



August 7, 2014
Meeting Book



**Meeting Agenda
August 7, 2014**

1. Call to Order and Establishment of Quorum
2. Adoption of Minutes, Meeting of May 12, 2014
3. Consideration of Applicant Disqualification
 - a. Florida Acquisition Corp.
4. Rulemaking
 - a. Adoption of Permanent Rules Pertaining to Gaming Facility Request for Application and Related Fees and Hearings
 - b. Extension of Emergency Rulemaking for Rules Pertaining to Gaming Facility Request for Application and Related Fees and Hearings
 - c. Adoption of Permanent Rules Pertaining to the Minimum Capital Investment for a Gaming Facility License That Must be Part of a Request for Application
 - d. Extension of Emergency Rulemaking for Rules Pertaining to the Minimum Capital Investment for a Gaming Facility License That Must be Part of a Request for Application
5. Discussion of Upcoming Events
 - a. Applicant Presentation Event
 - b. Public Comment Events
6. New/Old Business
7. Adjournment

Item 3 a.



MEMORANDUM

To : BOARD MEMBERS
From: Staff
Date : August 4, 2014
Re : Florida Acquisition Corporation

Summary.

[REDACTED]

Discussion. Florida Acquisition Corporation has sought to develop a Region 2 Gaming Facility to be located within the Town of Florida, Montgomery County. By letter dated June 20, 2014, Montgomery County officials requested the Board authorize deferral of payment on \$25 million of the required \$50 million licensing fee and extend the Application deadline by 60 days so Florida Acquisition Corporation could complete its RFA response. County officials requested the same through various media outlets covering the Application process.

Staff surveyed Board members and then issued a written press response stating: "It is simply not feasible or fair to alter any provision of the RFA or make concessions at the request of a bidder. To do so would create an unfair bidding process for every other potential bidder and invalidate the RFA."

Florida Acquisition Corporation acknowledged in its Executive Summary that it required a savings or deferral of \$25 million against the \$50 million License Fee in order for their bid to be feasible. See Florida Acquisition Corporation RFA Response, Executive Summary, p. 6. It also acknowledged the fee reduction sought was not acceptable to the Board or the Commission. Id.

Incomplete Physical Filing

The RFA, at Section IV, B., Official Submission required application materials be provided no later than June 30, 2014 at 4:00 p.m. Eastern Daylight Time. The RFA filing requirements are replicated below. A red font color identifies Florida Acquisition Corporation's responsiveness to each requirement.

1. twenty (20) identical hard copies of its Application including copies of all executed Attachments;

Two (2) copies were received.

2. ten (10) electronic copies of its Application, including copies of all executed Attachments, in PDF format submitted via ten (10) separate USB flash drives;

Two (2) copies were received.

3. ten (10) additional 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;

The submitted Application was nonresponsive to this requirement.

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. 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 and the respective file format;

The submitted Application was nonresponsive to this requirement.

5. 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”;

The submitted Application was nonresponsive to this permissive requirement.

6. an originally executed copy of the Affirmation (Attachment 1 hereof) executed by the Applicant;

A responsive document was received.

7. 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;

The submitted Application was nonresponsive to this requirement.

8. an original executed copy of the Waiver (Attachment 3 to this RFA) executed in counterparts by 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);

The submitted Application was nonresponsive to this requirement.

9. two (2) hard copies of each Background Information Form; and

The submitted Application was nonresponsive to this requirement.

10. two (2) electronic copies of each Background Information Form in PDF format submitted via two (2) separate USB flash drives.

The submitted Application was nonresponsive to this requirement.

In addition, RFA Section III. H., Overview, required each Applicant and its respective Related Parties to submit with its Application a variety of materials necessary for the conduct of an applicant background. These RFA filing requirements are replicated below. A red font color identifies Florida Acquisition Corporation's responsiveness to each requirement.

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; and

The submitted Application was nonresponsive to this requirement.

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.

The submitted Application was nonresponsive to this requirement.

Incomplete responses

While Florida Acquisition Corporation did submit a document as its response to the RFA, in numerous locations the response is qualified with the following language:

Florida Acquisition Corp., Clairvest Group, Inc. and Great Canadian Gaming Corporation will complete this section of the RFA within 60 days of the date at which the New York Gaming Facility Location Board or the New York State Gaming Commission agree with the Applicant on the solution for the challenge of the License Fee ... As soon as the relevant information and or documents are available, they will be submitted to be added to this RFA response . . .



This language appears in association with the following Required Exhibits:

- | | |
|------------------|---|
| Exhibit VI.E. | Table of Ownership |
| Exhibit VI.F. | Organizational Chart |
| Exhibit VI.G. | Names, Addresses and Experience of Directors and Officers |
| Exhibit VI.P. | Organizational Documents |
| Exhibit VIII.A.2 | Applicant Minimum 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 |

Exhibit VIII.A.8	Documentation of Financial Suitability and Responsibility
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.12	Breach of Contract
Exhibit VIII.A.13	Tax Audit
Exhibit VIII.A.14.b	Licenses in Other Jurisdictions, Disciplinary actions brought
Exhibit VIII.A.15.a	Proof of Advancing Objectives
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
Exhibit VIII.B.4	Projected Tax Revenues 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
Exhibit VIII.B.8	Competitive Environment
Exhibit VIII.B.9	Marketing Plans
Exhibit VIII.C.1.b	Description of Land, Assessed Value of Land
Exhibit VIII.C.1.c	Description of Land, Description of Land
Exhibit VIII.C.1.d	Description of Land, Description of Project Site
Exhibit VIII.C.1.e	Description of Land, Geological or Structural Defect in Project Site
Exhibit VIII.C.1.f	Description of Land, Phase I or Phase II Environmental Reports
Exhibit VIII.C.2	Ownership of Land
Exhibit VIII.C.3	Zoning

Exhibit VIII.C.4	Master Plan and Building Program
Exhibit VIII.C.5	Designs and Layouts
Exhibit VIII.C.6	Casino
Exhibit VIII.C.7	Hotel
Exhibit VIII.C.8	Meeting and Convention Facilities
Exhibit VIII.C.9	Entertainment Venues
Exhibit VIII.C.10	Non-Gaming 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
Exhibit VIII.C.15	Dock and Loading
Exhibit VIII.C.16	Physical Plant and Mechanical Systems
Exhibit VIII.C.17	Infrastructure Requirements
Exhibit VIII.C.18	Project Firms
Exhibit VIII.C.19	Construction Budget
Exhibit VIII.C.20	Timeline for Construction
Exhibit VIII.C.21	Construction Jobs
Exhibit VIII.C.22	Gaming Equipment Vendors
Exhibit VIII.D.1	Internal Controls and Security Systems
Exhibit IX.A.1.b	Assessment of Local Support, Other Evidence of Local Support
Exhibit IX.A.2	Local Impacts and Costs
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
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 Resources 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.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



Item 4 a. & b.



MEMORANDUM

To: BOARD MEMBERS

From: Edmund C. Burns, Commission General Counsel

Date: August 4, 2014

Re: Adoption of Proposed Rulemaking for License Fee and Public Hearings and Extension of Emergency Rulemaking (9 NYCRR §§ 600.1 through 601.1)

On March 31, 2014, the Gaming Facility Location Board adopted emergency rules prescribing fee information for gaming facility applicants and to enable the Board to have hearing procedures in place before any potential public hearing occurs. The Board re-adopted the emergency rules on May 12, 2014 and proposed the same rules for permanent adoption. The emergency rules remain effective through August 25, 2014.

The substantive text of the rules has not changed since the emergency adoption on March 31, 2014.

No public comment has been received in regard to the notice of proposed rulemaking and the public comment period has ended. The Board may now consider the rules for permanent adoption. If adopted, the rules would become effective as permanent rules upon publication in the *State Register*, which could occur at the earliest on August 27, 2014. Therefore, the Board should further consider the re-adoption of these rules as emergency rules, in order to prevent the rules from expiring while the effective date of the permanent rules is pending.

The text of the proposed rules as published in the *State Register* upon re-adoption is attached.

attachment

of application for applicants seeking a gaming facility license and the information the applicant must provide. Section 5300.1 sets forth the form of the application including disclosure of identifying information, finance and capital structure of the proposed gaming facility, economic and market analysis, proposed land and design of facility space, assessment of local support and plans to address regional tourism, problem gambling, workforce development and resource management. Section 5300.2 describes the scope of background information the applicant and related parties must provide in three disclosure forms, the Gaming Facility License Application Form, the Multi-Jurisdictional Personal History Disclosure Form and the Multi-Jurisdictional Personal History Disclosure Supplemental Form. Section 5300.3 describes the process by which all applicants for a gaming facility license shall submit fingerprints as part of a background investigation. Section 5300.4 describes the applicant's duty to update its application as necessary, following submission of the application. Section 5300.5 describes the application fee and procedure for refunding a portion of such fee in certain circumstances.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire August 25, 2014.

Text of rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, New York 12301-7500, (518) 388-3407, email: gamingrules@gaming.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

1. **STATUTORY AUTHORITY:** Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") section 104(19) grants authority to the Gaming Commission ("Commission") to promulgate rules and regulations that it deems necessary to carry out its responsibilities. Racing Law section 1305(2) grants rule making authority to the Commission to implement, administer and enforce the provisions of Racing Law Article 13.

Racing Law section 1306(1) and section 1312(1) prescribe that the Gaming Facility Location Board ("Board"), which is established by the Commission, shall issue a request for applications ("RFA") for applicants seeking a license to develop and operate gaming facilities in New York State. On March 31, 2014, the Gaming Facility Location Board issued the RFA.

Racing Law section 1307(2) prescribes that the Commission regulate, among other things, the method and form of the application; the methods, procedures and form for delivery of information concerning an applicant's family, habits, character, associates, criminal record, business activities, and financial affairs; and the procedures for the fingerprinting of an applicant.

2. **LEGISLATIVE OBJECTIVES:** This rule making carries out the legislative objectives of the above-referenced statutes by implementing the requirements of Racing Law section 1307(2).

3. **NEEDS AND BENEFITS:** This rule making is necessary to enable the Board to carry out its statutory duty of issuing the RFA for applicants seeking a license to develop and operate a gaming facility in New York State.

4. **COSTS:**

(a) Costs to the regulated parties for the implementation of and continuing compliance with the rule: Those parties who choose to seek a gaming facility license will bear some costs. There is an application fee of \$1 million that is prescribed by Racing Law section 1316(8) to defray the costs of processing the application and investigating the applicant. The extent of other costs incurred by applicants will depend upon the efforts that they put into completing and submitting the application.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: The rules will impose some costs on the Commission in reviewing gaming facility applications and in issuing licenses, but it is anticipated that the \$1 million application fee paid by each applicant will offset such costs. The rules will not impose any additional costs on local governments.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The cost estimates are based on the Commission's experience regulating racing and gaming activities within the State.

5. **PAPERWORK:** The rules set forth the content of the application for a gaming facility license. The requirements apply only to those parties that choose to seek a gaming facility license.

6. **LOCAL GOVERNMENT:** The rules do not impose any mandatory program, service, duty, or responsibility upon local government because the licensing of gaming facilities is strictly a matter of State law.

7. **DUPLICATION:** The rules do not duplicate, overlap or conflict with any existing State or federal requirements.

8. **ALTERNATIVES:** The Commission is required to create these rules under Racing Law section 1307(2). Therefore, no alternatives were considered.

9. **FEDERAL STANDARDS:** There are no federal standards applicable to the licensing of gaming facilities in New York because such licensing is solely in accordance with New York State law.

10. **COMPLIANCE SCHEDULE:** The Commission anticipates that affected parties will be able to achieve compliance with the rules upon the adoption of the rules, which will occur upon filing.

Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

This rule making will not have any adverse impact on small businesses, local governments, jobs or rural areas. The rules prescribe the method and form of the application for a gaming facility license; the methods, procedures and form for delivery of information concerning an applicant's family, habits, character, associates, criminal record, business activities, and financial affairs; and the procedures for fingerprinting an applicant. It is not expected that any small business or local government will apply for a gaming facility license.

The rules impose no adverse economic impact or reporting, recordkeeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. It is anticipated that the opening of up to four gaming facilities in upstate New York will create new job opportunities. The rules apply uniformly throughout the State to any applicant seeking a license to develop and operate a gaming facility in the State.

The proposal will not adversely impact small businesses, local governments, jobs, or rural areas. It does not require a full Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, or Job Impact Statement.

New York Gaming Facility Location Board

EMERGENCY RULE MAKING

Rules Pertaining to Gaming Facility Request for Application and Related Fees and Related Hearings

I.D. No. GFB-21-14-00008-E

Filing No. 564

Filing Date: 2014-06-27

Effective Date: 2014-06-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Addition of Parts 600 and 601 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 1306(4), (9) and 1319

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: The New York State Gaming Facility Location Board (the "Board") has determined that immediate re-adoption of these rules is necessary for the preservation of the general welfare. On March 31, 2014, the Board, which was established by the New York State Gaming Commission ("Commission"), issued a Request for Applications ("RFA") for applicants seeking a license to develop and operate a gaming facility in New York State pursuant to the Upstate New York Gaming Economic Development Act of 2013, as amended by Chapter 175 of the Laws of 2013 (the "Act"). The Act authorizes four upstate destination gaming resorts to enhance economic development in Upstate New York. The immediate re-adoption of these rules is necessary to prescribe required fee information for applicants that plan to submit an application in response to the RFA, due June 30, 2014 and to enable the Board to have hearing procedures in place before any potential public hearing occurs. Standard rule making procedures would prevent the Board from commencing the fulfillment of its statutory duties.

Subject: Rules pertaining to gaming facility request for application and related fees and related hearings.

Purpose: To facilitate a fair and transparent process for applying for a license to operate a gaming facility.

Text of emergency rule: Subtitle R of Title 9, Executive, of the NYCRR is amended to name such Subtitle "Gaming Facility Location Board" and add new Parts 600 and 601 as follows:

PART 600

PUBLIC HEARINGS

§ 600.1. Public Hearings.

(a) If the New York Gaming Facility Location Board conducts a public hearing, it shall cause the New York State Gaming Commission to post a notice of such hearing on the Gaming Commission's website a reasonable period of time before such hearing.

(b) Any member of the New York Gaming Facility Location Board may preside over a public hearing as chair of the meeting. The conduct of the meeting shall be in the sole and absolute discretion of the chair, who may decide whom to recognize to speak and limit the time allowed to any speaker and the number of speakers. The chair of the meeting may receive written testimony in the discretion of the chair.

PART 601

GAMING FACILITY LICENSE FEES

§ 601.1. Gaming Facility License Fees.

(a) The license fee for a gaming facility license issued by the Gaming Commission pursuant to subdivision 4 of section 1315 of the Racing, Pari-Mutuel Wagering and Breeding Law shall be as follows, unless a gaming facility licensee has agreed to pay an amount in excess of the fees listed below:

(1) In Zone Two, Region One (Counties of Columbia, Delaware, Dutchess, Greene, Orange, Sullivan and Ulster), as such zone and region are defined in section 1310 of the Racing, Pari-Mutuel Wagering and Breeding Law, the following fees will apply to counties as designated below:

(i) \$70,000,000 for a gaming facility in Dutchess or Orange Counties;

(ii) \$50,000,000 for a gaming facility in Columbia, Delaware, Greene, Sullivan or Ulster Counties, if no license is awarded for a gaming facility located in Dutchess or Orange Counties; and

(iii) \$35,000,000 for a gaming facility in Columbia, Delaware, Greene, Sullivan or Ulster Counties, if a license is awarded for a gaming facility located in Dutchess or Orange Counties.

(2) \$50,000,000 in Zone Two, Region Two (Counties of Albany, Fulton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie and Washington), as such zone and region are defined in section 1310 of the Racing, Pari-Mutuel Wagering and Breeding Law;

(3) In Zone Two, Region Five (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)), as such zone and region are defined in section 1310 of the Racing, Pari-Mutuel Wagering and Breeding Law, the following fees will apply to counties as designated below:

(i) \$35,000,000 for a gaming facility in Broome, Chemung, Schuyler, Tioga or Tompkins Counties;

(ii) \$50,000,000 for a gaming facility in Wayne or Seneca Counties; and

(iii) \$20,000,000 for a gaming facility in Broome, Chemung, Schuyler, Tioga or Tompkins Counties, if a license is awarded for a gaming facility located in Wayne or Seneca Counties.

(b) A gaming facility licensee shall pay the required license fee by electronic fund transfer according to directions issued by the Gaming Commission.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. GFB-21-14-00008-P, Issue of May 28, 2014. The emergency rule will expire August 25, 2014.

Text of rule and any required statements and analyses may be obtained from: Corey Callahan, New York State Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, New York 12301-7500, (518) 388-3408, email: sitingrules@gaming.ny.gov

Regulatory Impact Statement

1. **STATUTORY AUTHORITY:** Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") section 1306(1) and section 1312(1) prescribe that the Gaming Facility Location Board ("Board"), which is established by the Gaming Commission ("Commission"), shall issue a request for applications ("RFA") for applicants seeking a license to develop and operate a gaming facility in New York State. On March 31, 2014, the Gaming Facility Location Board issued the RFA.

Racing Law section 1306(4) authorizes the Board to determine a gaming facility license fee to be paid by an applicant.

Racing Law 1306(9) authorizes the Board to promulgate any rules and regulations that it deems necessary to carry out its responsibilities.

Racing Law section 1319 authorizes the Board to conduct hearings concerning the conduct of gaming and applicants for gaming facility licenses.

2. **LEGISLATIVE OBJECTIVES:** This emergency rule making carries

out the legislative objectives of the above referenced statutes by implementing the requirements of Racing Law section 1306(4) and section 1319.

3. **NEEDS AND BENEFITS:** This emergency rule making is necessary to enable the Board to carry out its statutory duty to prescribe the license fee for a gaming facility license issued by the Commission and prescribe public hearing procedures for the Board to follow in the event the Board conducts a public hearing concerning the conduct of gaming and applicants for gaming facility licenses.

4. **COSTS:**

(a) Costs to the regulated parties for the implementation of and continuing compliance with the rules: Those parties who choose to seek a gaming facility license will bear some costs, including the fee for the gaming facility license and the capital investment necessary to construct and operate a gaming facility.

(b) Costs to the regulating agency, the State, and local government: The rules will impose some costs on the Board to review gaming facility license applications and to conduct hearings, where necessary. The Board will rely on Commission staff to assist in these matters and the costs to the Commission are expected to be defrayed by the license fee and the \$1 million application fee that each applicant will pay as required by Racing Law section 1316(8). The rules will not impose any additional costs on local government.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The cost estimates are based on the Commission's experience regulating racing and gaming activities within the State.

5. **PAPERWORK:** The rules are not expected to impose any significant paperwork requirements for gaming facility applicants and licensees.

6. **LOCAL GOVERNMENT:** The rules do not impose any mandatory program, service, duty, or responsibility upon local government because the licensing of gaming facilities is strictly a matter of State law.

7. **DUPLICATION:** The rules do not duplicate, overlap or conflict with any existing State or federal requirements.

8. **ALTERNATIVES:** The Board is required to create these rules under Racing Law section 1306(4) and section 1319. Therefore, no alternatives were considered.

9. **FEDERAL STANDARDS:** There are no federal standards applicable to the licensing of gaming facilities in New York because such licensing is solely in accordance with New York State law.

10. **COMPLIANCE SCHEDULE:** The Board anticipates that affected parties will be able to achieve compliance with the emergency rules upon the adoption of the rules, which will occur upon filing.

Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

This emergency rule making will not have any adverse impact on small businesses, local governments, jobs, or rural areas. The rules prescribe the license fee for a gaming facility license issued by the New York State Gaming Commission and prescribe public hearing procedures that the Gaming Facility Location Board must follow in the event the Gaming Facility Location Board ("Board") conducts a public hearing concerning gaming and applicants for gaming facility licenses. It is not expected that any small business or local government will apply for a gaming facility license. To the extent that a small business or local government might participate in a Board hearing, each would be treated equally with any other participant in such hearing.

The rules impose no adverse economic impact or reporting, recordkeeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. It is anticipated that the opening of up to four gaming facilities in upstate New York will create new job opportunities. The rules apply uniformly throughout the State to any applicant seeking a license to develop and operate a gaming facility in the State.

The rules will not adversely impact small businesses, local governments, jobs, or rural areas. It does not require a full Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, or Job Impact Statement.

Item 4 c. & d.



MEMORANDUM

To: BOARD MEMBERS

From: Edmund C. Burns, Commission General Counsel

Date: August 4, 2014

Re: Adoption of Proposed Rulemaking for Minimum Capital Investment for a Gaming Facility License and Extension of Emergency Rulemaking (9 NYCRR §§ 602.1)

On May 12, 2014, the Gaming Facility Location Board adopted emergency rules prescribing minimum capital investment requirements for gaming facility applicants and proposed the same rules for permanent adoption. The emergency rules remain effective through August 10, 2014.

The text of the rules has not changed since the emergency adoption on May 12, 2014.

No public comment has been received in regard to the notice of proposed rulemaking and the public comment period has ended. The Board may now consider the rules for permanent adoption. If adopted, the rules would become effective as permanent rules upon publication in the *State Register*, which could occur at the earliest on August 27, 2014. Therefore, the Board should further consider re-adoption of these rules as emergency rules, in order to prevent the rules from expiring while the effective date of the permanent rules is pending.

The text of the proposed rules as published in the *State Register* is attached.

attachment

rule will not impose a burdensome set of requirements on entities operating in rural areas.

Costs: Some mortgage businesses in rural areas may choose to pay the increased costs associated with the continuing education requirements and the fees associated with licensing and annual renewal of their MLOs, but are not required to do so. The regulation sets forth the manner in which the background investigation fee, the initial license processing fee and the annual renewal fee are established. There will also be a fee for the processing of fingerprints and fees to cover the cost of third party processing of the application. Fees charged to the industry will be adjusted periodically to cover Department expenses incurred in carrying out its regulatory responsibilities. Costs associated with electronic filing of quarterly employment reports and retaining for six years evidence of completion by MLOs of required continuing education courses are expected to be minimal. The cost of continuing education is estimated to be approximately \$500 every two years. The Department's increased effectiveness in fighting mortgage fraud and predatory lending will lower costs related to litigation and will decrease losses to consumers and the mortgage industry by hundreds of millions of dollars.

Minimizing Adverse Impacts: The industry supported passage of the prior Article 12-E and had substantial opportunity to comment on the specific requirements of this statute and its supporting regulation. In addition, the industry was involved in a dialogue with the Department during rule development.

The revised regulations implement revised Article 12-E of the Banking Law, which in turn closely tracks the provisions of Title V of the federal Housing and Economic Recovery Act of 2008, also known as the S.A.F.E. Mortgage Licensing Act (the "SAFE Act"). Hence, the licensing and regulation of mortgage loan originators in New York now closely tracks the federal standard. If New York did not adopt this standard, the SAFE Act requires that the federal Department of Housing and Urban Development assume the licensing of MLOs in New York State.

Rural Area Participation: Representatives of various entities, including mortgage bankers and brokers conducting business in rural areas and entities that conduct mortgage originating in rural areas, participated in outreach meetings that were conducted during the process of drafting the prior Article 12-E and the implementing regulations. As noted above, the revised statute and regulations closely track the provisions of the federal SAFE Act.

Job Impact Statement

Revised Article 12-E of the Banking Law, effective on July 11, 2009, replaces the prior version of Article 12-E with respect to the licensing and regulation of mortgage loan servicers. This regulation sets forth the application, exemption and approval procedures for licensing registration as a Mortgage Loan Originator (MLO), as well as financial responsibility requirements for individuals engaging in MLO activities. The regulation also provides transition rules for individuals who engaged in MLO activities under the prior version of the article to become licensed under the new statute.

The requirement to comply with the regulations is not expected to have a significant adverse effect on jobs or employment activities within the mortgage loan servicing industry. This is because individuals were already subject to regulation under the prior version of Article 12-E of the Banking Law. New Article 12-E and Part 420 are intended to conform the regulation of MLOs to the requirements of federal law. Absent action by New York to conform this regulation to federal requirements, federal law authorized the Department of Housing and Urban Affairs to take control of the regulation of MLOs in New York State.

As with their predecessors, the new statute and regulations require the use of the internet-based National Mortgage Licensing System and Registry (NMLS), developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses a common on-line application for MLO registration in New York and other participating states. It is believed that any remaining adverse impact would be due primarily to the nature and purpose of the statutory licensing requirement rather than the provisions of the regulations.

Supervisory Procedure 108 relates to the approval by the Superintendent of Financial Services (formerly the Superintendent of Banks) of educational courses and course providers for MLOs. Under revised Article 12-E, this function has been transferred to the NMLS. Moreover, educational requirements have been increased under the new law and regulation by the Superintendent.

New York Gaming Facility Location Board

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rule Pertaining to the Minimum Capital Investment for a Gaming Facility License That Must be Part of a Request for Application

I.D. No. GFB-21-14-00009-EP

Filing No. 399

Filing Date: 2014-05-13

Effective Date: 2014-05-13

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Proposed Action: Addition of Part 602 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 1306(5), 1306(9) and 1315(1)

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: The New York State Gaming Facility Location Board (the "Board") has determined that immediate adoption of this rule is necessary for the preservation of the general welfare. On March 31, 2014, the Board, which was established by the New York State Gaming Commission, issued a Request for Applications ("RFA") for applicants seeking a license to develop and operate a gaming facility in New York State pursuant to the Upstate New York Gaming Economic Development Act of 2013, as amended by Chapter 175 of the Laws of 2013 (the "Act"). The Act authorizes four upstate destination gaming resorts to enhance economic development in Upstate New York. The immediate adoption of this rule is necessary to prescribe the minimum investment information for applicants considering whether or not to submit an application in response to the RFA, which is due to the Board by June 30, 2014. Standard rule making procedures would prevent the Board from commencing the fulfillment of its statutory duties.

Subject: Rule pertaining to the minimum capital investment for a gaming facility license that must be part of a request for application.

Purpose: To facilitate a fair and transparent process for applying for a license to operate a gaming facility.

Text of emergency/proposed rule: Subtitle R of Title 9, Executive, of the NYCRR is amended to add a new Part 602 as follows:

PART 602

CAPITAL INVESTMENT

§ 602.1. Gaming Facility Minimum Capital Investment.

The minimum capital investment for a gaming facility by zone and region shall be:

(a) In Zone Two, Region One (Counties of Columbia, Delaware, Dutchess, Greene, Orange, Sullivan and Ulster), as such zone and region are defined in section 1310 of the Racing, Pari-Mutuel Wagering and Breeding Law:

(1) \$350,000,000 for a gaming facility in Dutchess or Orange Counties;

(2) \$130,000,000 for a gaming facility in Columbia, Delaware, Greene, Sullivan or Ulster Counties, if no license is awarded for a gaming facility located in Dutchess or Orange Counties; and

(3) \$100,000,000 for a gaming facility in Columbia, Delaware, Greene, Sullivan or Ulster Counties, if a license is awarded for a gaming facility located in Dutchess or Orange Counties.

(b) \$135,000,000 in Zone Two, Region Two (Counties of Albany, Fulton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie and Washington), as such zone and region are defined in section 1310 of the Racing, Pari-Mutuel Wagering and Breeding Law.

(c) In Zone Two, Region Five (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)), as such zone and region are defined in section 1310 of the Racing, Pari-Mutuel Wagering and Breeding Law, the following fees will apply to counties as designated below:

(1) \$85,000,000 for a gaming facility in Broome, Chemung, Schuyler, Tioga or Tompkins Counties;

(2) \$135,000,000 for a gaming facility in Wayne or Seneca Counties; and

(3) \$70,000,000 for a gaming facility in Broome, Chemung, Schuyler, Tioga or Tompkins Counties, if a license is awarded for a gaming facility located in Wayne or Seneca Counties.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire August 10, 2014.

Text of rule and any required statements and analyses may be obtained from: Heather McArn, New York State Gaming Commission, 1 Broadway Center, PO Box 7500, Schenectady, New York 12301-7500, (518) 388-3408, email: sitingrules@gaming.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

1. **STATUTORY AUTHORITY:** Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") section 1306(5) and section 1315(1) prescribe that the Gaming Facility Location Board, which is established by the Commission, shall establish the minimum capital investment for an applicant seeking a license to develop and operate a gaming facility in New York State. Racing Law 1306(9) authorizes the Board to promulgate any rules and regulations that it deems necessary to carry out its responsibilities.

2. **LEGISLATIVE OBJECTIVES:** This rule making carries out the legislative objectives of the above referenced statutes by implementing the requirements of Racing Law section 1306(5) and section 1315(1).

3. **NEEDS AND BENEFITS:** This rule making is necessary to enable the Gaming Facility Location Board to carry out its statutory duty to prescribe the minimum capital investment for a gaming facility. The Gaming Facility Location Board released the request for applications ("RFA") on March 31, 2014, and applicants are expected to submit completed applications by June 30, 2014. Promulgation of this rule will provide applicants with the capital investment requirements prior to the application deadline.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with the rule: Those parties who choose to seek a gaming facility license will bear some costs, including the application fee, the fee for the gaming facility license and the capital investment necessary to construct and operate a gaming facility.

(b) Costs to the regulating agency, the State, and local government: The rule will impose some costs on the Board to review gaming facility license applications and to conduct hearings, where necessary. The Board will rely on Gaming Commission staff to assist in these matters and the costs to the Gaming Commission are expected to be defrayed by the license fee and the \$1 million application fee that each applicant will pay as required by Racing Law section 1316(8). The rule will not impose any additional costs on local government.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The cost estimates are based on the Gaming Commission's experience regulating racing and gaming activities within the State.

5. **PAPERWORK:** The rule is not expected to impose any significant paperwork requirements for gaming facility applicants and licensees.

6. **LOCAL GOVERNMENT:** The rule does not impose any mandatory program, service, duty, or responsibility upon local government because the licensing of gaming facilities is strictly a matter of State law.

7. **DUPLICATION:** The rule does not duplicate, overlap or conflict with any existing State or federal requirements.

8. **ALTERNATIVES:** The Board is required to create this rule under Racing Law sections 1306(5) and 1315(1). Therefore, no alternatives were considered.

9. **FEDERAL STANDARDS:** There are no federal standards applicable to the licensing of gaming facilities in New York because such licensing is solely in accordance with New York State law.

10. **COMPLIANCE SCHEDULE:** The Board anticipates that affected parties will be able to achieve compliance with the rule upon adoption of the rule, which will occur upon filing.

Regulatory Flexibility Analysis

1. **EFFECT OF THE RULE:** The rule will not affect small businesses or local governments because the rule prescribes the minimum capital investment for a gaming facility. It is not expected that any small business or local government will apply for a gaming facility license.

2. **COMPLIANCE REQUIREMENTS:** The rule will not impose any compliance requirements on small business or local governments.

3. **PROFESSIONAL SERVICES:** The rule will not require small businesses or local governments to obtain professional services.

4. **COMPLIANCE COSTS:** The rule will not impose any compliance costs on small businesses or local governments.

5. **ECONOMIC AND TECHNOLOGICAL FEASIBILITY:** The rule will not impose any technological requirements on small businesses or local governments.

6. **MINIMIZING ADVERSE IMPACT:** The rule will not have an adverse economic impact on small businesses or local governments.

7. **SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:** This rule is adopted on an emergency basis and is incorporated in the Request for Applications issued on March 31, 2014 by the Gaming Facility Location Board established by the Commission. Therefore, the rule goes into effect upon filing.

Rural Area Flexibility Analysis

A rural flexibility analysis is not attached because the rule does not impose any adverse impact or reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. The rule applies uniformly throughout the State to any applicant seeking a license to develop and operate a gaming facility in New York State.

Job Impact Statement

The Board has no reason to believe that this rule will have any adverse impact on any jobs or employment opportunities. The rule prescribes the minimum capital investment for a gaming facility. It is anticipated that the opening of up to four gaming facilities in upstate New York will create new job opportunities. Therefore, the rule will not impact jobs and employment and a full Job Impact Statement is not necessary.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rules Pertaining to Gaming Facility Request for Application and Related Fees and Hearings

I.D. No. GFB-21-14-00008-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Addition of Parts 600 and 601 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 1306(4), 1306(9) and 1319

Subject: Rules pertaining to gaming facility request for application and related fees and hearings.

Purpose: To facilitate a fair and transparent process for applying for a license to operate a gaming facility.

Text of proposed rule: Subtitle R of Title 9, Executive, of the NYCRR is amended to name such Subtitle "Gaming Facility Location Board" and add new Parts 600 and 601 as follows:

PART 600

PUBLIC HEARINGS

§ 600.1. Public Hearings.

(a) If the New York Gaming Facility Location Board conducts a public hearing, it shall cause the New York State Gaming Commission to post a notice of such hearing on the Gaming Commission's website a reasonable period of time before such hearing.

(b) Any member of the New York Gaming Facility Location Board may preside over a public hearing as chair of the meeting. The conduct of the meeting shall be in the sole and absolute discretion of the chair, who may decide whom to recognize to speak and limit the time allowed to any speaker and the number of speakers. The chair of the meeting may receive written testimony in the discretion of the chair.

PART 601

GAMING FACILITY LICENSE FEES

§ 601.1. Gaming Facility License Fees.

(a) The license fee for a gaming facility license issued by the Gaming Commission pursuant to subdivision 4 of section 1315 of the Racing, Pari-Mutuel Wagering and Breeding Law shall be as follows, unless a gaming facility licensee has agreed to pay an amount in excess of the fees listed below:

(1) In Zone Two, Region One (Counties of Columbia, Delaware, Dutchess, Greene, Orange, Sullivan and Ulster), as such zone and region are defined in section 1310 of the Racing, Pari-Mutuel Wagering and Breeding Law, the following fees will apply to counties as designated below:

(i) \$70,000,000 for a gaming facility in Dutchess or Orange Counties;

(ii) \$50,000,000 for a gaming facility in Columbia, Delaware, Greene, Sullivan or Ulster Counties, if no license is awarded for a gaming facility located in Dutchess or Orange Counties; and

(iii) \$35,000,000 for a gaming facility in Columbia, Delaware, Greene, Sullivan or Ulster Counties, if a license is awarded for a gaming facility located in Dutchess or Orange Counties.