



TESTIMONY

**Presented to: The House Gaming Oversight Committee and
The Senate Committee on Community, Economic & Recreational
Development**

May 17, 2016

Chairmen Payne and Kotik, Chairs Ward and Farnese, members of the respective Committees, on behalf of all 12 of Pennsylvania’s casinos, we thank you for holding today’s joint hearing and for the opportunity to address you on this issue of great concern. Our appreciation of this forum and your efforts is heightened by the process which has brought us to this day.

On March 31, 2016, we were collectively blindsided when we were advised by the Department of Revenue (“DOR” or “Revenue”) that, starting this July, the regulatory cost assessment we pay would increase by 33%. The notice received was perfunctory. The explanation accompanying this more than \$18.5 million increase in regulatory costs was exceedingly minimalist – consisting of less than ten (10) words. We received no financial data identifying the regulatory costs at issue, much less justifying the substantial and unanticipated increases. We received no explanation of why this substantial increase was needed over and above the already enhanced funding being received due to increased Gross Terminal Revenue

statewide. Revenue depicted this increase as a done deal, failing to acknowledge that, in fact, the matter of establishing the appropriate regulatory cost levels for the state's gaming industry and the amount of the appropriations for each of the affected agencies is and remains a determination to be made by the General Assembly.

Herein lies, perhaps, the most disappointing breakdown in this process. Revenue's March 31st notice was issued *after* the appropriations committee hearings for the Pennsylvania Gaming Control Board ("PGCB" or the "Board"), DOR, the Office of Attorney General ("OAG") and the Pennsylvania State Police ("PSP"), all of which receive funding through accounts we maintain pursuant to Section 1401 of the Race Horse Development and Gaming Act ("Gaming Act"). Indeed, at no time prior to receipt of Revenue's notice were we even afforded the courtesy of being provided a copy of the budget requests made by these agencies.

The 33% regulatory cost increase that Revenue is attempting to foist upon our businesses is unplanned, not included in our operational budgets, and will wreak havoc on our financial projections and related financial obligations. Many of you who have owned your own businesses surely can understand the challenge of absorbing an unanticipated, major spike in costs. We already operate under one of the highest tax rates of any gaming jurisdiction in the nation. This significant increase in our regulatory cost assessment will further undermine our ability to market our casinos, reinvest in our customers and maintain and reinvest in our properties. Moreover, the increase will weaken our competitive position in the face of ever-increasing out-of-state competition. The combined effect of these impacts is to suppress the earning potential of our operations and our ability to generate tax revenue for the Commonwealth.

We urge you and your legislative colleagues not to let that happen – and, instead, to slow this process down, allow for a comprehensive review of the costs, and then work collaboratively with the industry to address adjustments in the 1401 Accounts, should any be necessary.

Before such steps can be achieved, however, we all need to take several steps back. We respectfully submit that serious questions exist about both the propriety of previously incurred and anticipated regulatory costs and the need for such a dramatic increase in the appropriations of the 1401 Account agencies. Does anyone think it reasonable that the funding demanded by the 1401 Account agencies is proposed to rise by 33% in the next fiscal year? Collectively, we know from our experience in the industry that Pennsylvania has one of the highest regulatory costs of any gaming jurisdiction. Our experience was confirmed by the report prepared by Econsult Solutions for the Legislative Budget and Finance Committee entitled, *The Current Condition and Future Viability of Casino Gaming in Pennsylvania*. See Report at pp. 107-121. Notably, if the proposed 2016-17 budgets for the 1401 Account agencies are approved, Pennsylvania's regulatory costs will have more than doubled since the advent of gaming.

A careful examination of these regulatory cost levels is required before any further increases are implemented. The need for such an examination is particularly acute considering that dramatic cost increases continue to occur despite the fact that, with the maturing of the Commonwealth's gaming industry, the regulatory activity and personnel levels of these agencies has (and/or should have) declined. Questions are also prompted by what appear to be outliers in certain cost centers. Presumably, as the agency charged with the general oversight of gaming in Pennsylvania, the PGCB should incur, by far, the greatest amount of regulatory costs. Yet, based on the 2016-17 budget proposals, the PSP – which has seen an increase in its costs of more than 300% over the past decade – would be nearly comparable to the PGCB in costs.

In addition to the level of regulatory costs burdening the industry, an examination should be conducted into the propriety of those costs and the functions driving them under the Gaming Act. Under Section 1402.1(a) of the Gaming Act, costs funded through our 1401 Accounts must be “**necessary**” to administering the Act. 4 Pa.C.S. § 1402.1(a). This is consistent with the Gaming Act’s requirement (and the well-established principle of regulatory cost assessment) that costs and expenses passed on to casino operators must be both actual and reasonable. *See* 4 Pa.C.S. § 1202.2(a). The Gaming Act mandates that these “necessary” costs be identified and substantiated by the PGCB, DOR, OAG and PSP in *itemized budgets*. 4 Pa.C.S. § 1402.1(a). Yet, the budget requests provided by the agencies and obtained by us after receipt of Revenue’s new assessment pronouncement include inadequate itemization. Further, as a healthy check and balance on regulatory costs, the General Assembly charged the Board with preparing and submitting to it “analyses” of and “recommendations” regarding the agencies’ itemized budgets. *Id.* We are unaware of the Board addressing its analyses and recommendations at any of its public meetings, and have never seen any reports or documents reflecting the same.

In addition to this important role vested with the Board, we respectfully submit that a full review and audit of these regulatory costs should be conducted by the Auditor General. The Auditor General previously conducted an audit of another restricted fund under the Gaming Act, the Race Horse Development Fund established under Section 1405. Significantly, the Auditor General’s review uncovered numerous instances in which the Department of Agriculture was misapplying the Fund to pay for costs associated with ineligible, and therefore inappropriate, agency functions. A similar audit is needed here.

In order to help facilitate the necessary review of these matters, we submitted correspondence to Revenue on April 28th that requested information and data to substantiate the

increases. We have yet to receive any response. In addition, we have submitted formal Right to Know Law requests to each of the 1401 Account agencies, but have not yet received any responsive documents. Ultimately, a full and fair review of the announced regulatory cost increases and these related issues requires more than our self-help efforts. As such, we suggest and urge the following course of action:

- Maintain the Status Quo for Now – For this year, the General Assembly should preserve the status quo and appropriate funding for the 1401 Account agencies that can be accommodated at the existing 1.5% assessment;
- Comply with Section 1402.1 of the Gaming Act – Itemized budgets should be submitted by the 1401 Account agencies, and the PGCB should conduct the required analyses and publicly report on those analyses and its recommendations related to the itemized budgets;
- Auditor General Review – The Auditor General should conduct a full audit of the subject agencies’ costs to ensure that those costs are necessary for the administration of the Act and appropriate for funding via the 1401 Accounts; and
- Collaboration – Once the proper reviews have been conducted, if a need for an increase in the regulatory cost assessment exists, the various stakeholders will collaborate to develop appropriate solutions.

Thank you, once again, for holding today’s hearing and taking up this important issue that will have a direct impact on the health of our industry and the Commonwealth’s 55% stake in it.