeking to develop and operate a commercial gaming facilities in Region Five.
September 10, 2015	An Applicant public presentation is held in New York City to afford the Applicant an opportunity to provide the Gaming Facility Location Board with an overview of the contents of its Application, explain any particularly complex information and highlight any specific areas it desires.
September 18, 2015	A public comment events is held in Binghamton to provide the Gaming Facility Location Board with the opportunity to hear public sentiment, support and concerns in regard to commercial gaming facility proposal, and to receive input from the potentially impacted community.

September 30, 2015

The Gaming Facility Location Board meets to discuss the financial viability of the Applicant.

October 14, 2015

The Gaming Facility Location Board unanimously approves its selection for Tioga Downs Racetrack, LLC to apply for a commercial gaming facility license in New York State.

## THE NEW YORK GAMING FACILITY LOCATION BOARD

The Upstate New York Gaming Economic Development Act provides that “the New York State Gaming Commission shall establish a separate board to be known as the New York state gaming facility location board to perform designated functions under article thirteen of this chapter.” (PML Section 109-a.)

Under the Act, the members of the Board must possess ten or more years of responsible experience in fiscal matters, plus significant service:

- As an accountant, economist or financial analyst experienced in finance or economics
- In an academic field relating to finance or economics
- In the field of commercial real estate
- As an executive with fiduciary responsibilities in charge of a large organization or foundation

Board members must be residents of New York State and cannot be elected officials. Additionally, they cannot:

- Have a close familial or business relationship to a person that holds a license under the PML
- Have any direct or indirect financial interest, ownership, or management, including holding any stocks, bonds, or other similar financial interests in any gaming activities, including horse racing, lottery or gambling
- Receive or share in, directly or indirectly, the receipts or proceeds of any gaming activities, including horse racing, lottery or gambling
- Have a beneficial interest in any contract for the manufacture or sale of gaming devices, the conduct of any gaming activity, or the provision of any independent consulting services in connection with any licensed establishment

The duties and authority of the Board include, without limitation, issuing the RFA for commercial casino Applicants; assisting the Commission in prescribing the form of the application; developing criteria, in addition to those outlined in the Act, to assess which applications provide the highest and best value to the State, the zone and the region in which a gaming facility is to be located; determining a gaming facility license fee to be paid by an Applicant; and determining, with the assistance of the Commission, the sources and total amount of an Applicant’s proposed capitalization to develop, construct, maintain and operate a proposed gaming facility license under the Act.

In addition, the Gaming Commission determined that Board members should reside outside of the eligible casino regions.

## GAMING FACILITY LOCATION BOARD MEMBERS

### Kevin Law, Chair



Kevin Law became President and CEO of the Long Island Association, one of the most respected business organizations in New York State, in September 2010. His efforts are focused on economic development and creating a better business climate on Long Island. Law also serves as Co-Chair of the Long Island Regional Economic Development Council.

Previously, Law led the Long Island Power Authority (LIPA), the 2nd largest public utility in the country with over 1.1 million customers. His leadership of the \$10 billion company brought developments in energy efficiency and renewable energy by launching the largest energy efficiency program for any public utility in the country, by procuring the largest solar energy project in New York State and by introducing “smart meters” to the region.

Previously, Law served as Chief Deputy County Executive for Suffolk County, where he had oversight of all county departments consisting of 12,000 employees and a \$2.7 billion budget. Prior to his tenure in Suffolk County, he was the Managing Partner of the Long Island office of Nixon Peabody LLP and a member of the firm’s Energy and Environment Practice Group. Before joining Nixon Peabody, Law was the Director of Real Estate for the Suffolk County Department of Law, Assistant Suffolk County Executive for Planning, Housing and Environmental Affairs and legislative assistant for the New York State Assembly’s Sub-Committee on the Long Island Economy.

In 2009, Law was appointed as Chairman of the Stony Brook University Council. He also sits on the Boards of the Advanced Energy Research Technology Center, Energeia, the Association of Council Members and College Trustees, and the North Shore LIJ Care Connect Insurance Co. Inc. He is also the Chairman of the Long Island Housing Partnership and Chairman of Accelerate Long Island, a consortium of Long Island’s top research institutions collaborating on converting world class research into start-up companies.

Earlier in his career, Law served as a Trustee to the Long Island Chapter of the Nature Conservancy and Suffolk County Community College. He was also formerly a member of the Board of Ethics for the Town of Smithtown.

Law received an Associate of Arts from Suffolk County Community College; a Bachelor of Arts from SUNY Stony Brook University; a Master of Science from the Graduate School of Urban Affairs and Planning at CUNY Hunter College; a Juris Doctor from St. John’s University School of Law; and most recently completed a Leadership Program at the John F. Kennedy School of Government at Harvard University.

## Dennis E. Glazer

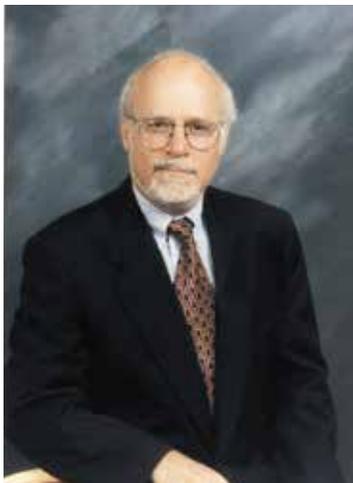


Dennis E. Glazer is a retired partner at the international law firm of Davis Polk & Wardwell LLP, where he served as Co-Head of the Litigation Department. During his legal career, Glazer advised a diverse group of public corporations, privately held companies, financial institutions in matters relating to significant business issues and disputes including corporate governance matters, stockholder derivative demands and litigation, internal investigations, shareholder litigation and administrative and criminal investigations.

Glazer has been active and holds or has recently held leadership positions in several not-for-profit health care organizations in Westchester County, including serving as the Chairman of the Board of Governors of Lawrence Hospital Center and as Chairman of Stellaris Health Network. Previously, he served as Chairman of the Strategic Planning Committee of the Bronxville School and Chairman of the Non-Partisan Committee for the Selection of Bronxville School Trustees. He currently serves as a Trustee of NewYork – Presbyterian Hospital.

Glazer has served as Executive Secretary of the Program and Planning Committee of the Second Circuit Judicial Conference and on the Second Circuit Courts Committee of the Federal Bar Council. He clerked for the Honorable George C. Pratt, U.S. District Court, Eastern District of New York and the U.S. Court of Appeals, Second Circuit. He graduated from Hofstra University and holds a J.D. from St. John's University School of Law.

## Stuart Rabinowitz



Stuart Rabinowitz is the eighth president of Hofstra University, selected by the Board of Trustees in December 2000. Prior to his appointment, he served as dean of the Hofstra University School of Law from September 1989 through June 2001. He joined the faculty of the Law School in 1972.

President Rabinowitz has held positions with a number of government and community organizations, including the Judicial Advisory Council of the State of New York Unified Court System, County of Nassau. He currently serves as a member of the board of directors for the Long Island Association and as co-vice chair of the Long Island Regional Economic Development Council. He has also served as a trustee of the Commission on Independent Colleges and Universities and on the board of directors of the Long Island Technology Network.

He is a former member of the Nassau County Blue Ribbon Financial Review Panel, former chair of the Nassau County Local Advisory Board and a member of the Nassau County Commission on Government Revision, which was charged with drafting a new charter and a new form of government for the County.

President Rabinowitz received a juris doctor, magna cum laude, from Columbia University School of Law, where he was a member of the board of editors of the Columbia Law Review and a Harlan Fiske Stone Scholar. He graduated from the City College of New York with honors, and is a member of Phi Beta Kappa and the American Law Institute.

## GAMING ADVISORY SERVICES CONSULTANT AND STATE AGENCY ASSISTANCE

The selection of a consultant to provide the Gaming Facility Location Board members with analysis of the gaming industry and assist with the comprehensive review and evaluation of the Application in 2013 was mandated by the Upstate New York Gaming Economic Development Act.

The New York State Gaming Commission issued a Request for Proposals for the consultant in November 2013. The proposal put forth by Taft, Stettinius & Hollister LLP was selected over four other timely proposals received.

Taft Stettinius & Hollister LLP has subcontracted with several entities to assist in the project, including financial advisory firm Christiansen Capital Advisors, investment bank Houlihan Lokey and gaming facility consultant Macomber International, Inc.

**Taft Stettinius & Hollister LLP (Taft)** is a national law firm with more than 400 attorneys and maintains relevant core practice groups in the areas of gaming law, corporate finance, government contracts and real estate development, among others. The firm has extensive experience in drafting requests for applications and protocols for casino development projects, including evaluating the legal, suitability, financial and local government and community impact aspects of the applications received and preparing analysis and conclusions on the siting process. The firm has worked with the states of Colorado, Louisiana, Michigan and Missouri and the cities of Chicago, Detroit and Springfield, Massachusetts on gaming matters.

**Christiansen Capital Advisors** has advised governments, investors, casino companies, law firms and the media concerning the gaming industry since 1988. The company has particular expertise conducting and evaluating revenue feasibility studies for the gaming industry. Christiansen Capital Advisors also advises industry and regulatory clients with respect to financial viability, market studies and revenue/cost projections.

**Houlihan Lokey Capital, Inc. (Houlihan)** is an international investment bank with expertise in mergers and acquisitions (M&A), capital markets, financial restructuring, valuation and strategic consulting. The firm serves corporations, institutions and governments worldwide with offices in the United States, Europe and Asia-Pacific. Houlihan is ranked as the number one M&A advisor for U.S. transactions under \$5 billion, the number one global restructuring advisor and the number one M&A fairness opinion advisor for U.S. transactions over the past 10 years, all according to Thomson Reuters.

**Macomber International, Inc. (Macomber)** is an international consulting company that provides custom development, finance/funding, operations, marketing and other services to publicly and privately owned companies and governments. Macomber has expertise in the development, layout and operation of casino projects.

In addition to using the services and expertise of the statutorily mandated gaming advisory services consultant, the Board engaged the expertise and resources of Commission staff and multiple state agencies and authorities to aid in the analysis of sections of the Application. These include:

- Department of Agriculture and Markets
- Department of Environmental Conservation
- Department of Labor
- Department of State
- Department of Tax and Finance
- Department of Transportation
- Division of Budget
- Division of Criminal Justice Services
- Division of State Police
- Division of Veterans' Affairs
- Dormitory Authority of the State of New York
- Empire State Development
- Environmental Facilities Corporation
- New York Power Authority
- New York State Homes and Community Renewal
- New York State Liquor Authority
- Office of Alcoholism and Substance Abuse Services
- Office of General Services

## APPLICATION MATERIALS RECEIVED

On July 6, 2015, the Board received application material from a single entity seeking to develop and operate a commercial gaming facility in Region Five of New York State. As required by the RFA, the Applicant delivered voluminous material to the Commission's headquarters in Schenectady. Among the materials the Applicant was required to submit were:

- Eight (8) identical hard copies of its Application including copies of all executed Attachments.
- Ten (10) electronic copies of its Application, including copies of all executed Attachments, in PDF format submitted via ten (10) separate and clearly labeled, USB flash drives.

The Board promptly began distributing the various copies to the members of the Board, its consultant and its subcontractors, the New York State Police (for background investigations), Commission Staff, and applicable agencies and authorities for their collective review, evaluation and consideration.

## PUBLIC DISCLOSURE OF APPLICATION MATERIALS

The Board treated the Application as a public record and has made it available to the public on the Gaming Commission's website with applicable exemptions pursuant to the FOIL.

Typically, applications and proposals submitted via state procurement processes (which this selection process was not) are not considered public until after an award is granted. The Board believes that the public had a right to see the contents of the Application before the selection and therefore elected to post Application materials as soon as practicable after receipt.

The FOIL provides for certain exemptions from public disclosure including, among others, an exemption from disclosure for trade secrets or information the disclosure of which would cause substantial injury to the competitive position of a commercial enterprise. This exemption applies both during and after the evaluation process. The FOIL also provides an exemption for records that are "specifically exempted from disclosure by state or federal statute." PML Section 1313(2), provides an exemption from disclosure under the FOIL for "trade secrets, competitively sensitive or other proprietary information provided in the course of an application for a gaming license, the disclosure of which would place the Applicant at a competitive disadvantage." See also Section 87(2)(d) of the New York Public Officers Law.

Confidential information was required to be marked conspicuously on the outside as containing confidential information, and each page upon which confidential information appeared was required to be marked conspicuously as containing confidential information.

Staff reviewed the Applicant's redactions and made available online all of the Application, except justified redactions consistent with the FOIL.

The Board determined to apply the FOIL carefully to all elements of the Application materials, as opposed to either accepting or denying Applicant's claims of confidentiality outright, thus avoiding possibly lengthy legal challenges. This was achieved via detailed consideration of numerous aspects of the Application and considerable discussion with industry consultants and the Applicant. The end result established a high level of transparency while acknowledging legitimate Applicant concerns.

All determinations concerning whether the Application and/or related documents submitted in response to the RFA are subject to disclosure under the FOIL were made by the Board or the Commission, as applicable, in their sole discretion.

## **APPLICANT PRESENTATION**

On September 10, 2015, the Applicant made an hour-long informational introductory presentation of its Application to the Board in New York City. The presentation was intended to afford the Applicant an opportunity to provide the Board with an overview of the contents of the Application, explain any particularly complex information, and highlight any specific areas it desired. The Board had the opportunity to ask the Applicant questions during and after their presentation.

## **PUBLIC COMMENTS**

The Board received more than 2,860 pieces of unique communications relating to the siting of a casino in the connection with the March 23, 2015 RFA. This tally represents a simplified tabulation of the unique comments received. Where identifiable, duplicative or redundant submissions by individuals or organizations were eliminated in order to create a more accurate accounting of public sentiment.

All but five of these communications were in support of the project.

These communications came in the form of emails, written correspondence, post cards, petitions, social media, organized campaigns, etc. sent to the Board via the Gaming Commission, individual Gaming Commissioners, individual Board members and correspondence to the Executive Chamber. All such communications were preserved and catalogued for the Board's review and consideration.

## **PUBLIC COMMENT EVENT**

The Board convened a public comment event in Binghamton on September 18, 2015 to provide the Board with the opportunity to hear from concerned members of the communities involved and to have the opportunity to address questions and concerns about the proposal by the Applicant, including the scope and quality of the gaming area and amenities, the integration of the gaming facility into the host municipality and nearby municipalities and the extent of required mitigation plans. At this Webcast session, the Board received input from members of the public from impacted communities. The Board purposefully selected a location and venue in a county and city other than those of the Applicant's proposed project.

The event was free and open to the public. The event was well-attended and dozens of New Yorkers came to express their views. In addition, the public submitted written materials to the Board before, after and during the public comment events. Representatives from the Applicant were required to attend the public comment event. Representatives of the host municipalities, representatives of nearby municipalities and representatives of any impacted live entertainment venue also attended the public comment event.

To ensure fairness, individual comment segments were limited to five minutes each. To accommodate members of the public with scheduling, the first five time slots per hour were available for speaking time reservations on a first-come, first-served basis. The balance of each hour was filled the day of the public comment event on a first-come, first-served basis.

In addition to oral statements, the Board accepted written submissions at the event and for seven days following the event.

The Board heard 50 individual speakers at the public comment event, all of whom supported the Applicant's project.

The Board found many of the comments helpful to its deliberations. The Board expresses its appreciation to those who took the time to attend the public comment session, particularly those who spoke and submitted written comments.

## **ISSUANCE OF LICENSES**

Upon this recommendation, the Board understands that the Commission will undertake its licensing process for the selected Applicant. If the Commission finds the selected Applicant suitable for licensing, the Commission will issue a commercial gaming facility license, including any terms and conditions to the license that the Commission may require.

## APPENDICES

Summary of the Applicant

Request for Applications to Develop and Operate a Gaming Facility in New York State - Region Five

First Round of Questions and Answers – April 13, 2015

Guidance Document – Protocol for Applicant Presentation – August 28, 2015

Guidance Document – Protocol for Public Comment Event – August 31, 2015

Guidance Document – UPDATED Protocol for Public Comment Event – September 15, 2015

The Upstate Gaming and Economic Development Act of 2013

Constitutional Amendment to Permit Casinos

## SUMMARY OF THE APPLICANT

The following summary was prepared by Commission staff, based on the Application and input from Board experts and various State agencies that reviewed and commented upon aspects of the Application within their areas of expertise. The Applicant's logo was taken from the Applicant's project Web site.



**Tioga Downs Racetrack, LLC proposes to expand its current facility into Tioga Downs Casino, Racing and Entertainment (“Tioga”) in the Town and Village of Nichols in Tioga County. According to Tioga, at full build out, the project will feature 1,000 slot machines and 50 table games in addition to live harness racing. The facility will include a 161-room hotel with three restaurants, plus additional fast food concessions, three additional bars/lounges, additional outdoor dining and bar facilities, indoor and outdoor pools and a waterslide. It also will include a fitness and day spa, a multi-use event facility an outdoor concert venue and space for farmers’ and antiques markets . Tioga also proposes to take over management of the nearby Tioga Country Club golf course.**

### **ECONOMIC ACTIVITY AND BUSINESS DEVELOPMENT**

#### **Realizing maximum capital investment exclusive of land acquisition and infrastructure improvements. (§ 1320(1)(a))**

Tioga proposes a minimum capital investment of \$122.6 million. Tioga's total capital investment less excluded capital investment is proposed to be \$137.9 million. This represents a \$9.9 million increase in new investment compared to its 2014 proposal. Tioga requested the inclusion of \$63.9 million in prior capital investment; however, no portion of its prior capital investment is needed to meet the minimum capital investment.

#### **Maximizing revenues received by the state and localities. (§ 1320(1)(b))**

Tioga does not propose a supplemental tax payment or increased license fee.

Tioga provides projections of the state, county and local tax revenue that would be generated by the proposed facility during the first five years of operation with high, average and low revenue scenarios. Tioga's projections are as follows:

- Direct New York state tax revenues (including gaming privilege taxes, device fees, corporate profits tax, sales and use taxes and personal income taxes) of approximately \$20.0 million in year one and \$30.6 million in year five, in the low-case scenario; \$22.8 million in year one and \$34.8 million in year five, in the average-case scenario; and \$25.4 million in year one and \$38.7 million in year five, in the high-case scenario.

- Indirect New York state tax revenues (including corporate profits tax, sales and use taxes and personal income taxes) from induced incremental economic activity of approximately \$578,000 in year one and approximately \$819,000 in year five, in the low-case scenario; approximately \$622,000 in year one and approximately \$886,000 in year five, in the average-case scenario; and approximately \$666,000 in year one and increase approximately \$944,000 in year five, in the high-case scenario.
- Direct host county tax revenues (Tioga County) of approximately \$234,000 in year one and approximately \$1.6 million in year five, in the low-case scenario; approximately \$276,000 in year one and approximately \$1.7 million in year five, in the average-case scenario; and approximately \$328,000 in year one and \$1.8 million in year five, in the high-case scenario.
- Indirect host community tax revenues from induced incremental economic activity (to Tioga County) of approximately \$83,000 in year one and approximately \$124,000 in year five, in the low-case scenario; approximately \$90,010 in year one and approximately \$135,000 in year five, in the average-case scenario; and approximately \$98,000 in year one and approximately \$144,000 in year five, in the high-case scenario.

These projections are higher than the projections Tioga submitted in its 2014 application. Board experts noted that various tax revenues might not be achieved if Tioga did not meet or exceed its financial projections.

The Tioga proposal, including the expansion and forecasted gross gaming revenue, does not represent entirely new revenue to the State of New York, because Tioga proposes to replace its existing VLT machines (approximately 800) with slot machines (1,000 machines). Tioga did not evaluate the impact of replacing the existing VLTs with slot machines.

**Providing the highest number of quality jobs in the gaming facility. (§ 1320(1)(c))**

Tioga anticipates that it will create 562 full-time and 572 part-time jobs, an increase from its 2014 proposal.

Tioga states that the proposed construction manager brings more than 50 years of construction expertise and has established strong working relationships throughout the State with contracting communities for a half-century. The stated goal is to maximize opportunities for local union subcontractors within a 50-mile radius of Tioga to work on the project.

Tioga anticipates construction total worker hours of 473,722, an increase from its 2014 proposal.

**Building a gaming facility of the highest caliber with a variety of quality amenities to be included as part of the gaming facility. (§ 1320(1)(d))**

Tioga’s project site for the gaming facility is the current location of Tioga Downs, the New York State VLT facility consisting of 145 acres with harness horseracing and simulcast wagering.

Tioga proposes a 3.5-star, “Tioga Downs”-branded resort comprising the following:

- 32,590-square-foot casino, including the existing and newly-expanded casino floor with designated high-limit areas;

- 161-room hotel with a fitness center, spa and indoor and outdoor pools, an increase in room number from its 2014 proposal;
- 6,652-square-foot flexible meeting/entertainment space with pre-function, back of house and kitchen areas;
- Three primary restaurants, plus various fast-food concession options located throughout the property;
- Five additional bars/lounges including outdoor terraces;
- A 12,000-seat outdoor concert venue in the racetrack infield, using temporary stages and other facilities, which had not been a part of its 2014 proposal
- Dedicated space for farmers' and antiques markets; and
- "Live" harness horseracing from May to September on a 5/8-mile track with a 1,225- seat grandstand.

In addition to the development on the project site, Tioga proposes to operate the Tioga Country Club, a golf course located approximately four miles from the project site. Tioga proposes to construct a new 5,000-square-foot clubhouse at the country club.

Because Tioga proposes to convert an existing VLT facility and harness racing track into an expanded casino resort, Tioga proposes a phased construction timeline, with conversion of the gaming floor first, followed by development of a new poker room, then gaming floor expansion to include table games, then the new event center and P.J. Clarke's restaurant, then Virgil's BBQ & Honkey Tonk, then the hotel and, finally, the new clubhouse for the Tioga Country Club

Board experts noted that because the proposal is a retrofitted expansion of existing facilities, improvements and infrastructure, the location of buildings and amenities, such as the hotel and restaurants, may not be ideally centrally located.

Using industry benchmarks for the seat or position capacity of slot machines and table games, Board experts suggested that the gaming capacity would have been capable of serving the physical demand on an average day using the average case visitor forecast.

Tioga proposes a total gaming area of 32,590 square feet (including its existing gaming floor of 15,422 square feet, gaming floor expansion of 11,442 square feet and a new poker room of 2,686 square feet) offering the following mix of games:

- Slots—1,000 slots;
- Table games—38 tables; and
- Poker tables—12 tables.

Conversion of Tioga's existing VLT gaming positions to slot machines is expected to be completed in various phases to avoid disruption of existing gaming and racing operations. Tioga expects the process of removing the existing VLTs and replacing them with slot machines to take approximately 90 days.

Tioga proposes a 3,100-square-foot separate high-limit gaming area with a separate entrance for VIP players, which had not been a component of its 2014 proposal.

Tioga's project includes construction of a single, 161-room hotel tower comprising:

- 56 king standard rooms (430 to 543 square feet each);
- 86 queen standard rooms (430 square feet each);
- 8 handicapped accessible rooms (538 square feet each); and
- 11 suites (755 to 869 square feet each).

The hotel will be "Tioga Downs"-branded and of 3.5-star quality. The newly constructed hotel, together with the newly constructed amenities building, will offer a 2,500-square-foot spa operated by AgeLess Spa, a local spa operator, a 2,384-square-foot indoor pool, a 652-square-foot fitness center, 6,652-square-feet of multi-purpose meeting/entertainment space, a restaurant (P.J. Clarke's) and an outdoor pool.

Tioga states that there are no hotels in the region of comparable quality, but cites the Mohegan Sun Pocono Downs Hotel in Wilkes-Barre, Pa. as being comparable.

Tioga states that to differentiate the hotel from its competition, the hotel rooms are designed to be 100 to 150 square feet larger than those offered by typical hotels in the primary competitive market. Other differentiating factors include that the hotel will be a component of the area's only gaming and destination resort; the level of service at the hotel will be highly guest-focused and superior to that offered by competitors in the region; and that the hotel will offer unique and diverse amenities, including large banquet space to host large weddings, conferences and meetings.

While the number of hotel rooms is increased from the 2014 proposal, Board experts suggested that the number of hotel rooms may still be small in light of the forecasted demand. Given the revised projections of 84,000 annual visitors traveling greater than one hour to get to Tioga, if 100 percent of them wanted to stay one-night, then the hotel would need 230 rooms per night. Board experts suggested that either the hotel is too small or the projections for visitation and room-night demand are inaccurate.

Tioga proposes a 6,652-square-foot flexible meeting and entertainment space located in the new amenities building adjacent to the hotel. The space is proposed to operate in its entirety or be subdivided into two spaces. Capacity of this space is 410 guests in a traditional banquet-style (dinner) event and 590 guests for a concert event. The space is proposed to accommodate banquets, conventions, trade shows, weddings and a variety of entertainment.

Tioga states that it has three existing entertainment venues that would remain in place including:

- Coaster's—3,600 square feet/200 capacity—an existing sports bar that offers free entertainment on weekends such as live bands, DJs, karaoke and trivia games.
- Mutuel lobby stage—6,594 square feet/500 capacity—when not used for racing, the grand lobby provides space with a stage to host a variety of entertainment acts.
- Outdoor concert venue – capacity of up to 4,594—in summer months, a mobile stage can be positioned just beyond the racetrack creating "close to stage" seating on the racetrack in addition to the elevated seats in the grandstands. This venue will be for hosting larger concerts.

In addition to the above, Tioga proposed seven new entertainment venues, more than in its 2014 proposal:

- Flexible meeting/entertainment space of 6,652 square feet/410 to 590 capacity;
- Upper Terrace—450 capacity, outdoor entertainment venue located on the rooftop of the new amenities building expected to offer free entertainment;
- Lower Terrace—300 capacity. outdoor patio located outside of the restaurants expected to offer free entertainment and customer-themed parties/events;
- Gaming Floor Lounge Stage—1,732 square feet/100 capacity, lounge with a stage located at the perimeter of the casino floor; and
- Virgil's Real BBQ and Honky Tonk Bar—4,669 square feet/200 capacity, Virgil's Real BBQ's flagship restaurant is located in Manhattan. The nightclub is expected to host a variety of country music entertainment.
- An event tent, with a capacity of 200; and
- The Park at Tioga Downs, a 12,000-seat outdoor concert venue in the racetrack infield, using temporary stages and other facilities.

Tioga appears willing to use entertainment as a marketing tool to promote its facility and create a competitive advantage.

Tioga proposes three primary restaurants, seven bars/lounges, plus various food concessions and additional outdoor dining/bar spaces, including:

- Country Fair Buffet—an existing buffet restaurant overlooking the racetrack with tiered seating for optimal views of the racetrack (5,370 square feet/200 seats);
- P.J. Clarke's—new restaurant located adjacent to the event center and would have had access to an outdoor patio (3,551 square feet/166 seats).; and
- Virgil's Real BBQ and Honky Tonk Bar—new restaurant located in the new addition to the existing facility (4,669 square feet/200 capacity).

As for other amenities, Tioga proposed the following:

- Waterslide—21-foot-high waterslide and plunge pool;
- Outdoor swimming pool—the private outdoor pool will be available only to hotel guests and will be complemented the indoor pool, spa and fitness center located within the hotel;
- Dedicated space for farmers' and antiques markets;
- Harness horseracing—from May to September, Tioga Downs hosts live harness racing; and
- Tioga Country Club—Tioga proposes to take over the Tioga Country Club, an 18-hole golf facility located off-site and construct a new 5,000-square-foot clubhouse featuring a restaurant, pro-shop and snack bar.

Tioga provided an adequate description of internal controls that reflected current industry standards.

**Offering the highest and best value to patrons to create a secure and robust gaming market in the region and the state. (§ 1320(1)(e))**

Tioga has an existing player database and loyalty rewards program that is exclusive to Tioga Downs and contains a significant number of customers. Tioga states that its Players Club Rewards will be earned through casino play, measured in club points and redeemed at a fixed reinvestment rate. Tioga believes that this cumulative player rewards strategy had the strongest draw among local, frequent customers. The existing database included present and past customers who had demonstrated an interest in patronizing a casino property. Tioga states that it will enhance its players club to be more competitive with Pennsylvania properties.

As an existing gaming facility, Tioga Downs is incorporated into the regional economic development strategic plans. Additionally, the facility is supported by the Town and Village of Nichols master plan, listed as a community asset in the New York Rising Community Reconstruction Program for Tioga and is part of the Tioga County Strategic Plan.

The County Director of Economic Development and Planning referred to Tioga Downs Racetrack long-standing commitment to the region and states that the track's development was widely understood to be critical and would provide a positive economic impact.

**Providing a market analysis detailing the benefits of the site location of the gaming facility and the estimated recapture rate of gaming-related spending by residents travelling to an out-of-state gaming facility. (§ 1320(1)(f))**

The proposed facility is located on the existing Tioga Downs complex, with harness horseracing track and VLT facility. The project site is located near I-86 and provides good access to nearby feeder markets. Board experts suggested that developing a casino around a racetrack may create synergies for the guest's experience due to the rural, horse-farming surroundings.

Tioga states that it can recapture recapture revenues currently being spent by New York residents in Pennsylvania.

**Offering the fastest time to completion of the full gaming facility. (§ 1320(1)(g))**

Tioga proposes the following timeline:

- Conversion of the gaming floor from New York VLTs to slot machines (the Applicant calls these "class III" machines but we assume that to mean slot machines as distinguished from New York VLTs) completed approximately 90 days from licensure.
- Conversion of Winner's Circle Lounge and Stage to the new Poker Room – completed approximately 90 days from licensure.
- Casino expansion for table games and renovations of existing gaming floor – completed approximately eight months from licensure.
- Virgil's BBQ & Honky Tonk – completed approximately eight months from licensure.
- New Event Center, PJ Clarke's restaurant – completed approximately one year from licensure.
- New Hotel – completed approximately 15 months from licensure.
- New clubhouse for Tioga Country Club – completed approximately 23 months from licensure.

Due to the existing VLTs already in place, Tioga anticipates being able to convert the facility into a full casino quickly and accelerate the opening date and associated economic benefits. The existing facility will allow Tioga to more easily transition to opening a full casino through established marketing efforts, a well-known name within the community and pre-existing relationships with local vendors, municipalities and labor unions. Board experts noted, however, that as an expansion of Tioga's existing facility, the project could open quickly, but is proposed to open in phases, which presents complications in construction and operations.

**Demonstrating the ability to fully finance the gaming facility. (§ 1320(1)(h))**

Tioga intends to finance its project through committed third-party debt from a financial institution and an equity contribution from its parent company. The proposed equity investment is substantially enhanced from the 2014 proposal.

**Demonstrating experience in the development and operation of a quality gaming facility. (§ 1320(1)(i))**

Tioga is owned principally by Jeff Gural, an owner of Southern Tier Acquisition II, LLC, which wholly owns Tioga. Mr. Gural has participated in multiple gaming and racing projects. Tioga intends to manage gaming operations internally, while racing operations would be managed by a third party.

Mr. Gural controls The Meadowlands harness racetrack in Northern New Jersey. The Meadowlands is being discussed publicly as a candidate for a casino in the event New Jersey authorizes gaming outside Atlantic City. A casino at The Meadowlands would compete with casinos in the Catskills/Hudson Valley region.

Tioga's parent company owns and operates the Vernon Downs Casino and Hotel, which offers 150 hotel rooms with an adjoining 767-game video lottery terminal with live entertainment. As the operator of a VLT facility in Nichols, New York and the Tioga Downs facility, Tioga has a good understanding of the area's gaming clientele and market. In addition, as the owner of the Tioga Downs player database and loyalty program, Tioga has an existing customer base for a full-service casino.

**LOCAL IMPACT AND SITING FACTORS**

**Mitigating potential impacts on host and nearby municipalities which might result from the development or operation of the gaming facility. (§ 1320(2)(a))**

The largest impact that is anticipated by Tioga's project is to the Nichols Fire Department. The Fire Department likely will need to purchase a new ladder truck to service effectively its proposed five-story hotel. Tioga has discussed with the Fire Department the possibility of providing financial assistance to purchase the new vehicle, although no formal agreement exists.

The Tioga County sheriff's office believes that it has sufficient capacity at its current level of resources to handle additional service demands resulting from the casino development. If additional resources become necessary, the sheriff's office expects that the costs and impacts will be borne by Tioga through existing agreements. Tioga proposes a casino expansion and new hotel at its existing racetrack and video lottery terminal facility. Consequently, Tioga's proposed facility is already serviced by existing water, sewer and electricity services.

Tioga operates existing on-site well and septic systems to service its facility with potable water and disposal of waste water. Tioga provided reports from its engineer indicating that the existing well and septic systems have sufficient built and permitted capacity to accommodate early phases of Tioga's proposed expansion. Significant new water infrastructure will be required. As Tioga's water and sewer services are accommodated entirely onsite, there is no projected impact on off-site water and sewer infrastructure.

Tioga reports that the local electric utility, NYSEG, has confirmed that the existing connection at Tioga's facility to the electricity grid provides sufficient supply to service the expanded facility.

Tioga believes that the housing market in general should have been able to absorb any potential increase of new families from outside of the area working at Tioga Downs because it is believed that many new residents would likely choose to live outside of Tioga County and commute to the facility.

Tioga notes that the gaming site is located within the Tioga Central School District (Tioga CSD). Tioga CSD currently has approximately 1,000 students enrolled, compared to 2005 when Tioga CSD had 1,165 students enrolled. The school district had seen an even greater percentage reduction in the student count over the last decade than the local population decline. Even with an anticipated larger workforce, Tioga believes additional enrollment would be minimal.

**Gaining public support in the host and nearby municipalities, which may be demonstrated through the passage of local laws or public comment received by the board or gaming Applicant. (§ 1320(2)(b))**

Tioga's host community is the Town of Nichols. Tioga provided a resolution in support of its project adopted by the Town of Nichols. Additionally, Tioga provided a resolution in support of its project adopted by the Tioga County Legislature and Village of Nichols. Tioga also provided resolutions in support of its project from the Towns of Ashland, Berkshire, Big Flats, Candor, Horseheads, Newark Valley, Owego, Richford, Spencer, Tioga, Van Etten, the Villages of Burdett, Candor, Owego, Spencer, Watkins Glen and Waverly, the Cities of Corning and Elmira, and the Counties of Chemung and Schulyer, as well as letters of support from various State legislators, towns, villages, chambers of commerce, tourism organizations, economic development and planning organizations, unions, law enforcement agencies and fire/emergency services, sponsors, entertainment venues and Pennsylvania communities.

The Tioga project was the subject of 2,860 written comments, with all but five indicating support.

Tioga was the subject of 50 comments at the September 18, 2015 public comment event, all indicating support.

**Operating in partnership with and promoting local hotels, restaurants and retail facilities so that patrons experience the full diversified regional tourism industry. (§1320(2)(c))**

Tioga provides multiple examples of cross-marketing opportunities with local businesses.

Tioga states that the opening of casino expansion creates an excellent opportunity to launch an improved, state-of-the art casino player's loyalty club that will help capture incremental play from current customers, attract trial from competitors' customers and compete more aggressively for

continued patronage of both gaming and non-gaming patrons. Tioga states that its current casino players club will be reengineered as a resort club program, offering a more diverse and relevant rewards menu that will strengthen patron connectivity to Tioga's brand, while at the same time creating viable and sustainable economic growth to the region.

Tioga states that it makes it a priority to engage local business whenever purchasing goods and services. Locational sourcing priorities favored Southern Tier businesses, followed by State business and finally Pennsylvania border counties. Further, Tioga also will give priority to minority- and woman-owned businesses. In 2013, more than 65 percent of all available operating spend dollars went to local vendors (excluding exclusive/proprietary providers); \$4.5 million went to 252 vendors within the Southern Tier for goods and services.

**Establishing a fair and reasonable partnership with live entertainment venues that may be impacted by a gaming facility under which the gaming facility actively supports the mission and the operation of the impacted entertainment venues. (§1320(2)(d))**

Tioga entered into a memorandum of understanding with The Upstate Theater Coalition for a Fair Game. The agreement requires the parties to form a booking collaboration for all events in the represented venues and Tioga's facility to coordinate calendars, work to avoid exclusivity agreements in performer contracts, and, as appropriate, alternate specific talent between facilities. Other terms require Tioga to promote events at Fair Game facilities, to use the loyalty rewards program to purchase and distribute tickets from Fair Game facilities and to make an annual payment to Fair Game. This agreement will remain in effect for the length of the full gaming license awarded.

**WORKFORCE ENHANCEMENT FACTORS**

**Implementing a workforce development plan that utilizes the existing labor force, including the estimated number of construction jobs a proposed gaming facility will generate, the development of workforce training programs that serve the unemployed and methods for accessing employment at the gaming facility. (§ 1320(3)(a))**

Tioga performed a Workforce Enhancement Analysis and Labor Market Availability study, providing information on the existing workforce, demographics, education, community patterns and workforce projections, Tioga already has established partnerships and is present in the community.

**Taking additional measures to address problem gambling including, but not limited to, training of gaming employees to identify patrons exhibiting problems with gambling. (§ 1320(3)(b))**

Tioga states that throughout its tenure as a pari-mutuel and VLT facility, its ownership and management has emphasized a culture of responsible gaming with a continuous improvement focus. In 2013, Tioga participated (as a New York Gaming Association member) in the development of the robust New York Council on Problem Gaming (NYCPG) facility evaluations and recommendations. Tioga states that it had fully committed to achieving all criteria in the Responsible Gambling Policies, Practices and Procedures of the New York Council on Problem Gaming Summary Analysis. Tioga proposes enhancements to expand its program beyond the Council's blanket recommendations.

Tioga has an existing relationship with the Tioga County Council on Addiction and Substance Abuse to help facilitate local education and treatment options.

**Utilizing sustainable development principles including, but not limited to:**

- (1) having new and renovation construction certified under the appropriate certification category in the Leadership in Energy and Environmental Design Green Building Rating System created by the United States Green Building Council;**
- (2) efforts to mitigate vehicle trips;**
- (3) efforts to conserve water and manage storm water;**
- (4) demonstrating that electrical and HVAC equipment and appliances would be Energy Star labeled where available;**
- (5) procuring or generating on-site 10 percent of its annual electricity consumption from renewable sources; and**
- (6) developing an ongoing plan to submeter and monitor all major sources of energy consumption and undertake regular efforts to maintain and improve energy efficiency of buildings in their systems. (§1320(3)(c))**

Tioga's traffic study concludes that all intersections in the study area were considered to have acceptable operating conditions, with the possible exception of one intersection that was expected to be addressed in a State improvement project to meet interstate standards. The study indicates that the proposed expansion of Tioga's existing facility would not have warranted any improvements in the form of traffic control, geometric changes or combination of improvements.

State agency review suggests that Tioga's location could easily accommodate the additional traffic with relatively minor mitigation, given that Route 17/I-86 has excess capacity.

Tioga states an intention to achieve silver LEED certification. Tioga states an intention to use high-efficiency HVAC systems meeting applicable national standards. State agency experts noted that Tioga Down submitted a thoughtful, well presented LEED plan that addressed many, but not all, of the design elements necessary to pursue and achieve LEED Certification.

Tioga presents proposed standards set forth in the NYSDEC Storm water Management Design Manual. State agency review suggests that because Tioga's gaming facility is proposed at a previously developed site, it will minimize disturbance of undeveloped land and taken advantage of existing infrastructure.

Tioga states that it will use low-flow fixtures throughout its facility. Tioga plans to use native and adaptive landscaping and the facility will not have permanent irrigation.

As part of its LEED strategy, Tioga plans, but does not specifically commit, to obtain 35 percent of the project's required energy from renewable sources.

**Establishing, funding and maintaining human resource hiring and training practices that promote the development of a skilled and diverse workforce and access to promotion opportunities through a workforce training program that:**

- (1) establishes transparent career paths with measurable criteria within the gaming facility that lead to increased responsibility and higher pay grades that are designed to allow employees to pursue career advancement and promotion;**
- (2) provides employee access to additional resources, such as tuition reimbursement or stipend policies, to enable employees to acquire the education or job training needed to**

**advance career paths based on increased responsibility and pay grades; and  
(3) establishes an on-site child day care program. (§ 1320(3)(d))**

Tioga states that it has existing practices that provided career advancement opportunities to residents of the region through the use of both internal and external training programs. Tioga anticipates expanding educational and training opportunities with the approval of an expanded gaming license. Tioga has existing partnerships with local agencies that enable it to provide its employees with educational and training programs. These partnerships also help Tioga recruit candidates to fill challenging positions. Tioga also focuses on hiring veterans.

**Purchasing, whenever possible, domestically manufactured slot machines. (§1320(3)(e))**

Tioga proposes to source domestically manufactured slot machines.

**Implementing a workforce development plan that:**

- (1) incorporates an affirmative action program of equal opportunity by which the Applicant guarantees to provide equal employment opportunities to all employees qualified for licensure in all employment categories, including persons with disabilities;**
- (2) utilizes the existing labor force in the state;**
- (3) estimates the number of construction jobs a gaming facility will generate and provides for equal employment opportunities and which includes specific goals for the utilization of minorities, women and veterans on those construction jobs;**
- (4) identifies workforce training programs offered by the gaming facility; and**
- (5) identifies the methods for accessing employment at the gaming facility. (§1320(3)(f))**

Tioga states that it is committed to providing equal employment opportunities to all job Applicants and employees without regard to race, color, gender, national origin, disability, status as a qualified protected veteran or any other category protected by federal, State or local law.

**Demonstrating that the Applicant has an agreement with organized labor, including hospitality services, and has the support of organized labor for its application, which specifies:**

- (1) the number of employees to be employed at the gaming facility, including detailed information on the pay rate and benefits for employees and contractors in the gaming facility and all infrastructure improvements related to the project; and**
- (2) detailed plans for assuring labor harmony during all phases of the construction, reconstruction, renovation, development and operation of the gaming facility. (§1320(3)(g))**

Tioga entered into a project labor agreement with the Binghamton–Oneonta Building & Construction Trades Council (“Council”). The Council entered into this agreement on behalf of itself and its affiliated local unions (16 in total) and their members. Further, Tioga entered into a memorandum of agreement with the Rochester Regional Joint Board, Workers United (“Workers United”). Workers United previously entered into and is a party to a collective bargaining agreement. The memorandum of agreement clarifies the processes to be followed between Tioga and Workers United if Tioga is granted a gaming facility license.





**Gaming  
Commission**

**REQUEST FOR APPLICATIONS  
TO DEVELOP AND OPERATE  
A GAMING FACILITY  
IN NEW YORK STATE**

March 23, 2015

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Dear Applicant:

New York Governor Andrew M. Cuomo has made reviving Upstate New York's long-stagnant economy a priority of his administration.

In 2012, recognizing the importance and potential that expanded gaming could bring to the residents and business of New York State, Governor Cuomo proposed an amendment to the State constitution to permit casino gaming. The constitutional amendment process—passage of legislation by two consecutive legislatures followed by a public referendum—culminated in November 2013, when voters approved the constitutional amendment.

On July 30, 2013, Governor Cuomo signed into law The Upstate New York Gaming Economic Development Act of 2013, which outlined the process and criteria for siting no more than four destination gaming resorts to create jobs, reduce unemployment in disadvantaged areas of the State, enhance the State's tourism industry and generate substantial revenue for public education and taxpayer relief. In order to fully capitalize on the beneficial aspects of legalized gambling, the legislature determined that Upstate New York is where the jobs and economic development are most needed. The law established the eligible Regions of the State where such gaming resorts could be sited, while respecting boundaries established with Native American Tribes that have exclusivity over gaming rights in various parts of the State. The purpose of the law's siting criteria was to provide the highest impact and best value to the State and to those localities where a gaming resort is to be located.

The Act provided for the Gaming Commission to award up to four Gaming Facility licenses within three Regions of the State: Hudson Valley/Catskill area, Capital Region, and Eastern Southern Tier. On December 17, 2014 the Gaming Facility Location Board selected three Applicants - one in each of the aforementioned Regions. To maximize the benefit conferred and fulfill both the mission and spirit of the legislation, the Board looks to the fourth license to be an economic catalyst within the Eastern Southern Tier.

New York State is removing the barriers and red tape that, for too long, inhibited doing business in the State. This Request for Applications was designed in that spirit. The Request for Applications clearly enumerates the required components in a format that is responsive to the spirit and the letter of the law.

On behalf of the State of New York, we thank you for your interest in bringing world-class destination gaming resorts to Upstate New York, helping to create economic growth in the Southern Tier, and in providing the maximum beneficial impact to those localities in Upstate New York that need the jobs, revenues, and development.

### **New York State Gaming Facility Location Board**

Kevin Law, Chairman  
Paul Francis  
Dennis E. Glazer  
Stuart Rabinowitz  
William C. Thompson, Jr.

## I. INITIAL REQUIREMENT OF LOCAL SUPPORT

As a condition of filing an Application, each Applicant must submit to the Board a resolution passed by the local legislative body of its Host Municipality supporting the Application. For purposes of this requirement, local support means a post-November 5, 2013 resolution passed by the local legislative body of the Host Municipality supporting the Application.

For purposes of this requirement, the Host Municipality of a Project Site located in a city is the city. The Host Municipality of a Project Site located in a town, outside a village, is the town. The Host Municipality of a Project Site located in a village is the village and the town in which the Project Site is located.

An Applicant's demonstration of local support in fulfillment of this initial requirement is only a component part of the twenty (20) percent Local Impact and Siting Factors criteria to be used by the Board in evaluating Applications. In weighing local support and opposition under this criteria, the Board will consider public statements and declarations, letters or resolutions from the Host Municipality, nearby local governments, private organizations, community, religious and civic groups, charitable organizations, entertainment venues, chambers of commerce, local businesses, labor organizations, etc. "Nearby local governments" includes any county or municipality that is adjacent to the municipality in which the proposed gaming facility site is located or any county or municipality where a proposed gaming facility would likely have social, environmental, traffic, infrastructure or any other impact on the local and regional economy, including impact on cultural institutions and on small businesses.

For a Host Municipality resolution to be sufficient, such resolution should indicate support for a specific gaming facility within the jurisdiction of the Host Municipality. For the guidance of Applicants, below is provided an example "resolved clause" which would meet the Host Municipality support requirement:

NOW THEREFORE BE IT RESOLVED, that in furtherance of the above goals, Municipality **X** hereby agrees to the location of Gaming Facility **Y** at Premises **Z** within Municipality **X**.

## II. DEFINITIONS

Unless otherwise defined herein, the following terms have the following meanings:

**“Affiliate”** means with respect to a particular person or entity, any person or entity that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such person or entity.

**“Applicant”** means an entity or person submitting this Application. As used in this RFA, Applicant shall also mean any prospective Applicant, as the context may require.

**“Applicant Party”** means each of: (i) the Applicant; (ii) the Manager; (iii) any person or entity that has a direct or indirect ownership interest in the Applicant or the Manager equal to or greater than five (5) percent; and (iv) any Casino Key Employee.

**“Application”** means a completed response to this RFA or an application for a Gaming Facility License, as the context may require.

**“Board”** means the New York State Gaming Facility Location Board.

**“Casino Key Employee”** means any person employed (or to be employed) by a Licensee, or holding or intermediary company of a Licensee, and involved in the operation of a licensed Gaming Facility in a supervisory capacity and empowered to make discretionary decisions that regulate Gaming Facility operations; or any other employee so designated by the Commission for reasons consistent with the policies of PML Article 13.

**“Close Associate”** means a person who, or entity that, holds a relevant financial interest in, or is entitled to exercise power in, the business of an Applicant or Licensee and, by virtue of that interest or power, is able to exercise significant influence over the management or operation of a Gaming Facility or business licensed under PML Article 13.

**“Commission”** means the New York State Gaming Commission.

**“Effective Date”** means January 1, 2014, the effective date of the Upstate New York Gaming Economic Development Act of 2013.

**“Financing Source”** means each of: (i) the Applicant; (ii) the Manager, if applicable; and (iii) any person or entity that will provide, or is expected to provide, any equity, debt, credit support or credit enhancement for the proposed Gaming Facility. If a Manager is not providing any equity, debt, credit support or credit enhancement for the proposed Gaming Facility, it is not a “Financing Source”.

**“FOIL”** means the New York Freedom of Information Law, Sections 84-90 of the New York Public Officers Law.

**“Gaming Facility”** means the premises approved under a License which includes the gaming area and any other non-gaming structure related to the gaming area and may include, without limitation, hotels, restaurants or other amenities.

**“Host Municipality”** means each town, village or city in the territorial boundaries of which any portion of the Project Site described in an Application is located. For Project Sites located in a village, the host municipality includes both the village and the town in which the Project Site is located.

**“Immediate Family Member”** means a person’s spouse, parents, grandparents, children, grandchildren, siblings, uncles, aunts, nephews, nieces, fathers-in-law, daughters-in-law, sons-in-law, sisters-in-law, brothers-in-law, and mothers-in-law whether by the whole or half blood, marriage, adoption or natural relationship.

**“License”** means a license to operate a Gaming Facility in the State or an occupational license to be qualified under a requirement of Article 13 of the PML, as the context may require.

**“Manager”** means any entity engaged or to be engaged by an Applicant to operate and manage the casino of the Gaming Facility.

**“PML”** means the New York Racing, Pari-Mutuel Wagering and Breeding Law.

**“Project Site”** means the site upon which the Gaming Facility will be constructed.

**“Public Official”** means a person who: (i) is authorized to perform an official function and is paid by a governmental entity; (ii) is elected or appointed to office to discharge a public duty for a governmental entity; or (iii) with or without compensation, is appointed in writing by a public official to act in an advisory capacity to a governmental entity concerning a contract or purchase to be made by the entity. The term does not include a person appointed to an honorary advisory or honorary military position.

**“Region”** means each of Region One, Region Two and Region Five of Zone Two of the State of New York established by to PML Section 1310.

**“Region One”** means the region comprised of the following counties of the State: Counties of Columbia, Delaware, Dutchess, Greene, Orange, Sullivan and Ulster.

**“Region Two”** means the region comprised of the following counties of the State: Counties of Albany, Fulton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie and Washington.

**“Region Five”** means the region comprised of the following counties of the State: Counties of Broome, Chemung (east of State Route 14), Schuyler (east of State Route 14), Seneca, Tioga, Tompkins and Wayne (east of State Route 14).

**“Restricted Period”** means the period of time beginning with the public release of this RFA through (i) such time as the Board selects an Applicant or Applicants other than the Applicant to proceed to Commission consideration of suitability for a License to operate a Gaming Facility in the Region in which an Applicant has sought such a License or (ii) the final decision of the Commission on the suitability of the Applicant for a License, if the Board selects the Applicant to proceed to Commission consideration of suitability for a License, as the case may be.

**“RFA”** means this Request for Applications to Develop and Operate a Gaming Facility in New York State.

**“State”** means the State of New York.

Any other terms used throughout this RFA that are not otherwise defined in this RFA shall have the meaning ascribed to such terms as provided in PML Section 1301.

### III. OVERVIEW

#### A. INTRODUCTION

Chapter 174 of the Laws of 2013, known as the Upstate New York Gaming Economic Development Act of 2013, as amended by Chapter 175 of the Laws of 2013 (collectively, the “**Act**”), sets forth, among other things, statutory requirements for casino gaming in New York State.

The Act authorizes four Upstate destination gaming resorts to enhance tourism development. The Act amends the PML by adding a new Article 13, which became effective January 1, 2014 and which authorizes casino gaming. Article 13 provides for the Commission to award up to four Licenses within three Regions of the State: Hudson Valley/Catskill Region, Capital Region and Eastern Southern Tier Region (including portions of the Finger Lakes region).

PML Section 109-a provides that, “the commission shall establish a separate board to be known as the New York state gaming facility location board to perform designated functions under article thirteen of this chapter.” The duties and authority of the Board include, without limitation, issuing this RFA for Licenses; assisting the Commission in prescribing the form of the Application; developing criteria, in addition to those outlined in the Act, to assess which Applications provide the highest and best value to the State, the Zone and the Region in which a Gaming Facility is to be located; determining a Gaming Facility license fee to be paid by an Applicant; and determining, with the assistance of the Commission, the sources and total amount of an Applicant’s proposed capitalization to develop, construct, maintain and operate a proposed Gaming Facility license under the Act.

The Board, on behalf of the State, issues this RFA to solicit Applications from Applicants seeking a License to develop and operate a Gaming Facility in the State. The Commission shall undertake the licensing process after the Board recommends Applicants for licensure.

The Board is the only entity authorized to clarify, modify, amend, alter or withdraw any of the provisions of this RFA. The Board may, in its discretion, designate staff, consultants or other agents to communicate to Applicants and to the public any clarifications, modifications, amendments, alterations or withdrawals of any of the provisions of this RFA.

In this RFA, the Board sets forth requirements and an evaluation approach in conformance with State statutes and State regulations. The contents of this RFA, any modifications thereof made by the Board, and the respective Application and any changes thereto approved by the State will become obligations of the Licensee if a License is issued. Failure of the successful Applicant to accept these obligations may result in denial or revocation of a License.

Each Applicant will be required to pay to the Commission an Application fee of \$1 million to help defray the costs associated with the processing of the Application and investigation of the Applicant; provided, however, that if the costs of processing, investigation and related costs exceed the initial Application fee, the Applicant shall pay the additional amount to the Commission within 30 days after notification of insufficient fees or the Application shall be rejected and further provided that should the costs of such investigation not exceed the fee remitted, any unexpended portion shall be returned to the Applicant, all as required by PML Section 1316.8.

Such Application fee must be paid concurrent with submission of Application. Wire instructions are available upon request from the New York State Gaming Commission Finance Office. Please contact Frank Roddy at (518) 388-3354 or [Frank.Roddy@gaming.ny.gov](mailto:Frank.Roddy@gaming.ny.gov) for such instructions.

The term of an initial License granted by the Commission after selection for recommendation by the Board will be ten (10) years, as set forth in PML Section 1311.1. The Commission shall determine the term of any renewal of a License.

## B. SCHEDULE

The following dates are established for informational and planning purposes. The Board reserves the unilateral right to make adjustments to this schedule.

RFA Issued	March 23, 2015
Applicant's First Questions Due by 4:00 p.m. EDT	April 6, 2015
Board Responses to First Questions	April 13, 2015
Applicant's Second Questions Due by 4:00 p.m. EDT	April 27, 2015
Board Responses to Second Questions	May 4, 2015
Applications Due by 4:00 p.m. EDT	July 6, 2015
Oral Presentations of Applications	August 2015
Selection of Gaming Facility Operator	Fall

## C. PROCUREMENT LOBBYING RESTRICTIONS

As required by the Procurement Lobbying Law (Sections 139-j and 139-k of the New York State Finance Law), this RFA includes and imposes certain restrictions on communications between the Commission/Board and an Applicant during the Application process. An Applicant is restricted from making contacts during the Restricted Period with anyone at the Commission or the Board other than designees of the Commission's staff, unless the contact is permitted by the statutory exceptions set forth in Section 139-j.3.a. of the New York State Finance Law. Designated staff members are identified in the "PERMISSIBLE CONTACTS" section of this RFA. Other designees may be made in the future.

Commission employees are permitted to communicate with Applicants concerning this RFA only under circumstances described in the New York State Procurement Lobbying Law. Any Applicant causing or attempting to cause a violation of those requirements may be disqualified from further consideration for selection.

Board members and Commission members and employees are required to obtain certain information when contacted during the Restricted Period and to make a determination of the responsibility of the Applicant pursuant to Sections 139-j and 139-k. A violation can result in a determination of non-responsibility, which can result in disqualification for selection to proceed to consideration of a License award. In the event of two determinations of non-responsibility within a four-year period, an Applicant will be debarred for a period of four years from obtaining a governmental procurement award.

The Procurement Lobbying Law does not restrict communications between Applicants and other State agencies. Applicants may contact other State agencies in regard to technical elements necessary to appropriately respond to Application questions. For example, an Applicant may gather information about

an agency's process or an agency's activity in subjects such as transportation studies or environmental rulemaking.

Note that it is impermissible for an Applicant to make a specific request of an agency, or attempt to influence an agency, to garner such agency's support for the Applicant's proposal generally or to solicit support for an aspect of such proposal to the detriment of another Applicant's proposal.

Further information about these requirements can be found at: [www.ogs.ny.gov/acpl](http://www.ogs.ny.gov/acpl) and the joint JCOPE/Gaming Commission guidance document: <http://www.gaming.ny.gov/pdf/Joint%20Guidance%20on%20Lobbying,%20June%2016,%202014.pdf>

The Commission reserves the right, in its sole discretion, to terminate a License in the event that the Commission determines that the certification filed by the Applicant in accordance with Section 139-k of the New York State Finance Law was intentionally false or intentionally incomplete. Upon such determination, the Commission may exercise its termination right by providing written notification to the licensee.

Note that the restricted period does not apply to an Applicant's provision of comments to proposed regulations of the Commission/Board or other responses by Applicants in reply to solicitations for public comment made by the Commission/Board.

## **D. REGISTRATION OF LOBBYISTS**

As set forth in PML Section 1329, in addition to any other registration and reporting required by law, each lobbyist seeking to engage in lobbying activity on behalf of a client or a client's interest before the Commission shall first register with the Secretary of the Commission. The Secretary shall cause a registration to be available on the Commission's website within five days of submission. The applicable form for registration and instructions can be found at:

[www.gaming.ny.gov/pdf/NYSGCLobbyingRegistrationForm.docx](http://www.gaming.ny.gov/pdf/NYSGCLobbyingRegistrationForm.docx).

For purposes of this section, the terms "**lobbyist**", "**lobbying**", "**lobbying activities**" and "**client**" shall have the same meaning as New York Legislative Law Section 1-c defines those terms.

## **E. PERMISSIBLE CONTACTS**

Consistent with the public policy established by the Procurement Lobbying Law, the Supervisor of Contract Administration and the Contract Management Specialist designated below are the only points of contact with regard to matters relating to this RFA unless the Board designates additional points of contact.

Communications made with the Commission unrelated to the Application process (such as those made in the course of fulfilling statutory or regulatory reporting requirements) are not restricted.

**ALL COMMUNICATIONS CONCERNING THIS REQUEST FOR APPLICATION MUST BE ADDRESSED IN WRITING TO THE SUPERVISOR OF CONTRACT ADMINISTRATION OR THE CONTRACT MANAGEMENT SPECIALIST NOTED BELOW:**

**New York State Gaming Commission  
Contracts Office  
One Broadway Center  
Schenectady, NY 12301-7500**

**Gail P. Thorpe, Supervisor of Contract Administration**  
[gail.thorpe@gaming.ny.gov](mailto:gail.thorpe@gaming.ny.gov)

or

**Stacey Relation, Contract Management Specialist**  
[stacey.relation@gaming.ny.gov](mailto:stacey.relation@gaming.ny.gov)

## **F. QUESTIONS AND INQUIRIES**

Questions from Applicants in regard to this RFA must be submitted via electronic mail no later than the date and time specified in the “**OVERVIEW - SCHEDULE**” section of this RFA. If questions are provided via an attachment to electronic mail, the questions must be provided in a Microsoft Word format. Neither faxed nor telephone questions will be accepted.

Applicants are cautioned that an RFA inquiry must be written in generic terms and must not contain specific information about an Application or proposed Application in an inquiry. The Board reserves the right to answer or refrain from answering questions in its discretion.

Responses to questions and any changes to the RFA resulting from such questions will be communicated via published addenda, which will be posted on the Commission’s website, [www.gaming.ny.gov](http://www.gaming.ny.gov). An Addendum Acknowledgement Form, a form of which is incorporated into this RFA only for informational purposes as Attachment 2, will be provided with each addendum. An Applicant is required to include with its Application a signed Addendum Acknowledgement Form for each addendum issued to this RFA.

Applicants are responsible for checking the Commission’s Web site for updated information relative to the RFA and the Application selection process. Neither the Commission nor the Board will be responsible for an Applicant’s failure to obtain updated information.

## **G. BACKGROUND INVESTIGATION**

All Applicants for a License, and all related parties in interest to the Applicant, including Affiliates, Close Associates and financial resources of the Applicant (each a “**Related Party**”), shall be subject to a thorough background investigation into the suitability of such persons and entities by the Commission or by the Commission’s designated agents. Each Applicant and Related Party must prove by clear and convincing evidence its suitability and qualifications to hold a License.

In conducting the suitability investigation, pursuant to PML Section 1317 the Commission shall consider the overall reputation of the Applicant including, without limitation: (i) the integrity, honesty, good character and reputation of the Applicant; (ii) the financial stability, integrity and background of the Applicant; (iii) the business practices and the business ability of the Applicant to establish and maintain a successful Gaming Facility; (iv) whether the Applicant has a history of compliance with gaming licensing requirements in other jurisdictions; (v) whether the Applicant, at the time of Application, is a defendant in litigation involving its business practices; (vi) the suitability of all parties in interest to the License, including Affiliates and Close Associates and the financial resources of the Applicant; and (vii) whether the Applicant is disqualified, pursuant to PML Section 1318, from receiving a License.

The Application fee shall be used to defray the costs associated with the processing of the Application and investigation of the Applicant and Related Parties and related costs. If the allocable costs of the foregoing exceed the initial Application fee, then the Applicant shall pay the additional amount to the Commission within thirty (30) days after notification of insufficient funds. If payment of the additional amount is not made timely, then the Application may be rejected in the discretion of the Commission. If an additional amount is paid to the Commission for the foregoing and the costs do not exceed the amount remitted, any unexpended portion of such additional amount shall be returned to the Applicant.

The New York State Police will conduct the background investigations. The scope of background investigations required will depend upon the structure of the Applicant described in the Application.

Applicants shall make a good faith effort to determine whether they and their respective related parties must submit background investigation forms as set forth in this Section. If the Board determines that an Applicant has failed to provide background forms for a person or entity required to disclose, the Board will afford the Applicant the opportunity to submit promptly the necessary background forms for such person or entity.

The Board may, in its discretion, waive disclosure requirements for certain qualified institutional and other passive investors that can demonstrate they obtained an interest in a relevant party for investment purposes only and do not have any intention to influence or affect the affairs of an Applicant, a manager or any affiliated companies thereof.

To assist the Commission in conducting its suitability investigations, each Applicant and its respective Related Parties shall submit with its Application the following (collectively, the “**Background Investigation Forms**”):

1. A complete and accurate Gaming Facility License Application Form for each of: (i) the Applicant; (ii) any direct and indirect parent entity of the Applicant including any holding company; (iii) any Manager; (iv) any entity having a beneficial or proprietary interest of five (5) percent or more in an Applicant or a Manager; and (v) any other entity that may be designated by the Commission. The Gaming Facility License Application Form shall be submitted as an individual document within the overall response to the RFA.
2. A complete and accurate Multi-Jurisdictional Personal History Disclosure Form and New York Supplemental Form for each natural person who is (i) a director, manager, general partner or person holding an equivalent position with the Applicant, a Manager or any direct or indirect parent entity of the Applicant; (ii) a Casino Key Employee; (iii) a person having beneficial or proprietary interest of five (5) percent or more of an Applicant or a Manager; or (iv) designated by

the Commission. These forms are available on the Commission's webpage at the following address: <http://www.gaming.ny.gov/gaming/casinos.php>.

The Commission or the Board, in their sole discretion and as applicable to their respective duties under the Act, shall determine the persons and entities qualifying as the Applicant and any Related Parties including determining whether to grant temporary or permanent exemptions for particular persons or entities such as certain institutional investors, passive investors, stockholders of publicly held corporations or other circumstances.

If after review of an Applicant's Application and the related Background Information Forms, the Commission determines that persons or entities are Related Parties but such persons or entities have not filed the appropriate Background Information Forms, the Commission may require that such persons or entities file such Background Information Form within a time period designated by the Commission. If the additional Background Information Forms are not timely filed, the Board or the Commission may determine to disqualify the Applicant and/or such persons or entities.

The Board and/or the Commission may initiate investigations into the backgrounds of the Applicant and any Related Parties including, without limitation, persons or entities related to any officers, directors, members, principals, investors, owners, financing sources, subcontractors, employees, or any other individuals or entities related to the Applicant, as the Commission or the Board may deem appropriate, in the discretion of the Commission or the Board, as the case may be. Such background investigations may include fingerprint identification by the New York State Division of Criminal Justice Services and the Federal Bureau of Investigation, and such additional investigation as may be required.

The Commission may reject an Application based upon the results of these background checks and suitability investigations. Each Applicant is advised that any Applicant or Related Party who knowingly provides false or intentionally misleading information in connection with any investigation by the Commission may cause the Application to be rejected, or a License to be canceled, revoked or suspended by the Commission, in the sole discretion of the Commission.

Applicants are obligated to establish their suitability for a License and the suitability of all Related Parties by clear and convincing evidence.

## **H. CONTINUING DUTY TO UPDATE APPLICATION**

After the submission of an Application and prior to the award of the Licenses, each Applicant has a continuing duty to disclose to the Board promptly, in writing (and electronically), any changes or updates to the information submitted in its Application or any related materials submitted in connection therewith. Upon receipt of any updated materials, the Board may, in its sole discretion, determine to accept the update as an amendment to the Application. The Board, however, is not under any requirement to accept any such information. Failure to promptly notify the Board of any changes or updates to information previously submitted in its Application may be grounds for disqualification.

As a general rule, it is better to err on the side of over-reporting changes than to fail to report a change. Reporting a change will not, in and of itself, prejudice an Application, but information provided will be evaluated against prior submissions and could affect the Board's evaluation positively or negatively, depending on the information provided.

## **I. NON-COLLUSIVE BIDDING REQUIREMENT**

In accordance with Section 139-d of New York State Finance Law, if a selection of an Applicant by the Board for licensure consideration by the Commission is made based upon the submission of Applications, the Applicant must warrant, under penalty of perjury, that its Application was arrived at independently and without collusion aimed at restricting competition. Each Applicant must further warrant that, at the time the Applicant submitted an Application, an authorized and responsible person executed and delivered to the Board a Non-Collusive Bidding Certification on Applicant's behalf.

## **J. PUBLIC NOTIFICATION/NEWS RELEASES**

No results of the selection process may be released without prior approval by the Board and then only to persons and entities designated by the Board.

## **K. CLARIFICATION PROCESS**

The Board, through its designees, reserves the right to contact any Applicant after the submission of its Application exclusively for the purpose of clarifying any item submitted in its Application to ensure mutual understanding. This contact may include written questions, interviews, site visits, or requests for corrective pages in the Application. Responses must be submitted to the Board within the time specified in the request. As applicable, clarifications will be treated as addenda to an Application. Failure to comply with requests for additional information may result in rejection of the Application as noncompliant.

## **L. STATE'S RESERVED AUTHORITY**

In addition to any authority set forth elsewhere in this RFA, the Board reserves the authority to:

1. Waive any requirement of this RFA that is not prescribed by the Act, or any defects of any Application if, in the judgment of the Board, such waiver is deemed by the Board to further the policy objectives of the Act;
2. Eliminate any non-mandatory specification(s) that cannot be complied with by any of the Applicants;
3. Amend the RFA and direct Applicants to submit modifications to their Applications accordingly;
4. Change any of the scheduled dates stated in this RFA;
5. Reject any or all Applications received in response to this RFA, and reissue a modified version of this RFA;
6. Withdraw the RFA at any time, at the sole discretion of the Board;
7. Seek clarifications and revisions to Applications;
8. Use information obtained through site visits, management interviews, the State's investigation of an Applicant's qualifications, experience, ability or financial standing, any material or information submitted by the Applicant in response to the request by the Board for clarifying information in the course of evaluation and/or selection under this RFA or otherwise; and
9. Disqualify any Applicant whose conduct and/or Application fails to conform to the requirements of this RFA.

## **M. WAIVER, RELEASE, COVENANT NOT TO SUE AND INDEMNIFICATION**

As a condition to submitting an Application, each Applicant, Manager, and direct or indirect owner of an Applicant or Manager shall, by authorized signatory, execute and deliver a Waiver, Release, Covenant Not to Sue and Indemnification Agreement in the form attached hereto as Attachment 3 (“**Waiver**”). Pursuant to the Waiver, each Applicant, Manager, and direct or indirect owners of an Applicant or Manager, on his, her or its own behalf and on behalf of its agents, servants, representatives, affiliates, parents, subsidiaries, directors, officers and employees, assigns predecessors and successors, (and their heirs, estates, executors, spouses), shall covenant and agree to release, waive, covenant not to sue or make any claim for damages, costs, fees, expenses or any relief whatsoever including, but not limited to, equitable relief, not to seek any appeal, review or reconsideration of any decision of the State, the Commission and the Board, and indemnify, defend and hold harmless the State, the Commission and the Board and their officials, agents, consultants and representatives as more specifically described in the Waiver attached to this RFA as Attachment 3.

## **N. APPLICANT/LICENSEE DIFFERENTIATION**

Throughout this RFA, the terms Applicant and Licensee may be used interchangeably in reference to the preparation and submission of the Application and any requirements preceding the award of the final License. In describing post-License award requirements, an effort is made to use the term “Licensee.”

## **O. HEADINGS/SECTIONS OF THIS RFA**

The headings used in this RFA are for convenience only and shall not affect the interpretation of any of the terms and conditions of this RFA. Further, the division of this RFA into headings, sections and items, which may roughly correspond to items required to be included in the Application as provided under the PML, is only for the convenience of Applicants and the Board. The request from or provision by Applicants of information under or in connection with any section, heading or item of this RFA shall not imply or be construed to limit the applicability of such information to such section, heading or item or any apparently corresponding provision of the PML. The Board and its representatives and designees shall have the right, in their discretion, to use or consider any information provided or disclosed anywhere in an Application or otherwise provided by an Applicant or Manager for any purpose under the PML notwithstanding the heading, section or item of this RFA to which such information may respond or its apparent relevance, or lack thereof, to any other heading, section or item.

## IV. APPLICATION INSTRUCTIONS

### A. GENERAL

This Application is divided into the following sections:

- Applicant Information
- Economic Activity and Business Development
  - Finance and Capital Structure
  - Economics
  - Land, Construction and Design of Physical Plant
  - Internal Controls and Security Systems
- Local Impact and Siting Factors
  - Assessment of Local Support and Mitigation of Local Impact
  - Regional Tourism and Attractions
- Workforce Enhancement Factors
  - Measures to Address Problem Gambling
  - Workforce Development
  - Sustainability and Resource Management

To the extent that an Applicant is a newly formed entity or to date has been a largely non-operational entity, any information required to be provided by the Applicant shall, at a minimum, be provided by the most relevant party or parties, such as the Manager, the primary controlling and/or operating entities/persons of the proposed Gaming Facility and/or its significant business units.

This RFA does not constitute an offer of any nature or kind to any Applicant or its agents. The Commission is under no obligation to issue a License to any of the Applicants. By submitting an Application, the Applicant is deemed to agree to all of the terms of the RFA and the process the RFA and the Act describes. In accordance with PML Section 1314.3, “Within any development region, if the commission is not convinced that there is an applicant that has met the eligibility criteria or the board finds that no applicant has provided substantial evidence that its proposal will provide value to the region in which the gaming facility is proposed to be located, no gaming facility license shall be awarded in that region.”

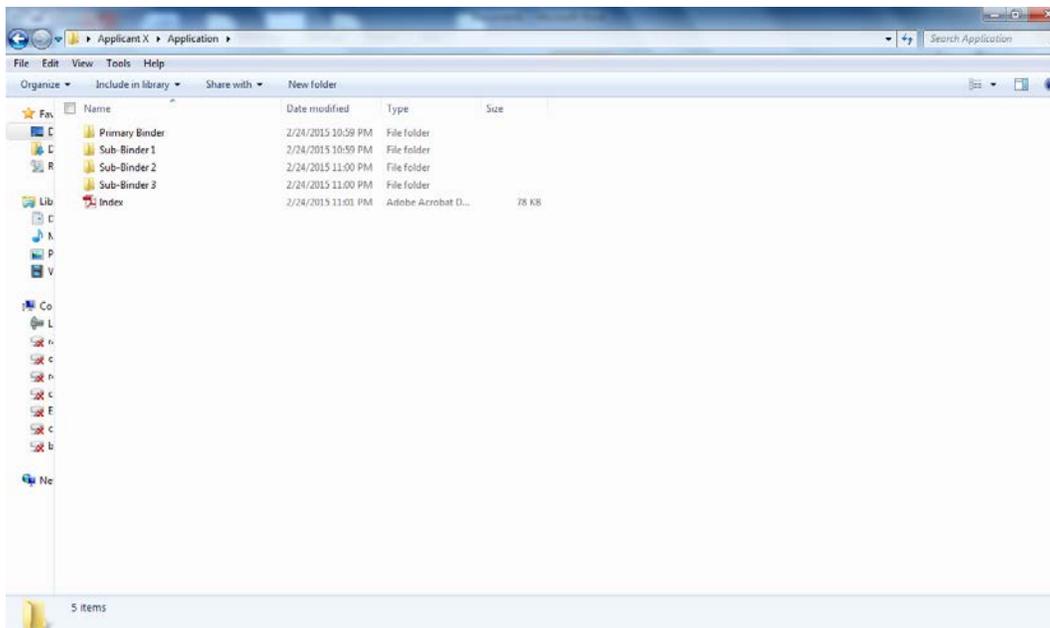
**DURING THE APPLICATION PROCESS, NO APPLICANT, AGENT OF THE APPLICANT, QUALIFIER, OR OTHER ASSOCIATED INDIVIDUAL SHALL CONTACT A BOARD OR COMMISSION MEMBER DIRECTLY. PLEASE REFER TO THE “PERMISSIBLE CONTACTS” SECTION OF THIS RFA.**

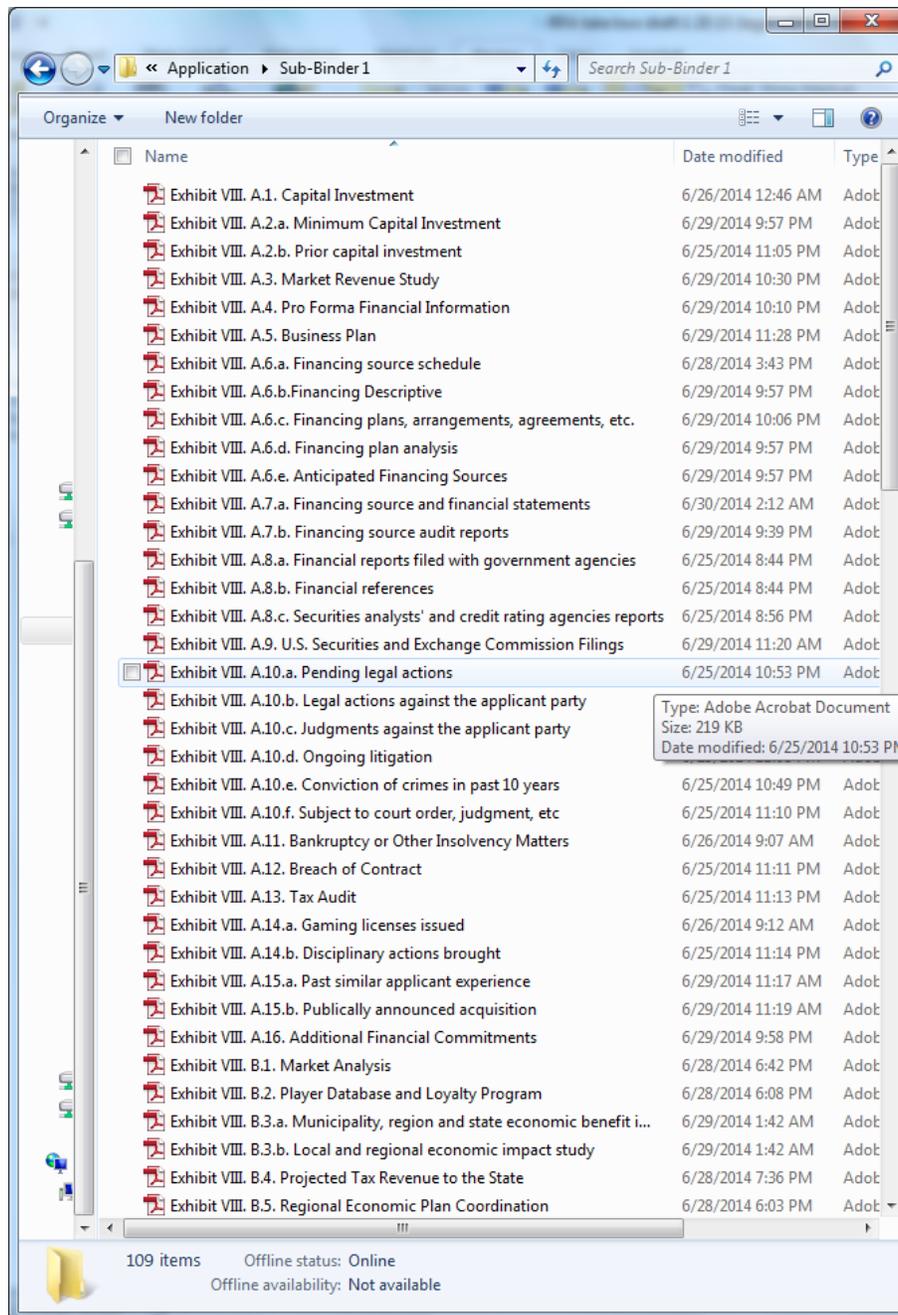
### B. OFFICIAL SUBMISSION

**To apply for a License, a completed Application must be received by the Board by July 6, 2015 at 4:00 p.m. Eastern Daylight Time.** The Board shall have no obligation to accept or review an Application submitted after the established deadline.

The Applicant must submit:

1. Eight (8) identical hard copies of its Application including copies of all executed Attachments in the following format:
  - Exhibit V and VI boxed together, with boxes clearly marked as containing said Exhibits. These boxes should be sealed in Purple tape in order to be readily identifiable.
  - Exhibit VIII boxed on its own, with the box or boxes clearly marked as containing said Exhibit. This box or boxes should be sealed in Orange tape in order to be readily identifiable.
  - Exhibit IX boxed on its own, with the box or boxes clearly marked as containing said Exhibit. This box or boxes should be sealed in Blue tape in order to be readily identifiable.
  - Exhibit X and XIII boxed together, with the box or boxes clearly marked as containing said Exhibits. These boxes should be sealed in Red tape in order to be readily identifiable.
  
2. Ten (10) electronic copies of its Application, including copies of all executed Attachments, in PDF format submitted via ten (10) separate and clearly labeled, USB flash drives. Each USB should contain folders containing Primary Binder, Sub-Binder 1, Sub-Binder 2, Sub-Binder 3 as delineated in RFA Section IV.C, Application Format. PDF files should be named according to Exhibit number and descriptive consistent with RFA Section XII List of Required Exhibits. See Screenshot below for examples:





- Ten (10) additional, clearly labeled USB flash drives or sets of USB flash drives (e.g., separate flash drives may be supplied, for example, for financial materials and for engineering or traffic materials) must be submitted containing interactive electronic versions (e.g., in Microsoft Excel or other file formats commonly used for the production of such material) of each revenue, construction, employment, financial, traffic, infrastructure or similar model, forecast, projection or table presented in an Application so as to enable the Board and the Board's representatives to analyze and tie the calculations and formulas used to produce such model, projection, forecast or table. To the extent supporting tabs, worksheets or data are required to make the supplied model, projection, forecast or table functional in the supplied file format, those supporting tabs, worksheets and data must also be included. A table of contents should accompany each such

additional USB flash drive clearly describing the contents of each file (or set of files) included thereon, the respective file format, and the software application used to produce such file or used to be used to open, display and interact with such file;

4. In addition to the images, renderings and schematics describing the architectural program, site, layout and other physical features of the Gaming Facility that are included in the hard and PDF copies of an Application, submit separately two (2) sets of high-quality files of each such image, rendering or schematic suitable for large-format printing and audio-visual display and two (2) sets of medium-quality files of each such image, rendering or schematic suitable for printing and web publication. Provide each set (i.e. four (4) sets total – two (2) high-quality sets and two (2) low-quality sets) on one or more USB flash drives or solid-state hard drive. A table of contents should accompany each such additional USB flash drive or solid-state hard drive clearly describing the contents of each file (or set of files) included thereon and the respective file format;
5. Two (2) hard copies of each Background Information Form; and
6. Two (2) electronic copies of each Background Information Form in PDF format submitted via two (2) separate, clearly labeled USB flash drives.
7. If your Application includes information that is exempt from disclosure under the FOIL (see “PUBLICLY AVAILABLE APPLICATION MATERIALS” below), then also submit:
  - a. A letter enumerating the specific grounds in the FOIL that support treatment of the material as exempt from disclosure and providing the name, address, and telephone number of the person authorized by the Applicant to respond to any inquiries by the Board concerning the confidential status of the materials;
  - b. Two (2) identical hard copies of the REDACTED Application, each clearly marked “REDACTED Application”; and
  - c. Two (2) electronic copies of the REDACTED Application be submitted via two (2) separate USB flash drives, each clearly labeled “REDACTED Application”;
8. An originally executed copy of the Affirmation (Attachment 1 hereof) executed by the Applicant;
9. An originally executed Addendum Acknowledgement Form (in the form of Attachment 2 to this RFA) executed by the Applicant for each addendum issued to this RFA;
10. An original executed copy of the Waiver (Attachment 3 to this RFA) executed in counterparts by an authorized signatory of each of the Applicant, the Manager and any direct or indirect owner of the Applicant and the Manager (excluding any equity holders of any publicly-held company);\*
11. An originally executed copy of the Acknowledgement of Amendments to RFA (Attachment 4 hereof) executed by the Applicant;

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\* The Board may require that other parties also execute and deliver a Waiver in the form of Attachment 3.

## C. APPLICATION FORMAT

Each hard copy version of the Application must be submitted in three-ring binders. Each set of hard copies shall have a minimum of three sub-binders:

1. Primary Binder: Information required to be submitted under the headings, “EXECUTIVE SUMMARY” and “APPLICANT INFORMATION”, and a copy of the executed version of each form attached as an Attachment to this RFA.
2. Sub-Binder 1: Information required to be submitted under the heading “ECONOMIC ACTIVITY AND BUSINESS DEVELOPMENT” and including information under the subheadings:
  - a. “FINANCE AND CAPITAL STRUCTURE”
  - b. “ECONOMICS”
  - c. “LAND, CONSTRUCTION AND DESIGN OF PHYSICAL PLANT”
  - d. “INTERNAL CONTROLS AND SECURITY SYSTEMS”
3. Sub-Binder 2: Information required to be submitted under the heading “LOCAL IMPACT AND SITING FACTORS” and including information under the subheadings:
  - a. “ASSESSMENT OF LOCAL SUPPORT AND MITIGATION OF LOCAL IMPACT”
  - b. “REGIONAL TOURISM AND ATTRACTIONS”
4. Sub-Binder 3: Information required to be submitted under the heading “WORKFORCE ENHANCEMENT FACTORS” and including information under the subheadings:
  - a. “MEASURES TO ADDRESS PROBLEM GAMBLING”
  - b. “WORKFORCE DEVELOPMENT”
  - c. “SUSTAINABILITY AND RESOURCE MANAGEMENT”

### NOTE:

If information to be included in a particular binder cannot fit in a single binder, that section may be split between multiple binders, but more than one section may not appear in a single binder.

Each binder must be clearly labeled with the Applicant’s name, the section name, and the words “Binder # of #” if one section comprises multiple binders.

Each exhibit included within each binder shall be tabbed and the tab must clearly identify the corresponding exhibit number.

**All Applications must be submitted by private delivery service, in person delivery, or by U.S. Postal Service to:**

**Gail P. Thorpe  
Supervisor, Contract Administration  
New York State Gaming Commission  
One Broadway Center  
Schenectady, NY 12301-7500**

**Applications may NOT be submitted by email or other electronic means.**

## **D. PUBLIC PRESENTATIONS**

After the July 6, 2015 submission deadline, but no earlier than July 27, 2015, each Applicant will be required to make an informational introductory presentation of its Application to the Board. The presentation is intended to afford the Applicant an opportunity to provide the Board with an overview of the contents of the Application, explain any particularly complex information, and highlight any specific areas it desires. The Board will have the opportunity to ask Applicants questions following their presentations. Timing and scheduling of introductory presentations will depend upon the Applications received. The order of the presentations will be drawn by lot in a public manner at the direction of the Board. Additionally, prior to the presentations, the Board will post to the Commission's Web site the rules and procedures relating to the conduct of such presentations.

## **E. PUBLIC HEARING**

The Board expects to convene a public hearing or public hearings in Region Five to provide the Board with the opportunity to address questions and concerns relative to the proposal of an Applicant to build a Gaming Facility, including the scope and quality of the gaming area and amenities, the integration of the Gaming Facility into the Host Municipality and nearby municipalities and the extent of required mitigation plans and receive input from members of the public from an impacted community.

The Applicants for Region Five and their agents and representatives are required to attend the public hearing(s), may make a presentation and respond to questions of the Board or public comments as directed by the Board or the Board's designee. Each Applicant must have at least one individual available who, based on actual knowledge, is prepared to respond on behalf of the Applicant to such questions or public comments that can reasonably be anticipated in regard to the contents of its Application, including the scope and quality of the proposed gaming area and amenities, the integration of the proposed Gaming Facility into the Host Municipality and nearby municipalities and the extent of required mitigation plans.

Representatives of the Host Municipalities, representatives of nearby municipalities and representatives of any impacted live entertainment venue may attend the public hearing, may make presentations and may respond to questions as directed by the Board or the Board's designee.

Others may attend the public hearing and may make a presentation at the discretion of the Board. Before the hearing, the Board will prescribe the manner in which it will receive comments from members of the public, and may take the opportunity during the hearing to read into the record any letters of

support, opposition or concern from members of the public in the vicinity of the proposed Gaming Facility.

## **F. PUBLIC DISCLOSURE OF APPLICATION MATERIALS**

The Board intends to treat Applications as public records and will make them available to the public, with applicable exemptions pursuant to the FOIL.

The FOIL provides for certain exemptions from public disclosure including, among others, an exemption from disclosure for trade secrets or information the disclosure of which would cause substantial injury to the competitive position of a commercial enterprise. This exemption applies both during and after the evaluation process. The FOIL also provides an exemption for records that are “specifically exempted from disclosure by state or federal statute.” PML Section 1313.2, provides an exemption from disclosure under the FOIL for “trade secrets, competitively sensitive or other proprietary information provided in the course of an application for a gaming license, the disclosure of which would place the applicant at a competitive disadvantage.” See also, Section 87.2.(d) of the New York Public Officers Law

Any Application submitted that contains confidential information must be conspicuously marked on the outside as containing confidential information, and each page upon which confidential information appears must be conspicuously marked as containing confidential information. Identification of the entire Application as confidential may be deemed non-responsive and may disqualify the Applicant. If an Applicant designates any portion of an Application as confidential, the Applicant must submit copies of its Application from which the confidential information has been excised or redacted. These copies of an Application are referred to as the “REDACTED” copies as described herein under “APPLICATION INSTRUCTIONS – OFFICIAL SUBMISSION”. The confidential material must be redacted or excised in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the proposal as possible.

All determinations concerning whether Applications and/or related documents submitted in response to this RFA are subject to disclosure under the FOIL will be made by the Board or the Commission, as applicable, in their sole discretion.

## **G. INCURRED EXPENSES AND ECONOMY OF PREPARATION**

Neither the Commission, the Board nor the State is responsible for any costs incurred by an Applicant in preparing and submitting an Application, responding to requests for clarification, in making an oral presentation or attending or participating in any hearing, in providing a demonstration, completing the Commission’s background investigation, or in performing any other activities related to this RFA. Applications should be prepared simply and economically, providing a straightforward and concise description of how the Applicant proposes to meet the requirements of this RFA.

## **V. EXECUTIVE SUMMARY**

Each Applicant shall submit as Exhibit V. of its Application, an executive summary, not to exceed four (4) single-sided pages in length, highlighting the principal terms of its Application.

## **VI. APPLICANT INFORMATION**

### **A. NAME OF APPLICANT**

Submit as Exhibit VI. A. the Applicant's and, if applicable, the Manager's, full name as it appears on its certificate of incorporation, charter, by-laws or other official document. Also include any d.b.a. or trade name.

### **B. CONTACT PERSON**

Submit as Exhibit VI. B. the name, title, email address and telephone number of the individual to be contacted in reference to this Application.

### **C. LOCATION OF THE PRINCIPAL PLACE OF BUSINESS OF THE APPLICANT**

Submit as Exhibit VI. C. the street address, city, state, zip code and telephone number for the Applicant's and, if applicable, the Manager's principal place of business. Also include the URL for any website maintained by or for the Applicant and, if applicable, the Manager.

### **D. TYPE OF BUSINESS FORMATION**

Submit as Exhibit VI. D. the type of business entity under which the Applicant and, if applicable, the Manager, is formed (e.g., corporation, limited liability company, partnership, etc.), the state (or other jurisdiction) of formation and the Federal Tax Identification Number. Also, attach evidence of existence or formation as an entity (e.g., a certificate of good standing) as of a date not earlier than ten (10) days prior to the submission of the Application.

### **E. TABLE OF OWNERSHIP**

Submit as Exhibit VI. E. a full and complete ownership chart for the Applicant and, if applicable, the Manager and their respective Affiliates including percentage ownership interests in the Applicant and the Manager by their respective direct and indirect owners illustrating the ultimate owners and real parties in interest. For a publicly held company, disclosure of owners may be limited to owners owning five (5) percent or more of the publicly held company.

### **F. ORGANIZATIONAL CHART**

Submit as Exhibit VI. F. an organizational chart of the Applicant and, if applicable, the Manager illustrating the organizational structure likely to be used by the Applicant or the Manager in the event that the Applicant is awarded a License. The organizational chart should include all Casino Key Employees. Further, specify which executives are anticipated to be on-site in New York and which will be based in other jurisdictions but assisting in oversight of New York operations. N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1301.8 defines "Casino key employee" as any natural person employed by a gaming facility licensee, or holding or intermediary company of a gaming facility licensee, and involved in the

operation of a licensed gaming facility in a supervisory capacity and empowered to make discretionary decisions which regulate gaming facility operations.

## **G. NAMES, ADDRESSES AND EXPERIENCE OF DIRECTORS AND OFFICERS**

Submit as Exhibit VI. G. the name, address, and title of each director, manager or general partner of the Applicant and, if applicable, the Manager, and each officer and Casino Key Employee of the Applicant or the Manager. Also, provide resumes of all principals and known individuals who will perform executive management duties or oversight of the Applicant or the Manager.

## **H. NAMES, ADDRESSES AND OWNERSHIP AND OTHER INTERESTS**

Submit as Exhibit VI. H. the name and business address of each person or entity that has a direct or indirect ownership or other proprietary interest (financial, voting or otherwise) in the Applicant and, if applicable, the Manager. Also, include a description of all such interests. For a publicly held company, disclosure of owners may be limited to owners owning five (5) percent or more of the publicly held company.

## **I. NAMES AND ADDRESSES OF PROMOTERS, SPONSORS AND OTHERS**

Submit as Exhibit VI. I. the name and business address of all promoters, sponsors, personnel, consultants, sales agents or other entities involved in aiding or assisting the Applicant's efforts to obtain a License pursuant to this RFA.

## **J. REGION AND HOST MUNICIPALITIES**

Submit as Exhibit VI. J. the Region and the Host Municipalities in which the Gaming Facility is proposed to be located. Also provide the name, business address, email address, telephone number and fax number of the Applicant's primary contact at the Host Municipalities.

## **K. CONFLICTS OF INTEREST**

The Board desires to ensure that there is no real or perceived conflict of interest at any time during the RFA process. Submit as Exhibit VI. K. a description of any relationship or affiliation of the Applicant, the Manager or any of their respective Affiliates that currently exists or existed in the past five (5) years with any member, employee, consultant or agent of the Board or the Commission that is a conflict of interest or may be perceived as a conflict of interest during the RFA process. Further, if any such conflict should arise during the term of the RFA process, the Applicant shall notify the Board, in writing, of such conflict.

The phrase "any relationship or affiliation" is intended to mean any connection, whether financial, contractual, ownership, professional, social or otherwise, between a person or entity and another person or entity. The phrase "conflict of interest" is intended to mean any relationship, affiliation or situation that could be reasonably interpreted to compromise the integrity of the Application selection process by creating a risk that professional judgment or actions will be influenced unduly by a secondary interest. Applicants are encouraged to err on the side of disclosure of any relationship, affiliation or situation that could be a direct or indirect conflict of interest or perceived conflict of interest.

The Board shall make the final determination as to whether any activity constitutes a conflict of interest pursuant to this provision. The Board's decision shall be final and without recourse; however, the Board will not make any such decision without providing the Applicant or the Manager, as applicable, with an opportunity to present comments.

If an Applicant does not identify any direct or indirect conflict of interest, or perceived conflict of interest, the Applicant shall state that no conflict or perceived conflict of interest exists with respect to its proposal. If the Applicant identifies a conflict of interest or perceived conflict of interest, the Applicant shall disclose the conflict and the steps the Applicant will take to resolve such conflict.

## **L. PUBLIC OFFICIALS**

Submit as Exhibit VI. L. a list of names, titles, addresses and telephone numbers of any Public Officials or officers or employees of any governmental entity, and Immediate Family Member(s) of said Public Officials, officers or employees, who, directly or indirectly, own any financial interest in, have any beneficial interest in, are the creditors of, hold any debt instrument issued by, or hold or have an interest, direct or indirect, in any contractual or service relationship with the Applicant, the Manager or their Affiliates.

Also submit a statement listing all persons, not limited to public officials, and entities not listed in the immediately preceding paragraph who or that have any arrangement, written or oral, to receive any compensation from anyone in connection with the Application, the RFA process or obtaining of a License from the State, describing the nature of the arrangement, the service to be provided and the amount of such compensation, whether actual or contingent.

## **M. APPLICATION FEE**

All Applicants are required to pay an Application fee of \$1 million to the Commission to defray the costs associated with the processing of the Application, the investigation of the Applicant and related matters. If the costs of processing, investigation and related matters exceed the initial application fee, the Applicant shall pay an additional amount to the Commission within thirty (30) days after notification of insufficient fees or the Application may be rejected.

The purpose of the Application Fee is to defray the costs of the Applicant's investigation and processing. A single Application Fee may govern multiple Applications, provided the financing, organizational structure, and principals and officers of the Applicant are identical within each Application. If there is any material disparity between the submitted Applications, each will require an independent Application Fee.

It is important to note that the ultimate charge for the Application process is determined by the actual costs of the investigation and processing. Thus, if the costs of investigating and processing an Application exceed the Application Fee, the Applicant will be charged the excess amount. Conversely, if the costs of the investigation and processing are less than Application Fee, the unexpended funds will be returned to the Applicant.

The Application fee must be paid by electronic funds transfer to an account designated by the Commission and must be received concurrent with submission of the Application.

## **N. CONTRACTS WITH STATE OF NEW YORK**

Submit as Exhibit VI. N. a list of any current or previous contracts that the Applicant has had with, and any current or previous licenses that the Applicant has been issued by or under, any department or agency of the State. Include the contract or license name and number and a concise explanation of the nature of the contract or license.

## **O. CASINO MANAGER**

If a Manager that is different from the Applicant will manage the Gaming Facility, submit as Exhibit VI. O. a description of the relationship between the Manager and the Applicant including, without limitation, a summary of the terms of any and all agreements, contracts or understandings between the Manager and the Applicant. Attach copies of any such written agreements, contracts or understandings.

## **P. ORGANIZATIONAL DOCUMENTS**

Submit as Exhibits VI. P.1. through VI. P.13., as applicable, copies of the following documents that apply to the Applicant, the Applicant's owners, any Manager or any of the Manager's owners:

1. certified copy of its certificate of incorporation, articles of incorporation or corporate charter;
2. bylaws as amended through the date of the Application;
3. certified copy of its certificate of formation or articles of organization of a limited liability company;
4. limited liability company agreement or operating agreement as amended through the date of the Application;
5. certified copy of its certificate of partnership;
6. partnership agreement as amended through the date of the Application;
7. certified copy of its certificate of limited partnership;
8. limited partnership agreement as amended through the date of the Application;
9. other legal instrument of organization;
10. joint venture agreement;
11. trust agreement or instrument, each as amended through the date of the Application;
12. voting trust or similar agreement; and
13. stockholder, member or similar agreement.

## VII. EVALUATION CRITERIA AND SELECTION PROCESS

In recommending an Application for License, the Board is required to follow the provisions of the PML, which require the evaluation of the Applications using the factors specified in the Act. The following Sections require the provision of information that will permit the Board to evaluate Applications appropriately.

The Board may also engage the assistance of various consultants including, without limitation, engineers, financial advisors, market analysts, or other advisors to assist with its review.

The decision by the Board to award a recommendation for License shall be weighted by:

### A. ECONOMIC ACTIVITY AND BUSINESS DEVELOPMENT FACTORS (Statutory Value: 70 percent)

The decision by the Board to select an Applicant shall be weighted by seventy (70) percent based on economic activity and business development factors including the following:

1. realizing the maximum capital investment exclusive of land acquisition and infrastructure improvements;
2. maximizing revenues received by the State and localities;
3. providing the highest number of quality jobs in the Gaming Facility;
4. building a Gaming Facility of the highest caliber with a variety of quality amenities to be included as part of the Gaming Facility;
5. offering the highest and best value to patrons to create a secure and robust gaming market in the Region in which the Gaming Facility is located and the State;
6. providing a market analysis detailing the benefits of the site location of the gaming facility and the estimated recapture rate of gaming-related spending by residents travelling to an out-of-state Gaming Facility;
7. offering the fastest time to completion of the full Gaming Facility;
8. demonstrating the ability to fully finance the Gaming Facility; and
9. demonstrating experience in the development and operation of a quality Gaming Facility.

### B. LOCAL IMPACT AND SITING FACTORS (Statutory Value: 20 percent)

The decision by the Board to select an Applicant shall be weighted by twenty (20) percent based on local impact and siting factors including the following:

1. mitigating potential impacts on host and nearby municipalities that might result from the development or operation of the Gaming Facility;
2. gaining public support in the host and nearby municipalities that may be demonstrated through the passage of local laws or public comment received by the Board or the Applicant;
3. operating in partnership with and promoting local hotels, restaurants and retail facilities so that patrons experience the full diversified regional tourism industry; and
4. establishing a fair and reasonable partnership with live entertainment venues that may be impacted by a Gaming Facility under which the Gaming Facility actively supports the mission and the operation of the impacted entertainment venues.

### **C. WORKFORCE ENHANCEMENT FACTORS** **(Statutory Value: 10 percent)**

The decision by the Board to select an Applicant shall be weighted by ten (10) percent based on workforce enhancement factors including the following:

1. implementing a workforce development plan that utilizes the existing labor force, including the estimated number of construction jobs a proposed Gaming Facility will generate, the development of workforce training programs that serve the unemployed and methods for accessing;
2. employment at the Gaming Facility;
3. taking additional measures to address problem gambling including, without limitation, training of gaming employees to identify patrons exhibiting problems with gambling;
4. utilizing sustainable development principles including, without limitation:
  - a. having new and renovation construction certified under the appropriate certification category in the Leadership in Energy and Environmental Design Green Building Rating System created by the United States Green Building Council;
  - b. efforts to mitigate vehicle trips;
  - c. efforts to conserve water and manage storm water;
  - d. demonstrating that electrical and HVAC equipment and appliances will be Energy Star labeled where available;
  - e. procuring or generating on-site ten (10) percent of its annual electricity consumption from renewable sources; and

- f. developing an ongoing plan to submeter and monitor all major sources of energy consumption and undertake regular efforts to maintain and improve energy efficiency of buildings in their systems;
5. establishing, funding and maintaining human resource hiring and training practices that promote the development of a skilled and diverse workforce and access to promotion opportunities through a workforce training program that:
  - a. establishes transparent career paths with measurable criteria within the Gaming Facility that lead to increased responsibility and higher pay grades that are designed to allow employees to pursue career advancement and promotion;
  - b. provides employee access to additional resources, such as tuition reimbursement or stipend policies, to enable employees to acquire the education or job training needed to advance career paths based on increased responsibility and pay grades; and
  - c. establishes an on-site child day care program;
6. purchasing, whenever possible, domestically manufactured slot machines for installation in the Gaming Facility;
7. implementing a workforce development plan that:
  - a. incorporates an affirmative action program of equal opportunity by which the Applicant guarantees to provide equal employment opportunities to all employees qualified for licensure in all employment categories, including persons with disabilities;
  - b. utilizes the existing labor force in the state;
  - c. estimates the number of construction jobs a Gaming Facility will generate and provides for equal employment opportunities and that includes specific goals for the utilization of minorities, women and veterans on those construction jobs;
  - d. identifies workforce training programs offered by the Gaming Facility; and
  - e. identifies the methods for accessing employment at the Gaming Facility; and
8. demonstrating that the Applicant has an agreement with organized labor, including hospitality services, and has the support of organized labor for its Application, which specifies:
  - a. the number of employees to be employed at the Gaming Facility, including detailed information on the pay rate and benefits for employees and contractors in the Gaming Facility and all infrastructure improvements related to the project; and

- b. detailed plans for assuring labor harmony during all phases of the construction, reconstruction, renovation, development and operation of the Gaming Facility.

## VIII. ECONOMIC ACTIVITY AND BUSINESS DEVELOPMENT (Statutory Value: 70 percent)

### A. FINANCE AND CAPITAL STRUCTURE

#### 1. CAPITAL INVESTMENT

- a. **Minimum Investment.** The Board established the following minimum capital investment for a Gaming Facility within Region Five:

Broome, Chemung, Schuyler, Tioga or Tompkins Counties:	\$ 85,000,000
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Wayne County or Seneca Counties:	\$ 135,000,000
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If a License is awarded for a Gaming Facility located in Wayne or Seneca Counties, then for the remaining portion of Region Five (comprising Broome, Chemung, Schuyler, Tioga or Tompkins Counties):

\$ 70,000,000
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- b. **Calculating Minimum Capital Investment.** The Board has determined that for purposes of calculating the “Minimum Capital Investment,” the Applicant shall include only those costs related to:

1. actual construction of the Gaming Facility including any hotel, gaming area, restaurants, convention space, back-of-house and other amenities;
2. preparation of the site including demolition, excavation, clearing, grading, earthwork and abatement;
3. remediation of environmental conditions or hazardous materials;
4. improvement of the existing or construction of new infrastructure inside the property boundaries of the site of the Gaming Facility including those related to drainage, utility support, roadways, parking, interchanges, fill and soil or groundwater or surface water contamination issues, sewer, storm water, landscaping and public transportation;
5. pre-opening purchase of furniture, fixtures, equipment, gaming equipment, information technology equipment and personal property to be used within the Gaming Facility including those within hotels, restaurants, retail and other components associated with the Gaming Facility;
6. design of the Gaming Facility including building design, interior design and exterior site design; and

7. professional and management fees including for engineers, architects, developers, contractors, or operators to the extent that they represent indirect and overhead costs related to the development of the Gaming Facility and do not represent profits or payout as part of partnership agreements;
- c. **Exclusions from Minimum Capital Investment Calculation.** The Board has determined that the “Minimum Capital Investment” shall not include those costs related to:
1. the purchase or lease or optioning of land where the Gaming Facility will be located including costs relative to registering, appraising, transferring title, or obtaining title insurance for the land;
  2. carried interest costs and other associated financing costs;
  3. mitigating impacts on host and nearby municipalities whether directly attributable to a specific impact or not;
  4. designing, improving or constructing the infrastructure outside the property boundaries of the site of the Gaming Facility including those related to drainage, utility support, roadways, interchanges, fill and soil or groundwater or surface water contamination issues, sewer, storm water, landscaping, and public transportation whether or not such costs are the result of any agreement with a Host Municipality or nearby municipality;
  5. legal fees;
  6. promotional, communications and marketing costs prior to and attributable to the efforts to obtain support for the Gaming Facility project including costs associated of obtaining local support for the Gaming Facility;
  7. payments to the Board or the Commission including, without limitation, the application fee, investigation fees and other fees and other similar fees paid to municipalities;
  8. marketing, advertising and promotions; and upfront costs designed to implement workforce development plans;
  9. consulting and due diligence necessary to fund studies to devise engineering solutions in accordance with the Act including traffic studies, environmental studies and other associated mitigation studies;
  10. applications for Federal, state and municipal permits;
  11. the safety, training, quality assurance, or testing incurred during the construction of the Gaming Facility;
  12. the pre-opening bankroll, defined as unrestricted cash maintained in the

13. cage or in cash and cash equivalent bank accounts that is readily available to meet prize payment obligations; and
14. State and local incentives.

## 2. APPLICANT MINIMUM CAPITAL INVESTMENT

- a. Submit as Exhibit VIII. A.2.a. a calculation of Applicant's Minimum Capital Investment for its Gaming Facility (which capital investment shall not be less than the applicable Minimum Capital Investment for the particular Region in which the Gaming Facility will be located). Include with such calculation a detailed description of the costs included in such calculation. Applicants may propose an aggregate capital investment in excess of the Minimum Capital Investment.
- b. For purposes of providing the information required in Exhibit VIII. A.2.a. the Applicant shall not include costs incurred prior to the Effective Date of the Act. Rather, the Applicant shall submit as Exhibit VIII. A.2.b. (i) a description of any capital investment made by the Applicant prior to the Effective Date including the date, type and dollar amount of any such investment and the reason for making the investment; (ii) the current fair market value of capital assets obtained from such prior capital investment; (iii) the amount of VLT Capital Award funds or other external reimbursement of such prior capital investment costs; and (iv) state whether the Applicant believes such capital investment(s) should be included in calculating the Applicant's Minimum Capital Investment and if yes, the reasons why such amounts should be included. Pursuant to PML Section 1315, the Board may, in its sole discretion, determine what portion, if any, of such capital investments may be included toward computing the Applicant's Minimum Capital Investment.

### **3. MARKET/REVENUE STUDY**

Submit as Exhibit VIII. A.3. a study completed by an independent expert assessing the size of the potential gaming market for the proposed Gaming Facility. Include annual projections of gaming patronage (e.g. by gaming visitor count) and gaming revenues (including itemization of slot, table and gross revenues) annually for a period of at least the first ten (10) years after opening for gaming on a high-, average- and low-case basis. The high-, average- and low-case bases should be the same as used for tax revenue analysis provided by the Applicant pursuant to Item VIII. B.4 hereof.

Include a description of all assumptions that are material to the expert's projections. Substantiate the bases and reasonableness of all such assumptions, for example, by comparison to comparable gaming facilities in comparable gaming markets. The study should explain the model or methodology used to derive the projections, identify the sources and robustness of input data, report the results of projections and include a comparison of those results to actual observed visitation and revenue performance against the most comparable gaming facilities in other jurisdictions for which data are available.

To be considered an "independent expert," a third party should maintain appropriate credentialing and be so experienced as to make credible, independent findings and determinations. A third party is not considered to be an independent expert merely by having been retained by an Applicant.

### **4. PRO-FORMA FINANCIAL INFORMATION**

Submit as Exhibit VIII. A.4. for the proposed Gaming Facility, a detailed financial forecast in the form of a pro-forma (i) statement of material revenue lines, material expense categories, EBITDA and net income, (ii) balance sheet and calculation of debt-to-equity ratio, and (iii) statement of cash flows, each, annually for a period of at least the first ten (10) years after opening for gaming on a high-, average- and low-case basis. The high-, average- and low-case pro-forma forecasted financial information should be presented for the high-, average- and low-case revenue and gaming patronage projections for such years that are reported in the independent expert's gaming market study provided pursuant to Item VIII. A.3. of this RFA.

Detail all assumptions relevant to the pro-forma forecasted financial information and relevant projected operating statistics, including but not limited to: (i) operating margins; (ii) liquidity; (iii) margins; (iv) growth; (v) revenue; (vi) visitation; (vii) win per day; (viii) hold percentages; (ix) number of slot and table positions; and (x) customer database growth. Substantiate the bases and reasonableness of all such assumptions, for example, by comparison to the Applicant's other gaming facilities currently in operation or by comparison to the most comparable gaming facilities for which data are available.

### **5. BUSINESS PLAN**

Submit as Exhibit VIII. A.5. a qualitative five (5) year business plan for the proposed Gaming Facility describing, at least, the components and projected results of the material revenue lines and expense categories of the proposed Gaming Facility, the Applicant's sources and availability of financing, the principal business and financing risks of the proposed Gaming Facility and plans to mitigate those risks.

### **6. CAPITAL AND FINANCING STRUCTURE**

- a. Submit as Exhibit VIII. A.6.a. a schedule for each Financing Source that is an entity, describing such entity's current capital structure, including secured debt, unsecured debt, and equity. Indicate maturity dates, interest rates, preferred dividends or distributions and key covenants. For each Financing Source that is a trust or individual, provide evidence of financial wherewithal to participate in the proposed financing. Describe and quantify any other material financial commitments, obligations and guarantees that would materially impact such wherewithal.

With its initial Application pursuant to this RFA, each Applicant is required to submit background Investigation Forms for, among others, persons having a beneficial or proprietary interest of five (5) percent or more in an Applicant or Manager. The five (5) percent beneficial or proprietary interest threshold is only an initial request, and the Commission and Board reserve the right to require submission of Background Investigation Forms for and investigate the suitability of any other Affiliate, Close Associate or Financing Source of the Applicant as the Commission and Board may in their discretion determine.

Neither the statute nor the RFA contemplates exclusion of Institutional Investors. Such subject matter will likely be considered in the context of Commission rulemaking. The Commission has, however, made Institutional Investor exceptions in other gaming contexts. Should the Commission choose to craft such an exception, it is likely the exception would be consistent with other uses.

For financing plans, highly confident letters, financing commitments and financing arrangements or agreements in the form of any syndicated debt facility or underwritten offering, the arrangers, agents, book runners and underwriters are Financing Sources for which the Application should include the disclosures to be made as to Financing Sources. For third party financings and offerings that are not syndicated or underwritten, the individual participants are each a Financing Source for which the Application should include the disclosures to be made.

- b. Submit as Exhibit VIII. A.6.b. a detailed description of how the project will be financed. Provide a statement of financing sources and uses for the Application fee, Application and suitability investigation expenses, license fee, capital investment deposit, and construction of the proposed Gaming Facility based on the proposed construction budget and timeline provided pursuant to Items VIII.C.19. and VIII.C.20. of this RFA, including reasonable and customary contingencies, and the pro-forma forecasted financial information provided pursuant to Item VIII.A.4. of this RFA. Provide a statement of financing sources and uses, annually, for at least the first three (3) years after beginning gaming operations using each of the high-, average- and low-case scenarios included in the pro-forma forecasted financial information provided pursuant to Item VIII.A.4. of this RFA. Expressly identify the funding source to cover any forecasted operating losses.
- c. Submit as Exhibit VIII. A.6.c. a description of the financing plans, arrangements and agreements for the Application fee, Application and suitability investigation expenses, license fee, capital investment deposit, construction and first three (3) years of operation of the proposed Gaming Facility. For debt financing, describe the material terms, conditions and covenants of any debt commitment letter or debt financing facility agreement that the Applicant has entered into or, if not providing such letters and/or agreements, the anticipated material terms, conditions and covenants of the anticipated debt financing arrangements. Provide a copy of each debt commitment letter and debt facility agreement. For equity other than common equity, describe

the material terms and economic rights of each class and series of equity. Provide a copy of each legal document defining such terms and economic rights. Provide a copy of any term sheets, offering documents or similar documents describing the material terms of any current or contemplated public or private offering of equity the proceeds of which may be used to finance the construction and first three (3) years of operation of the proposed Gaming Facility. Provide copies of any highly confident or other similar letters or representations from financial advisors describing the likely availability of debt and equity financing for the application fee, Application and suitability investigation expenses, license fee, capital investment deposit, construction and first three (3) years of operation of the proposed Gaming Facility.

- d. Submit as Exhibit VIII. A.6.d. an analysis of how the financing plans for the Application fee, Application and suitability investigation expenses, license fee, capital investment deposit, construction and first three (3) years of operation of the proposed Gaming Facility will affect each Financing Source's compliance with the financial covenants under its current financing arrangements.
- e. Submit as Exhibit VIII. A.6.e. a schedule of the Financing Sources' anticipated capital structure after construction and first three (3) years of operation of the proposed Gaming Facility, including secured debt, unsecured debt, and equity. Provide an analysis supporting the Financing Source's ability to service their contemplated post-opening capital structure and material financial commitments, obligations and guarantees.

## **7. FINANCIAL STATEMENTS AND AUDIT REPORT**

- a. Submit as Exhibit VIII. A.7.a. for the Applicant and each Financing Source, (i) audited annual financial statements prepared by an independent registered public accounting firm in accordance with U.S. Generally Accepted Accounting Principles ("**GAAP**") for each of the last five (5) fiscal years; and (ii) for any fiscal quarter(s) of the current fiscal year that have ended before the date Applications are due, unaudited quarterly financial statements. If, for any entity, audited annual financial statements are unavailable for any given period, provide unaudited annual financial statements prepared in accordance with GAAP. For any individual, provide annual financial statements along with an attestation by such individual that such statements are true and accurate. In lieu of hard copies, a link to the location of all responsive material is sufficient to fulfill this requirement.
- b. Submit as Exhibit VIII. A.7.b. for the Applicant, an independent audit report of all financial activities and interests including, but not limited to, the disclosure of all contributions, donations, loans or any other financial transactions to or from a gaming entity or operator in the past five (5) years.

## **8. DOCUMENTATION OF FINANCIAL SUITABILITY AND RESPONSIBILITY**

- a. Submit as Exhibit VIII. A.8.a. any bank references, business and personal income and disbursement schedules, tax returns and other reports filed with government agencies and business and personal accounting check records and ledgers that, pursuant to PML Section 1313.1.(e). present clear and convincing evidence of financial stability.

- b. Submit as Exhibit VIII. A.8.b. at least three (3) financial references from banks or other financial institutions attesting to each Financing Source's creditworthiness.
- c. Submit as Exhibit VIII. A.8.c. copies of securities analysts' and credit rating agencies' reports for the past three (3) years, if any, covering any Financing Source.

## **9. U.S. SECURITIES AND EXCHANGE COMMISSION FILINGS; NOTICES AND REPORTS TO FINANCING SOURCES AND EQUITY HOLDERS**

Submit as Exhibit VIII. A.9. copies of all U.S. Securities and Exchange Commission ("**SEC**") filings, if any, for the Financing Sources, for the three (3) fiscal years ended before the date Applications are due and any interim period between the end of the most recent fiscal year and the date Applications are due, including any SEC filings made by the Financing Sources on a voluntary basis. To the extent not duplicative of the preceding sentence, provide copies of all notices and reports delivered by the Financing Sources to financing sources and agents, equity holders or others for the three (3) fiscal years ended before the date Applications are due and for any interim period between the end of the most recent fiscal year and the date Applications are due that describe the Financing Sources' general business, business risks, results of operation and financial condition, material agreements, employment arrangements and other similar matters that are required to be included in annual, quarterly and periodic reports filed with the SEC by public companies. Omit from such SEC filings and notices and reports delivered to financing sources and agents, equity holders and others the financial statements for any period covered by the financial statements provided pursuant to Item VIII.A.7. of this RFA, but indicate such omission by inserting a page in such SEC filings where the omission occurs that briefly describes the financial statements so omitted. In lieu of physical submissions, an Applicant may provide links to all responsive materials.

## **10. LEGAL ACTIONS**

Submit as Exhibit VIII. A.10. the following information relating to legal actions of any Applicant Party:

- a. A statement as to whether there are any pending legal actions, whether civil, criminal or administrative in nature, to which the Applicant Party is a party and a brief description of any such actions;
- b. A brief description of any settled or closed legal actions, whether civil, criminal or administrative in nature, against the Applicant Party over the past ten (10) years;
- c. A description of any judgments against the Applicant Party within the past ten (10) years, including the case name, number, court, and what the final ruling or determination was from the court, administrative body or other tribunal;
- d. In instances where litigation is ongoing and the Applicant Party has been directed not to disclose information by the court, provide the name of the judge, location of the court, and case name and number;
- e. A statement whether the Applicant Party was indicted, accused or convicted of a crime or was a subject of a grand jury or criminal investigation during the past ten (10) years; and

- f. A statement whether the Applicant Party was the subject of any order, judgment or decree of any court, administrative body or other tribunal of competent jurisdiction permanently or temporarily enjoining it from or otherwise limiting its participation in any type of business, practice or activity during the past ten (10) years.

## **11. BANKRUPTCY OR OTHER INSOLVENCY MATTERS**

Submit as Exhibit VIII. A.11. a description of any bankruptcies (voluntary or involuntary), assignments for the benefit of creditors, appointments of a receiver or custodian or similar insolvency proceedings made, commenced or pending during the past ten (10) years by or involving any Applicant Party. Provide the name of the parties, the case number, the name of the court, and a description of the matter and its status.

## **12. BREACH OF CONTRACT**

Submit as Exhibit VIII. A.12. a description of any contract, loan agreement or commitment that any Applicant Party has breached or defaulted on during the past ten (10) years and provide information for any lawsuit, administrative proceeding or other proceeding that occurred as a result of the breach or default.

## **13. TAX AUDIT**

Submit as Exhibit VIII. A.13. a description of any delinquencies in the payment of or in dispute over the filings concerning or the payment of any fees or tax required under any Federal, state or municipal law within the past ten (10) years by an Applicant Party.

## **14. LICENSES IN OTHER JURISDICTIONS**

- a. Submit as Exhibit VIII. A.14.a. a description of any gaming-related licenses issued in any jurisdiction to an Applicant Party. Also, state whether an Applicant Party has ever had a gaming-related license denied, suspended, withdrawn or revoked, or if there is a pending proceeding that could lead to any of these conditions. If yes, provide a detailed summary of each denial, suspension, revocation, withdrawal or relevant documents in connection with such pending proceedings.
- b. Submit as Exhibit VIII. A.14.b. a description of any disciplinary action brought against an Applicant Party by any gaming licensing authority during the past five (5) years.

## **15. PROOF OF ADVANCING OBJECTIVES**

In order to be awarded a Gaming Facility license, an Applicant must demonstrate that it has sufficient business ability and experience to create the likelihood of establishing and maintaining a successful Gaming Facility.

- a. Submit as Exhibit VIII. A.15.a. a description of the Applicant's and, if applicable, the Manager's experience, training and expertise in developing, constructing and operating casinos and related facilities (e.g., hotels, restaurants and entertainment facilities). For each such project, include the name and location, the total dollar investment, number of gaming devices, number of hotel rooms, amenities, total gaming revenues for the last three (3) years, total non-gaming revenues for the last three (3) years, number of full-time employees, and approximate size of the site on which the project is located. For any such project no longer owned or operated, include a description of the disposition of the project or termination of its operations
- b. Additionally, submit as Exhibit VIII. A.15.b. a brief description of any destination casino resort or other gaming projects that the Applicant and, if applicable, the Manager, has publicly announced that it is in the process of acquiring, developing or proposing to acquire or develop. For each such project, include the name and location, the estimated total dollar investment, number of gaming devices, number of hotel rooms, amenities, and the timeframe within which Applicant or Manager expects to acquire or develop such project.

## **16.ADDITIONAL FINANCIAL COMMITMENTS**

Submit as Exhibit VIII. A.16. a description of all financial commitments and guarantees the Applicant or, if applicable, the Manager, or its Affiliates is prepared to provide to the Commission over and above the deposit or bond required by PML Section 1315.1 to ensure that the Gaming Facility is completed, license conditions are fulfilled and sufficient working capital is available to allow continuous operation in manner described in the Applicant's financial forecasts. Include examples of letters of credit, construction completion guaranties, performance bonds, keep-well agreements, MOUs or other agreements or commitments the Applicant, the Manager or their Affiliates commit to provide in connection with the Gaming Facility.

## **B. ECONOMICS**

Four Upstate Gaming Facilities will boost economic development, create thousands of well-paying jobs and provide added revenue to the State. These Gaming Facilities are intended to attract non-New York residents and bring downstate New Yorkers to Upstate, which will enhance the tourism industry and the State's economic infrastructure. The Act contemplates increases in potential State and local tax revenue. It also contemplates maximum economic and other benefits to the Host Municipalities and nearby municipalities, including incremental job creation and a reduction in unemployment rates.

### **1. MARKET ANALYSIS**

One of the principal objectives of the Act is to recapture gaming-related spending by New York residents at out-of-state gaming facilities. Submit as Exhibit VIII. B.1. a market analysis showing the benefits of the site location of the Applicant's Gaming Facility and the estimated recapture rate of gaming-related spending by New York residents travelling to out-of-state gaming facilities. This Exhibit should address how the site location of and marketing efforts on behalf of the gaming facility will secure a customer base and enable the gaming facility to compete

successfully against other facilities and promote the State, region and Host Municipality. In addition, such market analysis must describe:

- a. the components of the Applicant's marketing plan that focus on out-of-state visitors and the anticipated gaming and non-gaming gross revenues the Applicant anticipates from out-of-state visitors during each of the first five (5) years of the Gaming Facility's operations on a low-, average- and high-case scenario and clearly explain how this recapture rate was determined;
- b. how the Applicant plans to compete with other nearby gaming facilities in New York and other jurisdictions; and
- c. the Applicant's overall perspective and strategy for broadening the appeal of the Region and the Host Municipality in which its Gaming Facility is located and the State to travelers inside and outside of New York.

## 2. PLAYER DATABASE AND LOYALTY PROGRAM

Submit as Exhibit VIII. B.2. the following:

- a. describe any loyalty, reward or similar frequent player program (a "**Program**") maintained by the Applicant or, if applicable, the Manager for any casino the Applicant or Manager owns, operates or manages;
- b. state whether the Applicant or, if applicable, the Manager maintains a casino customer relationship management system and database (a "**Database**") that tracks the play of its Program members;
- c. indicate whether the Program and Database will be available for the marketing, promotion and advertising of the Gaming Facility and whether they are "exclusive" to the Applicant and/or, if applicable, the Manager;
- d. indicate the number of "active" (those who have played within the past 12 months) and "inactive" (those who have played over 12 months ago) members in the Database;
- e. indicate the number of rated players included in the Database that are located within 50-, 100-, 150- and 200-miles of the proposed Gaming Facility; and
- f. describe how the Database and Program will be used to market, promote and advertise the Gaming Facility.

## 3. STUDIES AND REPORTS

- a. A major goal of the Act is to enhance the financial condition of localities in the State that have suffered from economic hardships. Submit as Exhibit VIII. B.3.a. economic impact studies completed by an independent expert showing the proposed Gaming Facility's overall economic incremental benefit to the Region, the State, and the Host Municipality and nearby

municipalities including the manner in which the facility will generate new revenues as opposed to taking revenues from other New York businesses; and

- b. Submit as Exhibit VIII. B.3.b. economic impact studies completed by an independent expert showing the proposed Gaming Facility's positive and negative impacts on the local and regional economy, and on the host and nearby municipalities including impacts on incremental job creation, unemployment rates, cultural institutions and small businesses.

Each of the above studies should include a description of the background conditions in the comparable year (*i.e.*, assuming economic, traffic, etc. continues to develop as to trend without the Applicant's proposed project) and build a scenario with express enumeration of assumptions. Where independent studies depend on visitation or revenues, they should include analysis of the low-, average- and high-cases analogous to the same used for the revenue and tax studies. Studies should explain their methodology, report their results and compare those results to actual observed conditions in similar built projects.

#### **4. PROJECTED TAX REVENUE TO THE STATE**

Submit as Exhibit VIII. B.4. a study completed by an independent expert providing projections for all estimated State, county and local tax revenue (e.g., gaming, sales, income, real estate, hotel, entertainment and other taxes) for a period of at least the first five (5) years of operations on a high -, average- and low-case basis, identifying the source of each element of these tax revenues.

The study should include a description of the background conditions in the comparable year (*i.e.*, assuming economic conditions and demographics continues to develop as to trend without the Applicant's proposed Gaming Facility) and build scenario with express enumeration of assumptions. Include analysis of the low-, average- and high-cases used for the revenue study and financial forecasts. Studies should explain their methodology, report their results and compare those results to actual observed conditions in similar built projects.

#### **5. REGIONAL ECONOMIC PLAN COORDINATION**

Submit as Exhibit VIII. B.5. a statement as to whether the Applicant's proposed Gaming Facility is part of a regional or local economic plan, and, if yes, provide documentation demonstrating the Applicant's inclusion within, and coordination with, regional economic plans.

#### **6. NEW YORK STATE SUBCONTRACTORS AND SUPPLIERS**

Applicants are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the License. Such partnering may be as subcontractors, suppliers or other supporting roles.

Submit as Exhibit VIII. B.6. a description of the Applicant's plans and minimum commitments (expressed in terms of annual biddable spend) for use of New York-based suppliers and materials both in the construction and furniture, fixtures, and equipment furnishing phase of the Applicant's

project and in the operational phase of Applicant's project. Provide copies of any contracts, agreements or understandings evidencing such plans or commitments.

## **7. EMPLOYEES**

- a. Submit as Exhibit VIII. B.7.a. tables for each low-, average-, and high-revenue cases modeled in the revenue study and financial forecasts reporting for each functional area of operation of the Gaming Facility following construction: (i) the estimated number of total employees by full-time and part-time positions and full-time equivalents; (ii) each job classification and the pay rate and benefits therefor; and (iii) the number of such positions that are anticipated to be filled by residents of the State, residents of the Region and residents of the Host Municipality or nearby municipalities in which the Gaming Facility is to be located. Describe the bases for these projections, for example, by comparison to similar projects.
- b. Submit as Exhibit VIII. B.7.b. a description of how the Applicant proposes to ensure that it provides a high number of quality jobs in the Gaming Facility and the Applicant's commitment to hire a minimum number of employees, both full-time and part-time, at the opening of the Gaming Facility.

## **8. COMPETITIVE ENVIRONMENT**

Submit as Exhibit VIII. B.8. a description of the competitive environment in which the Applicant anticipates the proposed Gaming Facility will operate over the ten (10) years after opening and how the Applicant plans to succeed in that environment while limiting the impact on revenues at other New York gaming establishments (e.g., VLT facilities, tribal casinos, race tracks) or other New York businesses. This Exhibit should describe how the Applicant intends to expand the relevant market by bringing in new visitors, as opposed to merely shifting visitors from existing gaming venues in the region.

## **9. MARKETING PLANS**

- a. Submit as Exhibit VIII. B.9.a. a detailed description of the target market segments of the Gaming Facility.
- b. Submit as Exhibit VIII. B.9.b. the Applicant's marketing plans for the proposed Gaming Facility with specific reference to pre-opening marketing and opening celebrations. Include the minimum annual dollar amounts, kinds and types of general promotion and advertising campaigns that will likely be undertaken, and the proposed market to be reached; the number of visitors who are projected to stay overnight at the Gaming Facility; and other examples of joint marketing ventures, if any, undertaken by the Applicant in other jurisdictions.
- c. Submit as Exhibit VIII. B.9.c. a description of the strategies to be used by the Applicant to deal with the cyclical/seasonal nature of tourism demand and ensure maximum use of the Gaming Facility project throughout the entire calendar year.

## **10. SUPPLEMENTAL TAX PAYMENT**

For a Gaming Facility in Zone Two, Region Five, PML Section 1351 imposes a tax on Gross Gaming Revenues. The tax imposed is as set forth below:

- a. Thirty-seven (37) percent of Gross Gaming Revenue from slot machines and ten (10) percent of Gross Gaming Revenue from all other sources.

PML Section 1351, however, allows an Applicant, in its Application, to agree to supplement the tax by providing in its Application to pay a binding supplemental fee, which is in addition to the tax imposed by PML Section 1351.

Submit as Exhibit VIII. B.10. a statement as to whether the Applicant agrees to pay a binding supplemental fee if the Applicant is awarded a License. If yes, describe the amount of the binding supplemental fee. Any agreement to pay a binding supplemental fee will become a condition to the License. If the Applicant does not agree to pay a binding supplemental fee, it should explicitly state such.

## 11. LICENSING FEE

A Licensee must pay a minimum licensing fee, set below, within thirty (30) days after the award of a License. However, nothing shall prohibit an Applicant from agreeing to pay an amount in excess of the fees listed below:

**For a Gaming Facility located in:**

**The minimum licensing fee is:**

### **REGION Five**

Region Five in Broome, Chemung, Schuyler, Tioga or Tompkins Counties	\$35,000,000
Region Five in Wayne or Seneca Counties	\$50,000,000
If a License is awarded for a Gaming Facility located in Wayne or Seneca Counties, then for the remaining portion of Region Five (comprising Broome, Chemung, Schuyler, Tioga and Tompkins Counties)	\$20,000,000

If an Applicant agrees to pay a licensing fee in excess of the fee set forth above for its proposed Gaming Facility, the Applicant shall submit as Exhibit VIII. B.11. a statement as to the Applicant's agreement to pay a licensing fee in excess of the amount set forth above and state the amount Applicant agrees to pay. If an Applicant agrees to pay only the licensing fee set forth above for its proposed Gaming Facility, then the Applicant shall so state.

## C. LAND, CONSTRUCTION AND DESIGN OF PHYSICAL PLANT

### 1. DESCRIPTION OF LAND

- a. Submit as Exhibit VIII. C.1.a. the address, legal description, maps, book and page numbers from the appropriate registry of deeds for the location of the Applicant's gaming facility.
- b. Submit as Exhibit VIII. C.1.b. the assessed value of each parcel of the land for the proposed gaming facility and of the existing facilities, improvements and infrastructure thereon, if any, as of the time of the Application. Provide a schedule of the real estate taxes paid on such property for the past five (5) years.
- c. Submit as Exhibit VIII. C.1.c. a description of, and aerial and surface photography demonstrating, the salient topographic, geographic, and vegetative characteristics of the land for the proposed gaming facility as well as any significant existing facilities, improvements or infrastructure thereon. Provide schematics/maps of topographical, geographic and vegetative features and facilities, improvements and infrastructure. Describe and provide schematics/maps illustrating (in scale) the relationship to surrounding development and infrastructure.
- d. Submit as Exhibit VIII. C.1.d. a reasonably detailed description, including the dimensions and total acreage, and provide a schematic/map illustrating the boundary of the area of the land constituting the Project Site. An Application is for one Gaming Facility. If an Applicant's property comprises two non-contiguous parcels, gaming will only be allowed on one parcel.
- e. Submit as Exhibit VIII. C.1.e. a description of any geological or structural defect of the Project Site, and include a description of the engineering, design, and construction plans to remedy the defect. Indicate whether or not any of the Project Site is proposed to be located in a floodplain and, if so, include a description of the flood history of the site.
- f. Submit as Exhibit VIII. C.1.f. copies of any Phase I and II reports or any other investigations of site, sub-surface, geotechnical or environmental conditions or hazardous materials that have been completed relating to the condition of the Project Site. If a report's supporting exhibits, findings, field notes and related supporting matter would be unwieldy, Applicants may use their discretion to submit such materials in electronic form. Applicants, however, should submit hard copies of any narrative, summary or executive reports.

The hard copy of Exhibit VIII.C.1.f. should briefly describe the physical materials omitted, but electronically submitted.

### 2. OWNERSHIP OF LAND

- a. Submit as Exhibit VIII. C.2.a. a description of all ownership interests in the land for the past twenty (20) years, including all easements, options, encumbrances, and other interests in the property.

Pursuant to PML Section 1316, the Applicant must own or acquire the land where the Gaming Facility is proposed to be constructed within sixty (60) days after a License has been awarded (an Applicant shall be deemed to own the land if it has entered into a tenancy for a term of years under a lease that extends not less than sixty (60) years beyond ten (10) years for a License).

- b. Submit as Exhibit VIII. C.2.b. copies of any lease, deed, option, or other documentation and provide an explanation as to the status of the land upon which the proposed Gaming Facility will be constructed. If the Applicant does not currently possess an ownership interest in the land, provide an agreement and description of its plan as to how it intends to own or acquire, within sixty (60) days after a License has been awarded, the land where the Gaming Facility is proposed to be constructed. Further, state whether the land that the Applicant purchased or intends to purchase is publicly owned.
- c. Submit as Exhibit VIII. C.2.c. the total amount the Applicant has spent or proposes to spend to acquire or occupy the land for the proposed Gaming Facility. If other than a lump sum, provide a table indicating the amount spent or proposed to be spent in each year. If different from the amount spent, describe Applicant's total investment in the land.

### **3. ZONING**

- a. Submit as Exhibit VIII. C.3.a. copies of current local zoning approvals and any rezoning or variances that are required and any land use approvals, a detailed explanation of the status of any request for any of the foregoing with copies of all filings, including a specific schedule of applications for zoning approvals and anticipated approval dates.
- b. Submit as Exhibit VIII. C.3.b. a description of the applicable zoning designation for the Project Site.

Note that N.Y. Racing Pari-Mutuel Wagering and Breeding Law §1366 preempts land use and zoning regulations only with respect to the conduct of gaming. All other land use and zoning approvals, as well as construction and occupancy permitting, shall be governed by the regulations of the applicable local authority.

- c. Submit as Exhibit VIII. C.3.c. a list of any State and/or local permits or special use permits that the Applicant must obtain for the Project Site, and for such permits describe: (i) the procedure by which the Applicant shall obtain the permits; (ii) what conditions, if any, are likely to be placed on the permits; and (iii) the estimated dates by which the Applicant will obtain the permits.

### **4. MASTER PLAN AND BUILDING PROGRAM**

- a. Submit as Exhibit VIII. C.4.a. a description of, and provide schematics illustrating, the Applicant's master plan for the land and the Project Site showing major activities and functions. Provide a phasing plan for the proposed components of the master plan, if applicable.

- b. Submit as Exhibit VIII. C.4.b. a detailed analysis of the suitability of the proposed Project Site for the proposed Gaming Facility and the ways in which the proposed Gaming Facility supports revitalization, if applicable, and the proposed relationship of the Project Site to adjoining land uses and proposed land uses to ensure compatibility with those adjoining land uses.
- c. Submit as Exhibit VIII. C.4.c. a description of, and provide a table indicating, the building program of the proposed Gaming Facility and master plan by major function/activity/use and square footage. Substantiate the basis for the proposed building program with reference to the projected visitation and gaming revenues in the gaming market study by, for example, comparison to comparable existing facilities and/or to capacity standards customary and reasonable in the gaming and hospitality industries.

## 5. DESIGNS AND LAYOUT

- a. Submit as Exhibit VIII. C.5.a. designs for the proposed Gaming Facility as follow:
  1. a site plan for the Project Site, including any off-site ancillary property to be used by Applicant in connection with the Gaming Facility.
  2. full build out floor plans by building and floor including front- and back- of-the-house areas with major function/activity/use and approximate square footage thereof denoted. For repetitive activities like a hotel tower, a typical floor plan may be provided where floors are materially similar.
  3. building elevations and perspectives (showing heights, relative scale and relationship to adjacent existing or proposed buildings and areas).
  4. cross-sections sufficient to illustrate the interrelation of principal building program components (e.g. of a hotel room tower, if any, to circulation areas, the hotel lobby and/or gaming floor).
  5. proposed hardscape, landscape and landscape treatments including any off-site improvements required to implement the proposal.
  6. exterior lighting design.
  7. plans for parking structures, if any. For parking structure floors, a typical floor plan may be provided where floors are materially similar.
  8. surface parking and Project Site traffic circulation plan, including denotation of pick-up/drop-off areas for hotel and casino patrons, buses and valet parking and of parking areas for employees, patrons, valet-parked vehicles and buses if separate parking areas are to be provided.
  9. high-quality, color perspective renderings of the exterior of the proposed Gaming Facility showing general massing and context of the overall building program layout from each of the principal exterior approaches.

10. at least one high-quality, color perspective rendering of the exterior of the proposed Gaming Facility at night showing the effect of the proposed exterior lighting design.
11. high-quality, color perspective renderings of significant interior spaces providing general orientation and a sense of layout including, for example, the main entrance lobby, gaming floor, convention lobby/ballroom and principal circulation space(s).
12. Project Site access plan indicating adjacent properties and buildings, streets, automobile and pedestrian access and site circulation, parking, building footprints, service areas, vegetation, tour bus drop-off facilities and other related infrastructure and access to and egress from all major traffic arterials and freeways identifying those off-site improvements required to implement the proposal.

Please do not provide any physical models. The designs submitted should reflect the flow and style of the gaming facility, but will be considered conceptual. The Board recognizes modifications are likely as the construction progresses and licensee shall provide regular updates to the Commission to document improvements to the facility design during construction. Since an Application will be evaluated and approved based on the initial design, changes that reduce the size, quality, or fit and finish of a facility will not be permitted.

Drawings should be submitted in sufficient detail for the Board to understand the Applicant's vision for the facility. Plans should be to scale. To the extent feasible, specific locations of buildings and features should be identified. Planned amenities should be identified in detail and back-of-house functions should be presented. Representations of finish details should be included.

- b. Submit as Exhibit VIII. C.5.b. a narrative description of the basis of the overall architectural and building plan, any unique or defining exterior and interior themes or characteristics and prevailing style. Describe how various aspects of the proposed plans are designed to interrelate and principal decisions as to the layout of the building program, consolidation or segregation of major functions/activities/uses and configuration of the building program to meet any constraints or opportunities presented by the Project Site. Describe how the programmatic and architectural decisions contribute to an overall superior customer experience or address unique challenges or opportunities of the proposed Gaming Facility and Project Site.
- c. Submit as Exhibit VIII. C.5.c. a description of the types of materials, finishes and furnishings that are proposed and how those complement or interrelate with the chosen style or theme.
- d. Submit as Exhibit VIII. C.5.d. interior and exterior photos or descriptions of analogous resort gaming facility projects in other jurisdictions, either of the Applicant or, if applicable, the Manager, or, if the Applicant or, if applicable, the Manager have few or no such analogous projects, of other operators of destination resort gaming facilities.

## 6. CASINO

- a. Submit as Exhibit VIII. C.6.a. a description of the proposed gaming area (or areas, if more than one is being considered). Applicants should provide a breakdown of the specific games anticipated, along with the Applicant's rationale for the selections. The Board acknowledges that

the counts may be modified prior to opening. The description should include, but not be limited to, the following:

1. Square footage of each sub-area and a total for all gaming space.
  2. Total number of planned table games, with a breakdown by game type and number of positions per table.
  3. Total number of slot machines.
  4. Number and description of other electronic gaming devices or specialty games being considered.
  5. Description of any special purpose rooms that are being considered (e.g., poker rooms, high-limit gaming areas, etc.).
  6. Layout of cage area, including number of windows, and a breakdown of special-use windows, if any.
  7. Description of size, layout, and location of count room.
  8. Layout of any players-club areas, include number of stations, location, etc.
  9. Include a description of any other gaming related amenities that are not included in this section, but are relevant to operation.
  10. If the plan is to build the facility in different phases, the information provided should be broken out to explain the details of each phase, and then the Applicant should show a final description of the finished product. All descriptions should include plans created with a Computer Aided Design type of software.
- b. Submit as Exhibit VIII. C.6.b. a description of any plans for special high limit or VIP programs and amenities, including areas such as club member lounges, dining areas, restrooms, or VIP hotel check-in area(s).
- c. Submit as Exhibit VIII. C.6.c. a description of any particular efforts (e.g., design, operations, and/or marketing) that are planned to differentiate the casino from competitors and to maximize the potential of the market.
- d. Submit as Exhibit VIII. C.6.d. a description of the attributes of the slot accounting system that is planned for Applicant's operation, which allows the Gaming Commission access for the purposes of auditing revenues and game status.
- e. Submit as Exhibit VIII. C.6.e. any details of casino operation that the Applicant believes should be included in the evaluation of its operation.

## 7. HOTEL

- a. Submit as Exhibit VIII. C.7.a. a description of the proposed hotel(s), including the types of rooms, the numbers and proposed square footage of each type of room at full build-out and for each phase, if applicable. Describe the level of service and, if known, the flag or brand of the proposed hotel. If more than one level of service and/or flag or brand is intended, describe each level of service and/or flag or brand and how they will be developed, operated, and marketed separately but may be operationally combined. Provide copies of any arrangements or agreements relating to branding, franchising and hotel loyalty or patronage programs planned in connection to the proposed hotel(s) that are different from the Applicant's or the Manager's branding and customer loyalty or patronage programs.
- b. Submit as Exhibit VIII. C.7.b. copies of any forecast, projections, analysis or studies used to determine the number and type of hotel rooms, level(s) of service and flag(s) or brand(s). Describe any assumptions and the bases thereof. Substantiate their reasonableness.
- c. If any part of the hotel(s) is not to be managed or operated by the Applicant or the Manager, submit as Exhibit VIII. C.7.c. the name of the proposed manager or operator of such part and provide copies of any contracts, agreements or understandings between the Applicant and/or the Manager and such manager or operator.
- d. Submit as Exhibit VIII. C.7.d. a forecast of the number of hotel rooms that will be used for casino and other forms of marketing or reserved for gaming establishment promotions and substantiate the basis of such forecast, for example, by comparison to comparable facilities.
- e. Submit as Exhibit VIII. C.7.e. a description, including square footage, any proposed spa, fitness and pool facilities for the hotel(s). If a pool is proposed, describe plans, if any, to mitigate water and energy (for heating) resource demands.
- f. Submit as Exhibit VIII. C.7.f. a description of any particular efforts – design, operations, and/or marketing – that are planned to differentiate the hotel from competitors and to maximize the potential of the market.
- g. Submit as Exhibit VIII. C.7.g. names of hotels of comparable quality to that of the proposed hotel(s) at the Gaming Facility.
- h. Specify in Exhibit VIII. C.7.h. whether linen supply, housekeeping, and laundry will be outsourced or retained within the Gaming Facility operations.

## 8. MEETING AND CONVENTION FACILITIES

- a. Submit as Exhibit VIII. C.8.a. a description of any proposed meeting and convention spaces, including attached back of house and catering facilities, by square footage and approximate participant capacity of each space.
- b. Submit as Exhibit VIII. C.8.b. a description of any proposed business center facilities.

## 9. ENTERTAINMENT VENUES

- a. Submit as Exhibit VIII. C.9.a. a description of the entertainment venues proposed for the Project Site whether located inside or outside the Gaming Facility, the square footage and patron capacity of each (minimum/maximum), admission charges/price, the contemplated frequency of events (e.g., number of entertainment events and entertainment days), and uses/types of entertainment to which the venues will be dedicated. Describe and provide copies of any arrangements or agreements with promoters, artists, or performance companies or troupes. Substantiate (e.g., by comparison to analogous projects) the bases for such plans and estimates.
- b. As a major goal of the Act is to enhance the State's live entertainment venues, submit as Exhibit VIII. C.9.b. a description of how the entertainment venues proposed for the Project Site are distinguished (whether by design or intended use) and intended to complement the impacted live entertainment venues identified pursuant to Item IX.B.2. A live entertainment venue is a not-for-profit or government-owned performance venue designed in whole or in part for the presentation of live concerts, comedy or theatrical performances.
- c. Submit as Exhibit VIII. C.9.c. a description of the extent to which entertainment venues and plans are contemplated to be used for casino and/or other marketing. Include the manner in which the Gaming Facility will enhance entertainment venues already existing in the Host Municipality and nearby municipalities.

## 10. NON-GAMING AMENITIES

- a. Submit as Exhibit VIII. C.10.a. a description of:
  1. the proposed restaurants, including the approximate number, square footage and patron capacity, types and themes and the identity of any restaurateurs the Applicant anticipates will operate the restaurants.
  2. the proposed retail spaces, including the approximate number, square footage and types of retail shops and how such retail development will serve the general community.
  3. the proposed lounges and bars, including the approximate number, square footage and patron capacity and types.
  4. any proposed recreation facilities.
  5. any other proposed and related facilities or amenities.

If any of the above amenities are not proposed to be operated by the Applicant or the Manager, indicate the names of the proposed operators and provide copies of any contracts, agreements or understandings between the Applicant and/or the Manager and such operator.

- b. Submit as Exhibit VIII. C.10.b. a description of plans, if any, to highlight Host Municipality local and regional products, brands and cuisine in restaurants, lounges, bars, retail spaces and ancillary

amenities. Describe any proposed tie-ins or ventures with Host Municipality, local and regional establishments. Provide copies of any agreements or arrangements for the same. Describe how the Gaming Facility will complement and be compatible with the Host Municipality's culture and how it will showcase, stimulate and improve the use of existing and future attractions, including tourism and convention facilities within the Host Municipality and nearby municipalities

## **11. QUALITY OF AMENITIES**

Submit as Exhibit VIII. C.11. a statement as to how the hotels, hotel rooms, restaurants and other amenities that are part of the proposed Gaming Facility will compare in quality to other area hotels, restaurants and amenities as well as those included and offered in other competitive gaming facilities.

## **12. HOURS OF OPERATION**

Submit as Exhibit VIII. C.12. a description of the Applicant's proposed hours of operation for the various components of the proposed Gaming Facility including the casino, restaurants, bars and other amenities.

## **13. BACK OF HOUSE**

Submit as Exhibit VIII. C.13. a description, including square footage, of back of house, security, kitchen and office facilities to support the remaining building program.

## **14. PARKING AND TRANSPORTATION INFRASTRUCTURE**

- a. Submit as Exhibit VIII. C.14.a. a description of the approximate number, location and accessibility of parking spaces and structures for employees, patrons, valet-parked vehicles and buses. Substantiate (e.g. by inclusion of discussion in the independent traffic study to be provided pursuant to Item IX.A.2.b. of this RFA) the adequacy of parking and site circulation plans to service the projected visitor and employee demand.
- b. Submit as Exhibit VIII. C.14.b. a description of traffic circulation plans for the Project Site including ingress and egress of casino patrons, employees and suppliers including plans for tour bus, limousine and valet drop-off areas, plans for service vehicle parking, satellite parking and other related transportation infrastructure, and plans to offer refueling, overnight bus parking, disabled vehicle assistance, and convenience store facilities on site.

## **15. DOCK AND LOADING**

Submit as Exhibit VIII. C.15. a description of the planned dock and loading facilities, as well as armored car bay, including by square footage and schematic diagram. Describe their adequacy to serve the planned program (e.g. by comparison to analogous facilities).

## **16. PHYSICAL PLANT AND MECHANICAL SYSTEMS**

Submit as Exhibit VIII. C.16. a brief description of plans for mechanical systems and on-site infrastructure, with particular emphasis on unique features (e.g. district hot or cold water, on-site power generation, on-site water or waste treatment, etc.). Indicate whether the project relies on distributed or building HVAC, chilled and hot water, and other systems. Describe plans for systems redundancy, if any. Describe significant dedicated physical plant spaces by location and approximate square footage. Describe plans for emergency power generation and uninterruptable power supply.

## 17. INFRASTRUCTURE REQUIREMENTS

- a. Submit as Exhibit VIII. C.17.a. studies of independent engineers or other experts reporting projections of estimated fresh water and electricity demand (base and peak-period) and sanitary sewer and storm water discharge, each, for the proposed Gaming Facility. Include in those reports an assessment of the feasibility of any plans to accommodate that demand onsite (e.g. by onsite production of electricity, treatment of fresh or waste water, or detention of storm water).
- b. Submit as Exhibit VIII. C.17.b. a description of plans to address water and electricity use restrictions during peak demand periods.
- c. Submit as Exhibit VIII. C.17.c. a description of the electricity, sewer, water, and other utility improvements needed to adequately serve the Gaming Facility Site to include: (i) the estimated cost of the improvements; (ii) the estimated date of completion; (iii) the names of the parties, whether public or private, initiating the improvements; (iv) the names of the parties responsible for the costs of the improvements; and (v) if more than one party is responsible for the costs, the proportionate distribution of the costs among the parties.
- d. Submit as Exhibit VIII. C.17.d. a description of the roadway and traffic improvements needed to ensure adequate access to the Gaming Facility Site to include: (i) the estimated cost of the improvements; (ii) the estimated date of completion; (iii) the names of the parties, whether public or private, initiating the improvements; (iv) the names of the parties responsible for the costs of the improvements; and (v) if more than one party is responsible for the costs, the proportionate distribution of the costs among the parties.
- e. Submit as Exhibit VIII. C.17.e. a description of plans for management, detention and discharge of storm water on and from the Project Site to include (i) the estimated cost of the improvements; (ii) the estimated date of completion; (iii) the names of the parties, whether public or private, initiating the improvements; (iv) the names of the parties responsible for the costs of the improvements; and (v) if more than one party is responsible for the costs, the proportionate distribution of the costs among the parties.

For the improvements described in this section: (i) state whether local government approval is necessary for making the improvements; (ii) include a description of the procedure by which the local government approval is going to be obtained; (iii) indicate all conditions likely to be placed on the local government approval; and (iv) indicate the estimated date by which local government approval will be granted.

## 18. PROJECT FIRMS

- a. Submit as Exhibit VIII. C.18.a. names, addresses and relevant experience of the architects, engineers, contractors and designers of the proposed Gaming Facility and related proposed infrastructure improvements.
- b. Submit as Exhibit VIII. C.18.b. the name, title, office address, email address, direct phone number and fax number of the Applicant's or, if applicable, the Manager's principal contact individual at each such firm.

## 19. CONSTRUCTION BUDGET

Submit as Exhibit VIII. C.19. a detailed construction budget showing the total costs of the Gaming Facility project including hard costs (e.g., land acquisition, site preparation, remediation of environmental conditions or hazardous materials; excavation, grading and earth works; foundation; erection of structures; materials and labor; equipment HVAC; electrical; plumbing; furnishings; landscaping; and site improvements, including infrastructure in direct relation to both construction and operations), construction soft costs (e.g., architectural, engineering and consulting fees; real estate commissions; recordation fees and transfer taxes; insurance; contingency reserve, etc.), financial and other expenses (e.g., financing fees; interest; legal; etc.) and pre-opening expenses (e.g., training, pre-opening marketing; and initial working capital), and timing of such expenditures, together with a construction cash flow analysis.

## 20. TIMELINE FOR CONSTRUCTION

- a. Submit as Exhibit VIII. C.20.a. a proposed timeline of construction of the proposed Gaming Facility that includes detailed stages of construction for opening phase of the Gaming Facility and non-gaming structures and all related infrastructure improvements. Include major events/milestones/deadlines, including design plans completed, construction bid award, construction financing received, site secured, start site mitigation/remediation if necessary, excavation, grading and earth works, start construction, approvals, infrastructure completion dates, permanent financing executed, certificate of occupancy, training start, building loading, system testing, dry runs, and the like, and the dates or deadlines associated therewith. Describe any proposed construction phasing plan, including the proposed sequence of any phases, whether any phases are dependent upon future events, and if so, clearly describe such future events, and the approximate dates of beginning and completion of each phase.
- b. Submit as Exhibit VIII. C.20.b. a description of anticipated street and sidewalk closures, plans for redirecting traffic, impacts on existing parking, if any, noise and dust impacts, and plans for mitigating such impacts both during and following construction. Describe measures that will be taken to mitigate all construction impacts on the local community.

In the event the financing for any further phase is not included in Item VIII.A.6. of this RFA, indicate the anticipated sources of financing for such phase and the details of such financing.

- c. Submit as Exhibit VIII. C.20.c. an explanation as to how quickly after issuance of a License the Applicant would expect to commence construction of the Gaming Facility and explain conditions precedent to be satisfied prior to the Applicant being able to commence said construction.
- d. If the Applicant's plan for the proposed Gaming Facility is expected to displace or relocate any existing businesses, tenants or services, submit as Exhibit VIII. C.20.d. the Applicant's plans for relocating or compensating such displaced parties.
- e. Submit as Exhibit VIII. C.20.e. a proposed date for the proposed Gaming Facility to open for gaming and indicate major risks to such proposed opening date and the range of probable delays associated with each. Describe plans to mitigate such risks. Indicate whether the proposed Gaming Facility will open in phases or all at one time. If the facility is to open in phases, provide a detailed description of what will open in each phase and the proposed opening date for each phase and/or what conditions each such opening date will be contingent upon. Provide Applicant's commitment for a proposed outside date, notwithstanding any delays, for substantial completion of the initial fully operational phase of the proposed Gaming Facility.

## **21. CONSTRUCTION JOBS**

Submit as Exhibit VIII. C.21. a table indicating by trade and calendar quarter the number of construction hours, the average daily number of full time equivalent ("FTE's") workers expected to work on the project, the average monthly compensation and benefits per FTE, the average monthly total labor cost per FTE (compensation plus benefits). Provide overall and by trade the total construction hours, FTEs, compensation, benefits, and labor cost for the entire construction period.

## **22. GAMING EQUIPMENT VENDORS**

Realizing that formal plans may not be finalized, submit as Exhibit VIII. C.22. the names of all proposed vendors of gaming equipment to the best of your present knowledge and belief, including, without limitation, slot machines, table games, bases and chairs, signage, cage and count room equipment, player club systems, accounting and TITO systems, etc.

## **D. INTERNAL CONTROLS AND SECURITY SYSTEMS**

### **1. INTERNAL CONTROLS AND SECURITY SYSTEMS**

- a. The Commission will develop regulations governing internal controls for all gaming facilities in the near future. To assist the Board in its evaluation of the Applicant, the Board is interested in knowing what standards the Applicant anticipates adhering to at its Gaming Facility. Accordingly, subject to any adjustments required upon promulgation of the future regulations, submit as Exhibit VIII. D.1.a. a full description of the proposed internal controls, electronic surveillance systems, and security systems for the proposed Gaming Facility and any related facilities, including, for example, any contemplated internal audits, independent external audits, separation of accounting and cage processes for independent verifications, cage and count room

supervision, gaming floor drop processes, and other asset preservation and secure cash handling systems and processes. Where third-parties are to be engaged (e.g., external audit and law enforcement/safety entities), so indicate. Indicate how these efforts will achieve risk management/control goals at the enterprise/Licensee level as well as regulatory, law enforcement, and other local, regional, State, and Federal levels as applicable.

- b. Submit as Exhibit VIII. D.1.b. a projected table of organization for the entire project. For compliance, accounting, audit (both financial and internal control), security, and surveillance show additional detail that includes staffing levels and identifies the critical departments of detailed organization charts for each control/risk management related activity (e.g., positions in compliance, accounting, cage, cashiering, count room(s), credit issuance, credit collection, asset management, and income control), data processing, internal audit, compliance and security, and surveillance. Show staffing levels for each position. If risk management/control is vested in other departments, functions or activities, identify them and describe their role. Indicate which staff position(s) would be responsible for communications with the Commission.

## **IX. LOCAL IMPACT AND SITING FACTORS (Statutory Value: 20 percent)**

### **A. ASSESSMENT OF LOCAL SUPPORT / MITIGATION OF LOCAL IMPACT**

#### **1. ASSESSMENT OF LOCAL SUPPORT**

As stated previously as a condition of acceptance of this Application, local support must be demonstrated through a post-November 5, 2013 vote of the local legislative body of each Host Municipality.

- a. Submit as Exhibit IX. A.1.a. a copy of a resolution passed by the local legislative body of each Host Municipality supporting the Application.

For a Host Municipality resolution to be considered sufficient, such resolution should indicate support for a specific gaming facility within the jurisdiction of the Host Municipality. For the guidance of Applicants, below is provided an example “resolved clause” which would meet the Host Municipality support requirement:

NOW THEREFORE BE IT RESOLVED, that in furtherance of the above goals, Municipality **X** hereby agrees to the location of Gaming Facility **Y** at Premises **Z** within Municipality **X**.

- b. Submit as Exhibit IX. A.1.b. a list of any other evidence of local support including public statements and declarations, letters or resolutions from the Host Municipality, nearby municipalities, private organizations, community, religious and civic groups, charitable organizations, entertainment venues, chambers of commerce, local businesses, labor organizations, etc.

NOTE: Referring to the November 5, 2013 election results for Proposition 1 of a specific locality or the Host Municipality is NOT an acceptable demonstration of local support and will not be considered as part of the evaluation.

#### **2. LOCAL IMPACTS AND COSTS**

- a. Submit as Exhibit IX. A.2.a. studies completed by independent experts showing the proposed Gaming Facility’s cost to each Host Municipality, nearby municipalities and the State for the proposed Gaming Facility including, without limitation, the incremental effect on local government services (police, fire, EMS, health and building inspection, schools, public health and addiction services and general government services); and
- b. Submit as Exhibit IX. A.2.b. studies completed by independent experts showing the local and regional impacts of the proposed Gaming Facility in each of the following areas: traffic and roadway infrastructure; water demand, supply and infrastructure capacity; waste water

production, discharge, and infrastructure capacity; storm water discharge and management; electricity demand and infrastructure capacity; protected habitats and species; and light pollution.

Each independent expert's study should describe the background, qualifications and experience on similar projects of the preparer and contain a description of the background conditions in the comparable year (i.e. assuming economic, traffic, and demographic conditions, etc. continue to develop as to trend without the proposed Gaming Facility) and under the build scenario with express enumeration of assumptions. The report should include a comparison to similar projects or scenarios. The build scenario and assumptions should reasonably correspond to the description of the proposed Gaming Facility, revenue and visitation projections, and expense and employment estimates included in the Application. That is, the Applicant and the various independent studies should present comparable assumptions and build scenarios. Where independent studies depend on visitation or revenue assumptions, they should include analysis of the low-, average- and high-cases analogous to the same used for the gaming market and tax studies. Studies should explain their methodology, report their results and compare those results to actual observed conditions in similar built projects. The reports should critique and analyze the adequacy of the Applicant's proposed mitigation plans to address the identified impacts of the build conditions.

### **3. MITIGATION OF IMPACT TO HOST MUNICIPALITY AND NEARBY MUNICIPALITIES**

Submit as Exhibit IX. A.3. a description of Applicant's commitments to mitigate impacts of the proposed Gaming Facility (during construction and operation) on each Host Municipality and the nearby municipalities including for traffic mitigation, infrastructure costs, costs of increased emergency services and the other impacts identified in the studies included in Item IX.A.2.b of this RFA. Provide copies of any contracts, agreements or other understandings evidencing such mitigation commitments.

### **4. HOUSING**

Submit as Exhibit IX. A.4. an assessment of the likely impact on the housing stock in each Host Municipality and nearby municipalities resulting from the new jobs the Gaming Facility provides, and the Applicant's plans and commitments to remedy or mitigate any negative impacts. Provide copies of any contracts, agreements or other understandings evidencing such mitigation commitments.

### **5. SCHOOL POPULATION**

Submit as Exhibit IX. A.5. an assessment of the likely impact on school populations in the Host Municipality and nearby municipalities resulting from new jobs the Gaming Facility provides, and the Applicant's plans and commitments to remedy or mitigate any negative impacts. Provide copies of any contracts, agreements or other understandings evidencing such mitigation commitments.

## **B. REGIONAL TOURISM AND ATTRACTIONS**

### **1. LOCAL BUSINESS PROMOTION**

Submit as Exhibit IX. B.1. a description of plans for promoting local businesses in Host Municipality and nearby municipalities including developing cross-marketing strategies with local restaurants, small businesses, hotels and retail facilities. Provide copies of any contracts, agreements or other understandings evidencing such cross-marketing.

### **2. PARTNERSHIPS WITH LIVE ENTERTAINMENT VENUES**

A major goal of the Act is to enhance the State's live entertainment venues.

- a. Submit as Exhibit IX. B.2.a. copies of any and all contracts, agreements, MOUs or other understandings with live entertainment venues that may be impacted by the Gaming Facility. Contracts, agreements, MOUs and understandings shall include terms and conditions governing cross marketing, coordination of performance schedules, booking of performers, arrangements or agreements with promoters, promotions and ticket prices. Also explain how the Gaming Facility intends to actively support the mission and operation of impacted live entertainment venues including any minimum dollar commitments and/or special efforts the Applicant will make to promote live entertainment venues.
- b. Submit as Exhibit IX. B.2.b. the identity of any entertainment venue that requested an agreement that the Applicant declined. Explain the reason for the declination, and describe the nature of the discussions or negotiations the Applicant had with the entertainment venue. Include any materials or statements from the venue that requested the agreement as to why it merited treatment as an impacted live entertainment venue.

### **3. LOCAL BUSINESS OWNERS**

Submit as Exhibit IX. B.3. a description of plans for contracting with local business owners for provision of goods and services to the Gaming Facility, including developing plans designed to assist businesses in the State in identifying the needs for goods and services to the Gaming Facility.

### **4. LOCAL AGREEMENTS**

Submit as Exhibit IX. B.4. copies of local agreements designed to expand Gaming Facility draw (i.e., number of patrons brought to the Region).

### **5. CROSS MARKETING**

Submit as Exhibit IX. B.5. a description of plans for cross-marketing with other attractions. Provide copies of any contracts, agreements or other understandings evidencing such cross-marketing commitment.

## **X. WORKFORCE ENHANCEMENT FACTORS (Statutory Value: 10 percent)**

### **A. MEASURES TO ADDRESS PROBLEM GAMBLING**

#### **1. ON-SITE RESOURCES FOR PROBLEM GAMBLING**

Submit as Exhibit X. A.1. a description of on-site resources that will be available to those affected by gambling-related problems, including procedures for the exclusion of self-identified problem gamblers who request that they be prohibited from entering facilities throughout the State's various gaming venues.

#### **2. PROBLEM GAMBLING SIGNAGE**

Submit as Exhibit X. A.2. a description of signs, alerts and other information that will be available in the proposed Gaming Facility to identify resources available for those affected by gambling related problems, including the New York State Office of Alcoholism and Substance Abuse Services (OASAS) HOPEline (1-877-8-HOPENY).

#### **3. IDENTIFICATION OF PROBLEM GAMBLING**

Submit as Exhibit X. A.3. a description of the initial and ongoing training that will be used to help Gaming Facility employees identify those who may have gambling-related problems, or self-identify, and assist them to obtain help for those problems.

#### **4. SELF-EXCLUSION POLICIES**

Submit as Exhibit X. A.4. a description of the exclusion policies that will be available for Gaming Facility patrons and employees, including the process to notify individuals of the availability of self-exclusion, the steps that will be taken to assist those who request exclusion and steps that will be taken to assure that excluded patrons are identified before gaining access to the gaming floor.

#### **5. TREATMENT AND PREVENTION**

Submit as Exhibit X. A.5. a description of plans to coordinate with local providers to facilitate assistance and treatment for those with gambling-related problems and plans to develop prevention programs targeted toward vulnerable populations.

#### **6. HISTORICAL EFFORTS AGAINST PROBLEM GAMBLING**

Submit as Exhibit X. A.6. a description of the processes proposed to address problem gambling at the other facilities it owns or controls, the effectiveness of those processes, and the metrics the Applicant will use to determine the effects.

## **B. WORKFORCE DEVELOPMENT**

### **1. HUMAN RESOURCE PRACTICES**

Submit as Exhibit X. B.1. a statement of whether the Applicant or, as applicable, the Manager has prepared, and how the Applicant or, as applicable, the Manager proposes to establish, fund and maintain human resource hiring and training practices at the proposed Gaming Facility that promote the development of a skilled and diverse workforce and access to promotion opportunities through a workforce training program that:

- a. establishes transparent career paths with measurable criteria within the Gaming Facility that lead to increased responsibility and higher pay grades that are designed to allow employees to pursue career advancement and promotion;
- b. provides employee access to additional resources, such as tuition reimbursement or stipend policies, to enable employees to acquire the education or job training needed to advance career paths based on increased responsibility and pay grades; and
- c. establishes an on-site child day-care program.

Further, identify whether the Applicant and, as applicable, the Manager plans to establish employee assistance programs, including those relative to substance abuse and problem gaming.

### **2. AFFIRMATIVE ACTION PLAN**

The Gaming Facility Location Board recognizes the importance placed upon minority and women-owned business enterprises (MWBE) business participation by the State and adopts a policy to encourage contract opportunities for all small businesses including State certified MWBEs. A successful RFA proposal will include a meaningful opportunity for State certified MWBE businesses to participate in the development, construction and operation of the gaming industry.

Meaningful participation includes significant opportunity by certified MWBE small businesses through inclusion of specific, measurable commitments for vendor and supplier participation and development of a MWBE small business-monitoring program. The Board recommends that Applicants match or exceed Governor Andrew M. Cuomo's Executive Order establishing a 30 percent goal for MWBE contracting.

Submit as Exhibit X. B.2. how the Applicant and, as applicable, the Manager proposes to establish and implement an affirmative action program that identifies specific goals for the

engagement of minorities, women, persons with disabilities and veterans on construction jobs and service and professional jobs during operation.

### **3. JOB OPPORTUNITIES AND TRAINING FOR UNEMPLOYED**

Submit as Exhibit X. B.3. the Applicant's and, as applicable, the Manager's strategy to provide on-the-job opportunities and training in areas, and with respect to regional and local demographic groups with high unemployment.

### **4. EXPERIENCE WITH HIRING UNEMPLOYED**

Submit as Exhibit X. B.4. a description of the Applicant's and, as applicable, the Manager's approach and experience in the last ten (10) years with hiring in general, and with particular respect to demographic groups evidencing high unemployment. Note that a commitment to the removal of barriers that may prevent qualified long-term unemployed job seekers from applying or being fully considered for jobs generally requires the following practices:

- a. Ensuring that advertising does not discourage or discriminate against unemployed individuals.
- b. Reviewing screens or procedures used in recruiting and hiring processes so as to not intentionally or inadvertently disadvantage individuals from being considered for a job based solely on their unemployment status.
- c. Reviewing current recruiting practices to encourage all qualified candidates to consider applying, including the long-term unemployed, by taking steps that may include:
  1. Publicizing a commitment that qualified unemployed individuals will not be disadvantaged solely on their unemployment status on the Applicant's website, in Application materials, or in other places where it can be seen by potential Applicants;
  2. Interviewing or otherwise considering qualified long-term unemployed individuals;
  3. Training hiring teams and recruiters to focus on the bona fide occupational requirements and leadership requirements for a given role and not on an applicant's current or recent employment status; and
  4. Engaging local and regional entities in order to reach broad segments of the population with relevant skills and experience.

### **5. ORGANIZED LABOR CONTRACTS**

Submit as Exhibit X. B.5. a statement as to whether the Applicant and, as applicable the Manager has, is subject to, or is negotiating any contract with organized labor, including hospitality services, and whether the Applicant or, as applicable, the Manager has the support of organized labor for its Application, which specifies:

- a. the number of employees to be employed at the proposed Gaming Facility, including detailed information on the pay rate and benefits for employees and contractors,
- b. the total amount of investment in the proposed Gaming Facility and all infrastructure improvements related to the project,
- c. completed studies and reports including an economic benefit study, for the State, the Region, and the Host Municipality, and
- d. detailed plans for assuring labor harmony during all phases of the construction, reconstruction, renovation, development and operation of the Gaming Facility.

## **6. LABOR HARMONY**

Submit as Exhibit X. B.6. a statement as to whether the Applicant or, as applicable, the Manager has entered into labor peace agreements with labor organizations that are actually engaged in representing gaming or hospitality industry workers in the State. Provide copies of any such agreements. If the Applicant or, as applicable, the Manager has not entered into such agreements, provide an instrument stating that it will enter into such labor peace agreements and maintain such labor peace agreements in place during the term of a License.

## **C. SUSTAINABILITY AND RESOURCE MANAGEMENT**

### **1. TRAFFIC MITIGATION**

Submit as Exhibit X. C.1. a description of the steps, plans and measures, including infrastructure improvements, to mitigate traffic flow and vehicle trips in the vicinity of the Gaming Facility. Include a description of plans to use public or alternate transportation methods and transportation demand management.

### **2. LEED CERTIFICATION**

Submit as Exhibit X. C.2. a description of plans, including all proposed baseline and improved building design elements and measures, for its Gaming Facility to become certified under a certification category in the Leadership in Environmental and Energy Design (LEED) program created by the United States Green Building Council.

### **3. ENERGY EFFICIENT EQUIPMENT**

Submit as Exhibit X. C.3. a description of Applicant's plans for ensuring use of Energy Star-rated equipment and high-efficiency HVAC equipment and appliances throughout the Gaming Facility complex.

### **4. STORM WATER**

Submit as Exhibit X. C.4. a description of plans for management of storm water including any plans to use Institute for Sustainable Infrastructure techniques to minimize impact of storm water and maximize its reuse.

## **5. WATER CONSERVATION**

Submit as Exhibit X. C.5. a description of plans for water efficiency and conservation at the Gaming Facility including, without limitation, plans to use low-flow water fixtures, water efficient appliances, and implement water conservation at the Gaming Facility.

## **6. RENEWABLE ENERGY**

Submit as Exhibit X. C.6. a description of plans for procuring or generating on-site at least ten (10) percent of the facility's annual electricity consumption from renewable energy sources qualified by the New York State Energy Research and Development Authority (NYSERDA).

## **7. ENERGY CONSUMPTION MONITORING**

Submit as Exhibit X. C.7. a description of plans for developing an ongoing system that will submeter and monitor all major sources of energy consumption and for undertaking regular and sustained efforts throughout the life-cycle of the facility to maintain and improve energy efficiency and reliance on renewable sources of power in all buildings and equipment that are part of the facility.

## **8. DOMESTIC SLOT MACHINES**

Submit as Exhibit X. C.8. a description of plans for purchasing, whenever possible, domestically manufactured slot machines for installation in the Gaming Facility.

## XI. POST-LICENSURE RESPONSIBILITIES

### A. DEPOSIT TEN (10) PERCENT OF TOTAL INVESTMENT

Upon award of a License by the Commission, an Applicant must deposit ten (10) percent of the total investment proposed in the Application into an interest-bearing escrow account approved by the Commission.

This deposit will be held in escrow until the final stage of construction, as detailed in the timeline of construction submitted with the Application and approved by the Commission, at which time the deposit plus interest earned shall be returned to the Applicant to be applied for the final stage of construction.

In the event the Applicant is unable to complete the Gaming Facility, the deposit shall be forfeited to the State.

In place of a cash deposit, an Applicant may secure a deposit bond in a form acceptable to the Board insuring that ten (10) percent of the proposed capital investment shall be forfeited to the State if the Applicant is unable to complete the Gaming Facility.

### B. PAY LICENSING FEE

A Licensee must pay a minimum licensing fee, set below, within thirty (30) days after the award of a License. However, nothing shall prohibit an Applicant from agreeing to pay an amount in excess of the fees listed below:

<b>For a Gaming Facility located in:</b>	<b>The minimum licensing fee is:</b>
<b><u>REGION Five</u></b>	
Region Five in Broome, Chemung, Schuyler, Tioga, Tompkins Counties	\$35,000,000
Region Five in Wayne or Seneca Counties	\$50,000,000
If a License is awarded for a Gaming Facility located in Wayne or Seneca Counties, then for the remaining portion of Region Five (comprising Broome, Chemung, Schuyler, Tioga and Tompkins Counties)	\$20,000,000

### C. BEGIN GAMING OPERATIONS WITHIN TWO (2) YEARS

Any Licensee that fails to begin gaming operations within twenty-four (24) months following License award shall be subject to suspension or revocation of the License and may, after being found by the

Commission, after notice and opportunity for a hearing, to have acted in bad faith in its Application, be assessed a fine of up to \$50 million.

An Application may contemplate a phased opening, in which the gaming area and ancillary entertainment services and non-gaming amenities open first, with remaining elements of the initial fully operational phase of the proposed Gaming Facility to open at a later date.

To facilitate the Board's consideration and determination, Applicants proposing a phased opening should present reasonable, detailed phasing plans that describe, along with the gaming area, which ancillary entertainment services and non-gaming amenities of the proposed Gaming Facility program the Applicant proposes to open simultaneously with the gaming area and within twenty-four (24) months after award of a License. The proposed construction timeline and phasing plan to open for gaming within twenty-four (24) months after award of a License should include reasonable contingencies for the major risks to the proposed date to open for gaming and the range of probable delays associated therewith that are identified in Exhibit VIII.C.20.e. of the Application.

The Commission will interpret the 24-month timeline reasonably to provide for force majeure.

#### **D. ESTABLISH QUALIFICATIONS FOR CERTAIN PERSONS**

Licensees must provide and satisfy all requests for information pertaining to qualification; waive liability as to the Commission, the Board and the State and its instrumentalities and agents, for any damages resulting from any disclosure or publication; consent to inspections, searches and seizures while at a Gaming Facility; supply handwriting exemplars; provide, on a continuing basis, any assistance or information required by the Commission; cooperate in any inquiry, investigation or hearing conducted by the Commission; be photographed and fingerprinted for identification and investigation purposes; and inform the Commission of any action believed to constitute a violation.

#### **E. OBTAIN AND MAINTAIN CASINO KEY EMPLOYEE LICENSES**

A Licensee, or a holding or intermediary company of a Licensee, may only employ as a "Casino Key Employee" individuals who hold valid Casino Key Employee licenses. Applicants for such license must produce information, documentation and assurances concerning qualification criteria. Criteria include, among others, financial stability, integrity and responsibility of the Applicant, good character, honesty and integrity.

#### **F. REGISTER GAMING EMPLOYEES**

Each gaming employee of a Licensee must have a valid registration on file with the Commission.

#### **G. LICENSE VENDOR ENTERPRISES**

Any business to be conducted with an Applicant or Licensee by a vendor offering goods or services that directly relate to gaming activity, including gaming equipment manufacturers, suppliers, repairers and independent testing labs, shall be licensed as a casino vendor enterprise prior to conducting any

business with an Applicant or Licensee, its employees or agents (subject to other timing as determined by the Commission).

## **H. LICENSE AND REPORT ON JUNKET OPERATORS**

A Licensee must file a report describing the operation of all junkets engaged in on the premises. Junket representatives must be licensed as Casino Key Employees.

## **I. OBTAIN OPERATION CERTIFICATE**

A Licensee must obtain an operation certificate in order to open or remain open to the public.

## **J. MAINTAIN RECORD OF AGREEMENTS**

A Licensee must maintain a record of all agreements in regard to the project.

## **K. ENTER LABOR PEACE AGREEMENT**

A Licensee must produce documentation that it has entered into a labor peace agreement with each labor organization that is actively engaged in representing and attempting to represent gaming and hospitality industry workers in the State. This is an ongoing material condition of licensure. A Licensee must also ensure that operations conducted by contractors, subcontractors, licensees, assignees, tenants or subtenants and that involve gaming or hospitality industry employees will be done under a labor peace agreement.

## **L. PAY ANNUAL MACHINE AND TABLE FEES**

A Licensee must pay an annual license fee of \$500 per slot machine and table at the Gaming Facility, as adjusted by the Commission for inflation as provided in PML Section 1348.

## **M. PAY REGULATORY INVESTIGATORY FEE**

A Licensee must pay fees and charges established by the Commission for any investigations including, but not limited to, billable hours of the Commission staff involved in the investigation and costs of services, equipment and other expenses incurred during the investigation.

## **N. PAY ADDITIONAL REGULATORY COSTS**

The Licensee bears any remaining costs of the Commission necessary to maintain regulatory control over gaming facilities that are not covered by the fees set forth in PML Section 1349; any other fees assessed under such section; or any other designated sources of funding, shall be assessed annually on Licensees in proportion to the number of gaming positions at each Gaming Facility. Each Licensee shall pay the amount assessed against it within thirty (30) days after the date of a notice of assessment from the Commission.

## **O. PAY TAX ON GAMING REVENUES BASED ON ZONE AND REGION**

For a Gaming Facility in Zone two, PML Section 1351 imposes a tax on Gross Gaming Revenues. The amount of such tax imposed is as set forth below; provided, however, should a Licensee have agreed within its Application to supplement the tax with a binding supplemental fee payment exceeding the aforementioned tax rate, such tax and supplemental fee shall apply for a Gaming Facility:

In Region Five, thirty-seven (37) percent of Gross Gaming Revenue from slot machines and ten (10) percent of Gross Gaming Revenue from all other sources.

## **P. RETAIN UNCLAIMED FUNDS AND DEPOSIT IN THE COMMERCIAL GAMING REVENUE FUND**

Unclaimed funds, cash and prizes shall be retained by the Gaming Facility licensee for the person entitled to the funds, cash or prize for one year after the game in which the funds, cash or prize was won. If no claim is made for the funds, cash or prize within one year, the funds, cash or equivalent cash value of the prize shall be deposited in the commercial gaming revenue fund established under PML Section 1352.

## **Q. PAY RACING INDUSTRY SUPPORT PAYMENTS**

A Licensee that possesses a pari-mutuel wagering franchise or license awarded pursuant to PML Article 2 or Article 3, or who possessed in 2013 a franchise or a license awarded pursuant to PML Article 2 or Article 3 or is an articulated entity or such Applicant, shall maintain:

1. Payments made from video lottery gaming operations to the relevant horsemen and breeders organizations at the same dollar level realized in 2013, to be adjusted annually pursuant to changes in the consumer price index for all urban consumers, as published annually by the United States Department of Labor Bureau of Labor Statistics; and
2. Racing activity and race dates pursuant to PML Articles 2 and 3.

A Licensee that does not possess either a pari-mutuel wagering license or franchise awarded pursuant to PML Article 2 or Article 3 is issued a License, the Licensee shall pay:

1. an amount to horsemen for purses at the licensed racetracks in the region that will assure the purse support from video lottery gaming facilities in the region to the licensed racetracks in the region to be maintained at the same dollar levels realized in 2013 to be adjusted by the consumer price index for all urban consumers, as published annually by the United States Department of Labor Bureau of Labor Statistics; and
2. amounts to breeding and development funds to maintain payments from video lottery gaming facilities in the region to the funds to be maintained at the same dollar levels realized in 2013 to be adjusted by the consumer price index for all urban consumers, as published annually by the United States Department of Labor Bureau of Labor Statistics.

## **R. CONFIRMATORY AFFIDAVIT**

All Applicants are advised that if a License is awarded as a result of this RFA, the successful Applicant will be required to complete a Confirmatory Affidavit in form determined by the Commission that confirms that the statements, affirmations and agreements made in the Applicant's RFA remain true and correct.

## **S. ISSUANCE OF LICENSES**

When the Board recommends to the Commission which Applicants are to be considered for licensure, the Commission will undertake its licensing process. If the Commission finds an Applicant suitable for licensing, the Commission will issue a license, including any terms and conditions the Commission may require. All terms and conditions contained in the RFA, any amendments to the RFA, the Application, and the Board's decision statement shall be obligations and requirements of a Licensee.

## XII. LIST OF REQUIRED EXHIBITS

Number	Descriptive	Check If Included
Exhibit V	EXECUTIVE SUMMARY	
Exhibit VI.A.	NAME OF APPLICANT	
Exhibit VI.B.	CONTACT PERSON	
Exhibit VI.C.	LOCATION OF THE PRINCIPAL PLACE OF BUSINESS OF THE APPLICANT	
Exhibit VI.D.	TYPE OF BUSINESS FORMATION	
Exhibit VI.E.	TABLE OF OWNERSHIP	
Exhibit VI.F.	ORGANIZATIONAL CHART	
Exhibit VI.G.	NAMES, ADDRESSES AND EXPERIENCE OF DIRECTORS AND OFFICERS	
Exhibit VI.H.	NAMES, ADDRESSES AND OWNERSHIP AND OTHER INTERESTS	
Exhibit VI.I.	NAMES AND ADDRESSES OF PROMOTERS, SPONSORS AND OTHERS	
Exhibit VI.J.	REGION AND HOST MUNICIPALITIES	
Exhibit VI.K.	CONFLICTS OF INTEREST	
Exhibit VI.L.	PUBLIC OFFICIALS	
Exhibit VI.N.	CONTRACTS WITH STATE OF NEW YORK	
Exhibit VI.O.	CASINO MANAGER	
Exhibit VI.P.	ORGANIZATIONAL DOCUMENTS	
	1. Certified copy of its certificate of incorporation, articles of incorporation or corporate charter	
	2. Bylaws as amended through the date of the Application	
	3. Certified copy of its certificate of formation or articles of organization of a limited liability company	
	4. Limited liability company agreement or operating agreement as amended through the date of the Application	
	5. Certified copy of its certificate of partnership	
	6. Partnership agreement as amended through the date of the Application	
	7. Certified copy of its certificate of limited partnership	
	8. Limited partnership agreement as amended through the date of the Application	
	9. Other legal instrument of organization	
	10. Joint venture agreement	
	11. Trust agreement or instrument, each as amended through the date of the Application	
	12. Voting trust or similar agreement	
	13. Stockholder, member or similar agreement	
Exhibit VIII.A.2.	APPLICANT MINIMUM CAPITAL INVESTMENT	

	a.	Minimum Capital Investment	
	b.	Prior Capital Investment	
Exhibit VIII.A.3.		MARKET/REVENUE STUDY	
Exhibit VIII.A.4.		PRO-FORMA FINANCIAL INFORMATION	
Exhibit VIII.A.5.		BUSINESS PLAN	
Exhibit VIII.A.6.		CAPITAL AND FINANCING STRUCTURE	
	a.	Financing Source Schedule	
	b.	Financing Descriptive	
	c.	Financing plans, arrangements and agreements	
	d.	Financing plan analysis	
	e.	Anticipated Financing Sources	
Exhibit VIII.A.7.		FINANCIAL STATEMENTS AND AUDIT REPORT	
	a.	Financing Source Financial Statements	
	b.	Financing Source Audit Reports	
Exhibit VIII.A.8.		DOCUMENTATION OF FINANCIAL SUITABILITY AND RESPONSIBILITY	
	a.	Financial reports filed with government agencies and check records/ledgers	
	b.	Financial references	
	c.	Securities analysts' and credit rating agencies reports	
Exhibit VIII.A.9.		U.S. SECURITIES AND EXCHANGE COMMISSION FILINGS; NOTICES AND REPORTS TO FINANCING SOURCES AND EQUITY HOLDERS	
Exhibit VIII.A.10.		LEGAL ACTIONS	
Exhibit VIII.A.11.		BANKRUPTCY OR OTHER INSOLVENCY MATTERS	
Exhibit VIII.A.12.		BREACH OF CONTRACT	
Exhibit VIII.A.13.		TAX AUDIT	
Exhibit VIII.A.14.		LICENSES IN OTHER JURISDICTIONS	
	a.	Gaming licenses issued	
	b.	Disciplinary actions brought	
Exhibit VIII. A.15.		PROOF OF ADVANCING OBJECTIVES	
	a.	Past similar Applicant/Manager experience	
	b.	Publically announced acquisition, development or proposed competing gaming projects	
Exhibit VIII.A.16.		ADDITIONAL FINANCIAL COMMITMENTS	
Exhibit VIII.B.1.		MARKET ANALYSIS	
Exhibit VIII.B.2.		PLAYER DATABASE AND LOYALTY PROGRAM	
Exhibit VIII.B.3.		STUDIES AND REPORTS	
	a.	Municipality, Region and State economic benefit impact studies	
	b.	Local and regional economic impact study	
Exhibit VIII.B.4.		PROJECTED TAX REVENUE TO THE STATE	
Exhibit VIII.B.5.		REGIONAL ECONOMIC PLAN COORDINATION	
Exhibit VIII.B.6.		NEW YORK STATE SUBCONTRACTORS AND SUPPLIERS	
Exhibit VIII.B.7.		EMPLOYEES	
	a.	Tables for total employees/pay rate/in-region and in state	

		employees	
	b.	Commitment to hire minimum number of employees	
Exhibit VIII.B.8.		COMPETITIVE ENVIRONMENT	
Exhibit VIII.B.9.		MARKETING PLANS	
	a.	Target market	
	b.	Marketing plans	
	c.	Strategy to ensure maximum use	
Exhibit VIII.B.10.		SUPPLEMENTAL TAX PAYMENT	
Exhibit VIII.B.11.		LICENSING FEE	
Exhibit VIII.C.1.		DESCRIPTION OF LAND	
	a.	Location information	
	b.	Assessed value of land	
	c.	Description of land	
	d.	Description of Project Site	
	e.	Geological or structural defect in Project Site	
	f.	Phase I or Phase II environmental reports	
Exhibit VIII.C.2.		OWNERSHIP OF LAND	
	a.	All ownership interest in past 20 years	
	b.	Status of land	
	c.	Total amount spent/proposed to spend	
Exhibit VIII.C.3.		ZONING	
	a.	Current zoning/proposed rezoning or variance	
	b.	Applicable zoning designation	
	c.	Necessary permits	
Exhibit VIII.C.4.		MASTER PLAN AND BUILDING PROGRAM	
	a.	Master plan for land	
	b.	Suitability of Project Site	
	c.	Gaming Facility building program and	
Exhibit VIII.C.5.		DESIGNS AND LAYOUT	
	a.	Designs	
	b.	Overall architectural and building plan	
	c.	Description of materials	
	d.	Photos/descriptions of analogous resorts	
Exhibit VIII.C.6.		CASINO	
	a.	Description of proposed gaming area	
	b.	High limit	
	c.	Plans to differentiate casino	
	d.	Attributes of slot accounting system	
	e.	Additional details	
Exhibit VIII.C.7.		HOTEL	
	a.	Description of proposed hotel	
	b.	Determination of number of rooms/service/etc.	
	c.	Proposed manager of hotel	
	d.	Usage and allotment of hotel rooms	
	e.	Spa, fitness and pool areas	
	f.	Plans to differentiate hotel from competitors	

	g.	Names of hotels of comparable quality	
	h.	Outsourcing of linen, housekeeping and laundry	
Exhibit VIII.C.8.		MEETING AND CONVENTION FACILITIES	
	a.	Proposed meeting and convention space	
	b.	Proposed business center facilities	
Exhibit VIII.C.9.		ENTERTAINMENT VENUES	
	a.	Description of entertainment venues	
	b.	Marketing of entertainment venues	
	c.	Entertainment venues contemplated	
Exhibit VIII.C.10.		NON-GAMING AMENITIES	
	a.	Proposed restaurant/retail/lounges/bars/recreation/etc.	
	b.	Promotion of local and regional amenities	
Exhibit VIII.C.11.		QUALITY OF AMENITIES	
Exhibit VIII.C.12.		HOURS OF OPERATION	
Exhibit VIII.C.13.		BACK OF HOUSE	
Exhibit VIII.C.14.		PARKING AND TRANSPORTATION INFRASTRUCTURE	
	a.	Description of parking spaces and structures	
	b.	Description traffic circulation plans	
Exhibit VIII.C.15.		DOCK AND LOADING	
Exhibit VIII.C.16.		PHYSICAL PLANT AND MECHANICAL SYSTEMS	
Exhibit VIII.C.17.		INFRASTRUCTURE REQUIREMENTS	
	a.	Estimated fresh water and electricity demand	
	b.	Peak demand plans	
	c.	Necessary utility improvements	
	d.	Necessary roadway and traffic improvements	
	e.	Storm water management	
Exhibit VIII.C.18.		PROJECT FIRMS	
	a.	Information on associated project firms	
	b.	Contact information for associated project firms	
Exhibit VIII.C.19.		CONSTRUCTION BUDGET	
Exhibit VIII.C.20.		TIMELINE FOR CONSTRUCTION	
	a.	Proposed construction timeline	
	b.	Proposed closures	
	c.	Commencement of construction	
	d.	Dislocation due to construction	
	e.	Proposed opening date of Gaming Facility	
Exhibit VIII.C.21.		CONSTRUCTION JOBS	
Exhibit VIII.C.22.		GAMING EQUIPMENT VENDORS	
Exhibit VIII.D.1.		INTERNAL CONTROLS AND SECURITY SYSTEMS	
	a.	Proposed internal controls	
	b.	Projected table of organization	
Exhibit IX.A.1.		ASSESSMENT OF LOCAL SUPPORT	
	a.	Copies of resolution	
	b.	Other evidence of local support	
Exhibit IX.A.2.		LOCAL IMPACTS AND COSTS	
	a.	Cost to host municipalities and State	

	b.	Local and regional impacts	
Exhibit IX.A.3.		MITIGATION OF IMPACT TO HOST MUNICIPALITY AND NEARBY MUNICIPALITIES	
Exhibit IX.A.4.		HOUSING	
Exhibit IX.A.5.		SCHOOL POPULATION	
Exhibit IX.B.1.		LOCAL BUSINESS PROMOTION	
Exhibit IX.B.2.		PARTNERSHIPS WITH LIVE ENTERTAINMENT VENUES	
	a.	Agreements with impacted entertainment venues	
	b.	Declined agreements	
Exhibit IX.B.3.		LOCAL BUSINESS OWNERS	
Exhibit IX.B.4.		LOCAL AGREEMENTS	
Exhibit IX.B.5.		CROSS MARKETING	
Exhibit X.A.1.		ON-SITE RESOURCES FOR PROBLEM GAMBLING	
Exhibit X.A.2.		PROBLEM GAMBLING SIGNAGE	
Exhibit X.A.3.		IDENTIFICATION OF PROBLEM GAMBLING	
Exhibit X.A.4.		SELF-EXCLUSION POLICIES	
Exhibit X.A.5.		TREATMENT AND PREVENTION	
Exhibit X.A.6.		HISTORICAL EFFORTS AGAINST PROBLEM GAMBLING	
Exhibit X.B.1.		HUMAN RESOURCE PRACTICES	
Exhibit X.B.2.		AFFIRMATIVE ACTION PLAN	
Exhibit X.B.3.		JOB OPPORTUNITIES AND TRAINING FOR UNEMPLOYED	
Exhibit X.B.4.		EXPERIENCE WITH HIRING UNEMPLOYED	
Exhibit X.B.5.		ORGANIZED LABOR CONTRACTS	
Exhibit X.B.6.		LABOR HARMONY	
Exhibit X.C.1.		TRAFFIC MITIGATION	
Exhibit X.C.2.		LEED CERTIFICATION	
Exhibit X.C.3.		ENERGY EFFICIENT EQUIPMENT	
Exhibit X.C.4.		STORM WATER	
Exhibit X.C.5.		WATER CONSERVATION	
Exhibit X.C.6.		RENEWABLE ENERGY	
Exhibit X.C.7.		ENERGY CONSUMPTION MONITORING	
Exhibit X.C.8.		DOMESTIC SLOT MACHINES	
Attachment 1		AFFIRMATION	
Attachment 2		ADDENDUM ACKNOWLEDGEMENT FORM	
Attachment 3		WAIVER, RELEASE, COVENANT NOT TO SUE AND INDEMNIFICATION	

## ATTACHMENT 1: AFFIRMATION

I, \_\_\_\_\_, on behalf of \_\_\_\_\_, hereby affirm under the penalty of perjury and subject to Section 210.10 of New York Penal Law, (Perjury in the Second Degree, a class E felony), that the information contained in this RFA Application and all materials accompanying said Application are true and accurate to the best of my knowledge and understanding; that I have reviewed the information contained in the RFA Application for accuracy; that I read and understand the questions and responses on the RFA Application; that any document accompanying this RFA Application that is not an original document is a true copy of the original document; that I have read and understood all applicable provisions of PML Sections 1317 and 1318; that the Applicant agrees to all terms, conditions, and obligations made applicable to all Applicants for a Gaming Facility license; that in the event that the Applicant is awarded a Gaming Facility license it agrees to all obligations, terms, and conditions imposed upon a successful Applicant; and that I am authorized to submit this Application on behalf of the Applicant.

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APPLICANT

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REPRESENTATIVE SIGNATURE

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## ATTACHMENT 2: ADDENDUM ACKNOWLEDGEMENT FORM

\_\_\_\_\_  
Addendum Number

\_\_\_\_\_  
Date Addendum Issued

Summary:

By signing below, the Applicant attests to receiving and responding to the addendum number indicated above.

\_\_\_\_\_  
APPLICANT

\_\_\_\_\_  
REPRESENTATIVE SIGNATURE

## ATTACHMENT 3: WAIVER, RELEASE, COVENANT NOT TO SUE AND INDEMNIFICATION

This Waiver, Release, Covenant Not to Sue and Indemnification Agreement ("**Agreement**") is entered into by and between the New York State Gaming Facility Location Board ("**Board**") and \_\_\_\_\_, as (Manager) (Applicant) (indirect owner of Manager), (indirect owner of Applicant) (direct owner of Manager) (direct owner of Applicant) (hereinafter "**Proposer**").

WHEREAS, Proposer is, or has a proprietary or direct or indirect ownership relationship with, a Manager or an Applicant that is filing or has filed an application ("**Application**") for a gaming facility license ("**License**") pursuant to Chapter 174 of the Laws of 2013, Upstate New York Gaming Economic Development Act of 2013, as amended by Chapter 175 of the Laws of the 2013, each of the State of New York (the "**Act**");

WHEREAS, in consideration of the Board's acceptance of the Application for review, the Board has required the Proposer to agree to release, indemnify and hold harmless the Board and the New York State Gaming Commission, and the State of New York and their respective representatives, agents, employees, officers, directors, elected or appointed officials commissioners, consultants and board members (collectively the "**New York Agencies**"), as more fully set forth below, and to waive any current or future, known and unknown, claim, appeal, review or reconsideration concerning, related to, or in any way involving: (i) the Act, the Application process, the consideration, selection and evaluation of any Application, and the administration of the Act; (ii) the investigation of any Applicant, Manager or Related Party with respect to any Application; (iii) the release or disclosure of any information provided by any Applicant or Manager or owner of an Applicant or Manager, or otherwise obtained during the Application and investigation process; (iv) the issuance of any License; or (v) the use, investigation or processing of any information found or provided during the Application and investigation process.

WHEREAS, the Proposer is a sophisticated business/person, has been represented by counsel and other advisors and/or consultants and has not relied upon anything the New York Agencies have communicated but instead on its own investigation, review and inquiry and determined to submit his/her/its Application and to release, waive and surrender any claim, past, present or future, and to indemnify and defend the New York Agencies from any claim involving the Application or the Application process.

WHEREAS, the Proposer acknowledges and agrees that the receipt and acceptance by the Board of the Application is full and adequate consideration for the promises, covenants and undertakings in this Agreement.

NOW, THEREFORE, it is hereby agreed:

1. The recitals are incorporated herein and made a part of the Agreement;
2. Proposer, on behalf of himself/herself/itself and his/her/its agents, servants, representatives, affiliates, parents, subsidiaries, directors, officers, employees, assigns, predecessors and successors (and their heirs, estates, executors, spouses), covenants and agrees to release, waive, covenant not to sue or make any current or future, known and unknown, claim for damages, costs, fees, expenses or request any relief whatsoever, including but not limited to equitable relief arising from, related to or otherwise involving: (i) the Act, the Application

process, the consideration, selection and evaluation of any Application and the administration of the Act; (ii) the investigation of any Applicant, Manager or Related Party with respect to any Application; (iii) the release or disclosure of any information provided by any Applicant or Manager or owner of an Applicant or Manager or otherwise obtained during the Application and investigation process; (iv) the issuance of any License; or (v) the use, investigation or processing of any information found or provided during the Application and investigation process.

3. The Proposer on behalf of himself/herself/itself and his/her/its agents, servants, representatives, affiliates, parents, subsidiaries, directors, officers, employees, assigns, predecessors and successors (and their heirs, estates, executors, spouses) covenants and agrees not to seek appeal, review or reconsideration of any decision or action of the New York Agencies.
4. Proposer, on behalf of himself/herself/itself and his/her/its agents, servants, representatives, affiliates, parents, subsidiaries, directors, officers, employees, assigns, predecessors and successors (and their heirs, estates, executors, spouses) covenants and agrees to indemnify, defend and hold the New York Agencies harmless from and against any current or future, known and unknown, claim, cause, suit, cause of action, damages, costs, damages and expense, including attorney’s fees, (whether known or unknown, suspected or unsuspected, contingent or liquidated) arising from or related to or otherwise involving: (i) the Act, the Application process, the consideration, selection and evaluation of any Application and the administration of the Act; (ii) the investigation of any Applicant, Manager or Related Party with respect to any Application; (iii) the release or disclosure of any information provided by any Applicant or Manager or owner of an Applicant or Manager or otherwise obtained during the Application and investigation process; (iv) the issuance of any License; or (v) the use, investigation or processing of any information found or provided during the Application and investigation process.
5. Each of the promises, covenants and agreements set forth in Paragraphs 1-4 above run in favor of the New York Agencies.
6. Capitalized terms used but not defined in this Agreement shall have the meanings defined in the Board’s Request for Applications under the Act dated March 31, 2014, as the same may be amended from time to time.

<p><b>NEW YORK GAMING FACILITY LOCATION BOARD</b></p> <p>By: _____</p> <p>Its: _____</p> <p>Dated: _____</p>	<p>_____</p> <p>Applicant</p> <p>_____</p> <p>Manager</p> <p>_____</p> <p>Owner*</p> <p>Dated: _____</p>
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\* The legal guardian of any minor owner must execute on his or her behalf.

## **ATTACHMENT 4: ACKNOWLEDGEMENT OF AMENDMENTS TO RFA**

This attachment represents that the Applicant has read, reviewed and understands the totality of Applicant questions and answers, guidance documents and related communications issued by the Gaming Commission during the first RFA process (all available at <http://www.gaming.ny.gov/gaming/casinos.php> > RFA for Gaming Facilities). These documents served as amendments and should be read in conjunction with the RFA as issued on March 23, 2015.

By signing below, the Applicant attests to reviewing the documents indicated above.

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APPLICANT

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REPRESENTATIVE SIGNATURE



# **Request for Applications To Develop and Operate A Gaming Facility in New York State**

## **Round 1 - Questions and Answers**

**April 13, 2015**

**Q. 1:** With respect to the requirement to provide a Gaming Facility License Application Form for each of: (i) the Applicant; (ii) any direct and indirect parent entity of the Applicant including any holding company; (iii) any Manager; (iv) any entity having a beneficial or proprietary interest of five (5) percent or more in an Applicant or a Manager; and (v) any other entity that may designated by the Commission:

a. If a Gaming Facility License Application Form was submitted for any and/or all of the above-referenced entities in connection with a response to the Request for Applications to Develop and Operate a Gaming Facility in New York State dated March 31, 2014, will such Gaming Facility License Application Form(s) be required to be submitted again with a response to this RFA?

b. If the answer to question (a) is in the affirmative, will it be acceptable to resubmit a Gaming Facility License Application Form that was submitted for any and/or all of the above-referenced entities in connection with a response to the Request for Applications to Develop and Operate a Gaming Facility in New York State dated March 31, 2014?

**A. 1:**

**a. Yes, but submission should be of four (4) electronic copies, each contained on individual USB drives.**

**b. Yes, so long as all information submitted is correct as of submission on or before July 6, 2015 and there is a certification by the entity on behalf of which the form is submitted that all such information from the earlier-submitted form is complete and accurate as of the date of the 2015 submission.**

**Q. 2:** With respect to the requirement to provide a Multi-Jurisdictional Personal History Disclosure Form and New York Supplemental Form for each natural person who is (i) a director, manager, general partner or person holding an equivalent position with the Applicant, a Manager or any direct or indirect parent entity of the Applicant; (ii) a Casino Key Employee; (iii) a person having beneficial or proprietary interest of five (5) percent or more of an Applicant or a Manager; or (iv) designated by the Commission:

a. If a Multi-Jurisdictional Personal History Disclosure Form and New York Supplemental Form was submitted for any and/or all of the above-referenced natural persons in connection with a response to the Request for Applications to Develop and Operate a Gaming Facility in New York State dated March 31, 2014, will such Multi-Jurisdictional Personal History Disclosure Form(s) and New York Supplemental Form(s) be required to be submitted with a response to this RFA?

b. If the answer to question (a) is in the affirmative, will it be acceptable to resubmit Multi-Jurisdictional Personal History Disclosure Forms and New York Supplemental Forms that were submitted for any and/or all of the above-referenced natural persons in connection with a response to the Request for Applications to Develop and Operate a Gaming Facility in New York State dated March 31, 2014?

c. If the answer to question (a) is in the negative, may natural persons utilize financial information prepared in the 4 months preceding July 6, 2015 as an acceptable period in order to complete and compile the information in a timely manner for the July 6, 2015 submission, as was permitted during the Request for Applications to Develop and Operate a Gaming Facility in New York State dated March 31, 2014?

**A. 2:**

a. **Yes.**

b. **Yes, so long as all information submitted is correct as of submission on or before July 6, 2015 and there is a certification by the person submitting the form that all such information from the earlier-submitted form is complete and accurate as of the date of the 2015 submission.**

c. **Please see the Answer to Question 2 a., above.**

**Q. 3:** Regarding Section III, H:

a. Is an applicant obligated to follow the requirements related to number of copies and format of copies outlined in Section IV, B when providing an update to the application?

b. If not, how many copies and in what format should copies of updates be provided to the Board?

**A. 3: All updates should be digitally provided, labeled “update #, Exhibit Y.Y-[Exhibit Spelled Out Here]”. Eight (8) copies of any update should be submitted.**

**Q. 4:** Regarding Section IV, B – Original Submission, with respect to items 2 through 7, should these items be included in any specific box or marked with any specific color tape?

**A. 4: There is no preference as to box type, but an Applicant should use BLACK tape.**

**Q. 5:** Regarding Section IV, B – Original Submission:

a. Please clarify that the reference to Exhibit XIII is a reference to Section XIII, the required attachments.

b. Please clarify that it is the Attachments 1 through 4 that are required to be included, together with the Exhibit X documents, in the box sealed with Red tape.

**A. 5:**

**a. It is.**

**b. They are.**

**Q. 6:** Regarding Section IV, D – Public Presentations:

a. What types of Presentation aids are acceptable?

b. Will the Board accept presentation boards or digital (PowerPoint) presentations only?

c. If so, is there a size/format requirement for the boards?

d. Is there a limit as to the quantity of presentation aids?

**A. 6: At this time the location(s) for the Public Presentations have not yet been determined. As such, we are unable to comment as to what equipment may be available for use.**

**Q. 7:** Regarding Section VI, K – Conflicts of Interest, when does the Board anticipate posting a list of members, employees, consultants and agents of the Board and the Commission in order for an Applicant to submit an accurate description of any relationship or affiliation of the Applicant, the Manager or any of their respective Affiliates that currently exists or existed in the past five (5) years with any member, employee, consultant or agent of the Board or the Commission that is a conflict of interest or may be perceived as a conflict of interest during the RFA process?

**A. 7: No lists will be provided. Please see the answer to Question 99 a. from Request for Application to Develop and Operate a Gaming Facility in New York State, Round 1 Questions and Answers dated April 23, 2014.**

**Q. 8:** Regarding Section VI, L – Public Officials, please clarify whether the requirement of paragraph two regarding an “agreement, written or oral, to receive any compensation from anyone in connection with the Application, the RFA process or obtaining of a License from the State” is limited to an agreement that is for the benefit of the Applicant.

**A. 8: No, such requirement is not limited as described in this Question.**

**Q. 9:** Regarding Section VIII.A.8 – Documentation of Financial Suitability and Responsibility, can applicants take the position that Exhibit VIII.A.7.a. addresses the requirements of Exhibit VIII.A.8.a, as was permitted under the Request for Applications to Develop and Operate a Gaming Facility in New York State dated March 31, 2014 process?

**A. 9: Applicants may take the position that Exhibit VIII.A.7.a. addresses this request. See N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1313.1(e).**

**Additionally, please see the answer to Question 160 from Request for Application to Develop and Operate a Gaming Facility in New York State, Round 1 Questions and Answers dated April 23, 2014.**

**Q. 10:** To what extent will the Board consider existing infrastructure and previous investments in scoring an Applicant?

**A. 10: Please review the following language from § VIII.A.2.b of the RFA:**

**Pursuant to PML Section 1315, the Board may, in its sole discretion, determine what portion, if any, of such capital investments may be included toward computing the Applicant’s Minimum Capital Investment.**

**Q. 11:** During the background investigation into suitability of an Applicant, the Applicant will necessarily have direct contact with the Commission staff.

a. Is such contact during the Restricted Period an exception to the communication restrictions described in the RFA?

b. Is it necessary that Applicant's copy the Board's designated contact persons on all correspondence with Commission staff and/or the Commission's/Board's consultants regarding background investigatory matters?

**A. 11: Yes. Please see the answer to Question 15 from Request for Application to Develop and Operate a Gaming Facility in New York State, Round 1 Questions and Answers dated April 23, 2014.**

**Q. 12:** Does the communication bar between the Commission/Board and Applicants as described in the RFA apply to an Applicant's provision of comments to proposed regulations of the Commission/Board or other responses by Applicants in reply to solicitations for public comment made by the Commission/Board?

**A. 12: No. Please see the answer to Question 16 from Request for Application to Develop and Operate a Gaming Facility in New York State, Round 1 Questions and Answers dated April 23, 2014.**

**Q. 13:** Does the Board anticipate providing more guidance on the weight of each factor in the selection process? For example, page 32 of the RFA details "Economic Activity and Business Development Factors" as being weighted 70 percent and then provides a breakdown of 9 items within the "Economic Activity and Business Development Factors".

a. Are these 9 factors the only factors comprising the 70 percent?

b. Are these 9 factors all weighted equally?

c. If not, will the Board provide guidance as to how these factors are weighted?

d. Similarly for the factor breakdown of "Local Impact and Siting Factors" and "Workforce Enhancement Factors".

**A. 13: No.**

**Q. 14:** As the Board clarified in response to a question during the Request for Applications to Develop and Operate a Gaming Facility in New York State dated March 31, 2014 process, will the Board here maintain its position that plans to eliminate VLTs in favor of Class 3 machines at an existing facility will not have a negative impact on scoring?

**A. 14: An application of an existing VLT facility will not be disadvantaged by the proposed elimination of VLTs. Please see the answer to Question 123 from Request for Application to Develop and Operate a Gaming Facility in New York State, Round 1 Questions and Answers dated April 23, 2014.**

**Q. 15:** Will the Board consider the employment, economic and regional negative impacts a proposed Gaming Facility will have on existing Video Lottery Gaming facilities in the region if the license is awarded to an applicant that does not currently operate as a Video Lottery Gaming facility?

**A. 15: Yes.**

**Q. 16:** Will the Board consider an application with multiple financing sources more favorably than an application with one financing commitment?

**A. 16: The Commission will consider all relevant factors in making its determination. Consistent with past practice, the Commission will not entertain any hypothetical financing scenarios.**

**###**



## Request for Applications to Develop and Operate a Gaming Facility in REGION 5

# Protocol for Applicant Presentation

August 28, 2015

The Gaming Facility Location Board will host a forum in **New York City on Thursday, September 10, 2015** for the Applicant for the Region 5 RFA to make a mandatory informational presentation of its Application to Members of the New York Gaming Facility Location Board and the public.

**Purpose:** The purpose of this forum is to provide the Board and the public explanations of the contents of the proposed project in the Application.

### **Meeting Logistics:**

**Date and time.** The public presentation will be conducted September 10, 2015. Doors will open at 10:00 a.m. and the presentation will commence at 10:30 a.m.

**Location.** The public presentation will be located at:

Jacob K. Javits Convention Center  
655 West 34th Street, New York City

Exhibit Hall Meeting Space: 1E07-08.

**IMPORTANT:** All attendees must enter and exit through the "1E" entrance at the south end of the inner roadway.

**Seating.** The facility seats approximately 200 persons. Excepting limited reserved seating for members of the Board, Board's staff and representatives of the Applicant, seating will be on a first-come, first-served basis.

**Remote access.** The presentation will be streamed live and archived on the Gaming Commission's Web site ([www.gaming.ny.gov](http://www.gaming.ny.gov)).

**Presentation:**

**Length.** The Applicant should anticipate presenting for 45 minutes, leaving 15 minutes for questions by the Board.

**Participation.** The Applicant's presentation group shall be limited to personnel qualified to competently and cogently respond to questions from the Board and expound upon the materials presented.

**Equipment.** The Board will provide a computer, projector and screen for PowerPoint presentations, along with equipment to display posters and other visual aids necessary for the Applicant's presentation. For purposes of Board preparation, any PowerPoint presentation must be submitted to the Board by Tuesday, September 8, 2015 at 2:00 p.m. EDT via a single flash drive, consistent with previous submission protocols.

**Other visual aids.** The Applicant may utilize posters and other visual aids, however all materials must be promptly removed or disassembled at the conclusion of the presentation.

**Decorum:**

**Applicant.** The Applicant is instructed to limit their presentation to their own Application. The Board will not entertain comments about previously submitted Applicants or Applications.

**Public attendees.** No questions from the public will be permitted at this event. A Public Comment event for the Applicant will take place September 18 in Binghamton, NY.

###



## Request for Applications to Develop and Operate a Gaming Facility in REGION 5

# Protocol for Public Comment Event

August 31, 2015

The Gaming Facility Location Board is convening a public comment event in Region 5 for members of the public to comment on the Applicant's proposal and the potential impact on their Region and community. This public comment event is free, open to the public and does not require advance registration to attend.

Each speaker addressing the Board will be given an individual five-minute speaking slot.

Pursuant to section IV.E of the Request for Applications, the Applicant or their representatives are required to attend the public comment event. The Applicant cannot address the Board or make public comments; individuals attending the public comment event cannot pose comments or questions directly to the Applicant or their representatives.

**Date and time.** The public comment event will be conducted September 18. Doors will open at 9:30 a.m. The Board will receive comments between 10:00 a.m. and 2:00 p.m.

**Location.** The event will be conducted at:

SUNY Broome Community College  
Baldwin Gym (Located in the Student Center)  
907 Upper Front Street  
Binghamton, NY 13902

**Parking.** Please refer to the [campus map](#) for parking on campus.

**Seating.** Excepting limited reserved seating for members of the Board and staff and the Applicant team, seating will be on a first-come, first-served basis.

**Remote access.** The event will be streamed live and archived on the Gaming Commission's Web site ([www.gaming.ny.gov](http://www.gaming.ny.gov)). Members of the public not wishing to comment are encouraged to watch the live stream remotely in order to preserve limited seating for those wishing to comment.

**Public Comments:**

**Participation:** The public comment event is free, open to the public and does not require advance registration.

To allow diverse participation, the Board respectfully requests interested grassroots groups or formally constituted organizations designate a single representative to address the Board to avoid repetition. Time permitting, additional members of such groups or organizations may address the Board on a first-come, first-served basis.

**Length.** To ensure fairness, individual comment segments will be limited to five (5) minutes each. There will be a visual counter graphically illustrating time remaining for each segment. The Board will adhere to the clock to maximize the number of participants, and asks all speakers to keep remarks to the allotted time.

**Comment Segment Reservations.** The first five time slots per hour will be held for speaking time reservations.

**To reserve a segment, members of the public should email their name, organization (if applicable) and desired time request to [info@gaming.ny.gov](mailto:info@gaming.ny.gov).** All reservation slots will be filled on a first-come, first-served basis and may be requested from August 31 through the close of business on September 16. As these slots will be filled on a first-come, first-served basis, please note that all reservation slots may be filled before September 16.

The balance of time slots will be filled on a first-come, first-served basis, with sign-ups conducted at the event.

The Board will “reset” the start time for speakers at the top of each hour. This will allow the Board to hear as many comments as possible while adhering to the schedule of pre-registered speakers.

**Equipment and visual aids.** No attendees may utilize multimedia visual aids. Informational posters and handouts are permitted, however the assembly and distribution of materials will be counted as part of the five (5) minute allotment. All materials must be promptly removed or disassembled at the conclusion of remarks. Individuals making use of posters as part of their comment should submit a reduced-size copy of such if intended for inclusion in the formal written record.

**Written submissions.** In addition to oral statements, the Board will accept written submissions at the event and up to seven (7) days following the event. Statements received beyond seven (7) days following the event will not be included in the formal record but will be included in the full RFA process record.

All submissions should clearly identify the submitter’s name, and affiliation, if any, and be sent to:

Gail P. Thorpe, Supervisor of Contract Administration  
New York State Gaming Commission  
Contracts Office  
One Broadway Center  
Schenectady, New York 12301-7500

Written comments may also be submitted via email to [info@gaming.ny.gov](mailto:info@gaming.ny.gov).

## **Registration**

**Pre-Registered Speaker Check-In.** The first five (5) speaking time reservation slots per hour are being held for individuals to pre-register as described above.

Pre-registered speakers must check-in at the event table clearly marked “Pre-Registration Reserved Check-In” at least 15 minutes prior to their reserved speaking time. Slots for pre-registrants who do not timely check-in prior to the start of their speaking time will be released to same day on-site registrants.

**On-Site Registration.** Attendees without previously registered speaking slots may sign up at the event table clearly marked “Walk-In Registration.” Speaking slots will be filled on a first-come, first-served basis.

Each hour, the Board will first call pre-registered speakers, and then same day registrants in the order of registration. The Board anticipates more people will register to speak than time will allow, thus it is imperative that those who sign up to speak on the day of the event remain in the venue so they do not miss their opportunity to speak.

## **Decorum**

All attendees are expected to show respect and courtesy to attendees, commentators and Board members. Disruptions will not be tolerated. Any person making offensive, insulting, threatening, intimidating or obscene remarks, or who becomes unruly during the Public Comment Event will be requested to leave at the direction of any Board member. If necessary, the Board may request the assistance of law enforcement for the purpose of maintaining safety, order and decorum.

**Signs, Placards, Banners.** For public safety purposes, no signs or placards mounted on sticks, posts, poles or similar structures will be allowed. Non-mounted signs, placards, banners are allowed but must not disrupt or interfere with others.

## **FREQUENTLY ASKED QUESTIONS**

### **Q. How do I get to the Binghamton Public Comment Event?**

A. Please refer to the campus map located [here](#) and directions located [here](#).

**Q. Will Speakers be provided microphones, or a microphone at a podium?**

A. There will be a wireless microphone on a stand or podium facing the Board at the location.

**Q. Can I give my reserved speaking slot to someone else?**

A. Yes, but only in the event the individual seeking to take your spot is affiliated with the same organization as yourself.

**Q. Can you provide a list of those members of the public who have reserved speaking slots?**

A. No.

**Q. Another member of the public and I both have reserved speaking slots at the same event and wish to switch times. Is this allowed?**

A. Yes, but only if both impacted members of the public are present at the pre-registration sign-in table at the same time and make the request together.

**Q. What happens if someone doesn't use their entire five minute segment?**

A. If someone uses less than their five minute segment, the Board will immediately call the next individual to speak. All speakers should arrive 15 minutes prior to their scheduled time and not leave the premises until they have made their comment.

**Q. I am the Applicant and/or work for the Applicant. May I provide comment to the Board?**

A. No. Pursuant to section IV.E of the Request for Applications, Applicants or their representatives are required to attend the public comment event. However, they should not expect to address the Board or make public comments.

**Q. During my segment, may I address or question the Applicant at the public comment event?**

A. No. Individuals attending the public comment event cannot pose comments or questions directly to the Applicant in attendance.

**# # #**



## Gaming Facility Location Board

Request for Applications to Develop and Operate a Gaming Facility in REGION 5

# UPDATED Protocol for Public Comment Event

**New/Updated Information in Bold Yellow Highlight.**

September 15, 2015

The Gaming Facility Location Board is convening a public comment event in Region 5 for members of the public to comment on the Applicant's proposal and the potential impact on their Region and community. This public comment event is free, open to the public and does not require advance registration to attend.

Each speaker addressing the Board will be given an individual five-minute speaking slot.

Pursuant to section IV.E of the Request for Applications, the Applicant or their representatives are required to attend the public comment event. The Applicant cannot address the Board or make public comments; individuals attending the public comment event cannot pose comments or questions directly to the Applicant or their representatives.

**Date and time.** The public comment event will be conducted September 18. Doors will open at 9:30 a.m. The Board will receive comments between 10:00 a.m. and 2:00 p.m.

**A brief video that was unable to be shown at the September 10 Applicant Presentation event due to time constraints will be shown at the beginning of the Public Comment Event.**

**Location.** The event will be conducted at:

SUNY Broome Community College  
Baldwin Gym (Located in the Student Center)  
Main Campus: 907 Upper Front Street  
Binghamton, NY 13902

**Attendees should use the NORTH COLLEGE DRIVE entrance to the campus. The Baldwin Gym is adjacent to the Ice Center on North College Drive. Attendees for this event are permitted to park in clearly marked spaces anywhere on campus but must use the main entrance to the Gym.**

**Seating.** Excepting limited reserved seating for members of the Board and staff, seating will be on a first-come, first-served basis.

**Remote access.** The event will be streamed live and archived on the Gaming Commission's Web site ([www.gaming.ny.gov](http://www.gaming.ny.gov)). Members of the public not wishing to comment are encouraged to watch the live stream remotely in order to preserve seating for those wishing to comment.

### **Public Comments:**

**Participation:** The public comment event is free, open to the public and does not require advance registration.

To allow diverse participation, the Board respectfully requests interested grassroots groups or formally constituted organizations designate a single representative to address the Board to avoid repetition. Time permitting, additional members of such groups or organizations may address the Board on a first-come, first-served basis.

**Members of the public who spoke at the September 24, 2014 Public Comment Event in Ithaca during the prior casino bidding process, please NOTE: The length of this Public Comment Event is four hours. It is expected that more people will register to speak than time will allow. If you spoke at the September 24, 2014 Public Comment Event, it is unnecessary to speak again.**

- **If you wish to have your comment from that record considered in this casino bidding process, please simply email [info@gaming.ny.gov](mailto:info@gaming.ny.gov) and indicate as such (please include your name). Your 2014 comment will then be included in the current record.**
- **If you intend to speak at the September 18 Public Comment Event and also spoke at the September 24, 2014 Public Comment Event: Please inform the registration desk upon arrival and registration so that your previous comments are added to the current record.**

**For members of the public who wish to provide written comment to the Board: Slips of paper at the registration desks with the mailing and email address listed below will be available for attendees to take with them.**

**Length.** To ensure fairness, individual comment segments will be limited to five (5) minutes each. There will be a visual counter graphically illustrating time remaining for each segment. The Board will adhere to the clock to maximize the number of participants, and asks all speakers to keep remarks to the allotted time.

**Comment Segment Reservations.** As previously announced publicly, the first five time slots per hour are held for speaking time reservations. **All reserved times have been filled.**

The Board will “reset” the start time for speakers at the top of each hour. This will allow the Board to hear as many comments as possible while adhering to the schedule of pre-registered speakers.

**Equipment and visual aids.** No attendees may utilize multimedia visual aids. Informational posters and handouts are permitted, however the assembly and distribution of materials will be counted as part of the five (5) minute allotment. All materials must be promptly removed or disassembled at the conclusion of remarks. Individuals making use of posters as part of their comment should submit a reduced-size copy of such if intended for inclusion in the formal written record.

**Written submissions.** In addition to oral statements, the Board will accept written submissions at the event and up to seven (7) days following the event. Statements received beyond seven (7) days following the event will not be included in the formal record but will be included in the full RFA process record.

All submissions should clearly identify the submitter’s name, and affiliation, if any, and be sent to:

Gail P. Thorpe, Supervisor of Contract Administration  
New York State Gaming Commission  
Contracts Office  
One Broadway Center  
Schenectady, New York 12301-7500

Written comments may also be submitted via email to [info@gaming.ny.gov](mailto:info@gaming.ny.gov).

## **Registration**

**Pre-Registered Speaker Check-In.** The first five (5) speaking time reservation slots per hour are being held for individuals to pre-register as described above. **All reserved times have been filled.**

Pre-registered speakers must check-in at the event table clearly marked “Pre-Registration Reserved Check-In” at least 15 minutes prior to their reserved speaking time. Slots for pre-registrants who do not timely check-in prior to the start of their speaking time will be released to same day on-site registrants.

**On-Site Registration.** Attendees without previously registered speaking slots may sign up at the event table clearly marked “Walk-In Registration.” Speaking slots will be filled on a first-come, first-served basis.

Each hour, the Board will first call pre-registered speakers, and then same day registrants in the order of registration. The Board anticipates more people will register to speak than time will allow, thus it is imperative that those who sign up to speak on the day of the event remain in the venue so they do not miss their opportunity to speak.

## **Decorum**

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### **Q. Will Speakers be provided microphones, or a microphone at a podium?**

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A. Yes, but only if both impacted members of the public are present at the pre-registration sign-in table at the same time and make the request together.

### **Q. What happens if someone doesn't use their entire five minute segment?**

A. If someone uses less than their five minute segment, the Board will immediately call the next individual to speak. All speakers should arrive 15 minutes prior to their scheduled time and not leave the premises until they have made their comment.

**Q. I am the Applicant and/or work for the Applicant. May I provide comment to the Board?**

A. No. Pursuant to section IV.E of the Request for Applications, Applicants or their representatives are required to attend the public comment event. However, they should not expect to address the Board or make public comments.

**Q. During my segment, may I address or question the Applicant at the public comment event?**

A. No. Individuals attending the public comment event cannot pose comments or questions directly to the Applicant in attendance.

**# # #**

CHAPTER 174

AN ACT to amend the racing, pari-mutuel wagering and breeding law, the penal law and the state finance law, in relation to commercial gaming; to amend the executive law, the state finance law and the Indian law, in relation to authorizing the settlement of disputes between the Oneida Nation of New York, the state, Oneida county and Madison county; to amend the Indian law and the tax law, in relation to identifying nations and tribes; to amend the tax law and the state finance law, in relation to video lottery gaming; to amend part HH of chapter 57 of the laws of 2013 relating to providing for the administration of certain funds and accounts related to the 2013-14 budget, in relation to the commercial gaming revenue fund; to amend chapter 50 of the laws of 2013 enacting the state operations budget, in relation to commercial gaming revenues; to amend the racing, pari-mutuel wagering and breeding law, in relation to directing the state gaming commission to annually evaluate video lottery gaming; to amend the racing, pari-mutuel wagering and breeding law and the state finance law, in relation to account wagering on simulcast horse races; to repeal section 11 of the executive law relating to fuel and energy shortage state of emergency; and to repeal clause (G) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law relating to vendor's fees

Became a law July 30, 2013, with the approval of the Governor.

Passed by a majority vote, three-fifths being present.

**The People of the State of New York, represented in Senate and Assembly, do enact as follows:**

Section 1. This act shall be known and may be cited as the "upstate New York gaming economic development act of 2013."

§ 2. The racing, pari-mutuel wagering and breeding law is amended by adding a new article 13 to read as follows:

**ARTICLE 13**

**DESTINATION RESORT GAMING**

**Title 1. General provisions**

- 2. Facility determination and licensing**
- 3. Occupational licensing**
- 4. Enterprise and vendor licensing and registration**
- 5. Requirements for conduct and operation of gaming**
- 6. Taxation and fees**
- 7. Problem gambling**
- 8. Miscellaneous provisions**
- 9. Gaming inspector general**

**TITLE 1**

**GENERAL PROVISIONS**

**Section 1300. Legislative findings and purpose.**

- 1301. Definitions.**
- 1302. Auditing duties of the commission.**
- 1303. Equipment testing.**
- 1304. Commission reporting.**

EXPLANATION--Matter in **italics** is new; matter in brackets [-] is old law to be omitted.

1305. Supplemental power of the commission.

1306. Powers of the board.

1307. Required regulations.

1308. Reports and recommendations.

1309. Severability and preemption.

§ 1300. Legislative findings and purpose. The legislature hereby finds and declares that:

1. New York state is already in the business of gambling with nine video lottery facilities, five tribal class III casinos, and three tribal class II facilities;

2. New York state has more electronic gaming machines than any state in the Northeast or Mideast;

3. While gambling already exists throughout the state, the state does not fully capitalize on the economic development potential of legalized gambling;

4. The state should authorize four destination resort casinos in upstate New York;

5. Four upstate casinos can boost economic development, create thousands of well-paying jobs and provide added revenue to the state;

6. The upstate tourism industry constitutes a critical component of our state's economic infrastructure and that four upstate casinos will attract non-New York residents and bring downstate New Yorkers to upstate;

7. The casino sites and the licensed owners shall be selected on merit;

8. Local impact of the casino sites will be considered in the casino evaluation process;

9. Tribes whose gaming compacts are in good standing with the state will have their geographic exclusivity protected by this article;

10. Revenue realized from casinos shall be utilized to increase support for education beyond that of the state's education formulae and to provide real property tax relief to localities;

11. Casinos will be tightly and strictly regulated by the commission to guarantee public confidence and trust in the credibility and integrity of all casino gambling in the state and to prevent organized crime from any involvement in the casino industry;

12. The need for strict state controls extends to regulation of all persons, locations, practices and associations related to the operation of licensed enterprises and all related service industries as provided in this article;

13. The state and the casinos will develop programs and resources to combat compulsive and problem gambling;

14. The state will ensure that host municipalities of casinos are provided with funding to limit any potential adverse impacts of casinos;

15. Political contributions from the casino industry will be minimized to reduce the potential of political corruption from casinos; and

16. As thoroughly and pervasively regulated by the state, four upstate casinos will work to the betterment of all New York.

§ 1301. Definitions. As used in this article the following terms shall, unless the context clearly requires otherwise, have the following meanings:

1. "Affiliate". A person that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified person.

2. "Applicant". Any person who on his or her own behalf or on behalf of another has applied for permission to engage in any act or activity which is regulated under the provisions of this article.

3. "Application". A written request for permission to engage in any act or activity which is regulated under the provisions of this article.

4. "Authorized game". Any game determined by the commission to be compatible with the public interest and to be suitable for casino use after such appropriate test or experimental period as the commission may deem appropriate. An authorized game may include gaming tournaments in which players compete against one another in one or more of the games authorized herein or by the commission or in approved variations or composites thereof if the tournaments are authorized.

5. "Board". The New York state gaming facility location board established by the commission pursuant to section one hundred nine-a of this chapter.

6. "Business". A corporation, sole proprietorship, partnership, limited liability company or any other organization formed for the purpose of carrying on a commercial enterprise.

7. "Casino". One or more locations or rooms in a gaming facility that have been approved by the commission for the conduct of gaming in accordance with the provisions of this article.

8. "Casino key employee". Any natural person employed by a gaming facility licensee, or holding or intermediary company of a gaming facility licensee, and involved in the operation of a licensed gaming facility in a supervisory capacity and empowered to make discretionary decisions which regulate gaming facility operations; or any other employee so designated by the commission for reasons consistent with the policies of this article.

9. "Casino vendor enterprise". Any vendor offering goods or services which directly relate to casino or gaming activity, or any vendor providing to gaming facility licensees or applicants goods and services ancillary to gaming activity. Notwithstanding the foregoing, any form of enterprise engaged in the manufacture, sale, distribution, testing or repair of slot machines within the state, other than antique slot machines, shall be considered a casino vendor enterprise for the purposes of this article regardless of the nature of its business relationship, if any, with gaming facility applicants and licensees in this state.

10. "Close associate". A person who holds a relevant financial interest in, or is entitled to exercise power in, the business of an applicant or licensee and, by virtue of that interest or power, is able to exercise a significant influence over the management or operation of a gaming facility or business licensed under this article.

11. "Commission". The New York state gaming commission.

12. "Complimentary service or item". A service or item provided at no cost or at a reduced cost to a patron of a gaming facility.

13. "Conservator". A person appointed by the commission to temporarily manage the operation of a gaming facility.

14. "Credit card". A card, code or other device with which a person may defer payment of debt, incur debt and defer its payment, or purchase property or services and defer payment therefor, but not a card, code or other device used to activate a preexisting agreement between a person and a financial institution to extend credit when the person's account at the financial institution is overdrawn or to maintain a specified minimum balance in the person's account at the financial institution.

15. "Debt". Any legal liability, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent, including debt convertible into an equity security which has not yet been so converted, and any other debt carrying any warrant or right to subscribe to or purchase an equity security which warrant or right has not yet been exercised.

16. "Encumbrance". A mortgage, security interest, lien or charge of any nature in or upon property.

17. "Executive director". The executive director of the New York state gaming commission.

18. "Family". Spouse, domestic partner, partner in a civil union, parents, grandparents, children, grandchildren, siblings, uncles, aunts, nephews, nieces, fathers-in-law, mothers-in-law, daughters-in-law, sons-in-law, brothers-in-law and sisters-in-law, whether by the whole or half blood, by marriage, adoption or natural relationship.

19. "Game". Any banking or percentage game located within the gaming facility played with cards, dice, tiles, dominoes, or any electronic, electrical, or mechanical device or machine for money, property, or any representative of value which has been approved by the commission.

20. "Gaming" or "gambling". The dealing, operating, carrying on, conducting, maintaining or exposing for pay of any game.

21. "Gaming device" or "gaming equipment". Any electronic, electrical, or mechanical contrivance or machine used in connection with gaming or any game.

22. "Gaming employee". Any natural person, not otherwise included in the definition of casino key employee, who is employed by a gaming facility licensee, or a holding or intermediary company of a gaming facility licensee, and is involved in the operation of a licensed gaming facility or performs services or duties in a gaming facility or a restricted casino area; or any other natural person whose employment duties predominantly involve the maintenance or operation of gaming activity or equipment and assets associated therewith or who, in the judgment of the commission, is so regularly required to work in a restricted casino area that registration as a gaming employee is appropriate.

23. "Gaming facility". The premises approved under a gaming license which includes a gaming area and any other nongaming structure related to the gaming area and may include, but shall not be limited to, hotels, restaurants or other amenities.

24. "Gaming facility license". Any license issued pursuant to this article which authorizes the holder thereof to own or operate a gaming facility.

25. "Gross gaming revenue". The total of all sums actually received by a gaming facility licensee from gaming operations less the total of all sums paid out as winnings to patrons; provided, however, that the total of all sums paid out as winnings to patrons shall not include the cash equivalent value of any merchandise or thing of value included in a jackpot or payout; provided further, that the issuance to or wagering by patrons of a gaming facility of any promotional gaming credit shall not be taxable for the purposes of determining gross revenue.

26. "Holding company". A corporation, association, firm, partnership, trust or other form of business organization, other than a natural person, which, directly or indirectly, owns, has the power or right to control, or has the power to vote any significant part of the outstanding voting securities of a corporation or any other form of business organization which holds or applies for a gaming license; provided,

however, that a "holding company", in addition to any other reasonable use of the term, shall indirectly have, hold or own any such power, right or security if it does so through an interest in a subsidiary or any successive subsidiaries, notwithstanding how many such subsidiaries may intervene between the holding company and the gaming facility licensee or applicant.

27. "Host municipality". A city, town or village in which a gaming facility is located or in which an applicant has proposed locating a gaming facility.

28. "Intermediary company". A corporation, association, firm, partnership, trust or other form of business organization, other than a natural person, which is a holding company with respect to a corporation or other form of business organization which holds or applies for a gaming license, and is a subsidiary with respect to a holding company.

29. "Junket". An arrangement intended to induce a person to come to a gaming facility to gamble, where the person is selected or approved for participation on the basis of the person's ability to satisfy a financial qualification obligation related to the person's ability or willingness to gamble or on any other basis related to the person's propensity to gamble and pursuant to which and as consideration for which, any of the cost of transportation, food, lodging, and entertainment for the person is directly or indirectly paid by a gaming facility licensee or an affiliate of the gaming facility licensee.

30. "Junket enterprise". A person, other than a gaming facility licensee or an applicant for a gaming facility license, who employs or otherwise engages the services of a junket representative in connection with a junket to a licensed gaming facility, regardless of whether or not those activities occur within the state.

31. "Junket representative". A person who negotiates the terms of, or engages in the referral, procurement or selection of persons who may participate in, a junket to a gaming facility, regardless of whether or not those activities occur within the state.

32. "Operation certificate". A certificate issued by the commission which certifies that operation of a gaming facility conforms to the requirements of this article and applicable regulations and that its personnel and procedures are sufficient and prepared to entertain the public.

33. "Person". Any corporation, association, operation, firm, partnership, trust or other form of business association, as well as a natural person.

34. "Registration". Any requirement other than one which requires a license as a prerequisite to conduct a particular business as specified by this article.

35. "Registrant". Any person who is registered pursuant to the provisions of this article.

36. "Restricted casino areas". The cashier's cage, the soft count room, the hard count room, the slot cage booths and runway areas, the interior of table game pits, the surveillance room and catwalk areas, the slot machine repair room and any other area specifically designated by the commission as restricted in a licensee's operation certificate.

37. "Qualification" or "qualified". The process of licensure set forth by the commission to determine that all persons who have a professional interest in a gaming facility license, or casino vendor enterprise license, or the business of a gaming facility licensee or gaming vendor, meet the same standards of suitability to operate or conduct business with a gaming facility.

38. "Slot machine". A mechanical, electrical or other device, contrivance or machine which, upon insertion of a coin, token or similar object therein, or upon payment of any consideration whatsoever, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the individual playing or operating the machine to receive cash, or tokens to be exchanged for cash, or to receive merchandise or any other thing of value, whether the payoff is made automatically from the machine or in any other manner, except that the cash equivalent value of any merchandise or other thing of value shall not be included in determining the payout percentage of a slot machine.

39. "Sports wagering". The activity authorized by section one thousand three hundred sixty-seven of this article, provided that there has been a change in federal law authorizing such activity or upon ruling of a court of competent jurisdiction that such activity is lawful.

40. "Subsidiary". A corporation, a significant part of whose outstanding equity securities are owned, subject to a power or right of control, or held with power to vote, by a holding company or an intermediary company, or a significant interest in a firm, association, partnership, trust or other form of business organization, other than a natural person, which is owned, subject to a power or right of control, or held with power to vote, by a holding company or an intermediary company.

41. "Table game". A game, other than a slot machine, which is authorized by the commission to be played in a gaming facility.

42. "Transfer". The sale or other method, either directly or indirectly, of disposing of or parting with property or an interest therein, or the possession thereof, or of fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily or involuntarily, by or without judicial proceedings, as a conveyance, sale, payment, pledge, mortgage, lien, encumbrance, gift, security or otherwise; provided, however, that the retention of a security interest in property delivered to a corporation shall be deemed a transfer suffered by such corporation.

§ 1302. Auditing duties of the commission. The commission shall audit as often as the commission determines necessary, but not less than annually, the accounts, programs, activities, and functions of all gaming facility licensees, including the audit of payments made pursuant to section one thousand three hundred fifty-one of this chapter. To conduct the audit, authorized officers and employees of the commission shall have access to such accounts at reasonable times and the commission may require the production of books, documents, vouchers and other records relating to any matter within the scope of the audit. All audits shall be conducted in accordance with generally accepted auditing standards established by the American Institute of Certified Public Accountants. In any audit report of the accounts, funds, programs, activities and functions of a gaming facility licensee issued by the commission containing adverse or critical audit results, the commission may require a response, in writing, to the audit results. The response shall be forwarded to the commission within fifteen days of notification by the commission.

§ 1303. Equipment testing. Unless the commission otherwise determines it to be in the best interests of the state, the commission shall utilize the services of an independent testing laboratory that has been qualified and approved by the commission pursuant to this article to

perform the testing of slot machines and other gaming equipment and may

also utilize applicable data from the independent testing laboratory, or from a governmental agency of a state other than New York, authorized to regulate slot machines and other gaming equipment.

§ 1304. Commission reporting. The commission shall report monthly to the governor, the senate and the assembly, the senate finance committee and the assembly ways and means committee, and the chairs of the senate racing, gaming and wagering committee and the assembly racing and wagering committee on economic development and emerging technologies on the total gaming revenues, prize disbursements and other expenses for the preceding month and shall make an annual report to the same recipients which shall include a full and complete statement of gaming revenues, prize disbursements and other expenses, including such recommendations as the commission considers necessary or advisable. The commission shall also report immediately to the aforementioned on any matter which requires immediate changes in the laws in order to prevent abuses or evasions of the laws, rules or regulations related to gaming or to rectify undesirable conditions in connection with the administration or operation of gaming in the state.

§ 1305. Supplemental power of the commission. The commission shall have all powers necessary or convenient to carry out and effectuate its purposes including, but not limited to, the power to:

1. execute all instruments necessary or convenient for accomplishing the purposes of this article;

2. enter into agreements or other transactions with a person, including, but not limited to, a public entity or other governmental instrumentality or authority in connection with its powers and duties under this article;

3. require an applicant for a position which requires a license under this article to apply for such license and approve or disapprove any such application or other transactions, events and processes as provided in this article;

4. require a person who has a business association of any kind with a gaming licensee or applicant to be qualified for licensure under this article;

5. determine a suitable debt-to-equity ratio for applicants for a gaming license;

6. deny an application or limit, condition, restrict, revoke or suspend a license, registration, finding of suitability or approval, or fine a person licensed, registered, found suitable or approved for any cause that the commission deems reasonable;

7. monitor the conduct of licensees and other persons having a material involvement, directly or indirectly, with a licensee for the purpose of ensuring that licenses are not issued to or held by and that there is no direct or indirect material involvement with a licensee, by an unqualified or unsuitable person or by a person whose operations are conducted in an unsuitable manner or in unsuitable or prohibited places as provided in this article;

8. gather facts and information applicable to the commission's obligation to issue, suspend or revoke licenses, work permits or registrations for:

(a) a violation of this article or any regulation adopted by the commission;

(b) willfully violating an order of the commission directed to a licensee;

(c) the conviction of certain criminal offenses; or  
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(d) the violation of any other offense which would disqualify such a licensee from holding a license, work permit or registration;

9. conduct investigations into the qualifications of any regulated entity and all applicants for licensure;

10. request and receive from the division of criminal justice services and the federal bureau of investigation, criminal history information as defined in paragraph (c) of subdivision one of section eight hundred forty-five-b of the executive law for the purpose of evaluating applicants for employment by any regulated entity, and evaluating licensees and applicants for licensure under this article;

11. be present, through its agents, at all times, in a gaming facility for the purposes of:

(a) certifying revenue;

(b) receiving complaints from the public relating to the conduct of gaming and wagering operations;

(c) examining records of revenues and procedures and inspecting and auditing all books, documents and records of licensees;

(d) conducting periodic reviews of operations and facilities for the purpose of regulations adopted hereunder; and

(e) exercising its oversight responsibilities with respect to gaming;

12. inspect and have access to all equipment and supplies in a gaming facility or on premises where gaming equipment is manufactured, sold or distributed;

13. seize and remove from the premises of a gaming licensee and impound any equipment, supplies, documents and records for the purpose of examination and inspection;

14. demand access to and inspect, examine, photocopy and audit all papers, books and records of any affiliate of a gaming licensee or gaming vendor whom the commission suspects is involved in the financing, operation or management of the gaming licensee or gaming vendor; provided, however, that the inspection, examination, photocopying and audit may take place on the affiliate's premises or elsewhere as practicable and in the presence of the affiliate or its agent;

15. require that the books and financial or other records or statements of a gaming licensee or gaming vendor be kept in a manner that the commission considers proper;

16. levy and collect assessments, fees, fines and interest and impose penalties and sanctions as authorized by law for a violation of this article or any regulations promulgated by the commission;

17. collect taxes, fees and interest under this article;

18. restrict, suspend or revoke licenses issued under this article;

19. refer cases for criminal prosecution to the appropriate federal, state or local authorities;

20. adopt, amend or repeal regulations for the implementation, administration and enforcement of this article; and

21. determine a suitable duration for each license, registration or finding of suitability or approval.

§ 1306. Powers of the board. The New York state resort gaming facility location board shall select, following a competitive process and subject to the restrictions of this article, no more than four entities to apply to the commission for gaming facility licenses. In exercising its authority, the board shall have all powers necessary or convenient to fully carry out and effectuate its purposes including, but not limited to, the following powers. The board shall:

1. issue a request for applications for zone two gaming facility licenses pursuant to section one thousand three hundred twelve of this article;

2. assist the commission in prescribing the form of the application for zone two gaming facility licenses including information to be furnished by an applicant concerning an applicant's antecedents, habits, character, associates, criminal record, business activities and financial affairs, past or present pursuant to section one thousand three hundred thirteen of this article;

3. develop criteria, in addition to those outlined in this article, to assess which applications provide the highest and best value to the state, the zone and the region in which a gaming facility is to be located;

4. determine a gaming facility license fee to be paid by an applicant;

5. determine, from time to time, whether tribal-state gaming compacts are in or remain in good standing for the purposes of determining whether a gaming facility may be located in areas designated by subdivision two of section one thousand three hundred eleven of this article;

6. determine, with the assistance of the commission, the sources and total amount of an applicant's proposed capitalization to develop, construct, maintain and operate a proposed gaming facility license under this article;

7. have the authority to conduct investigative hearings concerning the conduct of gaming and gaming operations in accordance with any procedures set forth in this article and any applicable implementing regulations;

8. issue detailed findings of facts and conclusions demonstrating the reasons supporting its decisions to select applicants for commission licensure;

9. report annually to the governor, the speaker of the assembly and the temporary president of the senate, its proceedings for the preceding calendar year and any suggestions and recommendations as it shall deem desirable;

10. promulgate any rules and regulations that it deems necessary to carry out its responsibilities;

11. have the power to administer oaths and examine witnesses; and request and receive criminal history information as defined in paragraph (c) of subdivision one of section eight hundred forty-five-b of the executive law of the division of criminal justice services, pursuant to subdivision eight-a of section eight hundred thirty-seven of the executive law, in connection with executing the responsibilities of the board relating to licensing including fingerprinting, criminal history information and background investigations, of entities applying for a gaming facility license. At the request of the board, the division of criminal justice services shall submit a fingerprint card, along with the subject's processing fee, to the federal bureau of investigation for the purpose of conducting a criminal history search and returning a report thereon. The board shall also be entitled to request and receive, pursuant to a written memorandum of understanding filed with the department of state, any information in the possession of the state attorney general relating to the investigation of organized crime, gaming offenses, other revenue crimes or tax evasion. Provided however, the attorney general may withhold any information that (a) would identify a confidential source or disclose confidential information relating to a criminal investigation, (b) would interfere with law enforcement investigations

procedures, that, if disclosed, could endanger the life or safety of any person, or (d) constitutes records received from other state, local or federal agencies that the attorney general is prohibited by law, regulation or agreement from disclosing.

§ 1307. Required regulations. 1. The commission is authorized:

(a) to adopt, amend or repeal such regulations, consistent with the policy and objectives of this article, as amended and supplemented, as it may deem necessary to protect the public interest in carrying out the provisions of this article; and

(b) to adopt, amend or repeal such regulations as may be necessary for the conduct of hearings before the commission and for the matters within all other responsibilities and duties of the commission imposed by this article.

2. The commission shall, without limitation, include the following specific provisions in its regulations in accordance with the provisions of this article:

(a) prescribing the methods and forms of application and registration which any applicant or registrant shall follow and complete;

(b) prescribing the methods, procedures and form for delivery of information concerning any person's family, habits, character, associates, criminal record, business activities and financial affairs;

(c) prescribing such procedures for the fingerprinting of an applicant, employee of a licensee, or registrant, and methods of identification which may be necessary to accomplish effective enforcement of restrictions on access to the casino and other restricted casino areas of the gaming facility;

(d) prescribing the method of notice to an applicant, registrant or licensee concerning the release of any information or data provided to the commission by such applicant, registrant or licensee;

(e) prescribing the manner and procedure of all hearings conducted by the commission or any presiding officer;

(f) prescribing the manner and method of collection of payments of taxes, fees, interest and penalties;

(g) defining and limiting the areas of operation, the rules of authorized games, odds, and devices permitted, and the method of operation of such games and devices;

(h) regulating the practice and procedures for negotiable transactions involving patrons, including limitations on the circumstances and amounts of such transactions, and the establishment of forms and procedures for negotiable instrument transactions, redemptions, and consolidations;

(i) prescribing grounds and procedures for the revocation or suspension of operating certificates, licenses and registrations;

(j) governing the manufacture, distribution, sale, deployment, and servicing of gaming devices and equipment;

(k) prescribing for gaming operations the procedures, forms and methods of management controls, including employee and supervisory tables of organization and responsibility, and minimum security and surveillance standards, including security personnel structure, alarm and other electrical or visual security measures; provided, however, that the commission shall grant an applicant broad discretion concerning the organization and responsibilities of management personnel who are not directly involved in the supervision of gaming operations;

(l) prescribing the qualifications of, and the conditions pursuant to

before the commission or to submit materials on behalf of any applicant or licensee;

(m) prescribing minimum procedures for the exercise of effective control over the internal fiscal affairs of a licensee, including provisions for the safeguarding of assets and revenues, the recording of cash and evidence of indebtedness, and the maintenance of reliable records, accounts, and reports of transactions, operations and events, including reports to the commission;

(n) providing for a minimum uniform standard of accountancy methods, procedures and forms; a uniform code of accounts and accounting classifications; and such other standard operating procedures, as may be necessary to assure consistency, comparability, and effective disclosure of all financial information, including calculations of percentages of profit by games, tables, gaming devices and slot machines;

(o) requiring quarterly financial reports and the form thereof, and an annual audit prepared by a certified public accountant licensed to do business in this state, attesting to the financial condition of a licensee and disclosing whether the accounts, records and control procedures examined are maintained by the licensee as required by this article and the regulations promulgated hereunder;

(p) governing the gaming-related advertising of licensees, their employees and agents, with the view toward assuring that such advertisements are not deceptive; and

(q) governing the distribution and consumption of alcoholic beverages on the premises of the licensee.

3. The commission shall, in its regulations, prescribe the manner and procedure of all hearings conducted by the commission.

§ 1308. Reports and recommendations. The commission shall carry on a continuous study of the operation and administration of casino control laws which may be in effect in other jurisdictions, literature on this subject which may from time to time become available, and federal laws which may affect the operation of casino gaming in this state. It shall be responsible for ascertaining any defects in this article or in the rules and regulations issued thereunder, formulating recommendations for changes in this article. The commission shall make available to the governor and the legislature within its annual report an accounting of all revenues, expenses and disbursements, a review of its licensing and enforcement activities conducted pursuant to section one thousand three hundred forty of this article and shall include therein such recommendations for changes in this article as the commission deems necessary or desirable.

§ 1309. Severability and preemption. 1. If any clause, sentence, subparagraph, paragraph, subdivision, section, article or other portion of this article or the application thereof to any person or circumstances shall be held to be invalid, such holding shall not affect, impair or invalidate the remainder of this article or the application of such portion held invalid to any other person or circumstances, but shall be confined in its operation to the clause, sentence, paragraph, subparagraph, subdivision, section, article or other portion thereof directly involved in such holding or to the person or circumstance therein involved.

2. If any provision of this article is inconsistent with, in conflict with, or contrary to any other provision of law, such provision of this article shall prevail over such other provision and such other provision

shall be deemed to be superseded to the extent of such inconsistency or conflict. Notwithstanding the provisions of any other law to the contra-  
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ry, no local government unit of this state may enact or enforce any ordinance or resolution conflicting with any provision of this article or with any policy of this state expressed or implied herein, whether by exclusion or inclusion. The commission shall have exclusive jurisdiction over all matters delegated to it or within the scope of its powers under the provisions of this article.

TITLE 2

FACILITY DETERMINATION AND LICENSING

Section 1310. Development zones and regions.

1311. License authorization; restrictions.

1312. Requests for applications.

1313. Form of application.

1314. License applicant eligibility.

1315. Required capital investment.

1316. Minimum license thresholds.

1317. Investigation of license applicants.

1318. Disqualifying criteria.

1319. Investigative hearings.

1320. Siting evaluation.

1321. Intentionally omitted.

§ 1310. Development zones and regions. 1. There are hereby created two development zones to be known as the zone one and zone two. Zone one shall include the city of New York and the counties of Nassau, Putnam, Rockland, Suffolk and Westchester. Zone two shall include all the other counties of the state.

2. Each zone shall be divided into development regions. (a) The three development regions in zone one shall be comprised of the following counties:

(1) Region one shall consist of Putnam, Rockland and Westchester counties;

(2) Region two shall consist of Bronx, Kings, New York, Queens and Richmond counties. No gaming facility shall be authorized in region two; and

(3) Region three shall consist of Nassau and Suffolk counties.

(b) The six development regions in zone two shall be comprised of the following counties:

(1) Region one shall consist of Columbia, Delaware, Dutchess, Greene, Orange, Sullivan and Ulster counties;

(2) Region two shall consist of Albany, Fulton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie and Washington counties.

(3) Region three shall consist of Clinton, Essex, Franklin, Hamilton, Jefferson, Saint Lawrence and Warren counties;

(4) Region four shall consist of Cayuga, Chenango, Cortland, Herkimer, Lewis, Madison, Oneida, Onondaga, Oswego and Otsego counties;

(5) Region five shall consist of Broome, Chemung (east of State Route 14), Schuyler (east of State Route 14), Seneca, Tioga, Tompkins, and Wayne (east of State Route 14) counties; and

(6) Region six shall consist of Allegany, Cattaraugus, Chautauqua, Chemung (west of State Route 14), Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler (west of State Route 14), Steuben, Wayne (west of State Route 14), Wyoming, and Yates counties.

§ 1311. License authorization; restrictions. 1. The commission is authorized to award up to four gaming facility licenses, in regions one,

two and five of zone two. The duration of such initial license shall be ten years. The term of renewal shall be determined by the commission. The commission may award a second license to a qualified applicant in no

more than a single region. The commission is not empowered to award any license in zone one. No gaming facilities are authorized under this article for the city of New York or any other portion of zone one.

As a condition of licensure, licensees are required to commence gaming operations no less than twenty-four months following license award. No additional licenses may be awarded during the twenty-four month period, nor for an additional sixty months following the end of the twenty-four month period. Should the state legislatively authorize additional gaming facility licenses within these periods, licensees shall have the right to recover the license fee paid pursuant to section one thousand three hundred six of this article.

This right shall be incorporated into the license itself, vest upon the opening of a gaming facility in zone one or in the same region as the licensee and entitle the holder of such license to bring an action in the court of claims to recover the license fee paid pursuant to section one thousand three hundred fifteen of this article in the event that any gaming facility license in excess of the number authorized by this section as of the effective date of this section is awarded within seven years from the date that the initial gaming facility license is awarded. This right to recover any such fee shall be proportionate to the length of the respective period that is still remaining upon the vesting of such right.

Additionally, the right to bring an action in the court of claims to recover the fee paid to the state on the twenty-fourth day of September, two thousand ten, by the operator of a video lottery gaming facility in a city of more than one million shall vest with such operator upon the opening of any gaming facility licensed by the commission in zone one within seven years from the date that the initial gaming facility license is awarded; provided however that the amount recoverable shall be limited to the pro rata amount of the time remaining until the end of the seven year exclusivity period, proportionate to the period of time between the date of opening of the video lottery facility until the conclusion of the seven year period.

2. Notwithstanding the foregoing, no casino gaming facility shall be authorized:

(a) in the counties of Clinton, Essex, Franklin, Hamilton, Jefferson, Lewis, Saint Lawrence and Warren;

(b) within the following area: (1) to the east, State Route 14 from Sodus Point to the Pennsylvania border with New York; (2) to the north, the border between New York and Canada; (3) to the south, the Pennsylvania border with New York; and (4) to the west, the border between New York and Canada and the border between Pennsylvania and New York; and

(c) in the counties of Cayuga, Chenango, Cortland, Herkimer, Lewis, Madison, Oneida, Onondaga, Oswego and Otsego.

§ 1312. Requests for applications. 1. The board shall issue within ninety days of a majority of members being appointed a request for applications for a gaming facility license in regions one, two and five in zone two; provided, however, that the board shall not issue any requests for applications for any region in zone one; and further provided that the board shall not issue any requests for applications with respect to any gaming facility subsequently legislatively authorized until seven years following the commencement of gaming activities

in zone two. All requests for applications shall include:

(a) the time and date for receipt of responses to the request for applications, the manner they are to be received and the address of the office to which the applications shall be delivered;

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(b) the form of the application and the method for submission;

(c) a general description of the anticipated schedule for processing the application;

(d) the contact information of board employees responsible for handling applicant questions; and

(e) any other information that the board determines.

2. Board activities shall be subject to section one hundred thirty-nine-j and section one hundred thirty-nine-k of the state finance law.

3. Requests for applications pursuant to subdivision one of this section shall be advertised in a newspaper of general circulation and on the official internet website of the commission and the board.

4. The board shall establish deadlines for the receipt of all applications. Applications received after the deadline shall not be reviewed by the board.

§ 1313. Form of application. 1. The commission and the board shall prescribe the initial form of the application for gaming licenses which shall require, but not be limited to:

(a) the name of the applicant;

(b) the mailing address and, if a corporation, the name of the state under the laws of which it is incorporated, the location of its principal place of business and the names and addresses of its directors and such stockholders as to be determined by the commission;

(c) the identity of each person having a direct or indirect interest in the business and the nature of such interest; provided, however, that if the disclosed entity is a trust, the application shall disclose the names and addresses of all beneficiaries; provided further, that if the disclosed entity is a partnership, the application shall disclose the names and addresses of all partners, both general and limited; and provided further, that if the disclosed entity is a limited liability company, the application shall disclose the names and addresses of all members;

(d) an independent audit report of all financial activities and interests including, but not limited to, the disclosure of all contributions, donations, loans or any other financial transactions to or from a gaming entity or operator in the past five years;

(e) clear and convincing evidence of financial stability including, but not limited to, bank references, business and personal income and disbursement schedules, tax returns and other reports filed by government agencies and business and personal accounting check records and ledgers;

(f) information and documentation to demonstrate that the applicant has sufficient business ability and experience to create the likelihood of establishing and maintaining a successful gaming facility;

(g) a full description of the proposed internal controls and security systems for the proposed gaming facility and any related facilities;

(h) the designs for the proposed gaming facility, including the names and addresses of the architects, engineers and designers, and a timeline of construction that includes detailed stages of construction for the gaming facility and non-gaming structures, where applicable, and a proposed date to open for gaming;

(i) the number of construction hours estimated to complete the work;

(j) a description of the ancillary entertainment services and amenities to be provided at the proposed gaming facility;

(k) the number of employees to be employed at the proposed gaming facility, including detailed information on the pay rate and benefits for employees;

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(1) completed studies and reports as required by the commission, which shall include, but not be limited to, an examination of the proposed gaming facility's:

(1) economic benefits to the region and the state;

(2) local and regional social, environmental, traffic and infrastructure impacts;

(3) impact on the local and regional economy, including the impact on cultural institutions and on small businesses in the host municipality and nearby municipalities;

(4) cost to the host municipality, nearby municipalities and the state for the proposed gaming facility to be located at the proposed location; and

(5) the estimated state tax revenue to be generated by the gaming facility;

(m) the names of proposed vendors of gaming equipment;

(n) the location of the proposed gaming facility, which shall include the address, maps, book and page numbers from the appropriate registry of deeds, assessed value of the land at the time of application and ownership interests over the past twenty years, including all interests, options, agreements in property and demographic, geographic and environmental information and any other information requested by the commission;

(o) the type and number of games to be conducted at the proposed gaming facility and the specific location of the games in the proposed gaming facility;

(p) the number of hotels and rooms, restaurants and other amenities located at the proposed gaming facility and how they measure in quality to other area hotels and amenities;

(q) whether the applicant's proposed gaming facility is part of a regional or local economic plan; and

(r) whether the applicant purchased or intends to purchase publicly-owned land for the proposed gaming facility.

2. Applications for licenses shall be public records; provided however, that trade secrets, competitively-sensitive or other proprietary information provided in the course of an application for a gaming license under this article, the disclosure of which would place the applicant at a competitive disadvantage, may be withheld from disclosure pursuant to paragraph (d) of subdivision two of section eighty-seven of the public officers law.

§ 1314. License applicant eligibility. 1. Gaming facility licenses shall only be issued to applicants who are qualified under the criteria set forth in this article, as determined by the commission.

2. As a condition of filing, each potential license applicant must demonstrate to the board's satisfaction that local support has been demonstrated.

3. Within any development region, if the commission is not convinced that there is an applicant that has met the eligibility criteria or the board finds that no applicant has provided substantial evidence that its proposal will provide value to the region in which the gaming facility is proposed to be located, no gaming facility license shall be awarded

in that region.

§ 1315. Required capital investment. 1. The board shall establish the minimum capital investment for a gaming facility by zone and region. Such investment shall include, but not be limited to, a casino area, at least one hotel and other amenities; and provided further, that the board shall determine whether it will include the purchase or lease

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price of the land where the gaming facility will be located or any infrastructure designed to support the site including, but not limited to, drainage, utility support, roadways, interchanges, fill and soil or groundwater or surface water contamination issues. The board may consider private capital investment made previous to the effective date of this section, but may, in its discretion, discount a percentage of the investment made. Upon award of a gaming license by the commission, the applicant shall be required to deposit ten percent of the total investment proposed in the application into an interest-bearing account. Monies received from the applicant shall be held in escrow until the final stage of construction, as detailed in the timeline of construction submitted with the licensee's application and approved by the commission, at which time the deposit plus interest earned shall be returned to the applicant to be applied for the final stage. Should the applicant be unable to complete the gaming facility, the deposit shall be forfeited to the state. In place of a cash deposit, the commission may allow for an applicant to secure a deposit bond insuring that ten percent of the proposed capital investment shall be forfeited to the state if the applicant is unable to complete the gaming facility.

2. Each applicant shall submit its proposed capital investment with its application to the board which shall include stages of construction of the gaming facility and the deadline by which the stages and overall construction and any infrastructure improvements will be completed. In awarding a license, the commission shall determine at what stage of construction a licensee shall be approved to open for gaming; provided, however, that a licensee shall not be approved to open for gaming until the commission has determined that at least the gaming area and other ancillary entertainment services and non-gaming amenities, as required by the board, have been built and are of a superior quality as set forth in the conditions of licensure. The commission shall not approve a gaming facility to open before the completion of the permanent casino area.

3. A licensee who fails to begin gaming operations within twenty-four months following license award shall be subject to suspension or revocation of the gaming license by the commission and may, after being found by the commission after notice and opportunity for a hearing to have acted in bad faith in its application, be assessed a fine of up to fifty million dollars.

4. The board shall determine a licensing fee to be paid by a licensee within thirty days after the award of the license which shall be deposited into the commercial gaming revenue fund. The license shall set forth the conditions to be satisfied by the licensee before the gaming facility shall be opened to the public. The commission shall set any renewal fee for such license based on the cost of fees associated with the evaluation of a licensee under this article which shall be deposited into the commercial gaming fund. Such renewal fee shall be exclusive of any subsequent licensing fees under this section.

5. The commission shall determine the sources and total amount of an applicant's proposed capitalization to develop, construct, maintain and

operate a proposed gaming facility under this article. Upon award of a gaming license, the commission shall continue to assess the capitalization of a licensee for the duration of construction of the proposed gaming facility and the term of the license.

§ 1316. Minimum license thresholds. No applicant shall be eligible to receive a gaming license unless the applicant meets the following crite-

ria and clearly states as part of an application that the applicant shall:

1. in accordance with the design plans submitted with the licensee's application to the board, invest not less than the required capital under this article into the gaming facility;

2. own or acquire, within sixty days after a license has been awarded, the land where the gaming facility is proposed to be constructed; provided, however, that ownership of the land shall include a tenancy for a term of years under a lease that extends not less than sixty years beyond the term of the gaming license issued under this article;

3. meet the licensee deposit requirement;

4. demonstrate that it is able to pay and shall commit to paying the gaming licensing fee;

5. demonstrate to the commission how the applicant proposes to address problem gambling concerns, workforce development and community development and host and nearby municipality impact and mitigation issues;

6. identify the infrastructure costs of the host municipality incurred in direct relation to the construction and operation of a gaming facility and commit to a community mitigation plan for the host municipality;

7. identify the service costs of the host municipality incurred for emergency services in direct relation to the operation of a gaming facility and commit to a community mitigation plan for the host municipality;

8. pay to the commission an application fee of one million dollars to defray the costs associated with the processing of the application and investigation of the applicant; provided, however, that if the costs of the investigation exceed the initial application fee, the applicant shall pay the additional amount to the commission within thirty days after notification of insufficient fees or the application shall be rejected and further provided that should the costs of such investigation not exceed the fee remitted, any unexpended portion shall be returned to the applicant;

9. comply with state building and fire prevention codes;

10. formulate for board approval and abide by an affirmative action program of equal opportunity whereby the applicant establishes specific goals for the utilization of minorities, women and veterans on construction jobs.

§ 1317. Investigation of license applicants. 1. Upon receipt of an application for a gaming facility license, the commission shall cause to be commenced an investigation into the suitability of the applicant. In evaluating the suitability of the applicant, the commission shall consider the overall reputation of the applicant including, without limitation:

(a) the integrity, honesty, good character and reputation of the applicant;

(b) the financial stability, integrity and background of the applicant;

(c) the business practices and the business ability of the applicant to establish and maintain a successful gaming facility;

(d) whether the applicant has a history of compliance with gaming licensing requirements in other jurisdictions;

(e) whether the applicant, at the time of application, is a defendant in litigation involving its business practices;

(f) the suitability of all parties in interest to the gaming facility license, including affiliates and close associates and the financial resources of the applicant; and

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(g) whether the applicant is disqualified from receiving a license under this article; provided, however, that in considering the rehabilitation of an applicant for a gaming facility license, the commission shall not automatically disqualify an applicant if the applicant affirmatively demonstrates, by clear and convincing evidence, that the applicant has financial responsibility, character, reputation, integrity and general fitness as such to warrant belief by the commission that the applicant will act honestly, fairly, soundly and efficiently as a gaming licensee.

2. If the investigation reveals that an applicant has failed to:

(a) establish the applicant's integrity or the integrity of any affiliate, close associate, financial source or any person required to be qualified by the commission;

(b) demonstrate responsible business practices in any jurisdiction; or

(c) overcome any other reason, as determined by the commission, as to why it would be injurious to the interests of the state in awarding the applicant a gaming facility license, the commission shall deny the application, subject to notice and an opportunity for hearing.

3. If the investigation reveals that an applicant is suitable to receive a gaming facility license, the entity shall recommend that the commission commence a review of the applicant's entire application.

§ 1318. Disqualifying criteria. 1. The commission shall deny a license to any applicant who the commission determines is disqualified on the basis of any of the following criteria, subject to notice and an opportunity for hearing:

(a) failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this article;

(b) failure of the applicant to provide information, documentation and assurances required by this article or requested by the commission, or failure of the applicant to reveal any fact material to qualification, or the supplying of information which is untrue or misleading as to a material fact pertaining to the qualification criteria;

(c) the conviction of the applicant, or of any person required to be qualified under this article as a condition of a license, of any offense in any jurisdiction which is or would be a felony or other crime involving public integrity, embezzlement, theft, fraud or perjury;

(d) committed prior acts which have not been prosecuted or in which the applicant, or of any person required to be qualified under this article as a condition of a license, was not convicted but form a pattern of misconduct that makes the applicant unsuitable for a license under this article; or

(e) if the applicant, or of any person required to be qualified under this article as a condition of a license, has affiliates or close associates that would not qualify for a license or whose relationship with the applicant may pose an injurious threat to the interests of the state in awarding a gaming facility license to the applicant;

(f) any other offense under present state or federal law which indi-

cates that licensure of the applicant would be inimical to the policy of this article; provided, however, that the disqualification provisions of this section shall not apply with regard to any misdemeanor conviction;

(g) current prosecution or pending charges in any jurisdiction of the applicant or of any person who is required to be qualified under this article as a condition of a license, for any of the offenses enumerated in paragraph (c) of subdivision one of this section; provided, however, that at the request of the applicant or the person charged, the commis-

sion may defer decision upon such application during the pendency of such charge;

(h) the pursuit by the applicant or any person who is required to be qualified under this article as a condition of a license of economic gain in an occupational manner or context which is in violation of the criminal or civil public policies of this state, if such pursuit creates a reasonable belief that the participation of such person in gaming facility operations would be inimical to the policies of this article. For purposes of this section, occupational manner or context shall be defined as the systematic planning, administration, management, or execution of an activity for financial gain;

(i) the identification of the applicant or any person who is required to be qualified under this article as a condition of a license as a career offender or a member of a career offender cartel or an associate of a career offender or career offender cartel in such a manner which creates a reasonable belief that the association is of such a nature as to be inimical to the policy of this article. For purposes of this section, career offender shall be defined as any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain, utilizing such methods as are deemed criminal violations of the public policy of this state. A career offender cartel shall be defined as any group of persons who operate together as career offenders;

(j) the commission by the applicant or any person who is required to be qualified under this article as a condition of a license of any act or acts which would constitute any offense under paragraph (c) of subdivision one of this section, even if such conduct has not been or may not be prosecuted under the criminal laws of this state or any other jurisdiction;

(k) flagrant defiance by the applicant or any person who is required to be qualified under this article of any legislative investigatory body or other official investigatory body of any state or of the United States when such body is engaged in the investigation of crimes relating to gaming, official corruption, or organized crime activity; and

(l) failure by the applicant or any person required to be qualified under this article as a condition of a license to make required payments in accordance with a child support order, repay an overpayment for public assistance benefits, or repay any other debt owed to the state unless such applicant provides proof to the executive director's satisfaction of payment of or arrangement to pay any such debts prior to licensure.

§ 1319. Hearings. The commission and the board shall have the independent authority to conduct hearings concerning the conduct of gaming and applicants for gaming facility licenses in accordance with any procedures set forth in this article and any applicable implementing regulations.

§ 1320. Siting evaluation. In determining whether an applicant shall

be eligible for a gaming facility license, the board shall evaluate and issue a finding of how each applicant proposes to advance the following objectives.

1. The decision by the board to select a gaming facility license applicant shall be weighted by seventy percent based on economic activity and business development factors including:

(a) realizing maximum capital investment exclusive of land acquisition and infrastructure improvements;

(b) maximizing revenues received by the state and localities;

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(c) providing the highest number of quality jobs in the gaming facility;

(d) building a gaming facility of the highest caliber with a variety of quality amenities to be included as part of the gaming facility;

(e) offering the highest and best value to patrons to create a secure and robust gaming market in the region and the state;

(f) providing a market analysis detailing the benefits of the site location of the gaming facility and the estimated recapture rate of gaming-related spending by residents travelling to an out-of-state gaming facility;

(g) offering the fastest time to completion of the full gaming facility;

(h) demonstrating the ability to fully finance the gaming facility; and

(i) demonstrating experience in the development and operation of a quality gaming facility.

2. The decision by the board to select a gaming facility license applicant shall be weighted by twenty percent based on local impact and siting factors including:

(a) mitigating potential impacts on host and nearby municipalities which might result from the development or operation of the gaming facility;

(b) gaining public support in the host and nearby municipalities which may be demonstrated through the passage of local laws or public comment received by the board or gaming applicant;

(c) operating in partnership with and promoting local hotels, restaurants and retail facilities so that patrons experience the full diversified regional tourism industry; and

(d) establishing a fair and reasonable partnership with live entertainment venues that may be impacted by a gaming facility under which the gaming facility actively supports the mission and the operation of the impacted entertainment venues.

3. The decision by the board to select a gaming facility license applicant shall be weighted by ten percent based on workforce enhancement factors including:

(a) implementing a workforce development plan that utilizes the existing labor force, including the estimated number of construction jobs a proposed gaming facility will generate, the development of workforce training programs that serve the unemployed and methods for accessing employment at the gaming facility;

(b) taking additional measures to address problem gambling including, but not limited to, training of gaming employees to identify patrons exhibiting problems with gambling;

(c) utilizing sustainable development principles including, but not limited to:

(1) having new and renovation construction certified under the appro-

prate certification category in the Leadership in Energy and Environmental Design Green Building Rating System created by the United States Green Building Council;

- (2) efforts to mitigate vehicle trips;
- (3) efforts to conserve water and manage storm water;
- (4) demonstrating that electrical and HVAC equipment and appliances will be Energy Star labeled where available;
- (5) procuring or generating on-site ten percent of its annual electricity consumption from renewable sources; and

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(6) developing an ongoing plan to submeter and monitor all major sources of energy consumption and undertake regular efforts to maintain and improve energy efficiency of buildings in their systems;

(d) establishing, funding and maintaining human resource hiring and training practices that promote the development of a skilled and diverse workforce and access to promotion opportunities through a workforce training program that:

(1) establishes transparent career paths with measurable criteria within the gaming facility that lead to increased responsibility and higher pay grades that are designed to allow employees to pursue career advancement and promotion;

(2) provides employee access to additional resources, such as tuition reimbursement or stipend policies, to enable employees to acquire the education or job training needed to advance career paths based on increased responsibility and pay grades; and

(3) establishes an on-site child day care program;

(e) purchasing, whenever possible, domestically manufactured slot machines for installation in the gaming facility;

(f) implementing a workforce development plan that:

(1) incorporates an affirmative action program of equal opportunity by which the applicant guarantees to provide equal employment opportunities to all employees qualified for licensure in all employment categories, including persons with disabilities;

(2) utilizes the existing labor force in the state;

(3) estimates the number of construction jobs a gaming facility will generate and provides for equal employment opportunities and which includes specific goals for the utilization of minorities, women and veterans on those construction jobs;

(4) identifies workforce training programs offered by the gaming facility; and

(5) identifies the methods for accessing employment at the gaming facility; and

(g) demonstrating that the applicant has an agreement with organized labor, including hospitality services, and has the support of organized labor for its application, which specifies:

(1) the number of employees to be employed at the gaming facility, including detailed information on the pay rate and benefits for employees and contractors in the gaming facility and all infrastructure improvements related to the project; and

(2) detailed plans for assuring labor harmony during all phases of the construction, reconstruction, renovation, development and operation of the gaming facility.

§ 1321. Intentionally omitted.

### TITLE 3

#### OCCUPATIONAL LICENSING

Section 1322. General provisions.

1323. Key employee licenses.

1324. Gaming employee registration.

1325. Approval, denial and renewal of employee licenses and registrations.

§ 1322. General provisions. 1. It shall be the affirmative responsibility of each applicant or licensee to establish by clear and convincing evidence its individual qualifications, and for a gaming facility license the qualifications of each person who is required to be qualified under this article.

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2. Any applicant, licensee, registrant, or any other person who must be qualified pursuant to this article shall provide all legally required information and satisfy all lawful requests for information pertaining to qualification and in the form specified by regulation. All applicants, registrants, and licensees shall waive liability as to the state, and its instrumentalities and agents, for any damages resulting from any disclosure or publication in any manner, other than a willfully unlawful disclosure or publication, of any material or information acquired during inquiries, investigations or hearings.

3. All applicants, licensees, registrants, intermediary companies, and holding companies shall consent to inspections, searches and seizures while at a gaming facility and the supplying of handwriting exemplars as authorized by this article and regulations promulgated hereunder.

4. All applicants, licensees, registrants, and any other person who shall be qualified pursuant to this article shall have the continuing duty to provide any assistance or information required by the commission, and to cooperate in any inquiry, investigation or hearing conducted by the commission. If, upon issuance of a formal request to answer or produce information, evidence or testimony, any applicant, licensee, registrant, or any other person who shall be qualified pursuant to this article refuses to comply, the application, license, registration or qualification of such person may be denied or revoked.

5. Each applicant or person who must be qualified under this article shall be photographed and fingerprinted for identification and investigation purposes in accordance with procedures set forth by regulation.

6. All licensees, all registrants, and all other persons required to be qualified under this article shall have a duty to inform the commission of any action which they believe would constitute a violation of this article. No person who so informs the commission shall be discriminated against by an applicant, licensee or registrant because of the supplying of such information.

§ 1323. Key employee licenses. 1. No licensee or a holding or intermediary company of a licensee may employ any person as a casino key employee unless the person is the holder of a valid casino key employee license issued by the commission.

2. Each applicant for a casino key employee license must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:

(a) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be lawfully required to establish by clear and convincing evidence the financial stability, integrity and responsibility of the applicant, including but not limited to bank references, business and personal income and disbursements schedules, tax returns and other reports filed with governmental agencies, and business and personal accounting and check

records and ledgers. In addition, each applicant shall, in writing, authorize the examination of all bank accounts and records as may be deemed necessary by the commission.

(b) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include data pertaining to family, habits, character, reputation, criminal history information, business activities, financial affairs, and business, professional and personal associates, covering at least the ten year period imme-

diately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the federal government, of this state or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent non-sealed information concerning the applicant, or if such law enforcement agency does have such information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission, produce letters of reference from the gaming enforcement or control agency, which shall specify the experience of such agency with the applicant, his or her associates and his or her participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within sixty days of the applicant's request therefor, the applicant may submit a statement under oath that he or she is or was during the period such activities were conducted in good standing with such gaming enforcement or control agency.

(c) Each applicant employed by a gaming facility licensee shall be a resident of the state prior to the issuance of a casino key employee license; provided, however, that upon petition by the holder of a license, the commission may waive this residency requirement for any applicant whose particular position will require him to be employed outside the state; and provided further that no applicant employed by a holding or intermediary company of a licensee shall be required to establish residency in this state.

(d) For the purposes of this section, each applicant shall submit to the commission the applicant's name, address, fingerprints and written consent for a criminal history information as defined in paragraph (c) of subdivision one of section eight hundred forty-five-b of the executive law, to be performed. The commission is hereby authorized to exchange fingerprint data with and receive criminal history record information from the state division of criminal justice services and the federal bureau of investigation consistent with applicable state and federal laws, rules and regulations. The applicant shall pay the fee for such criminal history information as established pursuant to article thirty-five of the executive law. The state division of criminal justice services shall promptly notify the commission in the event a current or prospective licensee, who was the subject of such criminal history information pursuant to this section, is arrested for a crime or

offense in this state after the date the check was performed.

3. The commission shall deny a casino key employee license to any applicant who is disqualified on the basis of the criteria contained in section one thousand three hundred eighteen of this title, subject to notice and hearing.

4. Upon receipt of such criminal history information, the commission shall provide such applicant with a copy of such criminal history information, together with a copy of article twenty-three-A of the correction law, and inform such applicant of his or her right to seek correction of any incorrect information contained in such criminal history information pursuant to regulations and procedures established by the division of

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criminal justice services. Except as otherwise provided by law, such criminal history information shall be confidential and any person who willfully permits the release of such confidential criminal history information to persons not permitted to receive such information shall be guilty of a misdemeanor.

5. Upon petition by the holder of a license, the commission may issue a temporary license to an applicant for a casino key employee license, provided that:

(a) The applicant for the casino key employee license has filed a completed application as required by the commission;

(b) The petition for a temporary casino key employee license certifies, and the commission finds, that an existing casino key employee position of the petitioner is vacant or will become vacant within sixty days of the date of the petition and that the issuance of a temporary key employee license is necessary to fill the said vacancy on an emergency basis to continue the efficient operation of the casino, and that such circumstances are extraordinary and not designed to circumvent the normal licensing procedures of this article;

6. Unless otherwise terminated pursuant to this article, any temporary casino key employee license issued pursuant to this section shall expire nine months from the date of its issuance.

§ 1324. Gaming employee registration. 1. No person may commence employment as a gaming employee unless such person has a valid registration on file with the commission, which registration shall be prepared and filed in accordance with the regulations promulgated hereunder.

2. A gaming employee registrant shall produce such information as the commission by regulation may require. Subsequent to the registration of a gaming employee, the executive director may revoke, suspend, limit, or otherwise restrict the registration upon a finding that the registrant is disqualified on the basis of the criteria contained in section one thousand three hundred eighteen of this title. If a gaming employee registrant has not been employed in any position within a gaming facility for a period of three years, the registration of that gaming employee shall lapse.

3. No gaming employee registration shall be denied or revoked on the basis of a misdemeanor conviction of any of the offenses enumerated in this article as disqualification criteria or the commission of any act or acts which would constitute any offense under section one thousand three hundred eighteen of this title, provided that the registrant has affirmatively demonstrated the registrant's rehabilitation, pursuant to article twenty-three-A of the correction law.

4. For the purposes of this section, each registrant shall submit to the commission the registrant's name, address, fingerprints and written consent for a criminal history information to be performed. The commis-

sion is hereby authorized to exchange fingerprint data with and receive criminal history information as defined in paragraph (c) of subdivision one of section eight hundred forty-five-b of the executive law from the state division of criminal justice services and the federal bureau of investigation consistent with applicable state and federal laws, rules and regulations. The registrant shall pay the fee for such criminal history information as established pursuant to article thirty-five of the executive law. The state division of criminal justice services shall promptly notify the commission in the event a current or prospective licensee, who was the subject of a criminal history information pursuant to this section, is arrested for a crime or offense in this state after the date the check was performed.

5. Upon receipt of such criminal history information, the Commission shall provide such applicant with a copy of such criminal history information, together with a copy of article twenty-three-A of the correction law, and inform such applicant of his or her right to seek correction of any incorrect information contained in such criminal history information pursuant to regulations and procedures established by the division of criminal justice services. Except as otherwise provided by law, such criminal history information shall be confidential and any person who willfully permits the release of such confidential criminal history information to persons not permitted to receive such information shall be guilty of a misdemeanor.

§ 1325. Approval, denial and renewal of employee licenses and registrations. 1. Upon the filing of an application for a casino key employee license or gaming employee registration required by this article and after submission of such supplemental information as the commission may require, the commission shall conduct or cause to be conducted such investigation into the qualification of the applicant, and the commission shall conduct such hearings concerning the qualification of the applicant, in accordance with its regulations, as may be necessary to determine qualification for such license.

2. After such investigation, the commission may either deny the application or grant a license to an applicant whom it determines to be qualified to hold such license.

3. The commission shall have the authority to deny any application pursuant to the provisions of this article following notice and opportunity for hearing.

4. When the commission grants an application, the commission may limit or place such restrictions thereupon as it may deem necessary in the public interest.

5. After an application for a casino key employee license is submitted, final action of the commission shall be taken within ninety days after completion of all hearings and investigations and the receipt of all information required by the commission.

6. Licenses and registrations of casino key employees and gaming employees issued pursuant to this article shall remain valid for five years unless suspended, revoked or voided pursuant to law. Such licenses and registrations may be renewed by the holder thereof upon application, on a form prescribed by the commission, and payment of the applicable fee. Notwithstanding the forgoing, if a gaming employee registrant has not been employed in any position within a gaming facility for a period of three years, the registration of that gaming employee shall lapse.

8. The commission shall establish by regulation appropriate fees to be paid upon the filing of the required applications. Such fees shall be

deposited into the commercial gaming revenue fund.

TITLE 4

ENTERPRISE AND VENDOR LICENSING AND REGISTRATION

Section 1326. Licensing of vendor enterprises.

1327. Duration and renewal of vendor registration.

1328. Junket operator licensing.

1329. Lobbyist registration.

1330. Registration of labor organizations.

1330-a. Casino gaming expenditures.

§ 1326. Licensing of vendor enterprises. 1. Any business to be conducted with a gaming facility applicant or licensee by a vendor offering goods or services which directly relate to gaming activity, including gaming equipment manufacturers, suppliers, repairers, and

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independent testing laboratories, shall be licensed as a casino vendor enterprise in accordance with the provisions of this article prior to conducting any business whatsoever with a gaming facility applicant or licensee, its employees or agents; provided, however, that upon a showing of good cause by a gaming facility applicant or licensee, the executive director may permit an applicant for a casino vendor enterprise license to conduct business transactions with such gaming facility applicant or licensee prior to the licensure of that casino vendor enterprise applicant under this subdivision for such periods as the commission may establish by regulation.

2. In addition to the requirements of subdivision one of this section, any casino vendor enterprise intending to manufacture, sell, distribute, test or repair slot machines within the state shall be licensed in accordance with the provisions of this article prior to engaging in any such activities; provided, however, that upon a showing of good cause by a gaming facility applicant or licensee, the executive director may permit an applicant for a casino vendor enterprise license to conduct business transactions with the gaming facility applicant or licensee prior to the licensure of that casino vendor enterprise applicant under this subdivision for such periods as the commission may establish by regulation; and provided further, however, that upon a showing of good cause by an applicant required to be licensed as a casino vendor enterprise pursuant to this subdivision, the executive director may permit the casino vendor enterprise applicant to initiate the manufacture of slot machines or engage in the sale, distribution, testing or repair of slot machines with any person other than a gaming facility applicant or licensee, its employees or agents, prior to the licensure of that casino vendor enterprise applicant under this subdivision.

3. Vendors providing goods and services to gaming facility licensees or applicants ancillary to gaming shall be required to be licensed as an ancillary casino vendor enterprise and shall comply with the standards for casino vendor license applicants.

4. Each casino vendor enterprise required to be licensed pursuant to subdivision one of this section, as well as its owners; management and supervisory personnel; and employees if such employees have responsibility for services to a gaming facility applicant or licensee, must qualify under the standards, except residency, established for qualification of a casino key employee under this article.

5. Any vendor that offers goods or services to a gaming facility applicant or licensee that is not included in subdivision one or two of this section including, but not limited to site contractors and subcontractors, shopkeepers located within the facility, gaming schools that

possess slot machines for the purpose of instruction, and any non-supervisory employee of a junket enterprise licensed under subdivision three of this section, shall be required to register with the commission in accordance with the regulations promulgated under this article.

Notwithstanding the provisions aforementioned, the executive director may, consistent with the public interest and the policies of this article, direct that individual vendors registered pursuant to this subdivision be required to apply for either a casino vendor enterprise license pursuant to subdivision one of this section, or an ancillary vendor industry enterprise license pursuant to subdivision three of this section, as directed by the commission. The executive director may also order that any enterprise licensed as or required to be licensed as an ancillary casino vendor enterprise pursuant to subdivision three of this section be required to apply for a casino vendor enterprise license

pursuant to subdivision one of this section. The executive director may also, in his or her discretion, order that an independent software contractor not otherwise required to be registered be either registered as a vendor pursuant to this subdivision or be licensed pursuant to either subdivision one or three of this section.

Each ancillary casino vendor enterprise required to be licensed pursuant to subdivision three of this section, as well as its owners, management and supervisory personnel, and employees if such employees have responsibility for services to a gaming facility applicant or licensee, shall establish their good character, honesty and integrity by clear and convincing evidence and shall provide such financial information as may be required by the commission. Any enterprise required to be licensed as an ancillary casino vendor enterprise pursuant to this section shall be permitted to transact business with a gaming facility licensee upon filing of the appropriate vendor registration form and application for such licensure.

6. Any applicant, licensee or qualifier of a casino vendor enterprise license or of an ancillary casino vendor enterprise license under subdivision one of this section, and any vendor registrant under subdivision five of this section shall be disqualified in accordance with the criteria contained in section one thousand three hundred eighteen of this article, except that no such ancillary casino vendor enterprise license under subdivision three of this section or vendor registration under subdivision five of this section shall be denied or revoked if such vendor registrant can affirmatively demonstrate rehabilitation pursuant to article twenty-three-A of the correction law.

7. No casino vendor enterprise license or ancillary casino vendor enterprise license shall be issued pursuant to subdivision one of this section to any person unless that person shall provide proof of valid business registration with the department of state.

8. For the purposes of this section, each applicant shall submit to the commission the name, address, fingerprints and a written consent for a criminal history information to be performed, for each person required to qualify as part of the application. The commission is hereby authorized to exchange fingerprint data with and receive criminal history record information from the state division of criminal justice services and the federal bureau of investigation consistent with applicable state and federal laws, rules and regulations. The applicant shall pay the fee for such criminal history information as established pursuant to article thirty-five of the executive law. The state division of criminal justice services shall promptly notify the commission in the event a

current or prospective qualifier, who was the subject of a criminal history record check pursuant to this section, is arrested for a crime or offense in this state after the date the check was performed.

9. Subsequent to the licensure of any entity pursuant to subdivision one of this section, including any finding of qualification as may be required as a condition of licensure, or the registration of any vendor pursuant to subdivision three of this section, the executive director may revoke, suspend, limit, or otherwise restrict the license, registration or qualification status upon a finding that the licensee, registrant or qualifier is disqualified on the basis of the criteria set forth in section one thousand three hundred eighteen of this article.

10. After notice and hearing prior to the suspension of any license, registration or qualification issued pursuant to subdivision seven of this section the commission shall have the obligation to prove by substantial evidence that the licensee, registrant or qualifier is  
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disqualified on the basis of the criteria set forth in section one thousand three hundred eighteen of this article.

§ 1327. Duration and renewal of vendor registration. 1. A casino vendor registration shall be effective upon issuance, and shall remain valid for five years unless revoked, suspended, voided by law, limited, or otherwise restricted by the commission. Such registrations may be renewed by the holder thereof upon application, on a form prescribed by the commission, and payment of the applicable fee. Notwithstanding the foregoing, if a vendor registrant has not conducted business with a gaming facility for a period of three years, the registration of that vendor registrant shall lapse.

2. The commission shall establish by regulation reasonable and appropriate fees to be imposed on each vendor registrant who provides goods or services to a gaming facility, regardless of the nature of any contractual relationship between the vendor registrant and gaming facility, if any. Such fees shall be paid to the commission.

§ 1328. Junket operator licensing. 1. No junkets may be organized or permitted except in accordance with the provisions of this article. No person may act as a junket representative or junket enterprise except in accordance with this section.

2. A junket representative employed by a gaming facility licensee, an applicant for a gaming facility license or an affiliate of a gaming facility licensee shall be licensed as a casino key employee; provided, however, that said licensee need not be a resident of this state. No gaming facility licensee or applicant for a gaming facility license may employ or otherwise engage a junket representative who is not so licensed.

3. Junket enterprises that, and junket representatives not employed by a gaming facility licensee or an applicant for a gaming facility license or by a junket enterprise who, engage in activities governed by this section shall be licensed as an ancillary casino vendor enterprise in accordance with subdivision three of section one thousand three hundred twenty-six of this title, unless otherwise directed by the commission; provided, however, that any such junket enterprise or junket representative who has disqualified shall be entitled to establish his or her rehabilitation from such disqualification pursuant to article twenty-three-A of the correction law. Any non-supervisory employee of a junket enterprise or junket representative licensed as an ancillary casino vendor enterprise in accordance with subdivision three of section one thousand three hundred twenty-six of this title shall be registered.

4. Prior to the issuance of any license required by this section, an applicant for licensure shall submit to the jurisdiction of the state and shall demonstrate that he or she is amenable to service of process within this state. Failure to establish or maintain compliance with the requirements of this subdivision shall constitute sufficient cause for the denial, suspension or revocation of any license issued pursuant to this section.

5. Upon petition by the holder of a gaming facility license, an applicant for a casino key employee license intending to be employed as a junket representative may be issued a temporary license by the commission in accordance with regulations promulgated, provided that:

(a) the applicant for licensure is employed by a gaming facility licensee; and

(b) the applicant for licensure has filed a completed application as required by the commission.

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6. The commission shall have the authority to immediately suspend, limit or condition any temporary license issued pursuant to this section, pending a hearing on the qualifications of the junket representative.

7. Unless otherwise terminated, any temporary license issued pursuant to this section shall expire twelve months from the date of its issuance, and shall be renewable by the commission for one additional six month period.

8. Every agreement concerning junkets entered into by a gaming facility licensee and a junket representative or junket enterprise shall be deemed to include a provision for its termination without liability on the part of the gaming facility licensee, if the commission orders the termination upon the suspension, limitation, conditioning, denial or revocation of the licensure of the junket representative or junket enterprise. Failure to expressly include such a condition in the agreement shall not constitute a defense in any action brought to terminate the agreement.

9. A gaming facility licensee shall be responsible for the conduct of any junket representative or junket enterprise associated with it and for the terms and conditions of any junket engaged in on its premises, regardless of the fact that the junket may involve persons not employed by such a gaming facility licensee.

10. A gaming facility licensee shall be responsible for any violation or deviation from the terms of a junket. Notwithstanding any other provisions of this article, the commission may order restitution to junket participants, assess penalties for such violations or deviations, prohibit future junkets by the gaming facility licensee, junket enterprise or junket representative, and order such further relief as it deems appropriate.

11. The commission shall, by regulation, prescribe methods, procedures and forms for the delivery and retention of information concerning the conduct of junkets by gaming facility licensees. Without limitation of the foregoing, each gaming facility licensee, in accordance with the rules of the commission, shall:

(a) Maintain on file a report describing the operation of any junket engaged in on its premises; and

(b) Submit to the commission a list of all its employees who are acting as junket representatives.

12. Each gaming facility licensee, junket representative or junket enterprise shall, in accordance with the rules of the commission, file a

report with the commission with respect to each list of junket patrons or potential junket patrons purchased directly or indirectly by the gaming facility licensee, junket representative or enterprise.

13. The commission shall have the authority to determine, either by regulation, or upon petition by the holder of a gaming facility license, that a type of arrangement otherwise included within the definition of "junket" shall not require compliance with any or all of the requirements of this section. In granting exemptions, the commission shall consider such factors as the nature, volume and significance of the particular type of arrangement, and whether the exemption would be consistent with the public policies established by this article. In applying the provisions of this subdivision, the commission may condition, limit, or restrict any exemption as it may deem appropriate.

14. No junket enterprise or junket representative or person acting as a junket representative may:

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(a) Engage in efforts to collect upon checks that have been returned by banks without full and final payment;

(b) Exercise approval authority with regard to the authorization or issuance of credit;

(c) Act on behalf of or under any arrangement with a gaming facility licensee or a gaming patron with regard to the redemption, consolidation, or substitution of the gaming patron's checks awaiting deposit;

(d) Individually receive or retain any fee from a patron for the privilege of participating in a junket; and

(e) Pay for any services, including transportation, or other items of value provided to, or for the benefit of, any patron participating in a junket.

§ 1329. Lobbyist registration. 1. For purposes of this section, the terms "lobbyist", "lobbying", "lobbying activities" and "client" shall have the same meaning as those terms are defined by section one-c of the legislative law.

2. In addition to any other registration and reporting required by law, each lobbyist seeking to engage in lobbying activity on behalf of a client or a client's interest before the commission shall first register with the secretary of the commission. The secretary shall cause a registration to be available on the commission's website within five days of submission.

§ 1330. Registration of labor organizations. 1. Each labor organization, union or affiliate seeking to represent employees who are employed in a gaming facility by a gaming facility licensee shall register with the commission biennially, and shall disclose such information as the commission may require, including the names of all affiliated organizations, pension and welfare systems and all officers and agents of such organizations and systems; provided, however, that no labor organization, union, or affiliate shall be required to furnish such information to the extent such information is included in a report filed by any labor organization, union, or affiliate with the Secretary of Labor pursuant to 29 U.S.C. § 431 et seq. or § 1001 et seq. if a copy of such report, or of the portion thereof containing such information, is furnished to the commission pursuant to the aforesaid federal provisions. The commission may in its discretion exempt any labor organization, union, or affiliate from the registration requirements of this subdivision where the commission finds that such organization, union or affiliate is not the certified bargaining representative of any employee who is employed in a gaming facility by a gaming facility licensee, is

not involved actively, directly or substantially in the control or direction of the representation of any such employee, and is not seeking to do so.

2. No person may act as an officer, agent or principal employee of a labor organization, union or affiliate registered or required to be registered pursuant to this section if the person has been found disqualified by the commission in accordance with the criteria contained in section one thousand three hundred eighteen of this article. The commission may, for purposes of this subdivision, waive any disqualification criterion consistent with the public policy of this article and upon a finding that the interests of justice so require.

3. Neither a labor organization, union or affiliate nor its officers and agents not otherwise individually licensed or registered under this article and employed by a gaming facility licensee may hold any financial interest whatsoever in the gaming facility or gaming facility licensee whose employees they represent.

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4. The commission may maintain a civil action and proceed in a summary manner, without posting bond, against any person, including any labor organization, union or affiliate, to compel compliance with this section, or to prevent any violations, the aiding and abetting thereof, or any attempt or conspiracy to violate this section.

5. In addition to any other remedies provided in this section, a labor organization, union or affiliate registered or required to be registered pursuant to this section may be prohibited by the commission from receiving any dues from any employee licensed or registered under this article and employed by a gaming facility licensee or its agent, if any officer, agent or principal employee of the labor organization, union or affiliate has been found disqualified and if such disqualification has not been waived by the commission in accordance with subdivision two of this section.

§ 1330-a. Casino gaming expenditures. 1. (a) In addition to any other registration or reporting required by law, any entity licensed under section sixteen hundred seventeen-a of the tax law, or which possesses a pari-mutuel wagering license or franchise awarded pursuant to article two or three of this chapter that makes an expenditure of more than one thousand dollars for any written, typed, or other printed communication, or any internet-based communication, or any television or radio communication, or any automated or paid telephone communications, in support or opposition to any referendum authorized by the state legislature following second passage of a concurrent resolution to amend the state constitution to permit or authorize casino gaming to a general public audience, shall file any reports required pursuant to the election law simultaneously with the gaming commission and shall provide such additional reports as required by the gaming commission. This requirement shall apply irrespective of whether such entity makes such expenditure directly or indirectly via one or more persons. The gaming commission shall promulgate regulations to implement the requirements of this section.

(b) Casino gaming expenditures do not include expenditures in connection with:

(i) a written news story, commentary, or editorial or a news story, commentary, or editorial distributed through the facilities of any broadcasting station, cable or satellite unless such publication or facilities are owned or controlled directly or indirectly by the person making such expenditure; or

(ii) a communication published on the Internet, unless the communication is a paid advertisement.

(c) For purposes of this section, the term "person" shall mean person, group of persons, corporation, unincorporated business entity, labor organization or business, trade or professional association or organization, or political committee.

(d) A knowing or willful violation of the provisions of this section shall subject the person to a civil penalty equal to up to one hundred thousand dollars or the cost of the communication, whichever is greater, imposed by the gaming commission for each violation.

2. A copy of all communications paid for by the casino gaming expenditure, including but not limited to broadcast, cable or satellite schedules and scripts, advertisements, pamphlets, circulars, flyers, brochures, letterheads and other printed matter and statements or information conveyed to one thousand or more members of a general public audience shall be filed with the gaming commission with the statements required this article.

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#### TITLE 5

#### REQUIREMENTS FOR CONDUCT AND OPERATION OF GAMING

Section 1331. Operation certificate.

1332. Age for gaming participation.

1333. Hours of operation.

1334. Internal controls.

1335. Games and gaming equipment.

1336. Certain wagering prohibited.

1337. Gratuities.

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1339. Credit.

1340. Alcoholic beverages.

1341. Licensee leases and contracts.

1342. Required exclusion of certain persons.

1343. Exclusion, ejection of certain persons.

1344. List of persons self-excluded from gaming activities.

1345. Excluded person; forfeiture of winnings; other sanctions.

1346. Labor peace agreements for certain facilities

§ 1331. Operation certificate. 1. Notwithstanding the issuance of a license therefor, no gaming facility may be opened or remain open to the public, and no gaming activity, except for test purposes, may be conducted therein, unless and until a valid operation certificate has been issued to the gaming facility licensee by the commission. Such certificate shall be issued by the executive director upon a determination that a gaming facility complies in all respects with the requirements of this article and regulations promulgated hereunder, and that the gaming facility is prepared in all respects to receive and entertain the public.

2. An operation certificate shall remain in force and effect unless revoked, suspended, limited, or otherwise altered by the commission in accordance with this article.

3. It shall be an express condition of continued operation under this article that a gaming facility licensee shall maintain either electronically or in hard copy at the discretion of the gaming facility licensee, copies of all books, records, and documents pertaining to the licensee's operations and approved hotel in a manner and location approved by the commission, provided, however, that the originals of such books, records and documents, whether in electronic or hard copy

form, may be maintained at the offices or electronic system of an affiliate of the gaming facility licensee, at the discretion of the gaming facility licensee. All such books, records and documents shall be immediately available for inspection during all hours of operation in accordance with the rules of the commission and shall be maintained for such period of time as the commission shall require.

§ 1332. Age for gaming participation. 1. No person under the age at which a person is authorized to purchase and consume alcoholic beverages shall enter, or wager in, a licensed gaming facility; provided, however, that such a person may enter a gaming facility by way of passage to another room, and provided further, however, that any such person who is licensed or registered under the provisions of this article may enter a gaming facility in the regular course of the person's permitted activities.

2. Any person disqualified pursuant to subdivision one of this section entitled to funds, cash or prizes from gambling activity shall forfeit same. Such forfeited funds, cash or prizes shall be remitted to the commission and deposited into the commercial gaming revenue fund.

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§ 1333. Hours of operation. 1. Each gaming facility licensed pursuant to this article shall be permitted to operate twenty-four hours a day unless otherwise directed by the commission.

2. A gaming facility licensee shall file with the commission a schedule of hours prior to the issuance of an initial operation certificate. If the gaming facility licensee proposes any change in scheduled hours, such change may not be effected until such licensee files a notice of the new schedule of hours with the commission. Such filing must be made thirty days prior to the effective date of the proposed change in hours.

3. Nothing in this section shall be construed to limit a gaming facility licensee in opening its casino later than, or closing its casino earlier than, the times stated in its schedule of operating hours; provided, however, that any such alterations in its hours shall comply with the provisions of subdivision one of this section and with regulations of the commission pertaining to such alterations.

§ 1334. Internal controls. 1. Each applicant for a gaming facility license shall create, maintain, and file with the commission a description of its internal procedures and administrative and accounting controls for gaming operations that conform to commission regulations and provide adequate and effective controls, establish a consistent overall system of internal procedures and administrative and accounting controls and conform to generally accepted accounting principles, and ensure that gaming facility procedures are carried out and supervised by personnel who do not have incompatible functions. A gaming facility licensee's internal controls shall contain a narrative description of the internal control system to be utilized by the gaming facility, including, but not limited to:

(a) Accounting controls, including the standardization of forms and definition of terms to be utilized in the gaming operations;

(b) Procedures, forms, and, where appropriate, formulas covering the calculation of hold percentages; revenue drop; expense and overhead schedules; complimentary service or item; junkets; and cash equivalent transactions;

(c) Procedures within the cashier's cage for the receipt, storage and disbursal of chips, cash, and other cash equivalents used in gaming; the cashing of checks; the redemption of chips and other cash equivalents used in gaming; the pay-off of jackpots; and the recording of trans-

actions pertaining to gaming operations;

(d) Procedures for the collection and security of moneys at the gaming tables;

(e) Procedures for the transfer and recordation of chips between the gaming tables and the cashier's cage;

(f) Procedures for the transfer of moneys from the gaming tables to the counting process;

(g) Procedures and security for the counting and recordation of revenue;

(h) Procedures for the security, storage and recordation of cash, chips and other cash equivalents utilized in the gaming;

(i) Procedures for the transfer of moneys or chips from and to the slot machines;

(j) Procedures and standards for the opening and security of slot machines;

(k) Procedures for the payment and recordation of slot machine jackpots;

(l) Procedures for the cashing and recordation of checks exchanged by casino patrons;

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(m) Procedures governing the utilization of the private security force within the gaming facility;

(n) Procedures and security standards for the handling and storage of gaming apparatus including cards, dice, machines, wheels and all other gaming equipment;

(o) Procedures and rules governing the conduct of particular games and the responsibility of gaming facility personnel in respect thereto;

(p) Procedures for the orderly shutdown of gaming facility operations in the event that a state of emergency is declared and the gaming facility licensee is unable or ineligible to continue to conduct gaming facility operations during such a state of emergency, which procedures shall include, without limitation, the securing of all keys and gaming assets.

2. No minimum staffing requirements shall be included in the internal controls created in accordance with subdivision one of this section.

§ 1335. Games and gaming equipment. 1. This article shall not be construed to permit any gaming except the conduct of authorized games in a casino in accordance with this article and the regulations promulgated hereunder.

2. Gaming equipment shall not be possessed, maintained or exhibited by any person on the premises of a gaming facility except in a casino or in restricted casino areas used for the inspection, repair or storage of such equipment and specifically designated for that purpose by the gaming facility licensee with the approval of the commission. Gaming equipment that supports the conduct of gaming in a gaming facility but does not permit or require patron access, such as computers, may be possessed and maintained by a gaming facility licensee or a qualified holding or intermediary company of a gaming facility licensee in restricted areas specifically approved by the commission. No gaming equipment shall be possessed, maintained, exhibited, brought into or removed from a gaming facility by any person unless such equipment is necessary to the conduct of an authorized game, has permanently affixed, imprinted, impressed or engraved thereon an identification number or symbol authorized by the commission, is under the exclusive control of a gaming facility licensee or gaming facility licensee's employees, or of any individually qualified employee of a holding company or gaming

facility licensee and is brought into or removed from the gaming facility following twenty-four hour prior notice given to an authorized agent of the commission.

Notwithstanding any other provision of this section, computer equipment used by the slot system operator of a multi-casino progressive slot system to link and communicate with the slot machines of two or more gaming facility licensees for the purpose of calculating and displaying the amount of a progressive jackpot, monitoring the operation of the system, and any other purpose that the commission deems necessary and appropriate to the operation or maintenance of the multi-casino progressive slot machine system may, with the prior approval of the commission, be possessed, maintained and operated by the slot system operator either in a restricted area on the premises of a gaming facility or in a secure facility inaccessible to the public and specifically designed for that purpose off the premises of a gaming facility with the written permission of the commission. Notwithstanding the foregoing, a person may, with the prior approval of the commission and under such terms and conditions as may be required by the commission, possess, maintain or exhibit gaming equipment in any other area of the gaming facility, provided that such equipment is used for nongaming purposes. Notwith-

standing any other provision of this article to the contrary, the commission may, by regulation, authorize the linking of slot machines of one or more gaming facility licensees and slot machines located in casinos licensed by another state of the United States. Wagering and account information for a multi-state slot system shall be transmitted by the operator of such multi-state slot system to either a restricted area on the premises of a gaming facility or to a secure facility inaccessible to the public and specifically designed for that purpose with the written permission of the commission, and from there to slot machines of gaming facility licensees, provided all locations are approved by the commission.

3. Each gaming facility shall contain a count room and such other secure facilities as may be required by the commission for the counting and storage of cash, coins, tokens, checks, plaques, gaming vouchers, coupons, and other devices or items of value used in wagering and approved by the commission that are received in the conduct of gaming and for the inspection, counting and storage of dice, cards, chips and other representatives of value. The commission shall promulgate regulations for the security of drop boxes and other devices in which the foregoing items are deposited at the gaming tables or in slot machines, and all areas wherein such boxes and devices are kept while in use, which regulations may include certain locking devices. Said drop boxes and other devices shall not be brought into or removed from a gaming facility, or locked or unlocked, except at such times, in such places, and according to such procedures as the commission may require.

4. All chips used in gaming shall be of such size and uniform color by denomination as the commission shall require by regulation.

5. All gaming shall be conducted according to rules promulgated by the commission. All wagers and pay-offs of winning wagers shall be made according to rules promulgated by the commission, which shall establish such limitations as may be necessary to assure the vitality of casino operations and fair odds to patrons. Each slot machine shall have a minimum payout of eighty-five percent.

6. Each gaming facility licensee shall make available in printed form to any patron upon request the complete text of the rules of the commis-

sion regarding games and the conduct of gaming, pay-offs of winning wagers, an approximation of the odds of winning for each wager, and such other advice to the player as the commission shall require. Each gaming facility licensee shall prominently post within a casino, according to regulations of the commission such information about gaming rules, pay-offs of winning wagers, the odds of winning for each wager, and such other advice to the player as the commission shall require.

7. Each gaming table shall be equipped with a sign indicating the permissible minimum and maximum wagers pertaining thereto. It shall be unlawful for a gaming facility licensee to require any wager to be greater than the stated minimum or less than the stated maximum; provided, however, that any wager actually made by a patron and not rejected by a gaming facility licensee prior to the commencement of play shall be treated as a valid wager.

8. Testing of slot machines and associated devices. (a) Except as herein provided, no slot machine shall be used to conduct gaming unless it is identical in all electrical, mechanical and other aspects to a model thereof which has been specifically tested and licensed for use by the commission. The commission shall also test or cause to be tested any other gaming device, gaming equipment, gaming-related device or gross-revenue related device, such as a slot management system, electronic

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transfer credit system or gaming voucher system as it deems appropriate. In its discretion and for the purpose of expediting the approval process, the commission may utilize the services of a private testing laboratory that has obtained a plenary license as a casino vendor enterprise to perform the testing, and may also utilize applicable data from any such private testing laboratory or from a governmental agency of a state authorized to regulate slot machines and other gaming devices, gaming equipment, gaming-related devices and gross-revenue related devices used in gaming, if the private testing laboratory or governmental agency uses a testing methodology substantially similar to the methodology approved or utilized by the commission. The commission, in its discretion, may rely upon the data provided by the private testing laboratory or governmental agency and adopt the conclusions of such private testing laboratory or governmental agency regarding any submitted device.

(b) Except as otherwise provided in paragraph (e) of this subdivision, the commission shall, within sixty days of its receipt of a complete application for the testing of a slot machine or other gaming equipment model, approve or reject the slot machine or other gaming equipment model. In so doing, the commission shall specify whether and to what extent any data from a private testing laboratory or governmental agency of a state was used in reaching its conclusions and recommendation. If the commission is unable to complete the testing of a slot machine or other gaming equipment model within this sixty day period, the commission may conditionally approve the slot machine or other gaming equipment model for test use by a gaming facility licensee provided that the commission represents that the use of the slot machine or other gaming equipment model will not have a direct and materially adverse impact on the integrity of gaming or the control of gross revenue. The commission shall give priority to the testing of slot machines or other gaming equipment that a gaming facility licensee has certified it will use in its gaming facility in this state.

(c) The commission shall, by regulation, establish such technical standards for licensure of slot machines, including mechanical and electrical reliability, security against tampering, the comprehensibility of

wagering, and noise and light levels, as it may deem necessary to protect the player from fraud or deception and to insure the integrity of gaming. The denominations of such machines shall be set by the licensee; the licensee shall simultaneously notify the commission of the settings.

(d) The commission shall, by regulation, determine the permissible number and density of slot machines in a licensed gaming facility so as to:

- (1) promote optimum security for gaming facility operations;
- (2) avoid deception or frequent distraction to players at gaming tables;
- (3) promote the comfort of patrons;
- (4) create and maintain a gracious playing environment in the gaming facility; and
- (5) encourage and preserve competition in gaming facility operations by assuring that a variety of gaming opportunities is offered to the public.

Any such regulation promulgated by the commission which determines the permissible number and density of slot machines in a licensed gaming facility shall provide that all casinos shall be included in any calculation of the permissible number and density of slot machines in a licensed gaming facility.

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(e) Any new gaming equipment that is submitted for testing to the commission or to a state licensed independent testing laboratory prior to or simultaneously with submission of such new equipment for testing in a jurisdiction other than this state, may, consistent with regulations promulgated by the commission, be deployed by a gaming facility licensee on the casino fourteen days after submission of such equipment for testing. If the gaming facility or casino vendor enterprise licensee has not received approval for the equipment fourteen days after submission for testing, any interested gaming facility licensee may, consistent with commission regulations, deploy the equipment on a field test basis, unless otherwise directed by the executive director.

9. It shall be unlawful for any person to exchange or redeem chips for anything whatsoever, except for currency, negotiable personal checks, negotiable counter checks, other chips, coupons, slot vouchers or complimentary vouchers distributed by the gaming facility licensee, or, if authorized by regulation of the commission, a valid charge to a credit or debit card account. A gaming facility licensee shall, upon the request of any person, redeem that licensee's gaming chips surrendered by that person in any amount over one hundred dollars with a check drawn upon the licensee's account at any banking institution in this state and made payable to that person.

10. It shall be unlawful for any gaming facility licensee or its agents or employees to employ, contract with, or use any skill or barker to induce any person to enter a gaming facility or play at any game or for any purpose whatsoever.

11. It shall be unlawful for a dealer in any authorized game in which cards are dealt to deal cards by hand or other than from a device specifically designed for that purpose, unless otherwise permitted by the rules of the commission.

§ 1336. Certain wagering prohibited. 1. It shall be unlawful for any casino key employee licensee to wager in any gaming facility in this state.

2. It shall be unlawful for any other employee of a gaming facility

licensee who, in the judgment of the commission, is directly involved with the conduct of gaming operations, including but not limited to dealers, floor persons, box persons, security and surveillance employees, to engage in gambling in any gaming facility in which the employee is employed or in any other gaming facility in this state which is owned or operated by the gaming facility licensee or an affiliated licensee.

3. The prohibition against wagering set forth in subdivisions one and two of this section shall continue for a period of thirty days commencing upon the date that the employee either leaves employment with a gaming facility licensee or is terminated from employment with a gaming facility licensee.

§ 1337. Gratuities. 1. It shall be unlawful for any casino key employee or boxman, floorman, or any other gaming employee who shall serve in a supervisory position to solicit or accept, and for any other gaming employee to solicit, any tip or gratuity from any player or patron at the gaming facility where he is employed.

2. A dealer may accept tips or gratuities from a patron at the table at which such dealer is conducting play, subject to the provisions of this section. All such tips or gratuities shall be immediately deposited in a lockbox reserved for that purpose, unless the tip or gratuity is authorized by a patron utilizing an automated wagering system approved by the commission. All tips or gratuities shall be accounted for, and placed in a pool for distribution pro rata among the dealers, with the

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distribution based upon the number of hours each dealer has worked, except that the commission may, by regulation, permit a separate pool to be established for dealers in the game of poker, or may permit tips or gratuities to be retained by individual dealers in the game of poker.

3. Notwithstanding the provisions of subdivision one of this section, a gaming facility licensee may require that a percentage of the prize pool offered to participants pursuant to an authorized poker tournament be withheld for distribution to the tournament dealers as tips or gratuities as the commission by regulation may approve.

§ 1338. Limitation on certain financial access. In order to protect the public interest, the commission shall adopt regulations that include provisions that:

1. limit the number and location of and maximum withdrawal amounts from automated teller machines;

2. prohibit authorized automated teller machines from accepting electronic benefit cards, debit cards, or similar negotiable instruments issued by the state or political subdivisions for the purpose of accessing temporary public assistance;

3. prohibit the use of specified negotiable instruments at gaming facilities and the use of credit cards, debit cards, and similar devices in slot machines or at table games; and

4. prohibit consumers from cashing paychecks at gaming facilities.

§ 1339. Credit. 1. Except as otherwise provided in this section, no gaming facility licensee or any person licensed under this article, and no person acting on behalf of or under any arrangement with a gaming facility licensee or other person licensed under this article, shall:

(a) Cash any check, make any loan, or otherwise provide or allow to any person any credit or advance of anything of value or which represents value to enable any person to take part in gaming activity as a player; or

(b) Release or discharge any debt, either in whole or in part, or make any loan which represents any losses incurred by any player in gaming

activity, without maintaining a written record thereof in accordance with the rules of the commission.

2. No gaming facility licensee or any person licensed under this article, and no person acting on behalf of or under any arrangement with a gaming facility licensee or other person licensed under this article, may accept a check, other than a recognized traveler's check or other cash equivalent from any person to enable such person to take part in gaming activity as a player, or may give cash or cash equivalents in exchange for such check unless:

(a) The check is made payable to the gaming facility licensee;

(b) The check is dated, but not postdated;

(c) The check is presented to the cashier or the cashier's representative at a location in the gaming facility approved by the commission and is exchanged for cash or slot tokens which total an amount equal to the amount for which the check is drawn, or the check is presented to the cashier's representative at a gaming table in exchange for chips which total an amount equal to the amount for which the check is drawn; and

(d) The regulations concerning check cashing procedures are observed by the gaming facility licensee and its employees and agents. Nothing in this subdivision shall be deemed to preclude the establishment of an account by any person with a gaming facility licensee by a deposit of cash, recognized traveler's check or other cash equivalent, or a check which meets the requirements of subdivision seven of this section, or to

preclude the withdrawal, either in whole or in part, of any amount contained in such account.

3. When a gaming facility licensee or other person licensed under this article, or any person acting on behalf of or under any arrangement with a gaming facility licensee or other person licensed under this article, cashes a check in conformity with the requirements of subdivision two of this section, the gaming facility licensee shall cause the deposit of such check in a bank for collection or payment, or shall require an attorney or casino key employee with no incompatible functions to present such check to the drawer's bank for payment, within:

(a) seven calendar days of the date of the transaction for a check in an amount of one thousand dollars or less;

(b) fourteen calendar days of the date of the transaction for a check in an amount greater than one thousand dollars but less than or equal to five thousand dollars; or

(c) forty-five calendar days of the date of the transaction for a check in an amount greater than five thousand dollars.

Notwithstanding the foregoing, the drawer of the check may redeem the check by exchanging cash, cash equivalents, chips, or a check which meets the requirements of subdivision seven of this section in an amount equal to the amount for which the check is drawn; or he or she may redeem the check in part by exchanging cash, cash equivalents, chips, or a check which meets the requirements of subdivision seven of this section and another check which meets the requirements of subdivision two of this section for the difference between the original check and the cash, cash equivalents, chips, or check tendered; or he or she may issue one check which meets the requirements of subdivision two of this section in an amount sufficient to redeem two or more checks drawn to the order of the gaming facility licensee. If there has been a partial redemption or a consolidation in conformity with the provisions of this subdivision, the newly issued check shall be delivered to a bank for

collection or payment or presented to the drawer's bank for payment by an attorney or casino key employee with no incompatible functions within the period herein specified. No gaming facility licensee or any person licensed or registered under this article, and no person acting on behalf of or under any arrangement with a gaming facility licensee or other person licensed under this article, shall accept any check or series of checks in redemption or consolidation of another check or checks in accordance with this subdivision for the purpose of avoiding or delaying the deposit of a check in a bank for collection or payment or the presentment of the check to the drawer's bank within the time period prescribed by this subdivision.

In computing a time period prescribed by this subdivision, the last day of the period shall be included unless it is a Saturday, Sunday, or a state or federal holiday, in which event the time period shall run until the next business day.

4. No gaming facility licensee or any other person licensed or registered under this article, or any other person acting on behalf of or under any arrangement with a gaming facility licensee or other person licensed or registered under this article, shall transfer, convey, or give, with or without consideration, a check cashed in conformity with the requirements of this section to any person other than:

(a) The drawer of the check upon redemption or consolidation in accordance with subdivision three of this section;

(b) A bank for collection or payment of the check;

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(c) A purchaser of the gaming facility license as approved by the commission; or

(d) An attorney or casino key employee with no incompatible functions for presentment to the drawer's bank.

The limitation on transferability of checks imposed herein shall apply to checks returned by any bank to the gaming facility licensee without full and final payment.

5. No person other than a casino key employee licensed under this article or a gaming employee registered under this article may engage in efforts to collect upon checks that have been returned by banks without full and final payment, except that an attorney-at-law representing a gaming facility licensee may bring action for such collection.

6. Notwithstanding the provisions of any law to the contrary, checks cashed in conformity with the requirements of this article shall be valid instruments, enforceable at law in the courts of this state. Any check cashed, transferred, conveyed or given in violation of this article shall be invalid and unenforceable for the purposes of collection but shall be included in the calculation of gross gaming revenue.

7. Notwithstanding the provisions of subdivision two of this section to the contrary, a gaming facility licensee may accept a check from a person to enable the person to take part in gaming activity as a player, may give cash or cash equivalents in exchange for such a check, or may accept a check in redemption or partial redemption of a check issued in accordance with subdivision two of this section, provided that:

(a) (1) The check is issued by a gaming facility licensee, is made payable to the person presenting the check, and is issued for a purpose other than employment compensation or as payment for goods or services rendered;

(2) The check is issued by a banking institution which is chartered in a country other than the United States on its account at a federally chartered or state-chartered bank and is made payable to "cash," "bear-

er," a gaming facility licensee, or the person presenting the check;

(3) The check is issued by a banking institution which is chartered in the United States on its account at another federally chartered or state-chartered bank and is made payable to "cash," "bearer," a gaming facility licensee, or the person presenting the check;

(4) The check is issued by a slot system operator or pursuant to an annuity jackpot guarantee as payment for winnings from a multi-casino progressive slot machine system jackpot; or

(5) The check is issued by an entity that holds a gaming facility license in any jurisdiction, is made payable to the person presenting the check, and is issued for a purpose other than employment compensation or as payment for goods or services rendered;

(b) The check is identifiable in a manner approved by the commission as a check authorized for acceptance pursuant to paragraph (a) of this subdivision;

(c) The check is dated, but not postdated;

(d) The check is presented to the cashier or the cashier's representative by the original payee and its validity is verified by the drawer in the case of a check drawn pursuant to subparagraph one of paragraph (a) of this subdivision, or the check is verified in accordance with regulations promulgated under this article in the case of a check issued pursuant to subparagraph two, three, four or five of paragraph (a) of this subdivision; and

(e) The regulations concerning check-cashing procedures are observed by the gaming facility licensee and its employees and agents. No gaming

facility licensee shall issue a check for the purpose of making a loan or otherwise providing or allowing any advance or credit to a person to enable the person to take part in gaming activity as a player.

8. Notwithstanding the provisions of subdivisions two and three of this section to the contrary, a gaming facility licensee may, at a location outside the gaming facility, accept a personal check or checks from a person for up to five thousand dollars in exchange for cash or cash equivalents, and may, at such locations within the gaming facility as may be permitted by the commission, accept a personal check or checks for up to five thousand dollars in exchange for cash, cash equivalents, tokens, chips, or plaques to enable the person to take part in gaming activity as a player, provided that:

(a) The check is drawn on the patron's bank or brokerage cash management account;

(b) The check is for a specific amount;

(c) The check is made payable to the gaming facility licensee;

(d) The check is dated but not post-dated;

(e) The patron's identity is established by examination of one of the following: valid credit card, driver's license, passport, or other form of identification credential which contains, at a minimum, the patron's signature;

(f) The check is restrictively endorsed "For Deposit Only" to the gaming facility licensee's bank account and deposited on the next banking day following the date of the transaction;

(g) The total amount of personal checks accepted by any one licensee pursuant to this subdivision that are outstanding at any time, including the current check being submitted, does not exceed five thousand dollars;

(h) The gaming facility licensee has a system of internal controls in place that will enable it to determine the amount of outstanding

personal checks received from any patron pursuant to this subdivision at any given point in time; and

(i) The gaming facility licensee maintains a record of each such transaction in accordance with regulations established by the commission.

9. A person may request the commission to put that person's name on a list of persons to whom the extension of credit by a gaming facility as provided in this section would be prohibited by submitting to the commission the person's name, address, and date of birth. The person does not need to provide a reason for this request. The commission shall provide this list to the credit department of each gaming facility; neither the commission nor the credit department of a gaming facility shall divulge the names on this list to any person or entity other than those provided for in this subdivision. If such a person wishes to have that person's name removed from the list, the person shall submit this request to the commission, which shall so inform the credit departments of gaming facilities no later than three days after the submission of the request.

§ 1340. Alcoholic beverages. 1. Notwithstanding any law to the contrary, the authority to grant any license or permit for, or to permit or prohibit the presence of, alcoholic beverages in, on, or about any premises licensed as part of a gaming facility shall exclusively be vested in the commission.

2. Unless otherwise stated, and except where inconsistent with the purpose or intent of this article or the common understanding of usage thereof, definitions contained in the alcoholic beverage control law

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shall apply to this section. Any definition contained therein shall apply to the same word in any form.

3. Notwithstanding any provision of the alcoholic beverage control law to the contrary, the commission shall have the functions, powers and duties of the state liquor authority but only with respect to the issuance, renewal, transfer, suspension and revocation of licenses and permits for the sale of alcoholic beverages at retail for on-premise consumption by any holder of a gaming facility license issued by the commission including, without limitation, the power to fine or penalize a casino alcoholic beverage licensee or permittee; to enforce all statutes, laws, rulings, or regulations relating to such license or permit; and to collect license and permit fees and establish application standards therefor.

4. Except as otherwise provided in this section, the provisions of the alcoholic beverage control law and the rules, regulations, bulletins, orders, and advisories promulgated by the state liquor authority shall apply to any gaming facility holding a license or permit to sell alcoholic beverages under this section.

5. Notwithstanding any provision to the contrary, the commission may promulgate any regulations and special rulings and findings as may be necessary for the proper enforcement, regulation, and control of alcoholic beverages in gaming facilities when the commission finds that the uniqueness of gaming facility operations and the public interest require that such regulations, rulings, and findings are appropriate.

6. Notwithstanding any provision of law to the contrary, any manufacturer or wholesaler licensed under the alcoholic beverage control law may as authorized under the alcoholic beverage control law, sell alcoholic beverages to a gaming facility holding a retail license or permit to sell alcoholic beverages for consumption on the premises issued under this section, and any gaming facility holding a retail license or permit

to sell alcoholic beverages issued under this section may, as authorized under the alcoholic beverage control law, purchase alcoholic beverages from a manufacturer or wholesaler licensed under the alcoholic beverage control law.

7. It shall be unlawful for any person, including any gaming facility licensee or any of its lessees, agents or employees, to expose for sale, solicit or promote the sale of, possess with intent to sell, sell, give, dispense, or otherwise transfer or dispose of alcoholic beverages in, on or about any portion of the premises of a gaming facility, unless said person possesses a license or permit issued under this section.

8. It shall be unlawful for any person holding a license or permit to sell alcoholic beverages under this section to expose, possess, sell, give, dispense, transfer, or otherwise dispose of alcoholic beverages, other than within the terms and conditions of such license or permit, the provisions of the alcoholic beverage control law, the rules and regulations promulgated by the state liquor authority, and, when applicable, the regulations promulgated pursuant to this article. Notwithstanding any other provision of law to the contrary the holder of a license or permit issued under this section may be authorized to provide complimentary alcoholic beverages under regulations issued by the commission.

9. In issuing a casino alcoholic beverage license or permit, the commission shall describe the scope of the particular license or permit, and the restrictions and limitations thereon as it deems necessary and reasonable. The commission may, in a single casino alcoholic beverage license, permit the holder of such a license or permit to perform any or

all of the following activities, subject to applicable laws, rules and regulations:

(a) To sell any alcoholic beverage by the glass or other open receptacle including, but not limited to, an original container, for on-premise consumption within a facility; provided, however, that no alcoholic beverage shall be sold or given for consumption; delivered or otherwise brought to a patron; or consumed at a gaming table unless so requested by the patron.

(b) To sell any alcoholic beverage by the glass or other open receptacle for on-premise consumption within a gaming facility.

(c) To sell any alcoholic beverage by the glass or other open receptacle or in original containers from a room service location within an enclosed room not in a gaming facility; provided, however, that any sale of alcoholic beverages is delivered only to a guest room or to any other room in the gaming facility authorized by the commission.

(d) To possess or to store alcoholic beverages in original containers intended but not actually exposed for sale at a fixed location on a gaming facility premises, not in a gaming facility; and to transfer or deliver such alcoholic beverages only to a location approved pursuant to this section; provided, however, that no access to or from a storage location shall be permitted except during the normal course of business by employees or agents of the licensee, or by licensed employees or agents of wholesalers or distributors licensed pursuant to the alcoholic beverage control law and any applicable rules and regulations; and provided further, however, that no provision of this section shall be construed to prohibit a casino alcoholic beverage licensee from obtaining an off-site storage license from the state liquor authority.

10. The commission may revoke, suspend, refuse to renew or refuse to transfer any casino alcoholic beverage license or permit, and may fine

or penalize the holder of any alcoholic beverage license or permit issued under this section for violations of any provision of the alcoholic beverage control law, the rules and regulations promulgated by the state liquor authority, and the regulations promulgated by the commission.

11. Jurisdiction over all alcoholic beverage licenses and permits previously issued with respect to the gaming facility is hereby vested in the commission, which in its discretion may by regulation provide for the conversion thereof into a casino alcoholic beverage license or permit as provided in this section.

12. (a) Prior to issuing any license under this section, the commission, or its designee, shall consult with the state liquor authority, or its designee, to confirm that such application and such gaming facility conforms with all applicable provisions of the alcoholic beverage control law, and all applicable rules, regulations, bulletins, orders and advisories promulgated by the state liquor authority;

(b) Prior to commencing enforcement actions against any gaming facility licensed under this section, the commission, or its designee, shall consult with the state liquor authority, or its designee, with respect to the application of the applicable provisions of the alcoholic beverage control law, and all applicable rules, regulations, bulletins, orders and advisories promulgated by the state liquor authority on the alleged conduct of such licensee; and

(c) The commission, or its designee, shall consult with the state liquor authority, or its designee, on a regular basis, but no less than once every three months, regarding any pending applications and enforcement matters.

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§ 1341. Licensee leases and contracts. 1. Unless otherwise provided in this subdivision, no agreement shall be lawful which provides for the payment, however defined, of any direct or indirect interest, percentage or share of: any money or property gambled at a gaming facility; any money or property derived from gaming activity; or any revenues, profits or earnings of a gaming facility. Notwithstanding the foregoing:

(a) Agreements which provide only for the payment of a fixed sum which is in no way affected by the amount of any such money, property, revenues, profits or earnings shall not be subject to the provisions of this subdivision; and receipts, rentals or charges for real property, personal property or services shall not lose their character as payments of a fixed sum because of contract, lease, or license provisions for adjustments in charges, rentals or fees on account of changes in taxes or assessments, cost-of-living index escalations, expansion or improvement of facilities, or changes in services supplied.

(b) Agreements between a gaming facility licensee and a junket enterprise or junket representative licensed, qualified or registered in accordance with the provisions this article and the regulations of the commission which provide for the compensation of the junket enterprise or junket representative by the gaming facility licensee based upon the actual gaming activities of a patron procured or referred by the junket enterprise or junket representative shall be lawful if filed with the commission prior to the conduct of any junket that is governed by the agreement.

(c) Agreements between a gaming facility licensee and its employees which provide for gaming employee or casino key employee profit sharing shall be lawful if the agreement is in writing and filed with the commission prior to its effective date. Such agreements may be reviewed

by the commission.

(d) Agreements to lease an approved gaming facility or the land thereunder and agreements for the complete management of all gaming operations in a gaming facility shall not be subject to the provisions of this subdivision.

(e) Agreements which provide for percentage charges between the gaming facility licensee and a holding company or intermediary company of the gaming facility licensee shall be in writing and filed with the commission but shall not be subject to the provisions of this subdivision.

(f) Written agreements relating to the operation of multi-casino or multi-state progressive slot machine systems between one or more gaming facility licensees and a licensed casino vendor enterprise or an eligible applicant for such license, which provide for an interest, percentage or share of the gaming facility licensee's revenues, profits or earnings from the operation of such multi-casino or multi-state progressive slot machines to be paid to the casino vendor enterprise licensee or applicant shall not be subject to the provisions of this subdivision if the agreements are filed with and approved by the commission.

2. Each gaming facility applicant or licensee shall maintain, in accordance with the rules of the commission, a record of each written or unwritten agreement regarding the realty, construction, maintenance, or business of a proposed or existing gaming facility or related facility. The foregoing obligation shall apply regardless of whether the gaming facility applicant or licensee is a party to the agreement. Any such agreement may be reviewed by the commission on the basis of the reasonableness of its terms, including the terms of compensation, and of the qualifications of the owners, officers, employees, and directors of any enterprise involved in the agreement, which qualifications shall be

reviewed according to the standards enumerated in section one thousand three hundred twenty-three of this article. If the commission disapproves such an agreement or the owners, officers, employees, or directors of any enterprise involved therein, the commission may require its termination.

Every agreement required to be maintained, and every related agreement the performance of which is dependent upon the performance of any such agreement, shall be deemed to include a provision to the effect that, if the commission shall require termination of an agreement, such termination shall occur without liability on the part of the gaming facility applicant or licensee or any qualified party to the agreement or any related agreement. Failure expressly to include such a provision in the agreement shall not constitute a defense in any action brought to terminate the agreement. If the agreement is not maintained or presented to the commission in accordance with commission regulations, or the disapproved agreement is not terminated, the commission may pursue any remedy or combination of remedies provided in this article.

For the purposes of this subdivision, "gaming facility applicant" includes any person required to hold a gaming facility license who has applied to the commission for a gaming facility license or any approval required.

3. Nothing in this article shall be deemed to permit the transfer of any license, or any interest in any license, or any certificate of compliance or any commitment or reservation without the approval of the commission.

§ 1342. Required exclusion of certain persons. 1. The commission shall, by regulation, provide for the establishment of a list of persons

who are to be excluded or ejected from any licensed gaming facility. Such provisions shall define the standards for exclusion, and shall include standards relating to persons:

(a) Who are career or professional offenders as defined by regulations promulgated hereunder; or

(b) Who have been convicted of a criminal offense under the laws of any state or of the United States, which is punishable by more than twelve months in prison, or any crime or offense involving moral turpitude.

The commission shall promulgate definitions establishing those categories of persons who shall be excluded pursuant to this section, including cheats and persons whose privileges for licensure or registration have been revoked.

2. Any enumerated class listed in subdivision one of section two hundred ninety-six of the human rights law shall not be a reason for placing the name of any person upon such list.

3. The commission may impose sanctions upon a licensed gaming facility or individual licensee or registrant in accordance with the provisions of this article if such gaming facility or individual licensee or registrant knowingly fails to exclude or eject from the premises of any licensed gaming facility any person placed by the commission on the list of persons to be excluded or ejected.

4. Any list compiled by the commission of persons to be excluded or ejected shall not be deemed an all-inclusive list, and licensed gaming facilities shall have a duty to keep from their premises persons known to them to be within the classifications declared in subdivisions one and two of this section and the regulations promulgated thereunder, or known to them to be persons whose presence in a licensed gaming facility

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would be inimical to the interest of the state or of licensed gaming therein, or both, as defined in standards established by the commission.

5. Prior to placing the name of any person on a list pursuant to this section, the commission shall serve notice of such fact and of the opportunity for a hearing to such person by personal service or by certified mail at the last known address of such person.

6. Within thirty days after service of the petition in accordance with subdivision five of this section, the person named for exclusion or ejection may demand a hearing before the executive director or the executive director's designee, at which hearing the executive director or the executive director's designee shall have the affirmative obligation to demonstrate by substantial evidence that the person named for exclusion or ejection satisfies the criteria for exclusion established by this section and the applicable regulations. Failure to demand such a hearing within thirty days after service shall preclude a person from having an administrative hearing, but shall in no way affect his or her right to judicial review as provided herein.

7. The commission may make a preliminary placement on the list of a person named in a petition for exclusion or ejection pending completion of a hearing on the petition. The hearing on the application for preliminary placement shall be a limited proceeding at which the commission shall have the affirmative obligation to demonstrate by substantial evidence that the person satisfies the criteria for exclusion established by this section and the applicable regulations. If a person has been placed on the list as a result of an application for preliminary placement, unless otherwise agreed by the executive director and the named person, a hearing on the petition for exclusion or ejection shall

be initiated within thirty days after the receipt of a demand for such hearing or the date of preliminary placement on the list, whichever is later.

8. If, upon completion of the hearing on the petition for exclusion or ejection, the executive director determines that the person named therein does not satisfy the criteria for exclusion established by this section and the applicable regulations, the executive director shall issue an order denying the petition. If the person named in the petition for exclusion or ejection had been placed on the list as a result of an application for preliminary placement, the executive director shall notify all gaming facility licensees of the person's removal from the list.

9. If, upon completion of a hearing on the petition for exclusion or ejection, the executive director determines that placement of the name of the person on the exclusion list is appropriate, the executive director shall make and enter an order to that effect, which order shall be served on all gaming facility licensees. Such order shall be subject to review by the commission in accordance with regulations promulgated thereunder, which final decision shall be subject to review pursuant to article seventy-eight of the civil practice law and rules.

§ 1343. Exclusion, ejection of certain persons. 1. A gaming facility licensee may exclude or eject from its gaming facility any person who is known to it to have been convicted of a crime or disorderly conduct committed in or on the premises of any gaming facility.

2. Nothing in this section or in any other law of this state shall limit the right of a gaming facility licensee to exercise its common law right to exclude or eject permanently from its gaming facility any person who disrupts the operations of its premises, threatens the security of its premises or its occupants, or is disorderly or intoxicated.

§ 1344. List of persons self-excluded from gaming activities. 1. The commission shall provide by regulation for the establishment of a list of persons self-excluded from gaming activities at all licensed gaming facilities. Any person may request placement on the list of self-excluded persons by acknowledging in a manner to be established by the commission that the person is a problem gambler and by agreeing that, during any period of voluntary exclusion, the person may not collect any winnings or recover any losses resulting from any gaming activity at such gaming facilities.

2. The regulations of the commission shall establish procedures for placements on, and removals from, the list of self-excluded persons. Such regulations shall establish procedures for the transmittal to licensed gaming facilities of identifying information concerning self-excluded persons, and shall require licensed gaming facilities to establish procedures designed, at a minimum, to remove self-excluded persons from targeted mailings or other forms of advertising or promotions and deny self-excluded persons access to credit, complimentaries, check cashing privileges, club programs, and other similar benefits.

3. A licensed gaming facility or employee thereof acting reasonably and in good faith shall not be liable to any self-excluded person or to any other party in any judicial proceeding for any harm, monetary or otherwise, which may arise as a result of:

(a) the failure of a licensed gaming facility to withhold gaming privileges from, or restore gaming privileges to, a self-excluded person; or

(b) otherwise permitting a self-excluded person to engage in gaming activity in such licensed gaming facility while on the list of self-ex-

cluded persons.

4. Notwithstanding any other law to the contrary, the commission's list of self-excluded persons shall not be open to public inspection. Nothing herein, however, shall be construed to prohibit a gaming facility licensee from disclosing the identity of persons self-excluded pursuant to this section to affiliated gaming entities in this state or other jurisdictions for the limited purpose of assisting in the proper administration of responsible gaming programs operated by such gaming affiliated entities.

5. A licensed gaming facility or employee thereof shall not be liable to any self-excluded person or to any other party in any judicial proceeding for any harm, monetary or otherwise, which may arise as a result of disclosure or publication in any manner, other than a willfully unlawful disclosure or publication, of the identity of any self-excluded person.

§ 1345. Excluded person; forfeiture of winnings; other sanctions. 1. A person who is prohibited from gaming in a licensed gaming facility by any order of the executive director, commission or court of competent jurisdiction, including any person on the self-exclusion list pursuant to subdivision one of section one thousand three hundred forty-four of this title, shall not collect, in any manner or proceeding, any winnings or recover any losses arising as a result of any prohibited gaming activity.

2. For the purposes this section, any gaming activity in a licensed gaming facility which results in a prohibited person obtaining any money or thing of value from, or being owed any money or thing of value by, the gaming facility shall be considered, solely for purposes of this section, to be a fully executed gambling transaction.

3. In addition to any other penalty provided by law, any money or thing of value which has been obtained by, or is owed to, any prohibited

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person by a licensed gaming facility as a result of wagers made by a prohibited person shall be subject to forfeiture following notice to the prohibited person and opportunity to be heard. A licensed gaming facility shall inform a prohibited person of the availability of such notice on the commission's website when ejecting the prohibited person and seizing any chips, vouchers or other representative of money owed by a gaming facility to the prohibited person as authorized by this subdivision. All forfeited amounts shall be deposited into the commercial gaming revenue fund.

4. In any proceeding brought by the commission against a licensee or registrant for a willful violation of the commission's self-exclusion regulations, the commission may order, in addition to any other sanction authorized, an additional fine of double the amount of any money or thing of value obtained by the licensee or registrant from any self-excluded person. Any money or thing of value so forfeited shall be disposed of in the same manner as any money or thing of value forfeited pursuant to subdivision three of this section.

§ 1346. Labor peace agreements for certain facilities. 1. As used in this section:

(a) "Gaming facility" means any gaming facility licensed pursuant to this article or a video lottery gaming facility as may be authorized by paragraph three of subdivision (a) of section one thousand six hundred seventeen-a of the tax law, as amended by section nineteen of the chapter of the laws of two thousand thirteen that added this section licensed by the commission. A gaming facility shall not include any

horse racing, bingo or charitable games of chance, the state lottery for education, or any gaming facility operating pursuant to the federal Indian Gaming Regulatory Act, 25 U.S.C. § 2710 et seq. A gaming facility shall include any hospitality operation at or related to the gaming facility.

(b) "Labor peace agreement" means an agreement enforceable under 29 U.S.C. § 185(a) that, at a minimum, protects the state's proprietary interests by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with operation of the relevant gaming facility.

(c) "License" means any permit, license, franchise or allowance of the commission and shall include any franchisee or permittee.

(d) "Proprietary interest" means an economic and non-regulatory interest at risk in the financial success of the gaming facility that could be adversely affected by labor-management conflict, including but not limited to property interests, financial investments and revenue sharing.

2. The state legislature finds that the gaming industry constitutes a vital sector of New York's overall economy and that the state through its operation of lotteries and video lottery facilities and through its ownership of the properties utilized for horse racing by The New York Racing Association Inc. has a significant and ongoing economic and non-regulatory interest in the financial viability and competitiveness of the gaming industry. The state legislature further finds that the award or grant of a license by the commission to operate a gaming facility is a significant state action and that the commission must make prudent and efficient decisions to maximize the benefits and minimize the risks of gaming. The state legislature further recognizes that casino gaming industry integration can provide a vital economic engine to assist, nurture, develop, and promote regional economic development, the state tourism industry and the growth of jobs in the state. Additionally, the

state legislature also finds revenues derived directly by the state from such gaming activity will be shared from gross gaming receipts, after payout of prizes but prior to deductions for operational expenses.

Therefore, the state legislature finds that the state has a substantial and compelling proprietary interest in any license awarded for the operation of a gaming facility within the state.

3. The commission shall require any applicant for a gaming facility license who has not yet entered into a labor peace agreement to produce an affidavit stating it shall enter into a labor peace agreement with labor organizations that are actively engaged in representing or attempting to represent gaming or hospitality industry workers in the state. In order for the commission to issue a gaming facility license and for operations to commence, the applicant for a gaming facility license must produce documentation that it has entered into a labor peace agreement with each labor organization that is actively engaged in representing and attempting to represent gaming and hospitality industry workers in the state. The commission shall make the maintenance of such a labor peace agreement an ongoing material condition of licensure.

A license holder shall, as a condition of its license, ensure that operations at the gaming facility that are conducted by contractors, subcontractors, licensees, assignees, tenants or subtenants and that involve gaming or hospitality industry employees shall be done under a labor peace agreement containing the same provisions as specified above.

4. If otherwise applicable, capital projects undertaken by a gaming

facility shall be subject to article eight of the labor law and shall be subject to the enforcement of prevailing wage requirements by the department of labor.

5. If otherwise applicable, capital projects undertaken by a gaming facility shall be subject to section one hundred thirty-five of the state finance law.

6. If otherwise applicable, any gaming facility entering into a contract for a gaming facility capitol project shall be deemed to be a state agency, and such contract shall be deemed to be a state contract, for purposes of article fifteen-A of the executive law and section two hundred twenty-two of the labor law.

#### TITLE 6

#### TAXATION AND FEES

Section 1348. Machine and table fees.

1349. Regulatory investigatory fees.

1350. Additional regulatory costs.

1351. Tax on gaming revenues; permissive supplemental fee.

1352. Commercial gaming revenue fund.

1353. Determination of tax liability.

1354. Unclaimed funds.

1355. Racing support payments.

§ 1348. Machine and table fees. In addition to any other tax or fee imposed by this article, there shall be imposed an annual license fee of five hundred dollars for each slot machine and table approved by the commission for use by a gaming licensee at a gaming facility; provided, however, that not sooner than five years after award of an original gaming license, the commission may annually adjust the fee for inflation. The fee shall be imposed as of July first of each year for all approved slot machines and tables on that date and shall be assessed on a pro rata basis for any slot machine or table approved for use thereafter.

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Such assessed fees shall be deposited into the commercial gaming revenue fund established pursuant to section one thousand three hundred fifty-two of this article.

§ 1349. Regulatory investigatory fees. The commission may establish fees for any investigation into a violation of this article or regulation promulgated hereunder by a gaming facility licensee to be paid by the gaming facility licensee including, but not limited to, billable hours by commission staff involved in the investigation and the costs of services, equipment or other expenses that are incurred by the commission during the investigation.

§ 1350. Additional regulatory costs. 1. Any remaining costs of the commission necessary to maintain regulatory control over gaming facilities that are not covered by the fees set forth in section one thousand three hundred forty-nine of this title; any other fees assessed under this article; or any other designated sources of funding, shall be assessed annually on gaming licensees under this article in proportion to the number of gaming positions at each gaming facility. Each gaming licensee shall pay the amount assessed against it within thirty days after the date of the notice of assessment from the commission.

2. If the fees collected in section one thousand three hundred forty-nine of this title exceed the cost required to maintain regulatory control, the surplus funds shall be credited in proportional shares against each gaming licensee's next assessment.

§ 1351. Tax on gaming revenues; permissive supplemental fee. 1. For a

gaming facility in zone two, there is hereby imposed a tax on gross gaming revenues. The amount of such tax imposed shall be as follows; provided, however, should a licensee have agreed within its application to supplement the tax with a binding supplemental fee payment exceeding the aforementioned tax rate, such tax and supplemental fee shall apply for a gaming facility:

(a) in region two, forty-five percent of gross gaming revenue from slot machines and ten percent of gross gaming revenue from all other sources.

(b) in region one, thirty-nine percent of gross gaming revenue from slot machines and ten percent of gross gaming revenue from all other sources.

(c) in region five, thirty-seven percent of gross gaming revenue from slot machines and ten percent of gross gaming revenue from all other sources.

§ 1352. Commercial gaming revenue fund. 1. The commission shall pay into an account, to be known as the commercial gaming revenue fund as established pursuant to section ninety-seven-nnnn of the state finance law, under the joint custody of the comptroller and the commissioner of taxation and finance, all taxes and fees imposed by this article; any interest and penalties imposed by the commission relating to those taxes; the appropriate percentage of the value of expired gaming related obligations; all penalties levied and collected by the commission; and the appropriate funds, cash or prizes forfeited from gambling activity.

2. The commission shall require at least monthly deposits by the licensee of any payments pursuant to section one thousand three hundred fifty-one of this article, at such times, under such conditions, and in such depositories as shall be prescribed by the state comptroller. The deposits shall be deposited to the credit of the commercial gaming revenue fund as established by section ninety-seven-nnnn of the state finance law. The commission may require a monthly report and reconciliation statement to be filed with it on or before the tenth day of each

month, with respect to gross revenues and deposits received and made, respectively, during the preceding month.

§ 1353. Determination of tax liability. The commission may perform audits of the books and records of a gaming facility licensee, at such times and intervals as it deems appropriate, for the purpose of determining the sufficiency of tax or fee payments. If a return or deposit required with regard to obligations imposed is not filed or paid, or if a return or deposit when filed or paid is determined by the commission to be incorrect or insufficient with or without an audit, the amount of tax, fee or deposit due shall be determined by the commission. Notice of such determination shall be given to the licensee liable for the payment of the tax or fee or deposit. Such determination shall finally and irrevocably fix the tax or fee unless the person against whom it is assessed, within thirty days after receiving notice of such determination, shall apply to the commission for a hearing in accordance with the regulations of the commission.

§ 1354. Unclaimed funds. Unclaimed funds, cash and prizes shall be retained by the gaming facility licensee for the person entitled to the funds, cash or prize for one year after the game in which the funds, cash or prize was won. If no claim is made for the funds, cash or prize within one year, the funds, cash or equivalent cash value of the prize shall be deposited in the commercial gaming revenue fund.

§ 1355. Racing support payments. 1. If an applicant who possesses a

pari-mutuel wagering franchise or license awarded pursuant to article two or three of this chapter, or who possessed in two thousand thirteen a franchise or a license awarded pursuant to article two or three of this chapter or is an articulated entity or such applicant, is issued a gaming facility license pursuant to this article, the licensee shall:

(a) Maintain payments made from video lottery gaming operations to the relevant horsemen and breeders organizations at the same dollar level realized in two thousand thirteen, to be adjusted annually pursuant to changes in the consumer price index for all urban consumers, as published annually by the United States department of labor bureau of labor statistics;

(b) All racetracks locations awarded a gaming facility license shall maintain racing activity and race dates pursuant to articles two and three of this chapter.

2. If an applicant that does not possess either a pari-mutuel wagering license or franchise awarded pursuant to article two or three of this chapter is issued a gaming facility license pursuant to this article, the licensee shall pay:

(a) an amount to horsemen for purses at the licensed racetracks in the region that will assure the purse support from video lottery gaming facilities in the region to the licensed racetracks in the region to be maintained at the same dollar levels realized in two thousand thirteen to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of labor bureau of labor statistics; and

(b) amounts to the agricultural and New York state horse breeding development fund and the New York state thoroughbred breeding and development fund to maintain payments from video lottery gaming facilities in the region to such funds to be maintained at the same dollar levels realized in two thousand thirteen to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of labor bureau of labor statistics.

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## TITLE 7

### PROBLEM GAMBLING

Section 1362. Prevention and outreach efforts.

1363. Advertising restrictions.

§ 1362. Prevention and outreach efforts. 1. Each gaming facility licensee, management company, and holding company involved in the application and ownership or management of a gaming facility shall provide to the commission, as applicable, an applicant's problem gambling plan. An applicant's problem gambling plan shall be approved by the commission before the commission issues or renews a license. Each plan shall at minimum include the following:

(a) The goals of the plan and procedures and timetables to implement the plan;

(b) The identification of the individual who will be responsible for the implementation and maintenance of the plan;

(c) Policies and procedures including the following:

(1) The commitment of the applicant and the gaming facility licensee to train appropriate employees;

(2) The duties and responsibilities of the employees designated to implement or participate in the plan;

(3) The responsibility of patrons with respect to responsible gambling;

(4) Procedures for compliance with the voluntary exclusion program;

(5) Procedures to identify patrons and employees with suspected or known problem gambling behavior, including procedures specific to loyalty and other rewards and marketing programs;

(6) Procedures for providing information to individuals regarding the voluntary exclusion program and community, public and private treatment services, gamblers anonymous programs and similar treatment or addiction therapy programs designed to prevent, treat, or monitor problem gamblers and to counsel family members;

(7) Procedures for responding to patron and employee requests for information regarding the voluntary exclusion program and community, public and private treatment services, gamblers anonymous programs and similar treatment or addiction therapy programs designed to prevent, treat, or monitor compulsive and problem gamblers and to counsel family members;

(8) The provision of printed material to educate patrons and employees about problem gambling and to inform them about the voluntary exclusion program and treatment services available to problem gamblers and their families. The applicant shall provide examples of the materials to be used as part of its plan, including, brochures and other printed material and a description of how the material will be disseminated;

(9) Advertising and other marketing and outreach to educate the general public about the voluntary exclusion program and problem gambling;

(10) An employee training program, including training materials to be utilized and a plan for periodic reinforcement training and a certification process established by the applicant to verify that each employee has completed the training required by the plan;

(11) Procedures to prevent underage gambling;

(12) Procedures to prevent patrons impaired by drugs or alcohol, or both, from gambling; and

(13) The plan for posting signs within the gaming facility, containing information on gambling treatment and on the voluntary exclusion program. The applicant shall provide examples of the language and graphics to be used on the signs as part of its plan;

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(d) A list of community, public and private treatment services, gamblers anonymous programs and similar treatment or addiction therapy programs designed to prevent, treat, or monitor problem gamblers and to counsel family members; and

(e) Any other information, documents, and policies and procedures that the commission requires.

2. Each applicant or gaming facility licensee shall submit any amendments to the problem gambling plan to the commission for review and approval before implementing the amendments.

3. Each gaming facility licensee shall submit an annual summary of its problem gambling plan to the commission.

4. Each gaming facility licensee shall submit quarterly updates and an annual report to the commission of its adherence to the plans and goals submitted under this section.

§ 1363. Advertising restrictions. 1. As used in this section:

(a) "advertisement" shall mean any notice or communication to the public or any information concerning the gaming-related business of a gaming facility licensee or applicant through broadcasting, publication or any other means of dissemination, including electronic dissemination. Promotional activities are considered advertisements for purposes of this section.

(b) "direct advertisement" shall mean any advertisement as described

in paragraph (a) of this subdivision that is disseminated to a specific individual or individuals.

2. Advertising shall be based upon fact, and shall not be false, deceptive or misleading, and no advertising by or on behalf of a gaming facility licensee shall:

(a) Use any type, size, location, lighting, illustration, graphic depiction or color resulting in the obscuring of any material fact;

(b) Fail to clearly and conspicuously specify and state any material conditions or limiting factors;

(c) Depict any person under the age of twenty-one engaging in gaming and related activities; or

(d) Fail to designate and state the name and location of the gaming facility conducting the advertisement. The location of the gaming facility need not be included on billboards within thirty miles of the gaming facility.

3. Each advertisement shall, clearly and conspicuously, state a problem gambling hotline number.

4. Each direct advertisement shall, clearly and conspicuously, describe a method or methods by which an individual may designate that the individual does not wish to receive any future direct advertisement.

(a) The described method must be by at least two of the following:

(1) Telephone;

(2) Regular U.S. mail; or

(3) Electronic mail.

(b) Upon receipt of an individual's request to discontinue receipt of future advertisement, a gaming facility licensee or applicant shall block the individual in the gaming facility licensee's database so as to prevent the individual from receiving future direct advertisements within fifteen days of receipt of the request.

5. Each gaming facility licensee or applicant shall provide to the commission at its main office a complete and accurate copy of all advertisements within five business days of the advertisement's public dissemination. Gaming facility licensees or applicants shall discontinue

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the public dissemination upon receipt of notice from the commission to discontinue an advertisement.

6. A gaming facility licensee or applicant shall maintain a complete record of all advertisements for a period of at least two years. Records shall be made available to the commission upon request.

#### TITLE 8

#### MISCELLANEOUS PROVISIONS

Section 1364. Smoking prohibited.

1365. Conservatorship.

1366. Zoning.

1367. Sports wagering.

§ 1364. Smoking prohibited. Smoking shall not be permitted, and no person shall smoke in the indoor areas of facilities licensed pursuant to this article, except that the provisions of section one thousand three hundred ninety-nine-q of the public health law shall be applicable to facilities licensed pursuant to this article.

§ 1365. Conservatorship. 1. Upon revocation or suspension of a gaming facility license or upon the failure or refusal to renew a gaming facility license, the commission may appoint a conservator to temporarily manage and operate the business of the gaming licensee relating to the gaming facility. Such conservator shall be a person of similar experience in the field of gaming management and, in the case of replacing a

gaming facility licensee, shall have experience operating a gaming facility of similar caliber in another jurisdiction, and shall be in good standing in all jurisdictions in which the conservator operates a gaming facility. Upon appointment, a conservator shall agree to all licensing provisions of the former gaming licensee.

2. A conservator shall, before assuming, managerial or operational duties, execute and file a bond for the faithful performance of its duties payable to the commission with such surety and in such form and amount as the commission shall approve.

3. The commission shall require that the former or suspended gaming licensee purchase liability insurance, in an amount determined by the commission, to protect a conservator from liability for any acts or omissions of the conservator during the conservator's appointment which are reasonably related to and within the scope of the conservator's duties.

4. During the period of temporary management of the gaming facility, the commission shall initiate proceedings under this article to award a new gaming facility license to a qualified applicant whose gaming facility shall be located at the site of the preexisting gaming facility.

5. An applicant for a new gaming facility license shall be qualified for licensure under this article; provided, however, that the commission shall determine an appropriate level of investment by an applicant into the preexisting gaming facility.

6. Upon award of a new gaming facility license, the new gaming facility licensee shall pay the original licensing fee required under this article.

§ 1366. Zoning. Notwithstanding any inconsistent provision of law, gaming authorized at a location pursuant to this article shall be deemed an approved activity for such location under the relevant city, county, town, or village land use or zoning ordinances, rules, or regulations.

§ 1367. Sports wagering. 1. As used in this section:

(a) "Casino" means a licensed gaming facility at which gambling is conducted pursuant to the provisions of this article;

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(b) "Commission" means the commission established pursuant to section one hundred two of this chapter;

(c) "Collegiate sport or athletic event" means a sport or athletic event offered or sponsored by or played in connection with a public or private institution that offers educational services beyond the secondary level;

(d) "Operator" means a casino which has elected to operate a sports pool;

(e) "Professional sport or athletic event" means an event at which two or more persons participate in sports or athletic events and receive compensation in excess of actual expenses for their participation in such event;

(f) "Prohibited sports event" means any collegiate sport or athletic event that takes place in New York or a sport or athletic event in which any New York college team participates regardless of where the event takes place;

(g) "Sports event" means any professional sport or athletic event and any collegiate sport or athletic event, except a prohibited sports event;

(h) "Sports pool" means the business of accepting wagers on any sports event by any system or method of wagering; and

(i) "Sports wagering lounge" means an area wherein a sports pool is

operated.

2. No gaming facility may conduct sports wagering until such time as there has been a change in federal law authorizing such or upon a ruling of a court of competent jurisdiction that such activity is lawful.

3. (a) In addition to authorized gaming activities, a licensed gaming facility may when authorized by subdivision two of this section operate a sports pool upon the approval of the commission and in accordance with the provisions of this section and applicable regulations promulgated pursuant to this article. The commission shall hear and decide promptly and in reasonable order all applications for a license to operate a sports pool, shall have the general responsibility for the implementation of this section and shall have all other duties specified in this section with regard to the operation of a sports pool. The license to operate a sports pool shall be in addition to any other license required to be issued to operate a gaming facility. No license to operate a sports pool shall be issued by the commission to any entity unless it has established its financial stability, integrity and responsibility and its good character, honesty and integrity.

No later than five years after the date of the issuance of a license and every five years thereafter or within such lesser periods as the commission may direct, a licensee shall submit to the commission such documentation or information as the commission may by regulation require, to demonstrate to the satisfaction of the executive director of the commission that the licensee continues to meet the requirements of the law and regulations.

(b) A sports pool shall be operated in a sports wagering lounge located at a casino. The lounge shall conform to all requirements concerning square footage, design, equipment, security measures and related matters which the commission shall by regulation prescribe.

(c) The operator of a sports pool shall establish or display the odds at which wagers may be placed on sports events.

(d) An operator shall accept wagers on sports events only from persons physically present in the sports wagering lounge. A person placing a wager shall be at least twenty-one years of age.

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(e) An operator shall not admit into the sports wagering lounge, or accept wagers from, any person whose name appears on the exclusion list.

(f) The holder of a license to operate a sports pool may contract with an entity to conduct that operation, in accordance with the regulations of the commission. That entity shall obtain a license as a casino vendor enterprise prior to the execution of any such contract, and such license shall be issued pursuant to the provisions of section one thousand three hundred twenty-seven of this article and in accordance with the regulations promulgated by the commission.

(g) If any provision of this article or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

4. (a) All persons employed directly in wagering-related activities conducted within a sports wagering lounge shall be licensed as a casino key employee or registered as a gaming employee, as determined by the commission. All other employees who are working in the sports wagering lounge may be required to be registered, if appropriate, in accordance with regulations of the commission.

(b) Each operator of a sports pool shall designate one or more casino

key employees who shall be responsible for the operation of the sports pool. At least one such casino key employee shall be on the premises whenever sports wagering is conducted.

5. Except as otherwise provided by this article, the commission shall have the authority to regulate sports pools and the conduct of sports wagering under this article to the same extent that the commission regulates other gaming. No casino shall be authorized to operate a sports pool unless it has produced information, documentation, and assurances concerning its financial background and resources, including cash reserves, that are sufficient to demonstrate that it has the financial stability, integrity, and responsibility to operate a sports pool. In developing rules and regulations applicable to sports wagering, the commission shall examine the regulations implemented in other states where sports wagering is conducted and shall, as far as practicable, adopt a similar regulatory framework. The commission shall promulgate regulations necessary to carry out the provisions of this section, including, but not limited to, regulations governing the:

(a) amount of cash reserves to be maintained by operators to cover winning wagers;

(b) acceptance of wagers on a series of sports events;

(c) maximum wagers which may be accepted by an operator from any one patron on any one sports event;

(d) type of wagering tickets which may be used;

(e) method of issuing tickets;

(f) method of accounting to be used by operators;

(g) types of records which shall be kept;

(h) use of credit and checks by patrons;

(i) type of system for wagering; and

(j) protections for a person placing a wager.

6. Each operator shall adopt comprehensive house rules governing sports wagering transactions with its patrons. The rules shall specify the amounts to be paid on winning wagers and the effect of schedule changes. The house rules, together with any other information the commission deems appropriate, shall be conspicuously displayed in the sports wagering lounge and included in the terms and conditions of the

account wagering system, and copies shall be made readily available to patrons.

#### TITLE 9

##### GAMING INSPECTOR GENERAL

Section 1368. Establishment of the office of gaming inspector general.

1369. State gaming inspector general; functions and duties.

1370. Powers.

1371. Responsibilities of the commission and its officers and employees.

§ 1368. Establishment of the office of gaming inspector general. There is hereby created within the commission the office of gaming inspector general. The head of the office shall be the gaming inspector general who shall be appointed by the governor by and with the advice and consent of the senate. The inspector general shall serve at the pleasure of the governor. The inspector general shall report directly to the governor. The person appointed as inspector general shall, upon his or her appointment, have not less than ten years professional experience in law, investigation, or auditing. The inspector general shall be compensated within the limits of funds available therefor, provided, however, such salary shall be no less than the salaries of certain state

officers holding the positions indicated in paragraph (a) of subdivision one of section one hundred sixty-nine of the executive law.

§ 1369. State gaming inspector general; functions and duties. The state gaming inspector general shall have the following duties and responsibilities:

1. receive and investigate complaints from any source, or upon his or her own initiative, concerning allegations of corruption, fraud, criminal activity, conflicts of interest or abuse in the commission;

2. inform the commission members of such allegations and the progress of investigations related thereto, unless special circumstances require confidentiality;

3. determine with respect to such allegations whether disciplinary action, civil or criminal prosecution, or further investigation by an appropriate federal, state or local agency is warranted, and to assist in such investigations;

4. prepare and release to the public written reports of such investigations, as appropriate and to the extent permitted by law, subject to redaction to protect the confidentiality of witnesses. The release of all or portions of such reports may be deferred to protect the confidentiality of ongoing investigations;

5. review and examine periodically the policies and procedures of the commission with regard to the prevention and detection of corruption, fraud, criminal activity, conflicts of interest or abuse;

6. recommend remedial action to prevent or eliminate corruption, fraud, criminal activity, conflicts of interest or abuse in the commission; and

7. establish programs for training commission officers and employees regarding the prevention and elimination of corruption, fraud, criminal activity, conflicts of interest or abuse in the commission.

§ 1370. Powers. The state gaming inspector general shall have the power to:

1. subpoena and enforce the attendance of witnesses;

2. administer oaths or affirmations and examine witnesses under oath;

3. require the production of any books and papers deemed relevant or material to any investigation, examination or review;

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4. notwithstanding any law to the contrary, examine and copy or remove documents or records of any kind prepared, maintained or held by the commission;

5. require any commission officer or employee to answer questions concerning any matter related to the performance of his or her official duties. The refusal of any officer or employee to answer questions shall be cause for removal from office or employment or other appropriate penalty;

6. monitor the implementation by the commission of any recommendations made by the state inspector general; and

7. perform any other functions that are necessary or appropriate to fulfill the duties and responsibilities of the office.

§ 1371. Responsibilities of the commission and its officers and employees. 1. Every commission officer or employee shall report promptly to the state gaming inspector general any information concerning corruption, fraud, criminal activity, conflicts of interest or abuse by another state officer or employee relating to his or her office or employment, or by a person having business dealings with the commission relating to those dealings. The knowing failure of any officer or employee to so report shall be cause for removal from office or employ-

ment or other appropriate penalty under this article. Any officer or employee who acts pursuant to this subdivision by reporting to the state gaming inspector general or other appropriate law enforcement official improper governmental action as defined in section seventy-five-b of the civil service law shall not be subject to dismissal, discipline or other adverse personnel action.

2. The commission chair shall advise the governor within ninety days of the issuance of a report by the state gaming inspector general as to the remedial action that the commission has taken in response to any recommendation for such action contained in such report.

§ 3. Section 225.00 of the penal law is amended by adding eighteen new subdivisions 13 through 30 to read as follows:

13. "Authorized gaming establishment" means any structure, structure and adjacent or attached structure, or grounds adjacent to a structure in which casino gaming, conducted pursuant to article thirteen of the racing, pari-mutuel wagering and breeding law, or Class III gaming, as authorized pursuant to a compact reached between the state of New York and a federally recognized Indian nation or tribe under the federal Indian Gaming Regulatory Act of 1988, is conducted and shall include all public and non-public areas of any such building, except for such areas of a building where either Class I or II gaming are conducted or any building or grounds known as a video gaming entertainment facility, including facilities where food and drink are served, as well as those areas not normally open to the public, such as where records related to video lottery gaming operations are kept, except shall not include the racetracks or such areas where such video lottery gaming operations or facilities do not take place or exist, such as racetrack areas or fair-grounds which are wholly unrelated to video lottery gaming operations, pursuant to section sixteen hundred seventeen-a and paragraph five of subdivision a of section sixteen hundred twelve of the tax law, as amended and implemented.

14. "Authorized gaming operator" means an enterprise or business entity authorized by state or federal law to operate casino or video lottery gaming.

15. "Casino gaming" means games authorized to be played pursuant to a license granted under article thirteen of the racing, pari-mutuel wager-

ing and breeding law or by federally recognized Indian nations or tribes pursuant to a valid gaming compact reached in accordance with the federal Indian Gaming Regulatory Act of 1988, Pub. L. 100-497, 102 Stat. 2467, codified at 25 U.S.C. §§ 2701-21 and 18 U.S.C. §§ 1166-68.

16. "Cash equivalent" means a treasury check, a travelers check, wire transfer of funds, transfer check, money order, certified check, cashiers check, payroll check, a check drawn on the account of the authorized gaming operator payable to the patron or to the authorized gaming establishment, a promotional coupon, promotional chip, promotional cheque, promotional token, or a voucher recording cash drawn against a credit card or charge card.

17. "Cheques" or "chips" or "tokens" means nonmetal, metal or partly metal representatives of value, redeemable for cash or cash equivalent, and issued and sold by an authorized casino operator for use at an authorized gaming establishment. The value of such cheques or chips or tokens shall be considered equivalent in value to the cash or cash equivalent exchanged for such cheques or chips or tokens upon purchase or redemption.

18. "Class I gaming" and "Class II gaming" means those forms of gaming

that are not Class III gaming, as defined in subsection eight of section four of the federal Indian Gaming Regulatory Act, 25 U.S.C. § 2703.

19. "Class III gaming" means those forms of gaming that are not Class I or Class II gaming, as defined in subsections six and seven of section four of the federal Indian Gaming Regulatory Act, 25 U.S.C. § 2703 and those games enumerated in the Appendix of a gaming compact.

20. "Compact" or "gaming compact" means the agreement between a federally recognized Indian tribe and the state of New York regarding Class III gaming activities entered into pursuant to the federal Indian Gaming Regulatory Act, Pub. L. 100-497, 102 Stat. 2467, codified at 25 U.S.C. §§ 2701-21 and 18 U.S.C. §§ 1166-68 (1988 & Supp. II).

21. "Gaming equipment or device" means any machine or device which is specially designed or manufactured for use in the operation of any Class III or video lottery game.

22. "Gaming regulatory authority" means, with respect to any authorized gaming establishment on Indian lands, territory or reservation, the Indian nation or tribal gaming commission, its authorized officers, agents and representatives acting in their official capacities or such other agency of a nation or tribe as the nation or tribe may designate as the agency responsible for the regulation of Class III gaming, jointly with the state gaming agency, conducted pursuant to a gaming compact between the nation or tribe and the state of New York, or with respect to any casino gaming authorized pursuant to article thirteen of the racing, pari-mutuel wagering and breeding law or video lottery gaming conducted pursuant to section sixteen hundred seventeen-a and paragraph five of subdivision a of section sixteen hundred twelve of the tax law, as amended and implemented.

23. "Premises" includes any structure, parking lot, building, vehicle, watercraft, and any real property.

24. "Sell" means to sell, exchange, give or dispose of to another.

25. "State gaming agency" shall mean the New York state gaming commission, its authorized officials, agents, and representatives acting in their official capacities as the regulatory agency of the state which has responsibility for regulation with respect to video lottery gaming or casino gaming.

26. "Unfair gaming equipment" means loaded dice, marked cards, substituted cards or dice, or fixed roulette wheels or other gaming equipment

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which has been altered in a way that tends to deceive or tends to alter the elements of chance or normal random selection which determine the result of the game or outcome, or the amount or frequency of the payment in a game.

27. "Unlawful gaming property" means:

(a) any device, not prescribed for use in casino gaming by its rules, which is capable of assisting a player:

(i) to calculate any probabilities material to the outcome of a contest of chance; or

(ii) to receive or transmit information material to the outcome of a contest of chance; or

(b) any object or article which, by virtue of its size, shape or any other quality, is capable of being used in casino gaming as an improper substitute for a genuine chip, cheque, token, betting coupon, debit instrument, voucher or other instrument or indicia of value; or

(c) any unfair gaming equipment.

28. "Video lottery gaming" means any lottery game played on a video lottery terminal, which consists of multiple players competing for a

chance to win a random drawn prize pursuant to section sixteen hundred seventeen-a and paragraph five of subdivision a of section sixteen hundred twelve of the tax law, as amended and implemented.

29. "Voucher" means an instrument of value generated by a video lottery terminal representing a monetary amount and/or play value owed to a customer at a specific video lottery terminal based on video lottery gaming winnings and/or amounts not wagered.

§ 4. The penal law is amended by adding ten new sections 225.55, 225.60, 225.65, 225.70, 225.75, 225.80, 225.85, 225.90 and 225.95 to read as follows:

§ 225.55 Gaming fraud in the second degree.

A person is guilty of gaming fraud in the second degree when he or she:

1. with intent to defraud and in violation of the rules of the casino gaming, misrepresents, changes the amount bet or wagered on, or the outcome or possible outcome of the contest or event which is the subject of the bet or wager, or the amount or frequency of payment in the casino gaming; or

2. with intent to defraud, obtains anything of value from casino gaming without having won such amount by a bet or wager contingent thereon.

Gaming fraud in the second degree is a class A misdemeanor.

§ 225.60 Gaming fraud in the first degree.

A person is guilty of gaming fraud in the first degree when he or she commits a gaming fraud in the second degree, and:

1. The value of the benefit obtained exceeds one thousand dollars; or

2. He or she has been previously convicted within the preceding five years of any offense of which an essential element is the commission of a gaming fraud.

Gaming fraud in the first degree is a class E felony.

§ 225.65 Use of counterfeit, unapproved or unlawful wagering instruments.

A person is guilty of use of counterfeit, unapproved or unlawful wagering instruments when in playing or using any casino gaming designed to be played with, received or be operated by chips, cheques, tokens, vouchers or other wagering instruments approved by the appropriate gaming regulatory authority, he or she knowingly uses chips, cheques, tokens, vouchers or other wagering instruments other than those approved

by the appropriate gaming regulating authority and the state gaming agency or lawful coin or legal tender of the United States of America.

Possession of more than one counterfeit, unapproved or unlawful wagering instrument described in this section is presumptive evidence of possession thereof with knowledge of its character or contents.

Use of counterfeit, unapproved or unlawful wagering instruments is a class A misdemeanor.

§ 225.70 Possession of unlawful gaming property in the third degree.

A person is guilty of possession of unlawful gaming property in the third degree when he or she possesses, with intent to use such property to commit gaming fraud, unlawful gaming property at a premises being used for casino gaming.

Possession of unlawful gaming property in the third degree is a class A misdemeanor.

§ 225.75 Possession of unlawful gaming property in the second degree.

A person is guilty of possession of unlawful gaming property in the second degree when:

1. He or she makes, sells, or possesses with intent to sell, any unlawful gaming property at a casino gaming facility, the value of which exceeds three hundred dollars, with intent that it be made available to a person for unlawful use; or

2. He or she commits possession of unlawful gaming property in the third degree as defined in section 225.70 of this article, and the face value of the improper substitute property exceeds five hundred dollars; or

3. He or she commits the offense of possession of unlawful gaming property in the third degree and has been previously convicted within the preceding five years of any offense of which an essential element is possession of unlawful gaming property.

Possession of unlawful gaming property in the second degree is a class E felony.

§ 225.80 Possession of unlawful gaming property in the first degree.

A person is guilty of possession of unlawful gaming property in the first degree when:

1. He or she commits the crime of unlawful possession of gaming property in the third degree as defined in section 225.70 of this article and the face value of the improper substitute property exceeds one thousand dollars; or

2. He or she commits the offense of possession of unlawful gaming property in the second degree as defined in subdivision one or two of section 225.75 of this article and has been previously convicted within the preceding five years of any offense of which an essential element is possession of unlawful gaming property.

Possession of unlawful gaming property in the first degree is a class D felony.

§ 225.85 Use of unlawful gaming property.

A person is guilty of use of unlawful gaming property when he or she knowingly with intent to defraud uses unlawful gaming property at a premises being used for casino gaming.

Use of unlawful gaming property is a class E felony.

§ 225.90 Manipulation of gaming outcomes at an authorized gaming establishment.

A person is guilty of manipulation of gaming outcomes at an authorized gaming establishment when he or she:

1. Knowingly conducts, operates, deals or otherwise manipulates, or knowingly allows to be conducted, operated, dealt or otherwise manipu-

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lated, cards, dice or gaming equipment or device, for themselves or for another, through any trick or sleight of hand performance, with the intent of deceiving or altering the elements of chance or normal random selection which determines the result or outcome of the game, or the amount or frequency of the payment in a game; or

2. Knowingly uses, conducts, operates, deals, or exposes for play, or knowingly allows to be used, conducted, operated, dealt or exposed for play any cards, dice or gaming equipment or device, or any combination of gaming equipment or devices, which have in any manner been altered, marked or tampered with, or placed in a condition, or operated in a manner, the result of which tends to deceive or tends to alter the elements of chance or normal random selection which determine the result of the game or outcome, or the amount or frequency of the payment in a game; or

3. Knowingly uses, or possesses with the intent to use, any cards, dice or other gaming equipment or devices other than that provided by an

authorized gaming operator for current use in a permitted gaming activity; or

4. Alters or misrepresents the outcome of a game or other event on which bets or wagers have been made after the outcome is made sure but before it is revealed to players.

Possession of altered, marked or tampered with dice, cards, or gaming equipment or devices at an authorized gambling establishment is presumptive evidence of possession thereof with knowledge of its character or contents and intention to use such altered, marked or tampered with dice, cards, or gaming equipment or devices in violation of this section.

Manipulation of gaming outcomes at an authorized gaming establishment is a class A misdemeanor provided, however, that if the person has previously been convicted of this crime within the past five years this crim shall be a class E felony.

§ 225.95 Unlawful manufacture, sale, distribution, marking, altering or modification of equipment and devices associated with gaming.

A person is guilty of unlawful manufacture, sale, distribution, marking, altering or modification of equipment and devices associated with gaming when if he or she:

1. Manufactures, sells or distributes any cards, chips, cheques, tokens, dice, vouchers, game or device and he or she knew or reasonably should have known it was intended to be used to violate any provision of this article; or

2. Marks, alters or otherwise modifies any associated gaming equipment or device in a manner that either affects the result of the wager by determining win or loss or alters the normal criteria of random selection in a manner that affects the operation of a game or determines the outcome of a game, and he or she knew or reasonably should have known that it was intended to be used to violate any provision of this article.

Unlawful manufacture, sale, distribution, marking, altering or modification of equipment and devices associated with gaming is a class A misdemeanor provided, however, that if the person has previously been convicted of this crime within the past five years this crim shall be a class E felony.

§ 5. Section 109-a of the racing, pari-mutuel wagering and breeding law is REPEALED and a new section 109-a is added to read as follows:

§ 109-a. Separate board for facility siting. The commission shall establish a separate board to be known as the New York gaming facility

location board to perform designated functions under article thirteen of this chapter, the following provisions shall apply to the board:

1. The commission shall select five members and name the chair of the board. Each member of the board shall be a resident of the state of New York. No member of the legislature or person holding any elective or appointive office in federal, state or local government shall be eligible to serve as a member of the board.

2. Qualifications of members. Members of the board shall each possess no less than ten years of responsible experience in fiscal matters and shall have any one or more of the following qualifications:

(a) significant service as an accountant economist, or financial analyst experienced in finance or economics;

(b) significant service in an academic field relating to finance or economics;

(c) significant service and knowledge of the commercial real estate

industry; or

(d) significant service as an executive with fiduciary responsibilities in charge of a large organization or foundation.

3. No member of the board:

(a) may have a close familial or business relationship to a person that holds a license under this chapter;

(b) may have any direct or indirect financial interest, ownership, or management, including holding any stocks, bonds, or other similar financial interests in any gaming activities, including horse racing, lottery or gambling;

(c) may receive or share in, directly or indirectly, the receipts or proceeds of any gaming activities, including horse racing, lottery or gambling;

(d) may have a beneficial interest in any contract for the manufacture or sale of gaming devices, the conduct of any gaming activity, or the provision of any independent consulting services in connection with any establishment licensed under this chapter.

4. Board members are entitled to actual and necessary expenses incurred in the discharge of their duties but may not receive compensation for their service on the board.

5. (a) The commission shall provide staff to the board.

(b) The board shall contract with an outside consultant to provide analysis of the gaming industry and to support the board's comprehensive review and evaluation of the applications submitted to the board for gaming facility licenses.

(c) The board may contract with attorneys, accountants, auditors and financial and other experts to render necessary services.

(d) All other state agencies shall cooperate with and assist the board in the fulfillment of its duties under this article and may render such services to the board within their respective functions as the board may reasonably request.

6. Utilizing the powers and duties prescribed for it by article thirteen of this chapter, the board shall select, through a competitive process consistent with provisions of article thirteen of this chapter, not more than four gaming facility license applicants. Such selectees shall be authorized to receive a gaming facility license, if found suitable by the commission. The board may select another applicant for authorization to be licensed as a gaming facility if a previous selectee fails to meet licensing thresholds, is revoked or surrenders a license opportunity.

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§ 6. Subdivision 2 of section 99-h of the state finance law, as amended by section 1 of part V of chapter 59 of the laws of 2006, is amended to read as follows:

2. Such account shall consist of all revenues resulting from tribal-state compacts executed pursuant to article two of the executive law ~~[and]~~, a tribal-state compact with the St. Regis Mohawk tribe executed pursuant to chapter five hundred ninety of the laws of two thousand four and the Oneida Settlement Agreement referenced in section eleven of the executive law.

§ 7. Subdivision 3 of section 99-h of the state finance law, as amended by section 1 of part W of chapter 60 of the laws of 2011, is amended to read as follows:

3. Moneys of the account, following the segregation of appropriations enacted by the legislature, shall be available for purposes including but not limited to: (a) reimbursements or payments to municipal govern-

ments that host tribal casinos pursuant to a tribal-state compact for costs incurred in connection with services provided to such casinos or arising as a result thereof, for economic development opportunities and job expansion programs authorized by the executive law; provided, however, that for any gaming facility located in the city of Buffalo, the city of Buffalo shall receive a minimum of twenty-five percent of the negotiated percentage of the net drop from electronic gaming devices the state receives pursuant to the compact, and provided further that for any gaming facility located in the city of Niagara Falls, county of Niagara a minimum of twenty-five percent of the negotiated percentage of the net drop from electronic gaming devices the state receives pursuant to the compact shall be distributed in accordance with subdivision four of this section, and provided further that for any gaming facility located in the county or counties of Cattaraugus, Chautauqua or Allegany, the municipal governments of the state hosting the facility shall collectively receive a minimum of twenty-five percent of the negotiated percentage of the net drop from electronic gaming devices the state receives pursuant to the compact; and provided further that pursuant to chapter five hundred ninety of the laws of two thousand four, a minimum of twenty-five percent of the revenues received by the state pursuant to the state's compact with the St. Regis Mohawk tribe shall be made available to the counties of Franklin and St. Lawrence, and affected towns in such counties. Each such county and its affected towns shall receive fifty percent of the moneys made available by the state; and provided further that the state shall annually make twenty-five percent of the negotiated percentage of the net drop from all gaming devices the state actually receives pursuant to the Oneida Settlement Agreement confirmed by section eleven of the executive law as available to the county of Oneida, and a sum of three and one-half million dollars to the county of Madison. Additionally, the state shall distribute for a period of nineteen and one-quarter years, an additional annual sum of two and one-half million dollars to the county of Oneida. Additionally, the state shall distribute the one-time eleven million dollar payment received by the state pursuant to such agreement with the Oneida Nation of New York to the county of Madison by wire transfer upon receipt of such payment by the state; and (b) support and services of treatment programs for persons suffering from gambling addictions. Moneys not segregated for such purposes shall be transferred to the general fund for the support of government during the fiscal year in which they are received.

§ 7-a. Subdivision 3 of section 99-h of the state finance law, as amended by section 1 of part QQ of chapter 59 of the laws of 2009, is amended to read as follows:

3. Moneys of the account, following appropriation by the legislature, shall be available for purposes including but not limited to: (a) reimbursements or payments to municipal governments that host tribal casinos pursuant to a tribal-state compact for costs incurred in connection with services provided to such casinos or arising as a result thereof, for economic development opportunities and job expansion programs authorized by the executive law; provided, however, that for any gaming facility located in the city of Buffalo, the city of Buffalo shall receive a minimum of twenty-five percent of the negotiated percentage of the net drop from electronic gaming devices the state receives pursuant to the compact, and provided further that for any gaming facility located in the city of Niagara Falls, county of Niagara a minimum of twenty-five percent of the negotiated percentage of the net

drop from electronic gaming devices the state receives pursuant to the compact shall be distributed in accordance with subdivision four of this section, and provided further that for any gaming facility located in the county or counties of Cattaraugus, Chautauqua or Allegany, the municipal governments of the state hosting the facility shall collectively receive a minimum of twenty-five percent of the negotiated percentage of the net drop from electronic gaming devices the state receives pursuant to the compact; and provided further that pursuant to chapter five hundred ninety of the laws of two thousand four, a minimum of twenty-five percent of the revenues received by the state pursuant to the state's compact with the St. Regis Mohawk tribe shall be made available to the counties of Franklin and St. Lawrence, and affected towns in such counties. Each such county and its affected towns shall receive fifty percent of the moneys made available by the state; and provided further that the state shall annually make twenty-five percent of the negotiated percentage of the net drop from all gaming devices the state actually receives pursuant to the Oneida Settlement Agreement as confirmed by section eleven of the executive law as available to the county of Oneida, and a sum of three and one-half million dollars to the county of Madison. Additionally, the state shall distribute for a period of nineteen and one-quarter years, an additional annual sum of two and one-half million dollars to the county of Oneida. Additionally, the state shall distribute the one-time eleven million dollar payment received by the state pursuant to such agreement with the Oneida Nation of New York to the county of Madison by wire transfer upon receipt of such payment by the state; and (b) support and services of treatment programs for persons suffering from gambling addictions. Moneys not appropriated for such purposes shall be transferred to the general fund for the support of government during the fiscal year in which they are received.

§ 8. Subdivision 3 of section 99-h of the state finance law, as amended by section 23 of part HH of chapter 57 of the laws of 2013, is amended to read as follows:

3. Moneys of the account, following the segregation of appropriations enacted by the legislature, shall be available for purposes including but not limited to: (a) reimbursements or payments to municipal governments that host tribal casinos pursuant to a tribal-state compact for costs incurred in connection with services provided to such casinos or arising as a result thereof, for economic development opportunities and job expansion programs authorized by the executive law; provided, however-

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er, that for any gaming facility located in the county of Erie or Niagara, the municipal governments hosting the facility shall collectively receive a minimum of twenty-five percent of the negotiated percentage of the net drop from electronic gaming devices the state receives pursuant to the compact and provided further that for any gaming facility located in the county or counties of Cattaraugus, Chautauqua or Allegany, the municipal governments of the state hosting the facility shall collectively receive a minimum of twenty-five percent of the negotiated percentage of the net drop from electronic gaming devices the state receives pursuant to the compact; and provided further that pursuant to chapter five hundred ninety of the laws of two thousand four, a minimum of twenty-five percent of the revenues received by the state pursuant to the state's compact with the St. Regis Mohawk tribe shall be made available to the counties of Franklin and St. Lawrence, and affected towns in such counties. Each such county and its affected

towns shall receive fifty percent of the moneys made available by the state; and provided further that the state shall annually make twenty-five percent of the negotiated percentage of the net drop from all gaming devices the state actually receives pursuant to the Oneida Settlement Agreement confirmed by section eleven of the executive law available to the county of Oneida, and a sum of three and one-half million dollars to the county of Madison. Additionally, the state shall distribute, for a period of nineteen and one-quarter years, an additional annual sum of two and one-half million dollars to the county of Oneida. Additionally, the state shall distribute the one-time eleven million dollar payment actually received by the state pursuant to the Oneida Settlement Agreement to the county of Madison by wire transfer upon receipt of such payment by the state; and (b) support and services of treatment programs for persons suffering from gambling addictions. Moneys not segregated for such purposes shall be transferred to the general fund for the support of government during the fiscal year in which they are received.

§ 9. Section 99-h of the state finance law, as amended by chapter 747 of the laws of 2006, is amended by adding a new subdivision 3-a to read as follows:

3-a. Ten percent of any of the funds actually received by the state pursuant to the tribal-state compacts and agreements described in subdivision two of this section that are retained in the fund after the distributions required by subdivision three of this section, but prior to the transfer of unsegregated moneys to the general fund required by such subdivision, shall be distributed to counties in each respective exclusivity zone provided they do not otherwise receive a share of said revenues pursuant to this section. Such distribution shall be made among such counties on a per capita basis, excluding the population of any municipality that receives a distribution pursuant to subdivision three of this section.

§ 10. The state finance law is amended by adding a new section 97-nnnn to read as follows:

§ 97-nnnn. Commercial gaming revenue fund. 1. There is hereby established in the joint custody of the comptroller and the commissioner of taxation and finance an account in the miscellaneous special revenue fund to be known as the "commercial gaming revenue fund".

2. Such account shall consist of all revenues from all taxes and fees imposed by article thirteen of the racing, pari-mutuel wagering and breeding law; any interest and penalties imposed by the New York state gaming commission relating to those taxes; the percentage of the value

of expired gaming related obligations; and all penalties levied and collected by the commission. Additionally, the state gaming commission shall pay into the account any appropriate funds, cash or prizes forfeited from gambling activity.

3. Moneys of the account shall be available as follows, unless otherwise specified by the upstate New York gaming economic development act of two thousand thirteen, following appropriation by the legislature:

a. eighty percent of the moneys in such fund shall be appropriated or transferred only for elementary and secondary education or real property tax relief.

b. ten percent of the moneys in such fund shall be appropriated or transferred from the commercial gaming revenue fund equally between the host municipality and host county.

c. ten percent of the moneys in such fund, as attributable to a

specific licensed gaming facility, shall be appropriated or transferred from the commercial gaming revenue fund among counties within the region, as defined by section one thousand three hundred ten of the racing, pari-mutuel wagering and breeding law, hosting said facility for the purpose of real property tax relief and for education assistance. Such distribution shall be made among the counties on a per capita basis, subtracting the population of host municipality and county.

4. a. As used in this section, the term "base year gaming revenue" shall mean the sum of all revenue generated to support education from video lottery gaming as defined by section sixteen hundred seventeen-a of the tax law in the twelve months preceding the operation of any gaming facility pursuant to either article thirteen of the racing, pari-mutuel wagering and breeding law or pursuant to paragraph four of section one thousand six hundred seventeen-a of the tax law.

b. Amounts transferred in any year to support elementary and secondary education shall be calculated as follows:

(i) an amount equal to the positive difference, if any, between the base year gaming revenue amount and the sum of all revenue generated to support education from video lottery gaming as defined by section sixteen hundred seventeen-a of the tax law in the current fiscal year provided that such positive amount, if any, shall be transferred to the state lottery fund; and

(ii) the amount of revenue collected in the prior state fiscal year, to be distributed pursuant to paragraph a of subdivision three of this section, and in excess of any amounts transferred pursuant to subparagraph (i) of this paragraph in such prior fiscal year, if any.

c. Notwithstanding any provision of law to the contrary, amounts appropriated or transferred from the commercial gaming revenue fund pursuant to subparagraph (ii) of this paragraph shall not be included in: (i) the allowable growth amount computed pursuant to paragraph dd of subdivision one of section thirty-six hundred two of the education law, (ii) the preliminary growth amount computed pursuant to paragraph ff of subdivision one of section thirty-six hundred two of the education law, and (iii) the allocable growth amount computed pursuant to paragraph gg of subdivision one of section thirty-six hundred two of the education law.

5. Notwithstanding the foregoing, monies received pursuant to:

a. sections one thousand three hundred forty-five and one thousand three hundred forty-eight of this article shall be exclusively appropriated to the office of alcoholism and substance abuse services to be used for problem gambling education and treatment purposes.

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b. section one thousand three hundred forty-nine of this article shall be exclusively appropriated to the commission for regulatory investigations.

c. section one thousand three hundred fifty of this article shall be exclusively appropriated to the commission for costs regulation.

§ 11. The penal law is amended by adding a new section 156.40 to read as follows:

§ 156.40 Operating an unlawful electronic sweepstakes.

1. As used in this section the following words and terms shall have the following meanings:

(a) "Electronic machine or device" means a mechanically, electrically or electronically operated machine or device that is owned, leased or otherwise possessed by a sweepstakes sponsor or promoter, or any sponsors, promoters, partners, affiliates, subsidiaries or contractors ther-

eof; that is intended to be used by a sweepstakes entrant; that uses energy; and that displays the results of a game entry or game outcome to a participant on a screen or other mechanism at a business location, including a private club; provided, that an electronic machine or device may, without limitation:

- (1) be server-based;
- (2) use a simulated game terminal as a representation of the prizes associated with the results of the sweepstakes entries;
- (3) utilize software such that the simulated game influences or determines the winning or value of the prize;
- (4) select prizes from a predetermined finite pool of entries;
- (5) utilize a mechanism that reveals the content of a predetermined sweepstakes entry;
- (6) predetermine the prize results and stores those results for delivery at the time the sweepstakes entry results are revealed;
- (7) utilize software to create a game result;
- (8) require deposit of any money, coin or token, or the use of any credit card, debit card, prepaid card or any other method of payment to activate the electronic machine or device;
- (9) require direct payment into the electronic machine or device, or remote activation of the electronic machine or device;
- (10) require purchase of a related product having legitimate value;
- (11) reveal the prize incrementally, even though it may not influence if a prize is awarded or the value of any prize awarded;
- (12) determine and associate the prize with an entry or entries at the time the sweepstakes is entered; or
- (13) be a slot machine or other form of electrical, mechanical, or computer game.

(b) "Enter" or "entry" means the act or process by which a person becomes eligible to receive any prize offered in a sweepstakes.

(c) "Entertaining display" means any visual information, capable of being seen by a sweepstakes entrant, that takes the form of actual game play or simulated game play.

(d) "Prize" means any gift, award, gratuity, good, service, credit or anything else of value, which may be transferred to a person, whether possession of the prize is actually transferred, or placed on an account or other record as evidence of the intent to transfer the prize.

(e) "Sweepstakes" means any game, advertising scheme or plan, or other promotion, which, with or without payment of any consideration, a person may enter to win or become eligible to receive any prize, the determination of which is based upon chance.

2. A person is guilty of operating an unlawful electronic sweepstakes when he or she knowingly possesses with the intent to operate, or place into operation, an electronic machine or device to:

(a) conduct a sweepstakes through the use of an entertaining display, including the entry process or the reveal of a prize; or

(b) promote a sweepstakes that is conducted through the use of an entertaining display, including the entry process or the reveal of a prize.

3. Nothing in this section shall be construed to make illegal any activity which is lawfully conducted as the New York state lottery for education as authorized by article thirty-four of the tax law; pari-mutuel wagering on horse races as authorized by articles two, three, four, five-A, and ten of the racing, pari-mutuel wagering and breeding law; the game of bingo as authorized pursuant to article fourteen-H of the

general municipal law; games of chance as authorized pursuant to article nine-A of the general municipal law; gaming as authorized by article thirteen of the racing, pari-mutuel wagering and breeding law; or pursuant to the federal Indian Gaming Regulatory Act.

Operating an unlawful electronic sweepstakes is a class E felony.

§ 12. The legislature hereby finds that long-standing disputes between the Oneida Nation of New York and the State of New York, Madison County and Oneida County, have generated litigation in state and federal courts regarding property and other taxation, the status of Oneida Nation lands and transfer of such lands to the United States to be held in trust for the Oneida Nation, and that such litigation and disputes have caused decades of unrest and uncertainty for the citizens and residents of the Central New York region of this state. The legislature further finds that it is in the best interests of all citizens, residents and political subdivisions of this state to remove any uncertainty that such litigation or disputes have created regarding the title to and jurisdictional status of land within the state. The legislature recognizes that negotiated settlement of these disputes will facilitate a cooperative relationship between the state, the counties and the Oneida Nation. Therefore, the legislature declares that the following provisions are enacted to implement the settlement agreement that has been negotiated and executed by the governor on behalf of the people of this state.

§ 13. Section 11 of the executive law is REPEALED and a new section 11 is added to read as follows:

§ 11. Indian settlement agreements. 1. Oneida settlement agreement. Notwithstanding any other provision of law, upon filing with the secretary of state, the settlement agreement executed between the governor, the counties of Oneida and Madison, and the Oneida Nation of New York dated the sixteenth day of May, two thousand thirteen, to be known as the Oneida Settlement Agreement, including, without limitation, the provisions contained therein relating to arbitration and judicial review in state or federal courts and, for the sole purpose thereof, a limited waiver of the state's Eleventh Amendment sovereign immunity from suit, shall upon its effective date be deemed approved, ratified, validated and confirmed by the legislature. It is the intention of the legislature in enacting this section to ensure that the settlement agreement shall be fully enforceable in all respects as to the rights, benefits, responsibilities and privileges of all parties thereto.

§ 14. Notwithstanding any inconsistent provision of law, the Nation-State compact entered into by the State on April 16, 1993 and approved by the United States Department of the Interior on June 4, 1993, which  
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approval was published at 58 Fed. Reg. 33160 (June 15, 1993), is deemed ratified, validated and confirmed nunc pro tunc by the legislature.

§ 15. Sections 2 and 3 of the Indian law are renumbered sections 3 and 4 and a new section 2 is added to read as follows:

§ 2. New York state Indian nations and tribes. The term "Indian nation or tribe" means one of the following New York state Indian nations or tribes: Cayuga Nation, Oneida Nation of New York, Onondaga Nation, Poospatuck or Unkechauge Nation, Saint Regis Mohawk Tribe, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Band of Seneca and Tuscarora Nation.

§ 16. The Indian law is amended by adding a new section 16 to read as follows:

§ 16. Indian settlement agreements. Notwithstanding any other provision of law, the provisions of the Oneida Settlement Agreement

referenced in section eleven of the executive law shall be deemed to supersede any inconsistent laws and regulations.

§ 17. Subdivision 18 of section 282 of the tax law, as added by section 3 of part K of chapter 61 of the laws of 2005, is amended to read as follows:

18. "Indian nation or tribe" means one of the following New York state Indian nations or tribes: Cayuga [~~Indian~~] Nation [~~of New York~~], Oneida [~~Indian~~] Nation of New York, Onondaga Nation [~~of Indians~~], Poospatuck or Unkechauge Nation, [~~St.~~] Saint Regis Mohawk Tribe, Seneca Nation of Indians, Shinnecock [~~Tribe~~] Indian Nation, Tonawanda Band of [~~Senecas~~] Seneca and Tuscarora Nation [~~of Indians~~].

§ 18. Subdivision 14 of section 470 of the tax law, as added by section 1 of part K of chapter 61 of the laws of 2005, is amended to read as follows:

14. "Indian nation or tribe." One of the following New York state Indian nations or tribes: Cayuga [~~Indian~~] Nation [~~of New York~~], Oneida [~~Indian~~] Nation of New York, Onondaga Nation [~~of Indians~~], Poospatuck or Unkechauge Nation, [~~St.~~] Saint Regis Mohawk Tribe, Seneca Nation of Indians, Shinnecock [~~Tribe~~] Indian Nation, Tonawanda Band of [~~Senecas~~] Seneca and Tuscarora Nation [~~of Indians~~].

§ 19. Intentionally omitted.

§ 20. Intentionally omitted.

§ 21. Intentionally omitted.

§ 22. Intentionally omitted.

§ 23. Intentionally omitted.

§ 24. Intentionally omitted.

§ 25. Section 104 of the racing, pari-mutuel wagering and breeding law is amended by adding a new subdivision 21 to read as follows:

21. The commission shall promptly make available for public inspection and copying via electronic connection to the commission's website a copy of any report received from the New York state board of elections pursuant to article fourteen of the election law.

§ 26. Section 1617-a of the tax law is amended by adding a new subdivision g to read as follows:

g. Every video lottery gaming license, and every renewal license, shall be valid for a period of five years, except that video gaming licenses issued before the effective date of this subdivision shall be for a term expiring on June thirtieth, two thousand fourteen.

The gaming commission may decline to renew any license after notice and an opportunity for hearing if it determines that:

(1) the licensee has violated section one thousand six hundred seven of this article;

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(2) the licensee has violated any rule, regulation or order of the gaming commission;

(3) the applicant or its officers, directors or significant stockholders, as determined by the gaming commission, have been convicted of a crime involving moral turpitude; or

(4) that the character or fitness of the licensee and its officers, directors, and significant stockholders, as determined by the gaming commission is such that the participation of the applicant in video lottery gaming or related activities would be inconsistent with the public interest, convenience or necessity or with the best interests of video gaming generally.

(h) The gaming commission, subject to notice and an opportunity for hearing, may revoke, suspend, and condition the license of the video

gaming licensee, order the video gaming licensee to terminate the continued appointment, position or employment of officers and directors, or order the video gaming licensee to require significant stockholders to divest themselves of all interests in the video gaming licensee.

§ 27. Clause (G) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law is REPEALED and a new clause (G) is added to read as follows:

(G) Notwithstanding any provision to the contrary, when a vendor track is located within regions one, two, or five of development zone two as defined by section thirteen hundred ten of the racing, pari-mutuel wagering and breeding law, such vendor track shall receive an additional commission at a rate equal to the percentage of revenue wagered at the vendor track after payout for prizes pursuant to this chapter less ten percent retained by the commission for operation, administration, and procurement purposes and payment of the vendor's fee, marketing allowance, and capital award paid pursuant to this chapter and the effective tax rate paid on all gross gaming revenue paid by a gaming facility within the same region pursuant to section thirteen hundred fifty-one of the racing, pari-mutuel wagering and breeding law. The additional commission shall be paid to the vendor track within sixty days after the conclusion of the state fiscal year based on the calculated percentage during the previous fiscal year.

§ 28. Intentionally omitted.

§ 29. Intentionally omitted.

§ 30. The opening paragraph of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as amended by section 6 of part K of chapter 57 of the laws of 2010, is amended to read as follows:

less a vendor's fee the amount of which is to be paid for serving as a lottery agent to the track operator of a vendor track or the operator of a resort facility:

§ 31. Section 1 of part HH of chapter 57 of the laws of 2013 relating to providing for the administration of certain funds and accounts related to the 2013-14 budget, is amended by adding a new subdivision 39 to read as follows:

39. Commercial gaming revenue fund:

a. Commercial gaming revenue account.

§ 32. Subdivision a of section 1617-a of the tax law, as amended by section 2 of part O-1 of chapter 57 of the laws of 2009, is amended to read as follows:

a. The division of the lottery is hereby authorized to license, pursuant to rules and regulations to be promulgated by the division of the lottery, the operation of video lottery gaming:

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(1) at Aqueduct, Monticello, Yonkers, Finger Lakes, and Vernon Downs racetracks,

(2) or at any other racetrack licensed pursuant to article three of the racing, pari-mutuel wagering and breeding law that are located in a county or counties in which video lottery gaming has been authorized pursuant to local law, excluding the licensed racetrack commonly referred to in article three of the racing, pari-mutuel wagering and breeding law as the "New York state exposition" held in Onondaga county and the racetracks of the non-profit racing association known as Belmont Park racetrack and the Saratoga thoroughbred racetrack,

(3) at facilities established, pursuant to a competitive process to be determined by the state gaming commission within regions one, two, and five of zone two as established by section one thousand three hundred

ten of the racing, pari-mutuel wagering and breeding law following local governmental consultation and consideration of market factors including potential revenue impact, anticipated job development and capital investment to be made. The facilities authorized pursuant to this paragraph shall be deemed vendors for all purposes under this article, and need not be operated by licensed thoroughbred or harness racing associations or corporations.

Such rules and regulations shall provide, as a condition of licensure, that racetracks to be licensed are certified to be in compliance with all state and local fire and safety codes, that the division is afforded adequate space, infrastructure, and amenities consistent with industry standards for such video gaming operations as found at racetracks in other states, that racetrack employees involved in the operation of video lottery gaming pursuant to this section are licensed by the racing and wagering board, and such other terms and conditions of licensure as the division may establish. Notwithstanding any inconsistent provision of law, video lottery gaming at a racetrack pursuant to this section shall be deemed an approved activity for such racetrack under the relevant city, county, town, or village land use or zoning ordinances, rules, or regulations. No entity licensed by the division operating video lottery gaming pursuant to this section may house such gaming activity in a structure deemed or approved by the division as "temporary" for a duration of longer than eighteen-months. Nothing in this section shall prohibit the division from licensing an entity to operate video lottery gaming at an existing racetrack as authorized in this subdivision whether or not a different entity is licensed to conduct horse racing and pari-mutuel wagering at such racetrack pursuant to article two or three of the racing, pari-mutuel wagering and breeding law.

The division, in consultation with the racing and wagering board, shall establish standards for approval of the temporary and permanent physical layout and construction of any facility or building devoted to a video lottery gaming operation. In reviewing such application for the construction or reconstruction of facilities related or devoted to the operation or housing of video lottery gaming operations, the division, in consultation with the racing and wagering board, shall ensure that such facility:

(1) possesses superior consumer amenities and conveniences to encourage and attract the patronage of tourists and other visitors from across the region, state, and nation.

(2) has adequate motor vehicle parking facilities to satisfy patron requirements.

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(3) has a physical layout and location that facilitates access to and from the horse racing track portion of such facility to encourage patronage of live horse racing events that are conducted at such track.

§ 33. Subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law is amended by adding a new clause (H-1) to read as follows:

(H-1) Notwithstanding clauses (A), (B), (C), (D), (E), (F), (G) and (H) of this subparagraph where the vendor is authorized pursuant to paragraph three of subdivision a of section sixteen hundred seventeen-a of this article, at a rate of forty percent of the total revenue wagered at the facility after payout for prizes. All facilities authorized pursuant to paragraph three of subdivision a of section sixteen hundred seventeen-a of this article shall not be eligible for any vendor's capi-

tal award but are entitled to the vendor's marketing allowance of ten percent authorized by subparagraph (iii) of this paragraph. Facilities authorized by paragraph three of subdivision a of section sixteen hundred seventeen-a of this article shall pay

(i) an amount to horsemen for purses at the licensed racetracks in the region that will assure the purse support from video lottery gaming facilities in the region to the licensed racetracks in the region to be maintained at the same dollar levels realized in two thousand thirteen to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of labor bureau of labor statistics; and

(ii) amounts to the agricultural and New York state horse breeding development fund and the New York state thoroughbred breeding and development fund to maintain payments from video lottery gaming facilities in the region to such funds to be maintained at the same dollar levels realized in two thousand thirteen to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of labor bureau of labor statistics.

§ 34. Section 54-1 of the state finance law, as added by section 1 of part J of chapter 57 of the laws of 2011, paragraph b of subdivision 2 as amended by section 1 of part EE of chapter 57 of the laws of 2013, is amended to read as follows:

§ 54-1. State assistance to eligible cities and eligible municipalities in which a video lottery gaming facility is located. 1. Definitions. When used in this section, unless otherwise expressly stated:

a. "Eligible city" shall mean a city with a population equal to or greater than one hundred twenty-five thousand and less than one million in which a video lottery gaming facility is located and operating as of January first, two thousand nine pursuant to section sixteen hundred seventeen-a of the tax law.

b. "Eligible municipality" shall mean a county, city, town or village in which a video lottery gaming facility is located pursuant to section sixteen hundred seventeen-a of the tax law that is not located in a city with a population equal to or greater than one hundred twenty-five thousand.

c. "Newly eligible city" shall mean a city with a population equal to or greater than one hundred twenty-five thousand and less than one million in which a video lottery gaming facility pursuant to section sixteen hundred seventeen-a of the tax law is located and which was not operating as of January first, two thousand thirteen.

d. "Newly eligible municipality" shall mean a county, city, town or village in which a video lottery gaming facility is located pursuant to section sixteen hundred seventeen-a of the tax law that is not located

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in a city with a population equal to or greater than one hundred twenty-five thousand and which was not operating as of January first, two thousand thirteen.

e. "Estimated net machine income" shall mean the estimated full annual value of total revenue wagered after payout for prizes for games known as video lottery gaming as authorized under article thirty-four of the tax law during the state fiscal year in which state aid payments are made pursuant to subdivision two of this section.

2. a. Within the amount appropriated therefor, an eligible city shall receive an amount equal to the state aid payment received in the state fiscal year commencing April first, two thousand eight from an appropriation for aid to municipalities with video lottery gaming facilities.

b. Within the amounts appropriated therefor, eligible municipalities shall receive an amount equal to fifty-five percent of the state aid payment received in the state fiscal year commencing April first, two thousand eight from an appropriation for aid to municipalities with video lottery gaming facilities.

c. A newly eligible city shall receive a state aid payment equal to two percent of the "estimated net machine income" generated by a video lottery gaming facility located in such eligible city. Such state aid payment shall not exceed twenty million dollars per eligible city.

d. A newly eligible municipality shall receive a state aid payment equal to two percent of the "estimated net machine income" generated by a video lottery gaming facility located within such newly eligible municipality as follows: (i) twenty-five percent shall be apportioned and paid to the county; and (ii) seventy-five percent shall be apportioned and paid on a pro rata basis to eligible municipalities, other than the county, based upon the population of such eligible municipalities. Such state aid payment shall not exceed twenty-five percent of an eligible municipality's total expenditures as reported in the statistical report of the comptroller in the preceding state fiscal year pursuant to section thirty-seven of the general municipal law.

3. a. State aid payments made to an eligible city or to a newly eligible city pursuant to ~~[paragraph]~~ paragraphs a and c of subdivision two of this section shall be used to increase support for public schools in such city.

b. State aid payments made to ~~[an]~~ eligible ~~[municipality]~~ municipalities and newly eligible municipalities pursuant to ~~[paragraph]~~ paragraphs b and d of subdivision two of this section shall be used by such eligible municipality to: (i) defray local costs associated with a video lottery gaming facility, or (ii) minimize or reduce real property taxes.

4. Payments of state aid pursuant to this section shall be made on or before June thirtieth of each state fiscal year to the chief fiscal officer of each eligible city and each eligible municipality on audit and warrant of the state comptroller out of moneys appropriated by the legislature for such purpose to the credit of the local assistance fund in the general fund of the state treasury.

§ 35. Section 1 of chapter 50 of the laws of 2013, State Operations budget, is amended by repealing the items hereinbelow set forth in brackets and by adding to such section the other items underscored in this section.

NEW YORK STATE GAMING COMMISSION  
STATE OPERATIONS 2013-14

For payment according to the following schedule:

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	APPROPRIATIONS	REAPPROPRIATIONS
Special Revenue Funds - Other .....	<del>[111,604,700]</del> <u>111,772,700</u>	0
	-----	-----
All Funds .....	<del>[111,604,700]</del> <u>111,772,700</u>	0
	=====	=====

SCHEDULE

ADMINISTRATION OF GAMING COMMISSION PROGRAM ... ~~[1,000,000]~~ 1,168,000

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Special Revenue Funds - Other  
Miscellaneous Special Revenue Fund  
Commercial Gaming Revenue Account

For services and expenses related to the administration and operation of the commercial gaming revenue account, providing that moneys hereby appropriated shall be available to the program net of refunds, rebates, reimbursements and credits. A portion of this appropriation may be used for suballocation to the New York state gaming facility location board or other agencies for services and expenses, including fringe benefits.

Notwithstanding any provision of law to the contrary, the money hereby appropriated may not be, in whole or in part, interchanged with any other appropriation within the state gaming commission, except those appropriations that fund activities related to the administration of gaming commission program.

PERSONAL SERVICE

<u>Personal service--regular</u> .....	<u>100,000</u>
<u>Amount available for personal service</u> .....	<u>100,000</u>

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NONPERSONAL SERVICE

<u>Travel</u> .....	<u>10,000</u>
<u>Fringe benefits</u> .....	<u>55,000</u>
<u>Indirect costs</u> .....	<u>3,000</u>

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<u>Amount available for nonpersonal service</u> .....	<u>68,000</u>
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Special Revenue Funds - Other  
Miscellaneous Special Revenue Fund  
New York State Gaming Commission Account  
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For services and expenses related to the administration and operation of the administration of gaming commission program, providing that moneys hereby appropriated shall be available to the program net of refunds, rebates, reimbursements and credits.

Notwithstanding any provision of law to the contrary, the money hereby appropriated may not be, in whole or in part, interchanged with any other appropriation with-

in the state gaming commission, except those appropriations that fund activities related to the administration of gaming commission program.

Notwithstanding any other provision of law to the contrary, the OGS Interchange and Transfer Authority and the IT Interchange and Transfer Authority as defined in the 2013-14 state fiscal year state operations appropriation for the budget division program of the division of the budget, are deemed fully incorporated herein and a part of this appropriation as if fully stated.

PERSONAL SERVICE

Personal service--regular .....	527,000
Holiday/overtime compensation .....	10,000
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Amount available for personal service .....	537,000
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NONPERSONAL SERVICE

Supplies and materials .....	13,000
Travel .....	80,000
Contractual services .....	99,000
Equipment .....	30,000
Fringe benefits .....	228,000
Indirect costs .....	13,000
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Amount available for nonpersonal service .....	463,000
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§ 36. Section 104 of the racing, pari-mutuel wagering and breeding law is amended by adding a new subdivision 22 to read as follows:

**22. The commission shall annually conduct an evaluation of video lottery gaming to consider the various competitive factors impacting such industry and shall consider administrative changes that may be necessary to ensure a competitive industry and preserve its primary function of raising revenue for public education.**

§ 37. Clause (H) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as amended by chapter 454 of the laws of 2012, is amended to read as follows:

(H) notwithstanding clauses (A), (B), (C), (D), (E), (F) and (G) of this subparagraph, the track operator of a vendor track shall be eligible for a vendor's capital award of up to four percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter, which shall be used exclusively for capital project investments to improve the facilities of the vendor track which promote or encourage increased attendance at the video lottery gaming facility including, but not limited to hotels, other lodging facilities, entertainment facilities, retail facilities, dining facilities, events arenas, parking garages and other improvements that enhance facility

amenities; provided that such capital investments shall be approved by the division, in consultation with the state racing and wagering board, and that such vendor track demonstrates that such capital expenditures will increase patronage at such vendor track's facilities and increase the amount of revenue generated to support state education programs. The annual amount of such vendor's capital awards that a vendor track shall be eligible to receive shall be limited to two million five hundred thousand dollars, except for Aqueduct racetrack, for which there shall be no vendor's capital awards. Except for tracks having less than one thousand one hundred video gaming machines, and except for a vendor track located west of State Route 14 from Sodus Point to the Pennsylvania border within New York, each track operator shall be required to co-invest an amount of capital expenditure equal to its cumulative vendor's capital award. For all tracks, except for Aqueduct racetrack, the amount of any vendor's capital award that is not used during any one year period may be carried over into subsequent years ending before April first, two thousand fourteen. Any amount attributable to a capital expenditure approved prior to April first, two thousand fourteen and completed before April first, two thousand sixteen; or approved prior to April first, two thousand eighteen and completed before April first, two thousand twenty for a vendor track located west of State Route 14 from Sodus Point to the Pennsylvania border within New York, shall be eligible to receive the vendor's capital award. In the event that a vendor track's capital expenditures, approved by the division prior to April first, two thousand fourteen and completed prior to April first, two thousand sixteen, exceed the vendor track's cumulative capital award during the five year period ending April first, two thousand fourteen, the vendor shall continue to receive the capital award after April first, two thousand fourteen until such approved capital expenditures are paid to the vendor track subject to any required co-investment. In no event shall any vendor track that receives a vendor fee pursuant to clause (F) or (G) of this subparagraph be eligible for a vendor's capital award under this section. Any operator of a vendor track which has received a vendor's capital award, choosing to divest the capital improvement toward which the award was applied, prior to the full depreciation of the capital improvement in accordance with generally accepted accounting principles, shall reimburse the state in amounts equal to the total of any such awards. Any capital award not approved for a capital expenditure at a video lottery gaming facility by April first, two thousand fourteen shall be deposited into the state lottery fund for education aid; and

§ 38. Item (iii) of clause (I) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as added by section 1 of part 0 of chapter 61 of the laws of 2011, is amended to read as follows:

(iii) less an additional vendor's marketing allowance at a rate of ten percent for the first one hundred million dollars annually and eight

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percent thereafter of the total revenue wagered at the vendor track after payout for prizes to be used by the vendor track for the marketing and promotion and associated costs of its video lottery gaming operations and pari-mutuel horse racing operations, as long as any such costs associated with pari-mutuel horse racing operations simultaneously encourage increased attendance at such vendor's video lottery gaming facilities, consistent with the customary manner of marketing comparable operations in the industry and subject to the overall supervision of the division; provided, however, that the additional vendor's marketing

allowance shall not exceed eight percent in any year for any operator of a racetrack located in the county of Westchester or Queens; provided, however, a vendor track that receives a vendor fee pursuant to clause (G) of subparagraph (ii) of this paragraph shall not receive the additional vendor's marketing allowance; provided, however, except for a vendor track located west of State Route 14 from Sodus Point to the Pennsylvania border within New York shall continue to receive a marketing allowance of ten percent on total revenue wagered at the vendor track after payout for prizes in excess of one hundred million dollars annually. In establishing the vendor fee, the division shall ensure the maximum lottery support for education while also ensuring the effective implementation of section sixteen hundred seventeen-a of this article through the provision of reasonable reimbursements and compensation to vendor tracks for participation in such program. Within twenty days after any award of lottery prizes, the division shall pay into the state treasury, to the credit of the state lottery fund, the balance of all moneys received from the sale of all tickets for the lottery in which such prizes were awarded remaining after provision for the payment of prizes as herein provided. Any revenues derived from the sale of advertising on lottery tickets shall be deposited in the state lottery fund.

§ 39. Subdivision a of section 1617-a of the tax law is amended by adding a new paragraph 4 to read as follows:

(4) at a maximum of two facilities, neither to exceed one thousand video lottery gaming devices, established within region three of zone one as defined by section one thousand three hundred ten of the racing, pari-mutuel wagering and breeding law, one each operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law in the Suffolk region and the Nassau region to be located within a facility authorized pursuant to sections one thousand eight or one thousand nine of the racing, pari-mutuel wagering and breeding law. The facilities authorized pursuant to this paragraph shall be deemed vendors for all purposes under this article.

§ 40. Section 1612 of the tax law, as amended by chapter 2 of the laws of 1995, paragraph 1 of subdivision a as amended by chapter 147 of the laws of 2010, subparagraph (A) of paragraph 1 of subdivision a as amended by section 1 of part S of chapter 59 of the laws of 2012, paragraph 2 of subdivision a as amended by section 1 of part P of chapter 61 of the laws of 2011, paragraphs 3, 4 and 5 and the second undesignated and closing paragraph of subdivision a as amended by section 1 of part Q of chapter 61 of the laws of 2011, subdivision 6 as amended by section 1 of part O-1 of chapter 57 of the laws of 2009, the opening paragraph of paragraph 1 of subdivision b as amended by section 1 of part R of chapter 61 of the laws of 2011, subparagraph (ii) of paragraph 1 of subdivision b as amended by section 6 of part K of chapter 57 of the laws of 2010, clause (F) of subparagraph (ii) of paragraph 1 of subdivision b as amended by section 1 of part T of chapter 59 of the laws of 2013, clause

(H) of subparagraph (ii) of paragraph 1 of subdivision b as amended by chapter 454 of the laws of 2012, clause (I) of subparagraph (ii) of paragraph 1 of subdivision b as added by section 1 of part O of chapter 61 of the laws of 2011, paragraphs 2 and 3 of subdivision 6 as amended by section 1 of part J of chapter 55 of the laws of 2013, subdivision c as amended by section 2 of part CC of chapter 61 of the laws of 2005, paragraph 1 of subdivision c as amended by section 2 of part R of chapter 61 of the laws of 2011, subdivision d as amended and subdivision e

as added by chapter 18 of the laws of 2008, subdivisions f and g as amended by chapter 140 of the laws of 2008, paragraph 1 of subdivision f as amended by section 2 of part J of chapter 55 of the laws of 2013, subdivision h as added by section 13 of part A of chapter 60 of the laws of 2012, is amended to read as follows:

§ 1612. Disposition of revenues. a. The division shall pay into an account, to be known as the lottery prize account, under the joint custody of the comptroller and the commissioner, within one week after collection of sales receipts from a lottery game, such moneys necessary for the payment of lottery prizes but not to exceed the following percentages, plus interest earned thereon:

(1) sixty percent of the total amount for which tickets have been sold for a lawful lottery game introduced on or after the effective date of this paragraph, subject to the following provisions:

(A) such game shall be available only on premises occupied by licensed lottery sales agents, subject to the following provisions:

(i) if the licensee does not hold a license issued pursuant to the alcoholic beverage control law to sell alcoholic beverages for consumption on the premises, then the premises must have a minimum square footage greater than two thousand five hundred square feet;

(ii) notwithstanding the foregoing provisions, television equipment that automatically displays the results of such drawings may be installed and used without regard to the square footage if such premises are used as:

(I) a commercial bowling establishment, or

(II) a facility authorized under the racing, pari-mutuel wagering and breeding law to accept pari-mutuel wagers;

(B) the rules for the operation of such game shall be as prescribed by regulations promulgated and adopted by the division, provided however, that such rules shall provide that no person under the age of twenty-one may participate in such games on the premises of a licensee who holds a license issued pursuant to the alcoholic beverage control law to sell alcoholic beverages for consumption on the premises; and, provided, further, that such regulations may be revised on an emergency basis not later than ninety days after the enactment of this paragraph in order to conform such regulations to the requirements of this paragraph; or

(2) sixty-five percent of the total amount for which tickets have been sold for the "Instant Cash" game in which the participant purchases a preprinted ticket on which dollar amounts or symbols are concealed on the face or the back of such ticket, provided however up to five new games may be offered during the fiscal year, seventy-five percent of the total amount for which tickets have been sold for such five games in which the participant purchases a preprinted ticket on which dollar amounts or symbols are concealed on the face or the back of such ticket; or

(3) fifty-five percent of the total amount for which tickets have been sold for any joint, multi-jurisdiction, and out-of-state lottery except  
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as otherwise provided in paragraph one of subdivision b of this section for any joint, multi-jurisdiction, out-of-state video lottery gaming; or

(4) fifty percent of the total amount for which tickets have been sold for games known as: (A) the "Daily Numbers Game" or "Win 4", discrete games in which the participants select no more than three or four of their own numbers to match with three or four numbers drawn by the division for purposes of determining winners of such games, (B) "Pick 10", offered no more than once daily, in which participants select from a

specified field of numbers a subset of ten numbers to match against a subset of numbers to be drawn by the division from such field of numbers for the purpose of determining winners of such game, (C) "Take 5", offered no more than once daily, in which participants select from a specified field of numbers a subset of five numbers to match against a subset of five numbers to be drawn by the division from such field of numbers for purposes of determining winners of such game; or

(5) forty percent of the total amount for which tickets have been sold for: (A) "Lotto", offered no more than once daily, a discrete game in which all participants select a specific subset of numbers to match a specific subset of numbers, as prescribed by rules and regulations promulgated and adopted by the division, from a larger specific field of numbers, as also prescribed by such rules and regulations and (B) with the exception of the game described in paragraph one of this subdivision, such other state-operated lottery games which the division may introduce, offered no more than once daily, commencing on or after forty-five days following the official publication of the rules and regulations for such game.

The moneys in the lottery prize account shall be paid out of such account on the audit and warrant of the comptroller on vouchers certified or approved by the director or his or her duly designated official.

Prize money derived from ticket sales receipts of a particular game and deposited in the lottery prize account in accordance with the percentages set forth above may be used to pay prizes in such game. Balances in the lottery prize account identified by individual games may be carried over from one fiscal year to the next to ensure proper payout of games.

b. 1. Notwithstanding section one hundred twenty-one of the state finance law, on or before the twentieth day of each month, the division shall pay into the state treasury, to the credit of the state lottery fund created by section ninety-two-c of the state finance law, not less than forty-five percent of the total amount for which tickets have been sold for games defined in paragraph four of subdivision a of this section during the preceding month, not less than thirty-five percent of the total amount for which tickets have been sold for games defined in paragraph three of subdivision a of this section during the preceding month, not less than twenty percent of the total amount for which tickets have been sold for games defined in paragraph two of subdivision a of this section during the preceding month, provided however that for games with a prize payout of seventy-five percent of the total amount for which tickets have been sold, the division shall pay not less than ten percent of sales into the state treasury and not less than twenty-five percent of the total amount for which tickets have been sold for games defined in paragraph one of subdivision a of this section during the preceding month; and the balance of the total revenue after payout for prizes for games known as "video lottery gaming," including any joint, multi-jurisdiction, and out-of-state video lottery gaming, (i) less ten percent of the total revenue wagered after payout for prizes to

be retained by the division for operation, administration, and procurement purposes; (ii) less a vendor's fee the amount of which is to be paid for serving as a lottery agent to the track operator of a vendor track or the operator of any other video lottery gaming facility authorized pursuant to section one thousand six hundred seventeen a of this article:

(A) having fewer than one thousand one hundred video gaming machines,

at a rate of thirty-five percent for the first fifty million dollars annually, twenty-eight percent for the next hundred million dollars annually, and twenty-five percent thereafter of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter;

(B) having one thousand one hundred or more video gaming machines, at a rate of thirty-one percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter, except for such facility located in the county of Westchester, in which case the rate shall be thirty percent until March thirty-first, two thousand twelve.

Notwithstanding the foregoing, not later than April first, two thousand twelve, the vendor fee shall become thirty-one percent and remain at that level thereafter; and except for Aqueduct racetrack, in which case the vendor fee shall be thirty-eight percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter;

(C) notwithstanding clauses (A) and (B) of this subparagraph, when the vendor track is located in an area with a population of less than one million within the forty mile radius around such track, at a rate of thirty-nine percent for the first fifty million dollars annually, twenty-eight percent for the next hundred million dollars annually, and twenty-five percent thereafter of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter;

(D) notwithstanding clauses (A), (B) and (C) of this subparagraph, when the vendor track is located within fifteen miles of a Native American class III gaming facility at a rate of forty-one percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter;

(E) notwithstanding clauses (A), (B), (C) and (D) of this subparagraph, when a Native American class III gaming facility is established, after the effective date of this subparagraph, within fifteen miles of the vendor track, at a rate of forty-one percent of the total revenue wagered after payout for prizes pursuant to this chapter;

(E-1) for purposes of this subdivision, the term "class III gaming" shall have the meaning defined in 25 U.S.C. § 2703(8).

(F) notwithstanding clauses (A), (B), (C), (D) and (E) of this subparagraph, when a vendor track, is located in Sullivan county and within sixty miles from any gaming facility in a contiguous state such vendor fee shall, for a period of six years commencing April first, two thousand eight, be at a rate of forty-one percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter, after which time such rate shall be as for all tracks in clause (C) of this subparagraph.

(G) notwithstanding clauses (A), (B), (C), (D), (E) and (F) of this subparagraph, when no more than one vendor track located in the town of Thompson in Sullivan county at the site of the former Concord Resort at which a qualified capital investment has been made and no fewer than one thousand full-time, permanent employees have been newly hired, is located in Sullivan county and is within sixty miles from any gaming

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facility in a contiguous state, then for a period of forty years the vendor's fee shall equal the total revenue wagered at the vendor track after payout of prizes pursuant to this subdivision reduced by the greater of (i) twenty-five percent of total revenue after payout for prizes for "video lottery games" or (ii) for the first eight years of operation thirty-eight million dollars, and beginning in the ninth year

of operation such amount shall increase annually by the lesser of the increase in the consumer price index or two percent, plus seven percent of total revenue after payout of prizes. In addition, in the event the vendor fee is calculated pursuant to subclause (i) of this clause, the vendor's fee shall be further reduced by 11.11 percent of the amount by which total revenue after payout for prizes exceeds two hundred fifteen million dollars, but in no event shall such reduction exceed five million dollars. Provided, further, no vendor is eligible for the vendor's fee described in this clause who operates or invests in or owns, in whole or in part, another vendor license or is licensed as a vendor track that currently receives a vendor fee for the operation of video lottery gaming pursuant to this article.

Provided, however, that in the case of [~~no more than one vendor track~~] a resort facility located [~~in the town of Thompson~~] in Sullivan county [~~at the site of the former Concord Resort~~] with a qualified capital investment, and one thousand full-time, permanent employees if at any time after three years of opening operations of the licensed video gaming facility [~~or licensed vendor track~~], the [~~vendor track~~] resort facility experiences an employment shortfall, then the recapture amount shall apply, for only such period as the shortfall exists.

For the purposes of this section "qualified capital investment" shall mean an investment of a minimum of six hundred million dollars as reflected by audited financial statements of which not less than three hundred million dollars shall be comprised of equity and/or mezzanine financing as an initial investment in a county where twelve percent of the population is below the federal poverty level as measured by the most recent Bureau of Census Statistics prior to the qualified capital investment commencing that results in the construction, development or improvement of at least one eighteen hole golf course, and the construction and issuance of certificates of occupancy for hotels, lodging, spas, dining, retail and entertainment venues, parking garages and other capital improvements at or adjacent to the licensed video gaming facility or licensed vendor track which promote or encourage increased attendance at such facilities.

For the purposes of this section, "full-time, permanent employee" shall mean an employee who has worked at the video gaming facility[~~r vendor track~~] or related and adjacent facilities for a minimum of thirty-five hours per week for not less than four consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended to other employees with comparable rank and duties; or two part-time employees who have worked at the video gaming facility, vendor track or related and adjacent facilities for a combined minimum of thirty-five hours per week for not less than four consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended to other employees with comparable rank and duties.

For the purpose of this section "employment goal" shall mean one thousand five hundred full-time permanent employees after three years of opening operations of the licensed video gaming facility [~~or licensed vendor track~~].

For the purpose of this section "employment shortfall" shall mean a level of employment that falls below the employment goal, as certified annually by vendor's certified accountants and the chairman of the empire state development corporation.

For the purposes of this section "recapture amount" shall mean the difference between the amount of the vendor's fee paid to a vendor

~~[track]~~ with a qualified capital investment, and the vendor fee otherwise payable to a vendor ~~[track]~~ pursuant to clause (F) of this subparagraph, that is reimbursable by the vendor track to the division for payment into the state treasury, to the credit of the state lottery fund created by section ninety-two-c of the state finance law, due to an employment shortfall pursuant to the following schedule only for the period of the employment shortfall:

(i) one hundred percent of the recapture amount if the employment shortfall is greater than sixty-six and two-thirds percent of the employment goal;

(ii) seventy-five percent of the recapture amount if the employment shortfall is greater than thirty-three and one-third percent of the employment goal;

(iii) forty-nine and one-half percent of the recapture amount if the employment shortfall is greater than thirty percent of the employment goal;

(iv) twenty-two percent of the recapture amount if the employment shortfall is greater than twenty percent of the employment goal;

(v) eleven percent of the recapture amount if the employment shortfall is greater than ten percent of the employment goal.

(G-1) Notwithstanding clause (A) and (B) of this subparagraph, when a video lottery gaming facility is located in either the county of Nassau or Suffolk and is operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law at a rate of thirty-five percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter;

(H) Notwithstanding any provision to the contrary, when a vendor track is located within regions one, two, or five of development zone two as defined by section thirteen hundred ten of the racing, pari-mutuel wagering and breeding law, such vendor track shall receive an additional commission at a rate equal to the percentage of revenue wagered at the vendor track after payout for prizes pursuant to this chapter less than ten percent retained by the commission for operation, administration, and procurement purposes and payment of the vendor's fee, marketing allowance, and capital award paid pursuant to this chapter and the effective tax rate paid on all gross gaming revenue paid by a gaming facility within the same region pursuant to section thirteen hundred fifty-one of the racing, pari-mutuel wagering and breeding law. The additional commission shall be paid to the vendor track within sixty days after the conclusion of the state fiscal year based on the calculated percentage during the previous fiscal year.

~~[(H)]~~ (I) notwithstanding clauses (A), (B), (C), (D), (E), (F), and ~~[(G)]~~ (G-1) of this subparagraph, the track operator of a vendor track shall be eligible for a vendor's capital award of up to four percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter, which shall be used exclusively for capital project investments to improve the facilities of the vendor track which promote or encourage increased attendance at the video lottery gaming facility including, but not limited to hotels, other lodging facilities, entertainment facilities, retail facilities, dining facilities, events

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arenas, parking garages and other improvements that enhance facility amenities; provided that such capital investments shall be approved by the division, in consultation with the state racing and wagering board, and that such vendor track demonstrates that such capital expenditures will increase patronage at such vendor track's facilities and increase

the amount of revenue generated to support state education programs. The annual amount of such vendor's capital awards that a vendor track shall be eligible to receive shall be limited to two million five hundred thousand dollars, except for Aqueduct racetrack, for which there shall be no vendor's capital awards. Except for tracks having less than one thousand one hundred video gaming machines, each track operator shall be required to co-invest an amount of capital expenditure equal to its cumulative vendor's capital award. For all tracks, except for Aqueduct racetrack, the amount of any vendor's capital award that is not used during any one year period may be carried over into subsequent years ending before April first, two thousand fourteen. Any amount attributable to a capital expenditure approved prior to April first, two thousand fourteen and completed before April first, two thousand sixteen shall be eligible to receive the vendor's capital award. In the event that a vendor track's capital expenditures, approved by the division prior to April first, two thousand fourteen and completed prior to April first, two thousand sixteen, exceed the vendor track's cumulative capital award during the five year period ending April first, two thousand fourteen, the vendor shall continue to receive the capital award after April first, two thousand fourteen until such approved capital expenditures are paid to the vendor track subject to any required co-investment. In no event shall any vendor track that receives a vendor fee pursuant to clause (F) or (G) of this subparagraph be eligible for a vendor's capital award under this section. Any operator of a vendor track which has received a vendor's capital award, choosing to divest the capital improvement toward which the award was applied, prior to the full depreciation of the capital improvement in accordance with generally accepted accounting principles, shall reimburse the state in amounts equal to the total of any such awards. Any capital award not approved for a capital expenditure at a video lottery gaming facility by April first, two thousand fourteen shall be deposited into the state lottery fund for education aid; and

~~(I)~~ (J) Notwithstanding any provision of law to the contrary, free play allowance credits authorized by the division pursuant to subdivision f of section sixteen hundred seventeen-a of this article shall not be included in the calculation of the total amount wagered on video lottery games, the total amount wagered after payout of prizes, the vendor fees payable to the operators of video lottery facilities, vendor's capital awards, fees payable to the division's video lottery gaming equipment contractors, or racing support payments.

(iii) less an additional vendor's marketing allowance at a rate of ten percent for the first one hundred million dollars annually and eight percent thereafter of the total revenue wagered at the vendor track after payout for prizes to be used by the vendor track for the marketing and promotion and associated costs of its video lottery gaming operations and pari-mutuel horse racing operations, as long as any such costs associated with pari-mutuel horse racing operations simultaneously encourage increased attendance at such vendor's video lottery gaming facilities, consistent with the customary manner of marketing comparable operations in the industry and subject to the overall supervision of the division; provided, however, that the additional vendor's marketing

allowance shall not exceed eight percent in any year for any operator of a racetrack located in the county of Westchester or Queens; provided, however, a vendor track that receives a vendor fee pursuant to clause (G) of subparagraph (ii) of this paragraph shall not receive the addi-

tional vendor's marketing allowance

provided, however, a vendor that receives a vendor fee pursuant to clause (G-1) of subparagraph (ii) of this paragraph shall receive an additional marketing allowance at a rate of ten percent of the total revenue wagered at the video lottery gaming facility after payout for prizes. the division shall ensure the maximum lottery support for education while also ensuring the effective implementation of section sixteen hundred seventeen-a of this article through the provision of reasonable reimbursements and compensation to vendor tracks for participation in such program. Within twenty days after any award of lottery prizes, the division shall pay into the state treasury, to the credit of the state lottery fund, the balance of all moneys received from the sale of all tickets for the lottery in which such prizes were awarded remaining after provision for the payment of prizes as herein provided. Any revenues derived from the sale of advertising on lottery tickets shall be deposited in the state lottery fund.

2. As consideration for the operation of a video lottery gaming facility, the division, shall cause the investment in the racing industry of a portion of the vendor fee received pursuant to paragraph one of this subdivision in the manner set forth in this subdivision. With the exception of Aqueduct racetrack or a facility in the county of Nassau or Suffolk operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law or a facility in the county of Nassau or Suffolk operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law, each such track shall dedicate a portion of its vendor fees, received pursuant to clause (A), (B), (C), (D), (E), (F), or (G) of subparagraph (ii) of paragraph one of this subdivision, solely for the purpose of enhancing purses at such track, in an amount equal to eight and three-quarters percent of the total revenue wagered at the vendor track after pay out for prizes. One percent of such purse enhancement amount shall be paid to the gaming commission to be used exclusively to promote and ensure equine health and safety in New York. Any portion of such funding to the gaming commission unused during a fiscal year shall be returned to the video lottery gaming operators on a pro rata basis in accordance with the amounts originally contributed by each operator and shall be used for the purpose of enhancing purses at such track. In addition, with the exception of Aqueduct racetrack, one and one-quarter percent of total revenue wagered at the vendor track after pay out for prizes, received pursuant to clause (A), (B), (C), (D), (E), (F), or (G) of subparagraph (ii) of paragraph one of this subdivision, shall be distributed to the appropriate breeding fund for the manner of racing conducted by such track.

Provided, further, that nothing in this paragraph shall prevent each track from entering into an agreement, not to exceed five years, with the organization authorized to represent its horsemen to increase or decrease the portion of its vendor fee dedicated to enhancing purses at such track during the years of participation by such track, or to race fewer dates than required herein.

3. Nothing in paragraph two of this subdivision shall affect any agreement in effect on or before the effective date of this paragraph, CHAP. 174

except that the obligation to pay funds to the gaming commission to promote and ensure equine health and safety shall supersede any provision to the contrary in any such agreement.

c. 1. The specifications for video lottery gaming, including any joint, multi-jurisdiction, and out-of-state video lottery gaming, shall be designed in such a manner as to pay prizes that average no less than ninety percent of sales.

2. Of the ten percent retained by the division for administrative purposes, any amounts beyond that which are necessary for the operation and administration of this pilot program shall be deposited in the lottery education account.

d. Notwithstanding any law, rule or regulation to the contrary, any successor to the New York Racing Association, Inc. with respect to the operation and maintenance of video lottery gaming at Aqueduct racetrack shall be deemed the successor to the New York Racing Association, Inc. for purposes of being subject to existing contracts and loan agreements, if any, entered into by the New York Racing Association, Inc. directly related to the construction, operation, management and distribution of revenues of the video lottery gaming facility at Aqueduct racetrack.

e. The video lottery gaming operator selected to operate a video lottery terminal facility at Aqueduct will be subject to a memorandum of understanding between the governor, temporary president of the senate and the speaker of the assembly. Notwithstanding subparagraph (i) of paragraph a of subdivision eight of section two hundred twelve of the racing, pari-mutuel wagering and breeding law, the state, pursuant to an agreement with the video lottery gaming operator to operate a video lottery terminal facility at Aqueduct, may authorize, as part of such agreement or in conjunction with such agreement at the time it is executed, additional development at the Aqueduct racing facility. The selection will be made in consultation with the franchised corporation, but is not subject to such corporation's approval. The franchised corporation shall not be eligible to compete to operate or to operate a video lottery terminal facility at Aqueduct. The state will use its best efforts to ensure that the video lottery terminal facility at Aqueduct is opened as soon as is practicable and will, if practicable, pursue the construction of a temporary video lottery terminal facility at Aqueduct subject to staying within an agreed budget for such video lottery terminal facility and subject to such temporary facility not having an adverse impact on opening of the permanent facility at Aqueduct. To facilitate the opening of the video lottery gaming facility at Aqueduct as soon as is practicable, the division of the lottery may extend the term of any existing contract related to the video lottery system.

f. As consideration for the operation of the video lottery gaming facility at Aqueduct racetrack, the division shall cause the investment in the racing industry of the following percentages of the vendor fee to be deposited or paid, as follows:

1. Six and one-half percent of the total wagered after payout of prizes for the first year of operation of video lottery gaming at Aqueduct racetrack, seven percent of the total wagered after payout of prizes for the second year of operation, and seven and one-half percent of the total wagered after payout of prizes for the third year of operation and thereafter, for the purpose of enhancing purses at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course. One percent of such purse enhancement amount shall be paid to the gaming commission to be used exclusively to promote and ensure equine health and safety in New York. Any portion of such funding to the gaming commission unused

during a fiscal year shall be returned on a pro rata basis in accordance with the amounts originally contributed and shall be used for the

purpose of enhancing purses at such tracks.

2. One percent of the total wagered after payout of prizes for the first year of operation of video lottery gaming at Aqueduct racetrack, one and one-quarter percent of the total wagered after payout of prizes for the second year of operation, and one and one-half percent of the total wagered after payout of prizes for the third year of operation and thereafter, for an appropriate breeding fund for the manner of racing conducted at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course.

3. Four percent of the total revenue wagered after payout of prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for capital expenditures in maintaining and upgrading Aqueduct racetrack, Belmont Park racetrack and Saratoga race course.

4. Three percent of the total revenue wagered after payout for prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for general thoroughbred racing operations at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course.

5. Paragraphs one, two, three and four of this subdivision shall be known collectively as the "racing support payments".

g. In the event the state elects to construct a video lottery terminal facility at the Aqueduct racetrack, all video lottery terminal revenues payable to the video lottery gaming operator at the Aqueduct racetrack remaining after payment of the racing support payments shall first be used to repay the state's advances for (i) confirmation of the chapter eleven plan of reorganization and cash advances for the franchised corporation's operations following confirmation of the chapter eleven plan of reorganization and (ii) the amount expended by the state to construct such video lottery terminal facility at Aqueduct racetrack pursuant to an agreement with the state. Subparagraphs (i) and (ii) of this paragraph shall be defined as the state advance amount and the amounts payable to the division of the lottery.

h. As consideration for the operation of a video lottery gaming resort facility located in Sullivan county, the division shall cause the investment in the racing industry at the following amount from the vendor fee to be paid as follows:

As amount to the horsemen for purses at a licensed racetrack in Sullivan county and to the agriculture and New York state horse breeding development fund to maintain racing support payments at the same dollar levels realized in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of labor bureau of labor statistics. In no circumstance shall net proceeds of the lottery, including the proceeds from video lottery gaming, be used for the payment of non-lottery expenses of the gaming commission, administrative or otherwise.

(f-1) As consideration for operation of video lottery gaming facility located in the county of Nassau or Suffolk and operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law, the division shall cause the in the racing industry of the following percentages of the vendor fee to be deposited or paid as follows:

(1) Two and three tenths percent of the total wagered after payout of

prizes for the purpose of enhancing purses at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain purse support from video lottery gaming at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course at the same level realized in in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of bureau of labor statistics, shall be instead be returned to the commission.

(2) five tenths percent of the total wagered after payout of prizes for the appropriate breeding fund for the manner of racing at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain payments from video lottery gaming at Aqueduct racetrack at the same level realized in in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of bureau of labor statistics, shall be instead be returned to the commission.

(3) one and three tenths percent of the total revenue wagered after payout of prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for capital expenditures in maintaining and upgrading Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain payments for capital expenditures from video lottery gaming at Aqueduct racetrack at the same level realized in in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of bureau of labor statistics, shall be instead be returned to the commission.

(4) Nine tenths percent of the total revenue wagered after payout for prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for general thoroughbred racing operations at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain payments for general thoroughbred racing operations from video lottery gaming at Aqueduct racetrack at the same level realized in in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of bureau of labor statistics, shall be instead be returned to the commission.

§ 41. Subdivision a of section 1617-a of the tax law is amended by adding a new paragraph 5 to read as follows:

(5) at a facility established pursuant to a competitive process to be determined by the state gaming commission, established within region three of zone one as established by section one thousand three hundred ten of the racing, pari-mutuel wagering and breeding law, limited to Nassau county. Such facility may only be authorized by the state gaming commission following local governmental consultation and consideration of market factors such as potential revenue impact, job development and capital investment. The facility authorized pursuant to this paragraph shall be deemed a vendor for all purposes under this article, and need not be operated by licensed thoroughbred or harness racing associations

or corporations. The facility authorized pursuant to this paragraph

shall be deemed vendors for all purposes under this article.

§ 42. Section 1612 of the tax law, as amended by chapter 2 of the laws of 1995, paragraph 1 of subdivision a as amended by chapter 147 of the laws of 2010, subparagraph (A) of paragraph 1 of subdivision a as amended by section 1 of part S of chapter 59 of the laws of 2012, paragraph 2 of subdivision a as amended by section 1 of part P of chapter 61 of the laws of 2011, paragraphs 3, 4 and 5 and the second undesignated and closing paragraph of subdivision a as amended by section 1 of part Q of chapter 61 of the laws of 2011, subdivision 6 as amended by section 1 of part O-1 of chapter 57 of the laws of 2009, the opening paragraph of paragraph 1 of subdivision b as amended by section 1 of part R of chapter 61 of the laws of 2011, subparagraph (ii) of paragraph 1 of subdivision b as amended by section 6 of part K of chapter 57 of the laws of 2010, clause (F) of subparagraph (ii) of paragraph 1 of subdivision b as amended by section 1 of part T of chapter 59 of the laws of 2013, clause (H) of subparagraph (ii) of paragraph 1 of subdivision b as amended by chapter 454 of the laws of 2012, clause (I) of subparagraph (ii) of paragraph 1 of subdivision b as added by section 1 of part O of chapter 61 of the laws of 2011, paragraphs 2 and 3 of subdivision 6 as amended by section 1 of part J of chapter 55 of the laws of 2013, subdivision c as amended by section 2 of part CC of chapter 61 of the laws of 2005, paragraph 1 of subdivision c as amended by section 2 of part R of chapter 61 of the laws of 2011, subdivision d as amended and subdivision e as added by chapter 18 of the laws of 2008, subdivisions f and g as amended by chapter 140 of the laws of 2008, paragraph 1 of subdivision f as amended by section 2 of part J of chapter 55 of the laws of 2013, subdivision h as added by section 13 of part A of chapter 60 of the laws of 2012, is amended to read as follows:

§ 1612. Disposition of revenues. a. The division shall pay into an account, to be known as the lottery prize account, under the joint custody of the comptroller and the commissioner, within one week after collection of sales receipts from a lottery game, such moneys necessary for the payment of lottery prizes but not to exceed the following percentages, plus interest earned thereon:

(1) sixty percent of the total amount for which tickets have been sold for a lawful lottery game introduced on or after the effective date of this paragraph, subject to the following provisions:

(A) such game shall be available only on premises occupied by licensed lottery sales agents, subject to the following provisions:

(i) if the licensee does not hold a license issued pursuant to the alcoholic beverage control law to sell alcoholic beverages for consumption on the premises, then the premises must have a minimum square footage greater than two thousand five hundred square feet;

(ii) notwithstanding the foregoing provisions, television equipment that automatically displays the results of such drawings may be installed and used without regard to the square footage if such premises are used as:

(I) a commercial bowling establishment, or

(II) a facility authorized under the racing, pari-mutuel wagering and breeding law to accept pari-mutuel wagers;

(B) the rules for the operation of such game shall be as prescribed by regulations promulgated and adopted by the division, provided however, that such rules shall provide that no person under the age of twenty-one may participate in such games on the premises of a licensee who holds a license issued pursuant to the alcoholic beverage control law to sell

alcoholic beverages for consumption on the premises; and, provided, further, that such regulations may be revised on an emergency basis not later than ninety days after the enactment of this paragraph in order to conform such regulations to the requirements of this paragraph; or

(2) sixty-five percent of the total amount for which tickets have been sold for the "Instant Cash" game in which the participant purchases a preprinted ticket on which dollar amounts or symbols are concealed on the face or the back of such ticket, provided however up to five new games may be offered during the fiscal year, seventy-five percent of the total amount for which tickets have been sold for such five games in which the participant purchases a preprinted ticket on which dollar amounts or symbols are concealed on the face or the back of such ticket; or

(3) fifty-five percent of the total amount for which tickets have been sold for any joint, multi-jurisdiction, and out-of-state lottery except as otherwise provided in paragraph one of subdivision b of this section for any joint, multi-jurisdiction, out-of-state video lottery gaming; or

(4) fifty percent of the total amount for which tickets have been sold for games known as: (A) the "Daily Numbers Game" or "Win 4", discrete games in which the participants select no more than three or four of their own numbers to match with three or four numbers drawn by the division for purposes of determining winners of such games, (B) "Pick 10", offered no more than once daily, in which participants select from a specified field of numbers a subset of ten numbers to match against a subset of numbers to be drawn by the division from such field of numbers for the purpose of determining winners of such game, (C) "Take 5", offered no more than once daily, in which participants select from a specified field of numbers a subset of five numbers to match against a subset of five numbers to be drawn by the division from such field of numbers for purposes of determining winners of such game; or

(5) forty percent of the total amount for which tickets have been sold for: (A) "Lotto", offered no more than once daily, a discrete game in which all participants select a specific subset of numbers to match a specific subset of numbers, as prescribed by rules and regulations promulgated and adopted by the division, from a larger specific field of numbers, as also prescribed by such rules and regulations and (B) with the exception of the game described in paragraph one of this subdivision, such other state-operated lottery games which the division may introduce, offered no more than once daily, commencing on or after forty-five days following the official publication of the rules and regulations for such game.

The moneys in the lottery prize account shall be paid out of such account on the audit and warrant of the comptroller on vouchers certified or approved by the director or his or her duly designated official.

Prize money derived from ticket sales receipts of a particular game and deposited in the lottery prize account in accordance with the percentages set forth above may be used to pay prizes in such game. Balances in the lottery prize account identified by individual games may be carried over from one fiscal year to the next to ensure proper payout of games.

b. 1. Notwithstanding section one hundred twenty-one of the state finance law, on or before the twentieth day of each month, the division shall pay into the state treasury, to the credit of the state lottery fund created by section ninety-two-c of the state finance law, not less than forty-five percent of the total amount for which tickets have been sold for games defined in paragraph four of subdivision a of this

section during the preceding month, not less than thirty-five percent of the total amount for which tickets have been sold for games defined in paragraph three of subdivision a of this section during the preceding month, not less than twenty percent of the total amount for which tickets have been sold for games defined in paragraph two of subdivision a of this section during the preceding month, provided however that for games with a prize payout of seventy-five percent of the total amount for which tickets have been sold, the division shall pay not less than ten percent of sales into the state treasury and not less than twenty-five percent of the total amount for which tickets have been sold for games defined in paragraph one of subdivision a of this section during the preceding month; and the balance of the total revenue after payout for prizes for games known as "video lottery gaming," including any joint, multi-jurisdiction, and out-of-state video lottery gaming, (i) less ten percent of the total revenue wagered after payout for prizes to be retained by the division for operation, administration, and procurement purposes; (ii) less a vendor's fee the amount of which is to be paid for serving as a lottery agent to the track operator of a vendor track:

(A) having fewer than one thousand one hundred video gaming machines, at a rate of thirty-five percent for the first fifty million dollars annually, twenty-eight percent for the next hundred million dollars annually, and twenty-five percent thereafter of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter;

(B) having one thousand one hundred or more video gaming machines, at a rate of thirty-one percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter, except for such facility located in the county of Westchester, in which case the rate shall be thirty percent until March thirty-first, two thousand twelve.

Notwithstanding the foregoing, not later than April first, two thousand twelve, the vendor fee shall become thirty-one percent and remain at that level thereafter; and except for Aqueduct racetrack, in which case the vendor fee shall be thirty-eight percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter;

(C) notwithstanding clauses (A) and (B) of this subparagraph, when the vendor track is located in an area with a population of less than one million within the forty mile radius around such track, at a rate of thirty-nine percent for the first fifty million dollars annually, twenty-eight percent for the next hundred million dollars annually, and twenty-five percent thereafter of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter;

(D) notwithstanding clauses (A), (B) and (C) of this subparagraph, when the vendor track is located within fifteen miles of a Native American class III gaming facility at a rate of forty-one percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter;

(E) notwithstanding clauses (A), (B), (C) and (D) of this subparagraph, when a Native American class III gaming facility is established, after the effective date of this subparagraph, within fifteen miles of the vendor track, at a rate of forty-one percent of the total revenue wagered after payout for prizes pursuant to this chapter;

(E-1) for purposes of this subdivision, the term "class III gaming" shall have the meaning defined in 25 U.S.C. § 2703(8).

(F) notwithstanding clauses (A), (B), (C), (D) and (E) of this subparagraph, when a vendor track, is located in Sullivan county and within sixty miles from any gaming facility in a contiguous state such vendor fee shall, for a period of six years commencing April first, two thousand eight, be at a rate of forty-one percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter, after which time such rate shall be as for all tracks in clause (C) of this subparagraph.

(G) notwithstanding clauses (A), (B), (C), (D), (E) and (F) of this subparagraph, when ~~[no more than one vendor track]~~ a resort facility to be operated by other than a presently licensed video lottery gaming operator or any entity affiliated therewith selected by the division following a competitive process located in ~~[the town of Thompson in]~~ Sullivan county ~~[at the site of the former Concord Resort]~~ at which a qualified capital investment has been made and no fewer than one thousand full-time, permanent employees have been newly hired, is located in Sullivan county and is within sixty miles from any gaming facility in a contiguous state, then for a period of forty years the vendor's fee shall equal the total revenue wagered at the vendor track after payout of prizes pursuant to this subdivision reduced by the greater of (i) twenty-five percent of total revenue after payout for prizes for "video lottery games" or (ii) for the first eight years of operation thirty-eight million dollars, and beginning in the ninth year of operation such amount shall increase annually by the lesser of the increase in the consumer price index or two percent, plus seven percent of total revenue after payout of prizes. In addition, in the event the vendor fee is calculated pursuant to subclause (i) of this clause, the vendor's fee shall be further reduced by 11.11 percent of the amount by which total revenue after payout for prizes exceeds two hundred fifteen million dollars, but in no event shall such reduction exceed five million dollars.

Provided, however, that in the case of ~~[no more than one vendor track]~~ a resort facility located ~~[in the town of Thompson]~~ in Sullivan county ~~[at the site of the former Concord Resort]~~ with a qualified capital investment, and one thousand full-time, permanent employees if at any time after three years of opening operations of the licensed video gaming facility ~~[or licensed vendor track]~~, the ~~[vendor track]~~ resort facility experiences an employment shortfall, then the recapture amount shall apply, for only such period as the shortfall exists.

For the purposes of this section "qualified capital investment" shall mean an investment of a minimum of six hundred million dollars as reflected by audited financial statements of which not less than three hundred million dollars shall be comprised of equity and/or mezzanine financing as an initial investment in a county where twelve percent of the population is below the federal poverty level as measured by the most recent Bureau of Census Statistics prior to the qualified capital investment commencing that results in the construction, development or improvement of at least one eighteen hole golf course, and the construction and issuance of certificates of occupancy for hotels, lodging, spas, dining, retail and entertainment venues, parking garages and other capital improvements at or adjacent to the licensed video gaming facility or licensed vendor track which promote or encourage increased attendance at such facilities.

For the purposes of this section, "full-time, permanent employee" shall mean an employee who has worked at the video gaming facility~~[7 vendor track]~~ or related and adjacent facilities for a minimum of thir-

ty-five hours per week for not less than four consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended to other employees with comparable rank and duties; or two part-time employees who have worked at the video gaming facility, vendor track or related and adjacent facilities for a combined minimum of thirty-five hours per week for not less than four consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended to other employees with comparable rank and duties.

For the purpose of this section "employment goal" shall mean one thousand five hundred full-time permanent employees after three years of opening operations of the licensed video gaming facility [~~or licensed vendor track~~].

For the purpose of this section "employment shortfall" shall mean a level of employment that falls below the employment goal, as certified annually by vendor's certified accountants and the chairman of the empire state development corporation.

For the purposes of this section "recapture amount" shall mean the difference between the amount of the vendor's fee paid to a vendor [~~track~~] with a qualified capital investment, and the vendor fee otherwise payable to a vendor [~~track~~] pursuant to clause (F) of this subparagraph, that is reimbursable by the vendor track to the division for payment into the state treasury, to the credit of the state lottery fund created by section ninety-two-c of the state finance law, due to an employment shortfall pursuant to the following schedule only for the period of the employment shortfall:

(i) one hundred percent of the recapture amount if the employment shortfall is greater than sixty-six and two-thirds percent of the employment goal;

(ii) seventy-five percent of the recapture amount if the employment shortfall is greater than thirty-three and one-third percent of the employment goal;

(iii) forty-nine and one-half percent of the recapture amount if the employment shortfall is greater than thirty percent of the employment goal;

(iv) twenty-two percent of the recapture amount if the employment shortfall is greater than twenty percent of the employment goal;

(v) eleven percent of the recapture amount if the employment shortfall is greater than ten percent of the employment goal.

(G) notwithstanding clauses (A), (B), (C), (D), (E) and (F) of this subparagraph, when no more than one vendor track located in the town of Thompson in Sullivan county at the site of the former Concord Resort at which a qualified capital investment has been made and no fewer than one thousand full-time, permanent employees have been newly hired, is located in Sullivan county and is within sixty miles from any gaming facility in a contiguous state, then for a period of forty years the vendor's fee shall equal the total revenue wagered at the vendor track after payout of prizes pursuant to this subdivision reduced by the greater of (i) twenty-five percent of total revenue after payout for prizes for "video lottery games" or (ii) for the first eight years of operation thirty-eight million dollars, and beginning in the ninth year of operation such amount shall increase annually by the lesser of the increase in the consumer price index or two percent, plus seven percent of total revenue after payout of prizes. In addition, in the event the vendor fee is calculated pursuant to subclause (i) of this clause, the vendor's fee shall be further reduced by 11.11 percent of the amount by

million dollars, but in no event shall such reduction exceed five million dollars.

Provided, however, that in the case of no more than one vendor track located in the town of Thompson in Sullivan county at the site of the former Concord Resort with a qualified capital investment, and one thousand full-time, permanent employees if at any time after three years of opening operations of the licensed video gaming facility or licensed vendor track, the vendor track experiences an employment shortfall, then the recapture amount shall apply, for only such period as the shortfall exists.

For the purposes of this section "qualified capital investment" shall mean an investment of a minimum of six hundred million dollars as reflected by audited financial statements of which not less than three hundred million dollars shall be comprised of equity and/or mezzanine financing as an initial investment in a county where twelve percent of the population is below the federal poverty level as measured by the most recent Bureau of Census Statistics prior to the qualified capital investment commencing that results in the construction, development or improvement of at least one eighteen hole golf course, and the construction and issuance of certificates of occupancy for hotels, lodging, spas, dining, retail and entertainment venues, parking garages and other capital improvements at or adjacent to the licensed video gaming facility or licensed vendor track which promote or encourage increased attendance at such facilities.

For the purposes of this section, "full-time, permanent employee" shall mean an employee who has worked at the video gaming facility, vendor track or related and adjacent facilities for a minimum of thirty-five hours per week for not less than four consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended to other employees with comparable rank and duties; or two part-time employees who have worked at the video gaming facility, vendor track or related and adjacent facilities for a combined minimum of thirty-five hours per week for not less than four consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended to other employees with comparable rank and duties.

For the purpose of this section "employment goal" shall mean one thousand five hundred full-time permanent employees after three years of opening operations of the licensed video gaming facility or licensed vendor track.

For the purpose of this section "employment shortfall" shall mean a level of employment that falls below the employment goal, as certified annually by vendor's certified accountants and the chairman of the empire state development corporation.

For the purposes of this section "recapture amount" shall mean the difference between the amount of the vendor's fee paid to a vendor track with a qualified capital investment, and the vendor fee otherwise payable to a vendor track pursuant to clause (F) of this subparagraph, that is reimbursable by the vendor track to the division for payment into the state treasury, to the credit of the state lottery fund created by section ninety-two-c of the state finance law, due to an employment shortfall pursuant to the following schedule only for the period of the employment shortfall:

(i) one hundred percent of the recapture amount if the employment shortfall is greater than sixty-six and two-thirds percent of the

(ii) seventy-five percent of the recapture amount if the employment shortfall is greater than thirty-three and one-third percent of the employment goal;

(iii) forty-nine and one-half percent of the recapture amount if the employment shortfall is greater than thirty percent of the employment goal;

(iv) twenty-two percent of the recapture amount if the employment shortfall is greater than twenty percent of the employment goal;

(v) eleven percent of the recapture amount if the employment shortfall is greater than ten percent of the employment goal.

(G-1) Notwithstanding clause (A) and (B) of this subparagraph, when a video lottery gaming facility is located in either the county of Nassau or Suffolk and is operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law at a rate of thirty-five percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter;

(G-2) Notwithstanding clause (A) and (B) of this subparagraph, when a video lottery gaming facility is located in the county of Nassau established pursuant to a competitive process pursuant to paragraph (5) of section six thousand seventeen-a of this article at a rate of thirty-five percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter;

(H) notwithstanding clauses (A), (B), (C), (D), (E), (F) and (G) of this subparagraph, the track operator of a vendor track shall be eligible for a vendor's capital award of up to four percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter, which shall be used exclusively for capital project investments to improve the facilities of the vendor track which promote or encourage increased attendance at the video lottery gaming facility including, but not limited to hotels, other lodging facilities, entertainment facilities, retail facilities, dining facilities, events arenas, parking garages and other improvements that enhance facility amenities; provided that such capital investments shall be approved by the division, in consultation with the state racing and wagering board, and that such vendor track demonstrates that such capital expenditures will increase patronage at such vendor track's facilities and increase the amount of revenue generated to support state education programs. The annual amount of such vendor's capital awards that a vendor track shall be eligible to receive shall be limited to two million five hundred thousand dollars, except for Aqueduct racetrack, for which there shall be no vendor's capital awards. Except for tracks having less than one thousand one hundred video gaming machines, each track operator shall be required to co-invest an amount of capital expenditure equal to its cumulative vendor's capital award. For all tracks, except for Aqueduct racetrack, the amount of any vendor's capital award that is not used during any one year period may be carried over into subsequent years ending before April first, two thousand fourteen. Any amount attributable to a capital expenditure approved prior to April first, two thousand fourteen and completed before April first, two thousand sixteen shall be eligible to receive the vendor's capital award. In the event that a vendor track's capital expenditures, approved by the division prior to April first, two thousand fourteen and completed prior to April first, two thousand sixteen, exceed the vendor track's cumulative capital award during the five year period ending April first, two thousand

fourteen, the vendor shall continue to receive the capital award after April first, two thousand fourteen until such approved capital expenditure. CHAP. 174

tures are paid to the vendor track subject to any required co-investment. In no event shall any vendor track that receives a vendor fee pursuant to clause (F) or (G) of this subparagraph be eligible for a vendor's capital award under this section. Any operator of a vendor track which has received a vendor's capital award, choosing to divest the capital improvement toward which the award was applied, prior to the full depreciation of the capital improvement in accordance with generally accepted accounting principles, shall reimburse the state in amounts equal to the total of any such awards. Any capital award not approved for a capital expenditure at a video lottery gaming facility by April first, two thousand fourteen shall be deposited into the state lottery fund for education aid; and

(I) Notwithstanding any provision of law to the contrary, free play allowance credits authorized by the division pursuant to subdivision f of section sixteen hundred seventeen-a of this article shall not be included in the calculation of the total amount wagered on video lottery games, the total amount wagered after payout of prizes, the vendor fees payable to the operators of video lottery facilities, vendor's capital awards, fees payable to the division's video lottery gaming equipment contractors, or racing support payments.

(iii) less an additional vendor's marketing allowance at a rate of ten percent for the first one hundred million dollars annually and eight percent thereafter of the total revenue wagered at the vendor track after payout for prizes to be used by the vendor track for the marketing and promotion and associated costs of its video lottery gaming operations and pari-mutuel horse racing operations, as long as any such costs associated with pari-mutuel horse racing operations simultaneously encourage increased attendance at such vendor's video lottery gaming facilities, consistent with the customary manner of marketing comparable operations in the industry and subject to the overall supervision of the division; provided, however, that the additional vendor's marketing allowance shall not exceed eight percent in any year for any operator of a racetrack located in the county of Westchester or Queens; provided, however, a vendor track that receives a vendor fee pursuant to clause (G) of subparagraph (ii) of this paragraph shall not receive the additional vendor's marketing allowance. In establishing the vendor fee, the division shall ensure the maximum lottery support for education while also ensuring the effective implementation of section sixteen hundred seventeen-a of this article through the provision of reasonable reimbursements and compensation to vendor tracks for participation in such program. Within twenty days after any award of lottery prizes, the division shall pay into the state treasury, to the credit of the state lottery fund, the balance of all moneys received from the sale of all tickets for the lottery in which such prizes were awarded remaining after provision for the payment of prizes as herein provided. Any revenues derived from the sale of advertising on lottery tickets shall be deposited in the state lottery fund.

2. As consideration for the operation of a video lottery gaming facility, the division, shall cause the investment in the racing industry of a portion of the vendor fee received pursuant to paragraph one of this subdivision in the manner set forth in this subdivision. With the exception of Aqueduct racetrack, each such track shall dedicate a portion of its vendor fees, received pursuant to clause (A), (B), (C),

(D), (E), (F), or (G) of subparagraph (ii) of paragraph one of this subdivision, solely for the purpose of enhancing purses at such track, in an amount equal to eight and three-quarters percent of the total

revenue wagered at the vendor track after pay out for prizes. One percent of such purse enhancement amount shall be paid to the gaming commission to be used exclusively to promote and ensure equine health and safety in New York. Any portion of such funding to the gaming commission unused during a fiscal year shall be returned to the video lottery gaming operators on a pro rata basis in accordance with the amounts originally contributed by each operator and shall be used for the purpose of enhancing purses at such track. In addition, with the exception of Aqueduct racetrack, one and one-quarter percent of total revenue wagered at the vendor track after pay out for prizes, received pursuant to clause (A), (B), (C), (D), (E), (F), or (G) of subparagraph (ii) of paragraph one of this subdivision, shall be distributed to the appropriate breeding fund for the manner of racing conducted by such track.

Provided, further, that nothing in this paragraph shall prevent each track from entering into an agreement, not to exceed five years, with the organization authorized to represent its horsemen to increase or decrease the portion of its vendor fee dedicated to enhancing purses at such track during the years of participation by such track, or to race fewer dates than required herein.

3. Nothing in paragraph two of this subdivision shall affect any agreement in effect on or before the effective date of this paragraph, except that the obligation to pay funds to the gaming commission to promote and ensure equine health and safety shall supersede any provision to the contrary in any such agreement.

c. 1. The specifications for video lottery gaming, including any joint, multi-jurisdiction, and out-of-state video lottery gaming, shall be designed in such a manner as to pay prizes that average no less than ninety percent of sales.

2. Of the ten percent retained by the division for administrative purposes, any amounts beyond that which are necessary for the operation and administration of this pilot program shall be deposited in the lottery education account.

d. Notwithstanding any law, rule or regulation to the contrary, any successor to the New York Racing Association, Inc. with respect to the operation and maintenance of video lottery gaming at Aqueduct racetrack shall be deemed the successor to the New York Racing Association, Inc. for purposes of being subject to existing contracts and loan agreements, if any, entered into by the New York Racing Association, Inc. directly related to the construction, operation, management and distribution of revenues of the video lottery gaming facility at Aqueduct racetrack.

e. The video lottery gaming operator selected to operate a video lottery terminal facility at Aqueduct will be subject to a memorandum of understanding between the governor, temporary president of the senate and the speaker of the assembly. Notwithstanding subparagraph (i) of paragraph a of subdivision eight of section two hundred twelve of the racing, pari-mutuel wagering and breeding law, the state, pursuant to an agreement with the video lottery gaming operator to operate a video lottery terminal facility at Aqueduct, may authorize, as part of such agreement or in conjunction with such agreement at the time it is executed, additional development at the Aqueduct racing facility. The selection will be made in consultation with the franchised corporation,

but is not subject to such corporation's approval. The franchised corporation shall not be eligible to compete to operate or to operate a video lottery terminal facility at Aqueduct. The state will use its best efforts to ensure that the video lottery terminal facility at Aqueduct

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is opened as soon as is practicable and will, if practicable, pursue the construction of a temporary video lottery terminal facility at Aqueduct subject to staying within an agreed budget for such video lottery terminal facility and subject to such temporary facility not having an adverse impact on opening of the permanent facility at Aqueduct. To facilitate the opening of the video lottery gaming facility at Aqueduct as soon as is practicable, the division of the lottery may extend the term of any existing contract related to the video lottery system.

f. As consideration for the operation of the video lottery gaming facility at Aqueduct racetrack, the division shall cause the investment in the racing industry of the following percentages of the vendor fee to be deposited or paid, as follows:

1. Six and one-half percent of the total wagered after payout of prizes for the first year of operation of video lottery gaming at Aqueduct racetrack, seven percent of the total wagered after payout of prizes for the second year of operation, and seven and one-half percent of the total wagered after payout of prizes for the third year of operation and thereafter, for the purpose of enhancing purses at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course. One percent of such purse enhancement amount shall be paid to the gaming commission to be used exclusively to promote and ensure equine health and safety in New York. Any portion of such funding to the gaming commission unused during a fiscal year shall be returned on a pro rata basis in accordance with the amounts originally contributed and shall be used for the purpose of enhancing purses at such tracks.

2. One percent of the total wagered after payout of prizes for the first year of operation of video lottery gaming at Aqueduct racetrack, one and one-quarter percent of the total wagered after payout of prizes for the second year of operation, and one and one-half percent of the total wagered after payout of prizes for the third year of operation and thereafter, for an appropriate breeding fund for the manner of racing conducted at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course.

3. Four percent of the total revenue wagered after payout of prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for capital expenditures in maintaining and upgrading Aqueduct racetrack, Belmont Park racetrack and Saratoga race course.

4. Three percent of the total revenue wagered after payout for prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for general thoroughbred racing operations at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course.

5. Paragraphs one, two, three and four of this subdivision shall be known collectively as the "racing support payments".

(f-2) As consideration for operation of a video lottery gaming facility located in the county of Nassau established pursuant to a competitive process pursuant to paragraph (5) of section six thousand seventeen a of this article, the division shall cause the in the racing industry of the

following percentages of the vendor fee to be deposited or paid as follows:

(1) Two and three tenths percent of the total wagered after payout of prizes for the purpose of enhancing purses at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that

any amount that is in excess of the amount necessary to maintain purse support from video lottery gaming at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course at the same level realized in in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of bureau of labor statistics, shall be instead be returned to the commission.

(2) five tenths percent of the total wagered after payout of prizes for the appropriate breeding fund for the manner of racing at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain payments from video lottery gaming at Aqueduct racetrack at the same level realized in in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of bureau of labor statistics, shall be instead be returned to the commission.

(3) one and three tenths percent of the total revenue wagered after payout of prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for capital expenditures in maintaining and upgrading Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain payments for capital expenditures from video lottery gaming at Aqueduct racetrack at the same level realized in in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of bureau of labor statistics, shall be instead be returned to the commission.

(4) Nine tenths percent of the total revenue wagered after payout for prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for general thoroughbred racing operations at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain payments for general thoroughbred racing operations from video lottery gaming at Aqueduct racetrack at the same level realized in in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of bureau of labor statistics, shall be instead be returned to the commission.

g. In the event the state elects to construct a video lottery terminal facility at the Aqueduct racetrack, all video lottery terminal revenues payable to the video lottery gaming operator at the Aqueduct racetrack remaining after payment of the racing support payments shall first be used to repay the state's advances for (i) confirmation of the chapter eleven plan of reorganization and cash advances for the franchised corporation's operations following confirmation of the chapter eleven plan of reorganization and (ii) the amount expended by the state to construct such video lottery terminal facility at Aqueduct racetrack pursuant to an agreement with the state. Subparagraphs (i) and (ii) of

this paragraph shall be defined as the state advance amount and the amounts payable to the division of the lottery.

h. In no circumstance shall net proceeds of the lottery, including the proceeds from video lottery gaming, be used for the payment of non-lottery expenses of the gaming commission, administrative or otherwise.

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§ 43. Section 1001 of the racing, pari-mutuel wagering and breeding law, as added by chapter 363 of the laws of 1984, subdivisions n, o and p as added by chapter 445 of the laws of 1997, is amended to read as follows:

§ 1001. Definitions. As used in this article, the following terms shall have the following meanings:

a. "Simulcast" means the telecast of live audio and visual signals of running, harness or quarter horse races [~~conducted in the state~~] for the purposes of pari-mutuel wagering;

b. "Track" means the grounds or enclosures within which horse races are conducted by any person, association or corporation lawfully authorized to conduct such races in accordance with the terms and conditions of this chapter or the laws of another jurisdiction;

c. "Sending track" means any track from which simulcasts originate;

d. "Receiving track" means any track where simulcasts originated from another track are displayed;

e. "Applicant" means any association [~~or~~], corporation or business entity applying for a simulcast license in accordance with the provisions of this article;

f. "Operator" means any association [~~or~~], corporation or business entity operating a simulcast facility in accordance with the provisions of this article;

g. "Regional track or tracks" means any or all tracks located within a region defined as an off-track betting region, except that for the purposes of section one thousand eight of this article any track located in New York city, or Nassau, Suffolk and Westchester counties, shall be deemed a regional track for all regions located in district one, as defined in this section;

h. "[~~The board~~]Commission" means the state [~~racing and wagering board~~]gaming commission;

i. "Branch office" means an establishment maintained and operated by an off-track betting corporation, where off-track pari-mutuel betting on horse races may be placed in accordance with the terms and conditions of this chapter and rules and regulations issued pursuant thereto;

j. "Simulcast facility" means those facilities within the state that are authorized pursuant to the provisions of this article to display simulcasts for pari-mutuel wagering purposes;

k. "Off-track betting region" means those regions as defined in section five hundred nineteen of this chapter;

l. "Simulcast theater" means a simulcast facility which is also a public entertainment and wagering facility, and which may include any or all of the following: a large screen television projection and display unit, a display system for odds, pools, and payout prices, areas for viewing and seating, a food and beverage facility, and any other convenience currently provided at racetracks and not inconsistent with local zoning ordinances;

m. "Simulcast districts" means one or more of the following named districts comprised of the counties within which pari-mutuel racing events are conducted as follows:

District 1

New York City, Suffolk, Nassau, and

	Westchester counties
District 2	Sullivan county
District 3	Saratoga county
District 4	Oneida county
District 5	Erie, Genesee and Ontario counties
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n. "Initial out-of-state thoroughbred track" means the track commencing full-card simulcasting to New York prior to any other out-of-state thoroughbred track after 1:00 PM on any calendar day.

o. "Second out-of-state thoroughbred track" means the track (or subsequent track or tracks where otherwise authorized by this article) conducting full-card simulcasting to New York after the race program from the initial out-of-state thoroughbred track that has commenced simulcasting on any calendar day.

p. "Mixed meeting" means a race meeting which has a combination of thoroughbred, quarter horse, Appaloosa, paint, and/or Arabian racing on the same race program.

q. "Account wagering" means a form of pari-mutuel wagering in which a person establishes an account with an account wagering licensee and subsequently communicates via telephone or other electronic media to the account wagering licensee wagering instructions concerning the funds in such person's account and wagers to be placed on the account owner's behalf.

r. "Account wagering licensee" means racing associations, and corporations; franchised corporations, off-track betting corporations, and commission approved multi-jurisdictional account wagering providers that have been authorized by the commission to offer account wagering.

s. "Dormant account" means an account wagering account held by an account wagering licensee in which there has been no wagering activity for three years.

t. "Multi-jurisdictional account wagering provider" means a business entity domiciled in a jurisdiction, other than the state of New York, that does not operate either a simulcast facility that is open to the public within the state of New York or a licensed or franchised race-track within the state, but which is licensed by such other jurisdiction to offer pari-mutuel account wagering on races such provider simulcasts and other races it offers in its wagering menu to persons located in or out of the jurisdiction issuing such license.

§ 44. Section 1002 of the racing, pari-mutuel wagering and breeding law, as added by chapter 363 of the laws of 1984, subdivision 2 as amended by chapter 18 of the laws of 2008, is amended to read as follows:

§ 1002. General jurisdiction. 1. The [~~state racing and wagering board~~] commission shall have general jurisdiction over the simulcasting of horse races and account wagering within the state, and the [~~board~~] commission may issue rules and regulations in accordance with the provisions of this article.

2. The [~~board~~] commission shall annually submit reports on or before July first following each year in which simulcasting and account wagering is conducted to the director of the budget, the chairman of the senate finance committee and the chairman of the assembly ways and means committee evaluating the results of such simulcasts and account wagering on the compatibility with the well-being of the horse racing, breeding and pari-mutuel wagering industries in this state and make any recommendations it deems appropriate. Such reports may be submitted together with the reports required by subdivision two of section two hundred

thirty-six and subparagraph (iii) of paragraph a and subparagraph (i) of paragraph b of subdivision one of section three hundred eighteen of this chapter.

§ 45. Section 1003 of the racing, pari-mutuel wagering and breeding law, as added by chapter 363 of the laws of 1984, subdivision 1 as separately amended by chapters 2 and 70 of the laws of 1995, paragraph (a) CHAP. 174

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of subdivision 1 as amended by section 1 of part U of chapter 59 of the laws of 2013, the opening paragraph of paragraph a of subdivision 2 as amended by chapter 538 of the laws of 1999 and subdivision 5 as amended by chapter 287 of the laws of 1985, is amended to read as follows:

§ 1003. Licenses for simulcast facilities. 1. (a) Any racing association or corporation or regional off-track betting corporation, authorized to conduct pari-mutuel wagering under this chapter, desiring to display the simulcast of horse races on which pari-mutuel betting shall be permitted in the manner and subject to the conditions provided for in this article may apply to the [beard] commission for a license so to do. Applications for licenses shall be in such form as may be prescribed by the [beard] commission and shall contain such information or other material or evidence as the [beard] commission may require. No license shall be issued by the [beard] commission authorizing the simulcast transmission of thoroughbred races from a track located in Suffolk county. The fee for such licenses shall be five hundred dollars per simulcast facility and for account wagering licensees that do not operate either a simulcast facility that is open to the public within the state of New York or a licensed racetrack within the state, twenty thousand dollars per year payable by the licensee to the [beard] commission for deposit into the general fund. Except as provided [herein] in this section, the [beard] commission shall not approve any application to conduct simulcasting into individual or group residences, homes or other areas for the purposes of or in connection with pari-mutuel wagering. The board may approve simulcasting into residences, homes or other areas to be conducted jointly by one or more regional off-track betting corporations and one or more of the following: a franchised corporation, thoroughbred racing corporation or a harness racing corporation or association; provided (i) the simulcasting consists only of those races on which pari-mutuel betting is authorized by this chapter at one or more simulcast facilities for each of the contracting off-track betting corporations which shall include wagers made in accordance with section one thousand fifteen, one thousand sixteen and one thousand seventeen of this article; provided further that the contract provisions or other simulcast arrangements for such simulcast facility shall be no less favorable than those in effect on January first, two thousand five; (ii) that each off-track betting corporation having within its geographic boundaries such residences, homes or other areas technically capable of receiving the simulcast signal shall be a contracting party; (iii) the distribution of revenues shall be subject to contractual agreement of the parties except that statutory payments to non-contracting parties, if any, may not be reduced; provided, however, that nothing herein to the contrary shall prevent a track from televising its races on an irregular basis primarily for promotional or marketing purposes as found by the board. For purposes of this paragraph, the provisions of section one thousand thirteen of this article shall not apply. Any agreement authorizing an in-home simulcasting experiment commencing prior to May fifteenth, nineteen hundred ninety-five, may, and all its terms, be extended until June thirtieth, two thousand fourteen; provided, however,

that any party to such agreement may elect to terminate such agreement upon conveying written notice to all other parties of such agreement at least forty-five days prior to the effective date of the termination, via registered mail. Any party to an agreement receiving such notice of an intent to terminate, may request the board to mediate between the parties new terms and conditions in a replacement agreement between the parties as will permit continuation of an in-home experiment until June

thirtieth, two thousand fourteen; and (iv) no in-home simulcasting in the thoroughbred special betting district shall occur without the approval of the regional thoroughbred track.

(b) Any agreement authorizing in-home simulcasting pursuant to this section shall be in writing, and upon written request, a copy shall be provided to the representative horsemen's group of the racing association or corporation that is party to said agreement. Such agreement shall include a categorical statement of new and incremental expenses directly related and attributable to the conduct of in-home simulcasting. The representative horsemen's group may, within thirty days of receiving the agreement, petition the board for a determination as to the appropriateness and reasonableness of any expenses attributed by either the racing association or corporation or the off-track betting corporation.

2. Before it may grant such license, the [~~board~~] commission shall review and approve a plan of operation submitted by such applicant including, but not limited to the following information:

a. A feasibility study denoting the revenue earnings expected from the simulcast facility and the costs expected to operate such facility. No feasibility study shall be received for a simulcast facility that is applying to renew its license. The form of the feasibility study shall be prescribed by the [~~board~~] commission and may include:

- (i) the number of simulcast races to be displayed;
- (ii) the types of wagering to be offered;
- (iii) the level of attendance expected and the area from which such attendance will be drawn;
- (iv) the level of anticipated wagering activity;
- (v) the source and amount of revenues expected from other than pari-mutuel wagering;
- (vi) the cost of operating the simulcast facility and the identification of costs to be amortized and the method of amortization of such costs;
- (vii) the amount and source of revenues needed for financing the simulcast facility;
- (viii) the probable impact of the proposed operation on revenues to local government;

b. The security measures to be employed to protect the facility, to control crowds, to safeguard the transmission of the simulcast signals and to control the transmission of wagering data to effectuate common wagering pools;

c. The type of data processing, communication and transmission equipment to be utilized;

d. The description of the management groups responsible for the operation of the simulcast facility;

e. The system of accounts to maintain a separate record of revenues collected by the simulcast facility, the distribution of such revenues and the accounting of costs relative to the simulcast operation;

f. The location of the facility and a written confirmation from appro-

priate local officials that the location of such facility and the number of patrons expected to occupy such facility are in compliance with all applicable local ordinances;

g. The written agreements and letters of consent between specified parties pursuant to sections one thousand seven, one thousand eight and one thousand nine of this article.

3. Within forty-five days of receipt of the plan of operation provided in subdivision two of this section, the ~~[beard]~~ commission shall issue  
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an order approving the plan, approving it with modifications or denying approval, in which latter case the ~~[beard]~~ commission shall state its reasons therefor. Within such period the ~~[beard]~~ commission may request additional information or suggest amendments. If the ~~[beard]~~ commission fails to approve the plan, the applicant may request a public hearing to be held within thirty days of the issuance of an order denying it. The ~~[beard]~~ commission shall issue its final determination within ten days of such hearing. The applicant may submit an amended application no sooner than thirty days after a denial.

4. No racing association, franchised corporation or corporation or regional off-track betting corporation shall be allowed to operate a simulcast facility except according to the provisions of an approved plan of operation. No change in such plan of operation may occur until an amendment proposing a change to the plan is approved by the ~~[beard]~~ commission. A plan of operation may be amended from time to time at the request of either the operator or the ~~[beard]~~ commission. The operator shall have the right to be heard concerning any amendment to the plan and the ~~[beard]~~ commission shall dispose of such proposed amendments as expeditiously as practicable, but no later than thirty days following submission by the operator or, in the case of amendments proposed by the ~~[beard]~~ commission, objection by the operator.

5. For the purpose of maintaining proper control over simulcasts conducted pursuant to this article, the ~~[state racing and wagering board]~~ commission shall license any person, association or corporation participating in simulcasting, as the ~~[beard]~~ commission may by rule prescribe, including, if the ~~[beard]~~ commission deem it necessary so to do, any or all persons, associations or corporations who create, distribute, transmit or display simulcast signals. In the case of thoroughbred racing simulcasting or harness racing simulcasting, such licenses shall be issued in accordance with and subject to the provisions governing licenses for participants and employees in article two or article three of this chapter as may be applicable to such type of racing.

§ 46. Section 1012 of the racing, pari-mutuel wagering and breeding law, as amended by chapter 18 of the laws of 2008, subdivision 4-b as added by chapter 402 of the laws of 2011 and subdivision 5 as amended by section 10 of part U of chapter 59 of the laws of 2013, is amended to read as follows:

§ 1012. ~~[Telephone accounts and telephone] Account~~ wagering. ~~[Any regional off-track betting corporation, and any franchised corporation, harness, thoroughbred, quarter horse racing association or corporation licensed to conduct pari-mutuel racing may maintain telephone betting accounts for wagers placed on races and special events offered by such corporation or association.]~~ Racing associations and corporations, franchised corporations, off-track betting corporations and multi-jurisdictional account wagering providers may apply to the commission to be licensed to offer account wagering.

1. Racing associations and corporations, franchised corporations, off-track betting corporations and multi-jurisdictional account wagering providers may form partnerships, joint ventures, or any other affiliations or contractual arrangement in order to further the purposes of this section. Multi-jurisdictional account wagering providers involved in such joint affiliations or contractual arrangements shall follow the same distributional policy with respect to retained commissions as their in-state affiliate or contractual partner.

2. The commission shall promulgate rules and regulations to license and regulate all phases of account wagering.

3. The commission shall specify a non-refundable application fee which shall be paid by each applicant for an account wagering license or renewal thereof.

4. Account wagering licensees shall utilize personal identification numbers and such other technologies as the commission may specify to assure that only the account holder has access to the advance deposit wagering account.

5. Account wagering licensees shall provide for: a. withdrawals from the wagering account only by means of a check made payable to the account holder and sent to the address of the account holder or by means of an electronic transfer to an account held by the verified account holder or b. that the account holder may withdraw funds from the wagering account at a facility approved by the commission by presenting verifiable personal and account identification information.

6. Account wagering licensees may engage in interstate wagering transactions only where there is compliance with chapter fifty-seven of title fifteen of the United States code, commonly referred to as the "interstate horse racing act".

7. The account holder's deposits to the wagering account shall be submitted by the account holder to the account wagering licensee and shall be in the form of one of the following: a. cash given to the account wagering licensee; b. check, money order, negotiable order of withdrawal, or wire or electronic transfer, payable and remitted to the account wagering licensee; or c. charges made to an account holder's debit or credit card upon the account holder's direct and personal instruction, which instruction may be given by telephone communication or other electronic means to the account wagering licensee or its agent by the account holder if the use of the card has been approved by the account wagering licensee.

8. a. Each wager shall be in the name of a natural person and shall not be in the name of any beneficiary, custodian, joint trust, corporation, partnership or other organization or entity.

b. A wagering account may be established by a person completing an application form approved by the commission and submitting it together with a certification, or other proof, of age and residency. Such form shall include the address of the principal residence of the prospective account holder and a statement that a false statement made in regard to an application may subject the applicant to prosecution.

c. The prospective account holder shall submit the completed application to the account wagering licensee. The account wagering licensee may accept or reject an application after receipt and review of the application and certification, or other proof, of age and residency for compliance with this section.

d. No person other than the person in whose name an account has been established may issue wagering instructions relating to that account or

otherwise engage in wagering transactions relating to that account.

9. A wagering account shall not be assignable or otherwise transferable.

10. Except as otherwise provided in this article or in regulations which the commission may adopt pursuant thereto, all account wagers shall be final and no wager shall be canceled by the account holder at any time after the wager has been accepted by the account wagering licensee.

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11. Dormant accounts shall be treated as abandoned property pursuant to section three hundred of the abandoned property law.

12. Account wagering providers must possess appropriate totalizator and accounting controls that will safeguard the transmission of wagering data and will keep a system of accounts which will maintain a separate record of revenues and an accounting of costs relative to the operation of the wagering provider.

13. Wagers placed with the account wagering providers shall result in the combination of all wagers placed with such provider with the wagering pools at the host track so as to produce common pari-mutuel betting pools for the calculation of odds and the determination of payouts from such pools, which payout shall be the same for all winning tickets, irrespective of whether a wager is placed at a host track or at an account wagering provider.

14. Any [~~regional off-track betting corporation and any franchised corporation, harness, thoroughbred, quarter horse racing association or corporation licensed to conduct pari-mutuel racing~~] account wagering licensee may require a minimum account balance in an amount to be determined by such entity.

~~[2.]~~ 15. a. Any regional off-track betting corporation may suspend collection of the surcharge imposed under section five hundred thirty-two of this chapter on winning wagers placed in [~~telephone~~] wagering accounts maintained by such regional corporation.

b. In a city of one million or more any regional off-track betting corporation, with the approval of the mayor of such city, may suspend collection of the surcharge imposed under section five hundred thirty-two of this chapter in winning wagers placed in [~~telephone~~] wagering accounts maintained by such regional corporation.

~~[3. Any telephone account maintained by a regional off-track betting corporation, franchised corporation, harness, thoroughbred, quarter horse association or corporation, with inactivity for a period of three years shall be forfeited and paid to the commissioner of taxation and finance. Such amounts when collected shall be paid by the commissioner of taxation and finance into the general fund of the state treasury.~~

~~4.]~~ 16. The maintenance and operation of such [~~telephone~~] wagering accounts provided for in this section shall be subject to rules and regulations of the [~~state racing and wagering board~~] commission. The [~~board~~] commission shall include in such regulation a requirement that [~~telephone~~] wagering account information pertaining to surcharge and nonsurcharge [~~telephone~~] wagering accounts shall be separately reported.

~~[4-a.]~~ 17. For the purposes of this section, "telephone [~~betting~~] wagering accounts" [~~and "telephone wagering"~~] shall mean and include all those wagers which utilize any wired or wireless communications device, including but not limited to wireline telephones, wireless telephones~~[7]~~ and the internet~~[7]~~ to transmit the placement of wagers on races and special events offered by any regional off-track betting corporation, and any harness, thoroughbred, quarter horse racing association or

corporation licensed or franchised to conduct pari-mutuel racing in [~~New York~~] this state.

[~~4-b.~~] 18. Every racing association, off-track betting corporation, franchised corporation, harness, thoroughbred, quarter horse racing association or corporation or other entity licensed or franchised in this state to conduct pari-mutuel racing and wagering, or authorized to conduct races within the state, which operates [~~an account~~] a wagering [~~platform~~] account for the acceptance of wagers, shall locate the call center where such wagers are received within the state of New York.

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~~[5. The provisions of this section shall expire and be of no further force and effect after June thirtieth, two thousand fourteen.]~~

§ 47. The racing, pari-mutuel wagering and breeding law is amended by adding a new section 1012-a to read as follows:

§ 1012-a. Multi-jurisdictional account wagering providers. A multi-jurisdictional account wagering provider shall only be licensed under the following conditions:

1. the multi-jurisdictional account wagering provider is licensed by the state in which it is located and, if required, by each state in which it operates;

2. the character and the background of the multi-jurisdictional account wagering provider is such that granting the applications for a license is in the public interest and the best interest of honest horse racing;

3. the multi-jurisdictional account wagering provider shall utilize the services of an independent third party to perform identity and verification services with respect to the establishment of wagering accounts for persons who are residents of the state of New York;

4. the commission shall be allowed access to the premises of the multi-jurisdictional account wagering provider to visit, investigate and, place such expert accountants and other persons it deems necessary for the purpose of insuring compliance with the rules and regulations of the commission;

5. if not already registered, the multi-jurisdictional account wagering provider shall agree promptly to take those steps necessary to qualify to do business in New York state, and to maintain such status in good standing throughout the license period;

6. multi-jurisdictional account wagering providers shall pay a market origin fee equal to five per centum on each wager accepted from New York residents. Multi-jurisdictional account wagering providers shall make the required payments to the market origin account on or before the fifth business day of each month and such required payments shall cover payments due for the period of the preceding calendar month; provided, however, that such payments required to be made on April fifteenth shall be accompanied by a report under oath, showing the total of all such payments, together with such other information as the commission may require. A penalty of five per centum and interest at the rate of one per centum per month from the date the report is required to be filed to the date the payment shall be payable in case any payments required by this subdivision are paid when due. If the commission determines that any moneys received under this subdivision were paid in error, the commission may cause the same to be refunded without interest out of any moneys collected thereunder, provided an application therefor is filed with the commission within one year from the time the erroneous payment was made. The commission shall pay into the racing regulation account, under the joint custody of the comptroller and the commission, the total

amount of the fee collected pursuant to this section.

§ 48. Subdivision 2 of section 1017 of the racing, pari-mutuel wagering and breeding law, as amended by chapter 18 of the laws of 2008, is amended to read as follows:

2. a. Maintenance of effort. Any off-track betting corporation which engages in accepting wagers on the simulcasts of thoroughbred races from out-of-state or out-of-country as permitted under subdivision one of this section shall submit to the [beard] commission, for its approval, a schedule of payments to be made in any year or portion thereof, that such off-track corporation engages in nighttime thoroughbred simulcast-  
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ing. In order to be approved by the [beard] commission, the payment schedule shall be identical to the actual payments and distributions of such payments to tracks and purses made by such off-track corporation pursuant to the provisions of section one thousand fifteen of this article during the year two thousand two, as derived from out-of-state harness races displayed after 6:00 P.M. If approved by the [beard] commission, such scheduled payments shall be made from revenues derived from any simulcasting conducted pursuant to this section and section one thousand fifteen of this article.

b. Additional payments. During each calendar year, to the extent, and at such time in the event, that aggregate statewide wagering handle after 7:30 P.M. on out-of-state and out-of-country thoroughbred races exceeds one hundred million dollars, each off-track betting corporation conducting such simulcasting shall pay to its regional harness track or tracks, an amount equal to two percent of its proportionate share of such excess handle. In any region where there are two or more regional harness tracks, such two percent shall be divided between or among the tracks in a proportion equal to the proportion of handle on live harness races conducted at such tracks during the preceding calendar year. Fifty percent of the sum received by each track pursuant to this paragraph shall be used exclusively for increasing purses, stakes and prizes at that regional harness track. For the purpose of determining whether such aggregate statewide handle exceeds one hundred million dollars, all wagering on such thoroughbred races accepted by licensed multi-jurisdictional account wagering providers from customers within New York state shall be excluded.

§ 49. Section 503 of the racing, pari-mutuel wagering and breeding law is amended by adding a new subdivision 12-a to read as follows:

12-a. To enter into, amend, cancel and terminate agreements for the performance among themselves, licensed racing associations and corporations, and multi-jurisdictional account wagering providers, as defined in section one thousand one of this chapter, of their respective functions, powers and duties on a cooperative or contract basis.

§ 50. The racing, pari-mutuel wagering and breeding law is amended by adding a new section 115-b to read as follows:

§ 115-b. Market origin credits. 1. Notwithstanding any other provision of law to the contrary, any racing associations and corporations, franchised corporations, and off-track betting corporations that makes a payment of the regulatory fees imposed by this chapter may reduce such payment by an amount equal to the market origin credit allocated to such racing association or corporation, franchised corporation, or off-track betting corporation by the commission. The commission shall allocate credits in an amount equal to ninety percent of the amount received from the market origin fee paid pursuant to subdivision six of section one thousand twelve-a of this chapter for the period from the sixteenth day

of the preceding month through the fifteenth day of the current month. The commission shall notify participants of allocations on or before the twentieth day of the current month.

2. The commission shall allocate credits to racing associations and corporations, franchised corporations, and off-track betting corporations in the following amounts:

a. Forty percent of the amount received from the market origin fee paid pursuant to subdivision six of section one thousand twelve-a of this chapter to regional off-track betting corporations. Allocations to individual regional off-track betting corporations shall be made based on a ratio where the numerator is the regional corporation's total

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in-state handle for the previous calendar year as calculated by the commission and the denominator is the total in-state handle of all the regional off-track betting corporations for the previous calendar year as calculated by the commission;

b. Fifty percent of the amount received from the market origin fee paid pursuant to subdivision six of section one thousand twelve-a of this chapter to the racing associations and corporations and franchised corporations. Allocations to individual racing associations and corporations and franchised corporations shall be made as follows:

(i) Sixty percent to thoroughbred racing associations and franchised corporations. Five-sixths shall be allocated to a franchised corporation and one-sixth shall be allocated to a thoroughbred racing association.

(ii) Forty percent to harness racing associations and corporations. Allocations to individual harness racing associations and corporations shall be made based on a ratio where the numerator is the association's or corporation's total in-state handle on live racing for the previous calendar year as calculated by the commission and the denominator is the total in-state on live handle for all harness racing associations and corporations for the previous calendar year as calculated by the commission.

3. As a condition for any racing association or corporation or franchised corporation to claim any market origin credits allocated to it, such racing association or corporation or franchised corporation must make payments for moneys otherwise to be used to pay the regulatory fee as follows:

(i) Payment of an amount equal to forty percent of the allocated credits into an account used solely for the purpose of enhancing purses at such racing association or corporation or franchised corporation. Such payment shall be made within five days from receipt of notification of an allocation by the commission of an allocation of market origin credits;

(ii) Payment of an amount equal to twenty percent of the allocated credits to the state's breeding funds. Sixty percent of the payments to the breeding funds shall be allocated to the New York state thoroughbred breeding and development fund corporation established pursuant to section two hundred fifty-two of this chapter, and forty percent to the agriculture and New York state horse breeding development fund established pursuant to section three hundred thirty of this chapter. Such payment shall be made within five days from receipt of notification of an allocation by the commission of an allocation of market origin credits.

4. The commission shall promulgate any rules and regulations necessary for the administration of the market origin credit.

§ 51. Section 99-i of the state finance law, as added by section 26 of part F3 of chapter 62 of the laws of 2003, is amended to read as follows:

§ 99-i. Racing regulation account. 1. There is hereby established in the joint custody of the comptroller and the [~~rac~~ing and w~~agering~~ board] gaming commission a special revenue fund to be known as the "racing regulation account".

2. The racing [~~revenue~~] regulation account shall consist of all money received by the [~~board~~] commission as regulatory fees and market origin fees pursuant to the provisions of the racing, pari-mutuel wagering and breeding law.

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3. Moneys of this account shall be available to the [~~board~~] commission to pay for the costs of carrying out the purposes of the racing, pari-mutuel wagering and breeding law; provided, however, an amount equal to five percent of the amount received by the account from the market origin fee imposed by subdivision six of section one thousand twelve-a of the racing, pari-mutuel wagering and breeding law shall be transferred to the state department of taxation and finance and the department shall deem this transfer as a payment of a pari-mutuel tax.

4. All payments from the fund shall be made on the audit and warrant of the comptroller.

(f) Sections forth through forty-eight of this act shall take effect January 1, 2014; except that the New York state gaming commission may accept and review applications for licenses for account wagering and for multi-jurisdictional account wagering providers commencing on October 1, 2013.

§ 52. This act shall take effect immediately; provided, however, that:

(a) sections one, two, five, nine, ten, twenty-seven and thirty-one of this act shall take effect on the first of January next succeeding the date upon which the people shall approve and ratify amendments to subdivision 1 of section 9 of article I of the constitution by a majority of the electors voting thereon relating to casino gambling in the state;

(b) sections six, seven, fourteen and sixteen of this act shall take effect on the same date as the agreement between the Oneida Nation of New York and the state of New York entered into on the sixteenth day of May, 2013 takes effect; provided, further, that the amendments to subdivision 2 of section 99-h of the state finance law made by section six of this act shall take effect on the same date as the reversion of such section as provided in section 2 of chapter 747 of the laws of 2006, as amended; provided, further, that the amendments to subdivision 3 of section 99-h of the state finance law made by section seven of this act shall be subject to the expiration and reversion of such subdivision as provided in section 3 of part W of chapter 60 of the laws of 2011, as amended when upon such date the provisions of section seven-a of this act shall take effect; provided, further, that the amendments to subdivision 3 of section 99-h of the state finance law made by section seven-a of this act shall be subject to the the expiration and reversion of such section as provided in section 2 of chapter 747 of the laws of 2006, as amended when upon such date the provisions of section eight of this act shall take effect; provided, further, however, that the amendment to section 99-h of the state finance law made by section nine of this act shall not affect the expiration of such section and shall be deemed repealed therewith; provided, further, that the state gaming commission shall notify the legislative bill drafting commission upon the occurrence of such agreement between the Oneida Nation and the state

of New York becoming effective in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effecting the provisions of section 44 of the legislative law and section 70-b of the public officers law;

(c) section 1368 of the racing, pari-mutuel wagering and breeding law, as added by section two of this act, shall take effect upon a change in federal law authorizing the activity permitted by such section or upon a ruling by a court of competent jurisdiction that such activity is lawful. The state gaming commission shall notify the legislative bill drafting commission upon the occurrence of the change in federal law or upon the ruling of a court of competent jurisdiction in order that the

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commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effecting the provisions of section 44 of the legislative law and section 70-b of the public officers law;

(d) section thirty-five of this act shall be deemed to have been in full force and effect on and after April 1, 2013;

(e) notwithstanding the foregoing, sections thirty-two, thirty-three, thirty-four, forty-one and forty-two of this act, shall only be effective in the event that an amendment to the constitution to authorize casino gambling is defeated.

(f) section forty through forty-eight of this act shall take effect January 1, 2014; except that the New York state gaming commission may accept and review applications for licenses for account wagering and for multi-jurisdictional account wagering providers commencing on October 1, 2013.

The Legislature of the STATE OF NEW YORK **ss:**

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

DEAN G. SKELOS

Temporary President of the Senate

SHELDON SILVER

Speaker of the Assembly

CHAPTER 175

AN ACT to amend the racing, pari-mutuel wagering and breeding law, the penal law and the tax law, in relation to commercial gaming; to amend a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, in relation to the effective date of certain provisions thereof; to repeal certain provisions of the racing, pari-mutuel wagering and breeding law relating to the tribes that have gaming compacts with the state; and to repeal certain provisions of the tax law relating to disposition of revenues

Became a law July 30, 2013, with the approval of the Governor. Passed on message of necessity pursuant to Article III, section 14 of the Constitution by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivisions 9 and 15 of section 1300 of the racing, pari-mutuel wagering and breeding law, as added by section 2 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, are REPEALED, and subdivisions 10, 11, 12, 13, 14 and 16 are renumbered subdivisions 9, 10, 11, 12, 13 and 14.

§ 2. Subdivision 5 of section 1306 of the racing, pari-mutuel wagering and breeding law, as added by section 2 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S.5883 and A.8101, is REPEALED, and subdivisions 6, 7, 8, 9, 10 and 11 are renumbered subdivisions 5, 6, 7, 8, 9 and 10.

§ 3. Subdivision 15 of section 225.00 of the penal law, as added by section 3 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is amended to read as follows:

15. "Casino gaming" means games authorized to be played pursuant to a license granted under article thirteen of the racing, pari-mutuel wagering and breeding law or by federally recognized Indian nations or tribes pursuant to a ~~valid~~ gaming compact reached in accordance with the federal Indian Gaming Regulatory Act of 1988, Pub. L. 100-497, 102 Stat. 2467, codified at 25 U.S.C. §§ 2701-21 and 18 U.S.C. §§ 1166-68.

§ 4. Subdivision (f) of section 52 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is amended and a new subdivision (a-1) is added to read as follows:

EXPLANATION--Matter in italics is new; matter in brackets [-] is old law to be omitted.

(a-1) notwithstanding subdivision (a) of this section, section 1330-a

of the racing, pari-mutuel wagering and breeding law, as added by section two of this act, shall take effect immediately;

(f) [~~section forty~~] sections forty-three through [~~forty-eight~~] fifty-one of this act shall take effect January 1, 2014; except that the New York state gaming commission may accept and review applications for licenses for account wagering and for multi-jurisdictional account wagering providers commencing on October 1, 2013.

§ 5. The opening paragraph, the second, fourth, fifth undesignated paragraphs and the opening paragraph of the 7th undesignated paragraph of clause (G) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as amended by section 40 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, are amended to read as follows:

notwithstanding clauses (A), (B), (C), (D), (E) and (F) of this subparagraph, when no more than one vendor track located in the town of Thompson in Sullivan county at the site of the former Concord Resort at which a qualified capital investment has been made and no fewer than one thousand full-time, permanent employees have been newly hired, is located in Sullivan county and is within sixty miles from any gaming facility in a contiguous state, then for a period of forty years the vendor's fee shall equal the total revenue wagered at the vendor track after payout of prizes pursuant to this subdivision reduced by the greater of (i) twenty-five percent of total revenue after payout for prizes for "video lottery games" or (ii) for the first eight years of operation thirty-eight million dollars, and beginning in the ninth year of operation such amount shall increase annually by the lesser of the increase in the consumer price index or two percent, plus seven percent of total revenue after payout of prizes. In addition, in the event the vendor fee is calculated pursuant to subclause (i) of this clause, the vendor's fee shall be further reduced by 11.11 percent of the amount by which total revenue after payout for prizes exceeds two hundred fifteen million dollars, but in no event shall such reduction exceed five million dollars. [~~Provided, further, no vendor is eligible for the vendor's fee described in this clause who operates or invests in or owns, in whole or in part, another vendor license or is licensed as a vendor track that currently receives a vendor fee for the operation of video lottery gaming pursuant to this article.~~]

Provided, however, that in the case of [~~a resort facility~~] no more than one vendor track located in the town of Thompson in Sullivan county at the site of the former Concord Resort with a qualified capital investment, and one thousand full-time, permanent employees if at any time after three years of opening operations of the licensed video gaming facility or licensed vendor track, the [~~resort facility~~] vendor track experiences an employment shortfall, then the recapture amount shall apply, for only such period as the shortfall exists.

For the purposes of this section, "full-time, permanent employee" shall mean an employee who has worked at the video gaming facility, vendor track or related and adjacent facilities for a minimum of thirty-five hours per week for not less than four consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended to other employees with comparable rank and duties; or two part-time employees who have worked at the video gaming facility, vendor track or related and adjacent facilities for a combined minimum of thirty-five hours per week for not less than four consecutive weeks and who are

entitled to receive the usual and customary fringe benefits extended to other employees with comparable rank and duties.

For the purpose of this section "employment goal" shall mean one thousand five hundred full-time permanent employees after three years of opening operations of the licensed video gaming facility or licensed vendor track.

For the purposes of this section "recapture amount" shall mean the difference between the amount of the vendor's fee paid to a vendor track with a qualified capital investment, and the vendor fee otherwise payable to a vendor track pursuant to clause (F) of this subparagraph, that is reimbursable by the vendor track to the division for payment into the state treasury, to the credit of the state lottery fund created by section ninety-two-c of the state finance law, due to an employment shortfall pursuant to the following schedule only for the period of the employment shortfall:

§ 6. Clause (H) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as added by section 40 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is REPEALED.

§ 7. Clauses (I) and (J) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as added by section 40 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, are amended to read as follows:

~~[(I)]~~ (H) notwithstanding clauses (A), (B), (C), (D), (E), (F)~~[7]~~ and ~~[(G-1)]~~ (G) of this subparagraph, the track operator of a vendor track shall be eligible for a vendor's capital award of up to four percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter, which shall be used exclusively for capital project investments to improve the facilities of the vendor track which promote or encourage increased attendance at the video lottery gaming facility including, but not limited to hotels, other lodging facilities, entertainment facilities, retail facilities, dining facilities, events arenas, parking garages and other improvements that enhance facility amenities; provided that such capital investments shall be approved by the division, in consultation with the state racing and wagering board, and that such vendor track demonstrates that such capital expenditures will increase patronage at such vendor track's facilities and increase the amount of revenue generated to support state education programs. The annual amount of such vendor's capital awards that a vendor track shall be eligible to receive shall be limited to two million five hundred thousand dollars, except for Aqueduct racetrack, for which there shall be no vendor's capital awards. Except for tracks having less than one thousand one hundred video gaming machines, each track operator shall be required to co-invest an amount of capital expenditure equal to its cumulative vendor's capital award. For all tracks, except for Aqueduct racetrack, the amount of any vendor's capital award that is not used during any one year period may be carried over into subsequent years ending before April first, two thousand fourteen. Any amount attributable to a capital expenditure approved prior to April first, two thousand fourteen and completed before April first, two thousand sixteen shall be eligible to receive the vendor's capital award. In the event that a vendor track's capital expenditures, approved by the division prior to April first, two thousand fourteen and completed prior to April

first, two thousand sixteen, exceed the vendor track's cumulative capital award during the five year period ending April first, two thousand fourteen, the vendor shall continue to receive the capital award after April first, two thousand fourteen until such approved capital expenditures are paid to the vendor track subject to any required co-investment. In no event shall any vendor track that receives a vendor fee pursuant to clause (F) or (G) of this subparagraph be eligible for a vendor's capital award under this section. Any operator of a vendor track which has received a vendor's capital award, choosing to divest the capital improvement toward which the award was applied, prior to the full depreciation of the capital improvement in accordance with generally accepted accounting principles, shall reimburse the state in amounts equal to the total of any such awards. Any capital award not approved for a capital expenditure at a video lottery gaming facility by April first, two thousand fourteen shall be deposited into the state lottery fund for education aid; and

~~[(J)]~~ (I) Notwithstanding any provision of law to the contrary, free play allowance credits authorized by the division pursuant to subdivision f of section sixteen hundred seventeen-a of this article shall not be included in the calculation of the total amount wagered on video lottery games, the total amount wagered after payout of prizes, the vendor fees payable to the operators of video lottery facilities, vendor's capital awards, fees payable to the division's video lottery gaming equipment contractors, or racing support payments.

§ 8. Subparagraph (iii) of paragraph 1 of subdivision b of section 1612 of the tax law, as added by section 40 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is amended to read as follows:

(iii) less an additional vendor's marketing allowance at a rate of ten percent for the first one hundred million dollars annually and eight percent thereafter of the total revenue wagered at the vendor track after payout for prizes to be used by the vendor track for the marketing and promotion and associated costs of its video lottery gaming operations and pari-mutuel horse racing operations, as long as any such costs associated with pari-mutuel horse racing operations simultaneously encourage increased attendance at such vendor's video lottery gaming facilities, consistent with the customary manner of marketing comparable operations in the industry and subject to the overall supervision of the division; provided, however, that the additional vendor's marketing allowance shall not exceed eight percent in any year for any operator of a racetrack located in the county of Westchester or Queens; provided, however, a vendor track that receives a vendor fee pursuant to clause (G) of subparagraph (ii) of this paragraph shall not receive the additional vendor's marketing allowance provided, however, a vendor that receives a vendor fee pursuant to clause (G-1) of subparagraph (ii) of this paragraph shall receive an additional marketing allowance at a rate of ten percent of the total revenue wagered at the video lottery gaming facility after payout for prizes. ~~[the division shall ensure the maximum lottery support for education while also ensuring the effective implementation of section sixteen hundred seventeen-a of this article through the provision of reasonable reimbursements and compensation to vendor tracks for participation in such program. Within twenty days after any award of lottery prizes, the division shall pay into the state treasury, to the credit of the state lottery fund, the balance of all moneys received from the sale of all tickets for the lottery in which~~

~~such prizes were awarded remaining after provision for the payment of prizes as herein provided. Any revenues derived from the sale of advertising on lottery tickets shall be deposited in the state lottery fund.]~~

§ 9. The opening paragraph of paragraph 2 of subdivision b of section 1612 of the tax law, as added by section 40 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is amended to read as follows:

As consideration for the operation of a video lottery gaming facility, the division, shall cause the investment in the racing industry of a portion of the vendor fee received pursuant to paragraph one of this subdivision in the manner set forth in this subdivision. With the exception of Aqueduct racetrack or a facility in the county of Nassau or Suffolk operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law [~~or a facility in the county of Nassau or Suffolk operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law~~], each such track shall dedicate a portion of its vendor fees, received pursuant to clause (A), (B), (C), (D), (E), (F), or (G) of subparagraph (ii) of paragraph one of this subdivision, solely for the purpose of enhancing purses at such track, in an amount equal to eight and three-quarters percent of the total revenue wagered at the vendor track after pay out for prizes. One percent of such purse enhancement amount shall be paid to the gaming commission to be used exclusively to promote and ensure equine health and safety in New York. Any portion of such funding to the gaming commission unused during a fiscal year shall be returned to the video lottery gaming operators on a pro rata basis in accordance with the amounts originally contributed by each operator and shall be used for the purpose of enhancing purses at such track. In addition, with the exception of Aqueduct racetrack or a facility in the county of Nassau or Suffolk operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law, one and one-quarter percent of total revenue wagered at the vendor track after pay out for prizes, received pursuant to clause (A), (B), (C), (D), (E), (F), or (G) of subparagraph (ii) of paragraph one of this subdivision, shall be distributed to the appropriate breeding fund for the manner of racing conducted by such track.

§ 10. Subdivision (f-1) of section 1612 of the tax law, as added by section 40 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is amended to read as follows:

~~[(f-1)]~~ f-1. As consideration for operation of video lottery gaming facility located in the county of Nassau [~~of~~] or Suffolk and operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law, the division shall cause the investment in the racing industry of the following percentages of the vendor fee to be deposited or paid as follows:

~~[(1)]~~ 1. Two and three tenths percent of the total wagered after payout of prizes for the purpose of enhancing purses at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain purse support from video lottery gaming at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course at the same level real-

ized ~~[in]~~ in two thousand thirteen, to be adjusted by the consumer price  
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index for all urban consumers, as published annually by the United States department of labor, bureau of labor statistics, shall ~~[be]~~ instead be returned to the commission.

~~[(2)]~~ 2. five tenths percent of the total wagered after payout of prizes for the appropriate breeding fund for the manner of racing at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain payments from video lottery gaming at Aqueduct racetrack at the same level realized ~~[in]~~ in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of labor, bureau of labor statistics, shall ~~[be]~~ instead be returned to the commission.

~~[(3)]~~ 3. one and three tenths percent of the total revenue wagered after payout of prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for capital expenditures in maintaining and upgrading Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain payments for capital expenditures from video lottery gaming at Aqueduct racetrack at the same level realized ~~[in]~~ in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of labor, bureau of labor statistics, shall ~~[be]~~ instead be returned to the commission.

~~[(4)]~~ 4. Nine tenths percent of the total revenue wagered after payout for prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for general thoroughbred racing operations at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain payments for general thoroughbred racing operations from video lottery gaming at Aqueduct racetrack at the same level realized ~~[in]~~ in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of labor, bureau of labor statistics, shall ~~[be]~~ instead be returned to the commission.

§ 11. The opening paragraph of the first clause (G) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as amended by section 42 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is amended to read as follows:

notwithstanding clauses (A), (B), (C), (D), (E) and (F) of this subparagraph, when ~~[a resort facility to be operated by other than a presently licensed video lottery gaming operator or any entity affiliated therewith selected by the division following a competitive process located]~~ not more than one vendor track located in the town of Thompson in Sullivan county at the site of the former Concord resort at which a qualified capital investment has been made and no fewer than one thousand full-time, permanent employees have been newly hired, is located in Sullivan county and is within sixty miles from any gaming facility in a contiguous state, then for a period of forty years the vendor's fee shall equal the total revenue wagered at the vendor track after payout of prizes pursuant to this subdivision reduced by the greater of (i)

twenty-five percent of total revenue after payout for prizes for "video lottery games" or (ii) for the first eight years of operation thirty-

eight million dollars, and beginning in the ninth year of operation such amount shall increase annually by the lesser of the increase in the consumer price index or two percent, plus seven percent of total revenue after payout of prizes. In addition, in the event the vendor fee is calculated pursuant to subclause (i) of this clause, the vendor's fee shall be further reduced by 11.11 percent of the amount by which total revenue after payout for prizes exceeds two hundred fifteen million dollars, but in no event shall such reduction exceed five million dollars. Provided, further, no vendor is eligible for the vendor's fee described in this clause who operates or invests in or owns, in whole or in part, another vendor license or is licensed as a vendor track that currently receives a vendor fee for the operation of video lottery gaming pursuant to this article.

§ 12. The second clause (G) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as amended by section 42 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is REPEALED.

§ 13. Clause (G-1) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as amended by section 42 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is REPEALED.

§ 14. Paragraph 2 of subdivision b of section 1612 of the tax law, as amended by section 42 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is amended to read as follows:

2. As consideration for the operation of a video lottery gaming facility, the division, shall cause the investment in the racing industry of a portion of the vendor fee received pursuant to paragraph one of this subdivision in the manner set forth in this subdivision. With the exception of Aqueduct racetrack and a facility located in Nassau county authorized pursuant to paragraph five of subdivision a of section one thousand six hundred seventeen-a of this article, each such track shall dedicate a portion of its vendor fees, received pursuant to clause (A), (B), (C), (D), (E), (F), or (G) of subparagraph (ii) of paragraph one of this subdivision, solely for the purpose of enhancing purses at such track, in an amount equal to eight and three-quarters percent of the total revenue wagered at the vendor track after pay out for prizes. One percent of such purse enhancement amount shall be paid to the gaming commission to be used exclusively to promote and ensure equine health and safety in New York. Any portion of such funding to the gaming commission unused during a fiscal year shall be returned to the video lottery gaming operators on a pro rata basis in accordance with the amounts originally contributed by each operator and shall be used for the purpose of enhancing purses at such track. In addition, with the exception of Aqueduct racetrack and a facility located in Nassau county authorized pursuant to paragraph five of subdivision a of section one thousand six hundred seventeen-a of this article, one and one-quarter percent of total revenue wagered at the vendor track after pay out for prizes, received pursuant to clause (A), (B), (C), (D), (E), (F), or (G) of subparagraph (ii) of paragraph one of this subdivision, shall be

distributed to the appropriate breeding fund for the manner of racing conducted by such track.

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Provided, further, that nothing in this paragraph shall prevent each track from entering into an agreement, not to exceed five years, with the organization authorized to represent its horsemen to increase or decrease the portion of its vendor fee dedicated to enhancing purses at such track during the years of participation by such track, or to race fewer dates than required herein.

§ 15. Subdivision (f-2) of section 1612 of the tax law, as added by section 42 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is amended to read as follows:

~~[(f-2)]~~ f-2. As consideration for operation of a video lottery gaming facility located in the county of Nassau established pursuant to a competitive process pursuant to paragraph ~~[(5)]~~ five of subdivision a of section ~~[six]~~ one thousand ~~[seventeen-a]~~ six hundred seventeen-a of this article, the division shall cause the investment in the racing industry of the following percentages of the vendor fee to be deposited or paid as follows:

~~[(1)]~~ 1. Two and three tenths percent of the total wagered after payout of prizes for the purpose of enhancing purses at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain purse support from video lottery gaming at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course at the same level realized ~~[in]~~ in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of labor, bureau of labor statistics, shall ~~[be]~~ instead be returned to the commission.

~~[(2)]~~ 2. five tenths percent of the total wagered after payout of prizes for the appropriate breeding fund for the manner of racing at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain payments from video lottery gaming at Aqueduct racetrack at the same level realized ~~[in]~~ in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of labor, bureau of labor statistics, shall ~~[be]~~ instead be returned to the commission.

~~[(3)]~~ 3. one and three tenths percent of the total revenue wagered after payout of prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for capital expenditures in maintaining and upgrading Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain payments for capital expenditures from video lottery gaming at Aqueduct racetrack at the same level realized ~~[in]~~ in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of labor, bureau of labor statistics, shall ~~[be]~~ instead be returned to the commission.

~~[(4)]~~ 4. Nine tenths percent of the total revenue wagered after payout for prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for general thoroughbred

racing operations at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain payments for general

thoroughbred racing operations from video lottery gaming at Aqueduct racetrack at the same level realized [~~in~~] in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of labor, bureau of labor statistics, shall [~~be~~] instead be returned to the commission.

§ 16. Subdivision 6 of section 1340 of the racing, pari-mutuel wagering and breeding law, as added by section 2 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is amended to read as follows:

6. Notwithstanding any provision of law to the contrary, any manufacturer or wholesaler licensed under the alcoholic beverage control law may, as authorized under the alcoholic beverage control law, sell alcoholic beverages to a gaming facility holding a retail license or permit to sell alcoholic beverages for consumption on the premises issued under this section, and any gaming facility holding a retail license or permit to sell alcoholic beverages for consumption on the premises issued under this section may, as authorized under the alcoholic beverage control law, purchase alcoholic beverages from a manufacturer or wholesaler licensed under the alcoholic beverage control law.

§ 17. Paragraph 3 of subdivision a of section 1617-a of the tax law, as amended by section 32 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is amended to read as follows:

(3) at [~~facilities~~] one facility per region established, pursuant to a competitive process to be determined by the state gaming commission within regions one, two, and five of zone two as established by section one thousand three hundred ten of the racing, pari-mutuel wagering and breeding law following local governmental consultation and consideration of market factors including potential revenue impact, anticipated job development and capital investment to be made. The facilities authorized pursuant to this paragraph shall be deemed vendors for all purposes under this article, and need not be operated by licensed thoroughbred or harness racing associations or corporations.

§ 18. Clause (G-1) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as added by section 40 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is amended to read as follows:

(G-1) Notwithstanding clause (A) and (B) of this subparagraph, when a video lottery gaming facility is located in either the county of Nassau or Suffolk and is operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law at a rate of thirty-five percent of the total revenue wagered at the vendor [~~track~~] after payout for prizes pursuant to this chapter;

§ 19. Clause (G-2) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as added by section 42 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, are amended to read as follows:

(G-2) Notwithstanding clause (A) and (B) of this subparagraph, when a

video lottery gaming facility is located in the county of Nassau established pursuant to a competitive process pursuant to paragraph ~~[(5)]~~ five of subdivision a of section ~~[six]~~ one thousand six hundred seven-teen-a of this article at a rate of thirty-five percent of the total  
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revenue wagered at the vendor ~~[track]~~ after payout for prizes pursuant to this chapter;

§ 20. Subdivision 1 of section 1311 of the racing, pari-mutuel wagering and breeding law, as added by section 2 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is amended to read as follows:

1. The commission is authorized to award up to four gaming facility licenses, in regions one, two and five of zone two. The duration of such initial license shall be ten years. The term of renewal shall be determined by the commission. The commission may award a second license to a qualified applicant in no more than a single region. The commission is not empowered to award any license in zone one. No gaming facilities are authorized under this article for the city of New York or any other portion of zone one.

As a condition of licensure, licensees are required to commence gaming operations no ~~[less]~~ more than twenty-four months following license award. No additional licenses may be awarded during the twenty-four month period, nor for an additional sixty months following the end of the twenty-four month period. Should the state legislatively authorize additional gaming facility licenses within these periods, licensees shall have the right to recover the license fee paid pursuant to section one thousand three hundred six of this article.

This right shall be incorporated into the license itself, vest upon the opening of a gaming facility in zone one or in the same region as the licensee and entitle the holder of such license to bring an action in the court of claims to recover the license fee paid pursuant to section one thousand three hundred fifteen of this article in the event that any gaming facility license in excess of the number authorized by this section as of the effective date of this section is awarded within seven years from the date that the initial gaming facility license is awarded. This right to recover any such fee shall be proportionate to the length of the respective period that is still remaining upon the vesting of such right.

Additionally, the right to bring an action in the court of claims to recover the fee paid to the state on the twenty-fourth day of September, two thousand ten, by the operator of a video lottery gaming facility in a city of more than one million shall vest with such operator upon the opening of any gaming facility licensed by the commission in zone one within seven years from the date that the initial gaming facility license is awarded; provided however that the amount recoverable shall be limited to the pro rata amount of the time remaining until the end of the seven year exclusivity period, proportionate to the period of time between the date of opening of the video lottery facility until the conclusion of the seven year period.

§ 21. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, takes effect.

The Legislature of the STATE OF NEW YORK **SS:**

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

DEAN G. SKELOS  
**Temporary President of the Senate**

SHELDON SILVER  
**Speaker of the Assembly**



**STATE OF NEW YORK**  
**STATE BOARD OF ELECTIONS**

**FORM OF SUBMISSION OF PROPOSAL NUMBER ONE, AN AMENDMENT**

Authorizing Casino Gaming

The proposed amendment to section 9 of article 1 of the Constitution would allow the Legislature to authorize up to seven casinos in New York State for the legislated purposes of promoting job growth, increasing aid to schools, and permitting local governments to lower property taxes through revenues generated. Shall the amendment be approved?

**ABSTRACT OF PROPOSAL NUMBER ONE, AN AMENDMENT**

The purpose of the proposed amendment to section 9 of article 1 of the Constitution is to allow the Legislature to authorize and regulate up to seven casinos for the legislated purposes of promoting job growth, increasing aid to schools, and permitting local governments to lower property taxes through revenues generated.

**TEXT OF PROPOSAL NUMBER ONE, AN AMENDMENT**

**CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY**

proposing an amendment to subdivision 1 of section 9 of article 1 of the constitution, in relation to casino gambling in the state

Section 1. Resolved (if the Senate concur), That subdivision 1 of section 9 of article 1 of the constitution be amended to read as follows:

1. No law shall be passed abridging the rights of the people peaceably to assemble and to petition the government, or any department thereof; nor shall any divorce be granted otherwise than by due judicial proceedings; except as hereinafter provided, no lottery or the sale of lottery tickets, pool-selling, book-making, or any other kind of gambling, except lotteries operated by the state and the sale of lottery tickets in connection therewith as may be authorized and prescribed by the legislature, the net proceeds of which shall be applied exclusively to or in aid or support of education in this state as the legislature may prescribe, [and] except pari-mutuel betting on horse races as may be prescribed by the legislature and from which the state shall derive a reasonable revenue for the support of government, **and except casino gambling at no more than seven facilities as authorized and prescribed by the legislature** shall

hereafter be authorized or allowed within this state; and the legislature shall pass appropriate laws to prevent offenses against any of the provisions of this section.

§ 2. Resolved (if the Senate concur), That the foregoing amendment be submitted to the people for approval at the general election to be held in the year 2013 in accordance with the provisions of the election law.



**Gaming Facility  
Location Board**