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EMBARGOED MATERIAL

Testimony of

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Representing Sands Bethworks Gaming, LLC

Senate of Pennsylvania
Committee on Community, Economic and Recreational Development
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I. Introduction

On behalf of Las Vegas Sands Corp. and Sands Bethworks Gaming, we are pleased to appear before the Committee to provide testimony on this important issue regarding Regulatory Funding and Expense. In a jurisdiction where Gross Terminal Revenue ("GTR") is taxed at up to 55%, the magnitude of regulatory cost and its fair allocation across the industry participants will prove to be a significant factor to the success of gaming in Pennsylvania.

We have reviewed Chairman Decker's letters of January 11, 22, and 29, 2007, describing the Gaming Control Board's (the "Board") plans to assess licensees the budgets approved by the Board for itself, the Department of Revenue (the "Department"), the Pennsylvania State Policy ("SP"), and the Attorney General (the "AG") for regulatory costs ("Regulatory Costs"). We understand that the net operating expenditures budget for Regulatory Costs for fiscal year 2007-08 is $52,600,000; ($3.1 million in licensing fees are anticipated to be applied to reduce the total budget submitted of $55.7 million).

II. Costs Attributable to Specific Licensees

We start with **4 Pa. CSA § 1401(b)** ("Section 1401") , which provides that each licensee is required to deposit $5,000,000 in an account with the State Treasurer not later than two (2) days before operations commence. This deposit amounts to an imprest fund because **4 Pa. CSA § 1401(c)** provides that the licensee must replenish the account on a weekly basis with an amount equal to the deductions from the account as authorized by **4 Pa. CSA § 1402**. In turn, **4 Pa. CSA § 1402(a)** ("Section 1402") authorizes the Department to determine the appropriate assessments for each licensee and to determine the costs to be assessed against each account under 1401 and to transfer to the appropriate agency the following costs upon appropriation by the General Assembly: (1) costs incurred by the Department attributable to a specific licensee, (2) the other costs and expenses of the Department within the budget approved by the Board, (3) sums necessary to repay loans from the general fund to the Department in carrying out its responsibilities including the acquisition of the central computer, (4) the costs and expenses of the SP and the AG and not otherwise reimbursed to them and in accordance with an approved budget, (5) sums necessary to repay loans to the SP from the general fund, (6) the costs and expenses of the Board based on the budget of the Board approved by the Board, and (7) sums necessary to repay loans from the general fund to the Board.

Sands Bethworks has paid approximately $600,000 in application fees and investigative costs including approximately $500,000 in investigative fees.

The legislative scheme is consistent in requiring each licensee to pay for the cost of its own investigations and its own Regulatory Costs. Section 1402(a)(1) focuses on reimbursement of department specific costs for a licensee; only then do the remaining provisions of Section 1402 permit the recovery of common costs of regulation that cannot be attributable to an individual licensee. Section 1402, entitled *Gross Terminal Revenue Deductions*, envisions the assessment of Regulatory Cost beginning only upon the commencement of the licensees' revenue generation.

III. License Fees Should Fund the Regulatory Effort

The Gaming Act contemplates that the fees from licensees, applicant's and permitees would fund the operation of the Board. **4 Pa CSA § 1208**. In this section, the Board is empowered with the power and duty to levy and collect fees to "fund the operations of the Board." **Id.** The fees shall be deposited into the State Gaming Fund, as established under Section 1403 and "distributed to the Board upon appropriations by the General Assembly." Id.

It is important to note that these licensing fees expressly include the $50 million assessed under **4 Pa CSA § 1209** ("Section 1209"); the Section 1209 $50 million license fee is to be deposited into the State Gaming Fund. Reading Section 1209 and Section 1208 together reveals the legislative mandate under 1208 to fund operations for the Board through the use of licensing fees extends to the $50 million payments made by each licensee. The money could be distributed to the Board, upon appropriation by the General Assembly. Although the Board and Department of Revenue focus solely on payments to be made from the 1401 accounts (now required under amended Section 1402 to be subject to appropriations by the General Assembly), the legislative grant of authority clearly anticipates that money placed in the State Gaming Fund should be available through the appropriation process to be distributed to the Board and the other agencies for reimbursements.

IV. Allocation of the General Regulatory Costs

We think that several conclusions follow from the statutes already analyzed. Until just prior to the commencement of operations, a licensee is not required to fund any Regulatory Costs that are not specific to the investigation of its application. After it commences operations and at the time all licensees are in operation, a licensee may be assessed its appropriate share of costs to establish the system of regulation such as loans to the Department from the general fund for its share of the central computer system. **4 Pa. CSA § 1901.1**. However, we see nothing in Section 1402 that would authorize the assessment to a licensee of general staff costs not allocable to its investigation. The recent suggestion that the deductions from open facilities' Section 1401 accounts will be "treated similarly to the existing $36.1 million General Fund Loan" has no foundation in the legislative or regulatory structure. Non-operating licensees have no legal obligation to reimburse regulatory cost deductions made from another licensees' Section 1401 accounts.

A. General Regulatory Costs Incurred Before a Licensee Opens Should Not be Assessed to that Licensee.

With these conclusions in mind, we offer these observations. First, we are concerned that the "true up" may be an indirect method to do what Section 1402 does not authorize: to allocate to licensees general Regulatory Costs incurred for the general operation of the various agencies for periods of time when the licensee is not in operation. Second, while we do not believe that such a retroactive assessment of general Regulatory Costs is authorized by Section 1402, we think it is unfair to allocate such costs to licensees attributable to periods of time when they are not open. Otherwise, the licensees that are not open would wind up bearing general Regulatory Costs when they are earning no revenue with the result that the general Regulatory Costs would be shifted from licensees that are open and earning revenue to those that are not open and nor earning revenue.

We think that there is a just solution to whatever shortfall there may be between the amount of the general Regulatory Costs and what may be fair to assess to the initial licensees. We note in Chairman Decker's letter of January 22, 2007 that the Commonwealth has enjoyed just since November 14, 2006 the receipt of $173,500,000 in license fees, taxes and other assessments. The license fee for each licensee is $50,000,000 so there are ample funds available to the Commonwealth to cover an initial general Regulatory Costs shortfall without unduly burdening initial licensees with excessive assessments for Regulatory Costs and without shifting to the other licensees the Regulatory Costs attributable to periods before they commence operations.

B. There is no Statutory or Equitable Support for Regulatory Cost Payments Based on a Pro Rata Share of Gross Terminal Revenue.

We are more alarmed by the suggestion that once a stabilized year is achieved when all 11 licensees are operating that the general Regulatory Costs would be paid as a percentage of gross terminal revenue ("GTR"). We see no basis in the Act or in fairness to assess a larger proportion of the general Regulatory Costs to more successful licensees especially because those more successful licensees would be realizing the reward of better business acumen and larger investments.

Section 1402 originally authorized deductions for appropriate assessments by the Department for recovery of certain costs. It was modified, and amended Section 1402 provides the Department with the authority to determine the deductions but to obtain them through the appropriation process.

Each licensee has already been assessed the costs specifically attributable to its own investigation and operations. What is left is the residue of Regulatory Costs that should be shared in common and equally by each licensee. We see no basis for shifting the pro rata share of general Regulatory Costs from one or more licensees to one or more more successful licensees that are generating more GTR because they have invested more money in their operations in order to achieve larger GTR.

In fact, we know of no other major gaming jurisdiction that assesses general regulatory expenses in this way. Jurisdictions such as New Jersey, Missouri, Mississippi, Illinois, Indiana and Louisiana do not burden their licensees with non-allocated regulatory expense assessments based on GTR. ***N.J.A.C. 19:41-9.4; § 313.835 R.S.Mo.; Miss. Code Ann. § 75-76-11; Burns Ind. Code Ann. § 4-33-13-(1-4); § La. R.S. 27:92; 230 ILCS 10/1, et seq.*** Most recover non-allocated regulatory expenses through taxed revenue.

Regulatory cost assessments based on percentage of GTR are, in every way, a tax increase. Section 1209 relating to slot machine license fees, provides that a credit be provided if the tax imposed under Section 1403 is increased at any time during the ten years following initial issuance of the license.

C. Repayment of Gaming Fund Loans.

Section 1901.1, a new provision in Senate Bill 862, mandates that the Board defer assessing slot machine licenses for payments to the Gaming Fund for loans made to the Gaming Fund until all slot machine licenses have been issued and all entities have commenced operation. This statutory authority further requires that the Board adopt a repayment schedule that "assess to each slot machine licensee, costs for the repayment of any such loans in an amount that is proportional to each slot machine licensee's gross terminal revenue."

Section 1901.1 appears to require the Board to institute adjustments that protect the new licensees who have not been operating and generating GTR for the approximately two years during start up from paying more than their fair share of regulatory overhead. The repayment schedule would require a calculation summing all GTR for the "startup period" for each operating licensee. Those longstanding facilities, which have earned more GTR because they were opened earlier, would justly pay a larger amount of the loan repayment than the newcomers.