

## **SECTION I.**

### **INTRODUCTION**

## **A. THE NEW YORK STATE TASK FORCE ON CASINO GAMBLING**

### **1. Formation and Charge**

On May 2, 1996, Governor George E. Pataki issued Executive Order No. 36<sup>1</sup> establishing the New York State Task Force on Casino Gambling. The Governor assigned responsibility to the Task Force to assess the potential effects of casino gambling in New York State. The eight member Task Force, appointed by the Governor, includes a private sector chairman, the Chairman of the Racing and Wagering Board, the Secretary of State, the Commissioner of Taxation and Finance, the Commissioner of Parks, Recreation and Historic Preservation, the Commissioner of Criminal Justice Services, the Executive Deputy Commissioner of the Department of Economic Development, and the Executive Director of the Office of Real Property Services.

The Task Force, which was directed to report findings and recommendations no later than August 1, 1996, was charged by the Governor to:

- (1) Assess the economic impact of casino gambling on New York State and its local governments, including an analysis of which regions of the State are best suited for economically viable casinos; the effects of commercial casino gambling operations on Indian gaming; the extent to which casino gambling may help revive tourism in the Catskills and Western New York; and the direct and indirect costs of casino gambling to the State and local governments.
- (2) Analyze various methods of potential direct taxation and fee assessment derived from casino gambling for the State and local governments, including an assessment of the indirect taxes, such as sales and withholding taxes, which might be expected by State and local governments.
- (3) Determine an appropriate system for the State to regulate all aspects of casino licensing approval and operations, and the costs of such regulation.
- (4) Determine the impacts of casino gambling on the State's horse racing industry, Off Track Betting Corporations, and State Lottery.

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<sup>1</sup>Executive Order 36.1, signed July 31, 1996, extended the Task Force so that it might consider the 1996 prevalence study of the New York Council on Problem Gambling, Inc. as well as conduct further research on Indian gambling.

- (5) Evaluate the number and types of direct, on-site and off-site, permanent employment which would be generated by casino gambling in the State.
- (6) Assess the potential impact of casino gambling on peripheral businesses where casinos are located, and an assessment of gambling casinos on the costs of doing businesses in these communities.
- (7) Evaluate the impact of casino gambling on crime within the local communities where casinos are located.
- (8) Assess the effect of casino gambling on the ability of benevolent and religious organizations to fundraise.

## **2. Execution of Duties**

To accomplish its mission, the New York State Task Force on Casino Gambling conducted four public hearings, two in Albany, one in New York City and another in Buffalo. To ensure the greatest response to the hearings, the Task Force sent out approximately 10,000 public hearing notices to interested parties. Appearance at a Task Force hearing was not a necessity for an individual to provide input. All writings, letters, information, opinions or presentations received by the Task Force were copied and distributed to all Task Force members. In addition to the information derived from either the hearings or provided by interested parties, members of the Task Force and their staffs conducted extensive primary and secondary research, utilizing the assistance, resources, data and information of New York State departments, agencies and libraries.

## **B. AMENDMENT OF THE STATE CONSTITUTION**

### **1. The Process of Amendment**

For casino gaming to be legalized within New York State a fifth exception to the Constitution's general gambling prohibition would have to be carved out.<sup>2</sup> The Senate and the Assembly would have to pass identical concurrent resolutions in consecutively elected legislatures. This means that between passages, there would have to be an election of all State legislative seats. After the second passage by the Legislature, the measure would go to referendum on the November 1997 ballot. If a simple majority of the State's voters approve, the amendment would become law.

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<sup>2</sup>The legal structure of the State constitutional amendment process may be found within the State Constitution itself at Article XIX, section 1.

## **2. The Particulars of Senate 5557 / Assembly 8356**

On June 29, 1995, the New York State Legislature passed legislation to amend Article I of the Constitution of the State of New York to authorize casino gambling in selected cities and counties of the State, and electronic games of chance and slot machines at selected horse racing tracks under limited conditions.

The proposed amendment would permit the operation of privately owned, land based casinos, subject to county legislative and voter approval, within Greene, Sullivan and Ulster counties; one casino in the cities of Buffalo and Niagara Falls; and one casino in either Saratoga or Warren counties. Limited slot machine and electronic games of chance would also be permitted at horse racing tracks, licensed as of January 1, 1994, subject to local approval, for a maximum of eight hours per day on dates when live racing is conducted and pari-mutuel wagers on these live races are accepted. Such operations would be permitted beginning two hours prior to the first live racing event of the day, and up to two hours after the final racing event of the day. The proposed constitutional amendment specifically excludes the use of slot machines and other gaming devices at horse racing tracks in the City of New York, and in Nassau and Tioga Counties.

The proposed constitutional amendment also specifies that a portion of the revenues produced from casino gambling and gaming devices at horse racing tracks, as determined by the State Legislature, would be applied to programs to promote community development of the locality and the region, the racing and horse breeding industry, services and treatment for persons addicted to gambling, and for the support of State and local government.

Historically, there have been a number of times during the last twenty-five years where the State Legislature considered casino gambling proposals. The most recent occurred subsequent to the opening of casinos in Atlantic City. While many proposals received first passage<sup>3</sup> by the Legislature, no resolutions ever passed a second time and, therefore, the voters of the State have yet to decide the issue.

### **C. NEW YORK STATE AND GAMBLING**

#### **1. Historically<sup>4</sup>**

New York State has a rich history of gambling, or gaming as it was referred to in the 1600s. The first mention of gaming in the laws governing what is presently New York State occurred in 1656. The territory of New Netherland passed the Ordinance of October 26, 1656, to enforce proper observance of the Sabbath. Card-playing, ticktacking, nine pins and playing at bowls were

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<sup>3</sup>In 1972 and 1975 one resolution amending the State Constitution to allow for casino legalization was passed. In 1978 there were three resolutions passed and in 1980 eight such resolutions received first passage.

<sup>4</sup>Main historical source: Lincoln, The Constitutional History of New York State, 1905.

prohibited. The Dutch, who controlled New Netherland, were not as strict as their Puritan neighbors, as the Ordinance did not prohibit gaming on the Sabbath entirely, just during Church hours. The Dutch lost control of New Netherland in 1660 and it was 61 years before gambling was addressed in law again.

The legal structure presently governing gambling began in 1721 when the New York General Assembly, the colonial legislature, passed a law prohibiting unauthorized lotteries. This law also prohibited the offer of commodities or goods as prizes, but allowed monetary prizes. In 1741, the General Assembly passed a law imposing penalties on inn and tavern owners who permitted billiards, truck or shuffleboard on premises. Additionally, apprentices and youths under the age of 21 were not allowed to gamble.

These prohibitions did not stem the tide of gambling on lotteries. Between 1746 and 1774, the General Assembly authorized more than one dozen public lotteries for such diverse causes as fortifying the City of New York, establishing what later became Columbia University, repairing New York City Hall and constructing the Sandy Hook lighthouse. While these public lotteries were legal, there was brisk business in private lotteries as well.

In 1777, William Tryon was appointed as Captain General and Governor-in-Chief of the province of New York by King George III. As was the custom then, the appointment came with a set of instructions. The twenty-first item on the list concerned lotteries. Governor Tryon was directed not to approve any public or private lotteries without the approval of the Royal Court. The King was concerned that lotteries were affecting the spirit of industry and drawing attention from a person's proper calling and occupation.

With Tryon's support, the first comprehensive anti-lottery law passed the General Assembly the following year. The Act condemned lotteries as harmful to trade and encouraging idleness, fraud and impoverishment. Unauthorized lotteries were declared public and common nuisances and severe penalties for violation were imposed.

During the Revolutionary War, the British vigorously used the 1772 law to frustrate patriotic groups that were resorting to lotteries to help fund the rebel cause. In 1783, the State Legislature pardoned all who had been convicted under the anti-lottery laws for offenses committed after July 4, 1776.

New York State's first Constitution was adopted in 1777 without any provisions related to gambling. It was 45 years later, when the Constitution of 1821 was adopted, that the first reference to gambling is noted. Article V, Section 11 specifically stated that:

"No lottery shall hereafter be authorized in this State; and the legislature shall pass laws to prevent the sale of lottery tickets within this state, except in lotteries already provided by law."

Thus, future lotteries were banned, but those in existence were allowed to continue.

The third State Constitution, approved in 1846, amended the lottery language. Instead of prohibiting all lotteries other than those already allowed, the new Constitution completely prohibited all lotteries. It was not until 1894, however, that other forms of gambling were addressed constitutionally. In that year a constitution was approved which created the modern prohibition:

"... nor shall any lottery or the sale of lottery tickets, poolselling, bookmaking, or any other kind of gambling hereafter be authorized or allowed within the state ...".

## **2. Gambling Since the 1894 Constitution**

Since the Constitution's ratification in 1894, there have been four exceptions ratified that afford New Yorkers opportunities for legalized gaming. The exceptions were ratified by State Constitutional amendment in:

- 1939 - pari-mutuel betting on horse racing was authorized;
- 1957 - religious, charitable and certain non-profit groups were authorized to conduct bingo;
- 1966 - the State Lottery for Education amendment was approved; and
- 1975 - the religious, charitable and certain non-profit exception was expanded to include games of chance.

## **3. Indian Gambling in New York State**

Indian casino gambling became an issue in New York State after the passage of the federal Indian Gaming Regulatory Act<sup>5</sup> (IGRA) in 1988. Simply stated, the Act allows federally recognized Indian tribes to petition the Governor of their host state for a compact allowing Class III gaming.<sup>6</sup> A state may not prevent the opening of such commercial Indian facilities if such gaming activity may be lawfully conducted elsewhere in the state.<sup>7</sup>

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<sup>5</sup>25 U.S.C. 2701 et seq., Pub. L. 100-497, Oct. 17, 1988; 102 Stat. 2467.

<sup>6</sup>Class III gaming is defined as all gaming that is not social games for prizes of minimal value, traditional forms of Indian gaming engaged in connection with tribal ceremonies or celebrations, the game of chance which is commonly known as bingo, pull-tabs, lotto, punch boards, tip jars and card games that are explicitly authorized by the laws of the state and are played in conformity with those laws and regulations. Class III games are functionally those commonly referred to as casino-style games. See: 25 U.S.C 2703 (Supp. 1996):

<sup>7</sup>For discussion on the federal Indian Gaming Regulatory Act see: Santoni, *The Indian Gaming Regulatory Act: How Did We Get Here? Where Are We Going?*, 26 Creighton L. Rev. 387 (1993); Swanson, *The Reservation Gaming Craze: Casino Gambling Under the Indian Gaming Regulatory Act of 1988*, 15 Hamline L. Rev. 471 (1992).

It is the passage of the 1975 constitutional amendment authorizing religious, charitable and certain non-profit organizations to conduct "Las Vegas" nights that allows federally recognized Indian tribes within New York State the right to negotiate a gaming compact. As stated above, religious, charitable and certain non-profit organizations may apply for a license to conduct games of chance if the municipality where they are located has allowed such to occur. This legal conduct of gaming within New York borders allows federally recognized Indian nations with lands within the State the right to petition the Governor to enter into a compact for gaming establishment purposes.

#### **D. THE TASK FORCE REPORT TO THE GOVERNOR**

This report is organized into five major sections: Introduction; Economic and Sociological Impacts of Casino Gambling in New York State; Indian Gambling; Casino Gambling and Crime; and Regulation of Casino Gambling.