SECTION V.

REGULATION OF CASINO GAMBLING

A. INTRODUCTION

1. Purposes of Governmental Regulation

Rigorous government regulation is a universally accepted premise of legalized casino gambling. Three stated purposes of such regulation are:

> **Consumer Protection**. Government regulation will help assure that casino customers will receive a "square deal."
>
> **Prevention of Organized Crime**. Since casino gambling is perceived as especially susceptible to infiltration by organized crime, the expectation is that close government regulation of gambling reduces this risk.
>
> **State Interest**. Government regulation is usually designed to ensure that the State receive what it intended gambling legalization to provide, whether jobs, investment or tax revenue.[174]

There may be additional stated rationales for government regulation of casino gambling. For example, increased economic development in a particular area is cited as a reason for allowing gambling. To the extent that government regulation increases public confidence and acceptance of gambling, such regulation can also be described as promoting economic development.

2. Major Issues in Casino Regulation

Government regulation of gambling can be divided into several major sub-issues and questions, including but not limited to: **Regulatory Agency Structure and Organization**: What types and structures of government agencies are best suited to regulate casino operations?; **Selection of Casino Operators**: What selection criteria are appropriate in granting or denying permission to engage in the business of casino gambling?; **Degree of Regulation Over Casino Operations and Related Business**: To what extent should the regulating agency exercise supervision over the day-to-day conduct of casino operations, or of related businesses, such as hotels and casino suppliers?; **Costs of Regulation**: What are the true costs of government regulation over casinos, and what are the most efficient and equitable means of defraying those costs?; **Risk of Unreasonable or Excessive Regulation**: Within the context of casino gambling, are concerns over potential regulatory excesses appropriate, and, if so, are there techniques to address those concerns?; **Extent of Authority Vested in the Regulating Agency**: What is the appropriate balance of regulatory power among enabling legislation and rulemaking by the regulatory agency?

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[174]Christine Todd Whitman, National Gaming Summary, May 20, 1996, p. 2.

3. Structure of Regulatory Agencies throughout the United States

To analyze and determine the best structure for casino regulation in New York State, a review of the regulatory structures from each state which allows commercial casino gambling and New York State's regulatory structure as it pertains to Indian gambling was undertaken.

Colorado[175]: After several attempts to legalize casino gambling, the voters of Colorado approved a constitutional amendment in November 1990 which provided for limited gaming in mining towns. Limited gaming means blackjack, poker and slot machines with each game having a maximum single bet of five dollars. The "Limited Gaming Act of 1991," enacted to implement the constitutional referendum, legalized limited gaming in the commercial districts of Black Hawk, Central City and Cripple Creek on October 1, 1991.

The "Limited Gaming Act of 1991" designates the Department of Revenue as the oversight agency for the Division of Gaming and the Colorado Limited Gaming Control Commission. The Division issues licenses, and implements, regulates, and supervises the conduct of limited gaming. The Executive Director of the Department of Revenue appoints the Director of the Division.

The "Act" creates, within the Division, the Colorado Limited Gaming Control Commission. The Governor, subject to confirmation by the Senate, appoints the five member Commission. No more than three members may belong to the same political party and no more than one may be from the same congressional district. The Commission must include a law enforcement officer, an attorney, a certified or public accountant, a business person in a management-level position, and a registered elector who is not employed in a position similar to any other commission member. All members, except for the registered elector, are required to have at least five years experience in their profession. The members' terms are staggered, and none may serve more than two consecutive terms.

The Commission may establish and collect fees from licensees, annually establish the amount of adjusted gross income to be paid by each gaming licensee, adopt rules and regulations, issue and suspend licenses, establish internal control procedures for licenses, conduct on-site inspections, issue subpoenas, conduct hearings, and conduct an ongoing investigations of limited gaming in Colorado.

Illinois[176]: Illinois, like Nevada and New Jersey, formed a gaming board comprised of five members appointed by the Governor, with State Senate consent, which must include an attorney, a certified public accountant and a person with law enforcement experience. The Gaming Board

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[175]Duncan and Ostrander, *Colorado*, International Casino Law, Cabot, Thompson, and Tottenham, eds., Lionel Sawyer and Collins, Reno, Nevada, 2nd Ed. (1995) pp. 9-21; Pascoe and Linquanti, *Colorado Regulatory Agencies*, American Gaming Summit, Gaming USA '95, pp. 23-29 (1995).

[176]Ficaro, *Illinois*, International Casino Law, Cabot, Thompson, and Tottenham, eds., Lionel Sawyer and Collins, Reno, Nevada, 2nd Ed. (1995) pp.23-30; Roth, *Illinois Regulatory Agencies*, American Gaming Summit, Gaming USA '95, pp. 62-65 (1995).

conducts hearings on gaming violations, collects license fees and taxes, promulgates rules and regulations, and assesses fines and penalties, which include license suspensions and revocations. Instead of establishing a separate law enforcement agency, the State of Illinois chose to assign agents of the Departments of Revenue and State Police to the Gaming Board to conduct investigations, ensure an accurate collection of revenues and handle customer complaints. It is required that these agents be aboard the gaming vessels during all times gambling is conducted.

Indiana[177]: Indiana Code Section 4-33 authorizes riverboat gambling in counties contiguous to Lake Michigan, the Ohio River and Pakota Lake. The structure designated to regulate riverboat gambling is the Indiana Gaming Commission. The Commission is composed of seven individuals appointed by the Governor for three year terms, although the initial term of some commissioners has been staggered pursuant to statutory directive. Three members of the Commission must be from counties contiguous to Lake Michigan, three from counties contiguous to the Ohio River, and one member may not be from any of the previously described counties. No more than four members may be affiliated with the same political party. One member of the Commission must be experienced in law enforcement, one must be a certified public accountant, and one must be an attorney. All must have a reasonable knowledge of the practices, procedures and principles of gambling.

Iowa[178]: The Iowa Racing and Gaming Commission, a part of the Iowa Department of Inspections and Appeals, was created to administer to pari-mutuel wagering and excursion boat gambling. The Commission was created by the passing of Iowa Code Chapter 99D. The statute provides that the Commission shall consist of five members appointed by the Governor subject to confirmation by the Senate. The administrator of the Racing and Gaming Commission, appointed by the Commission, may hire other assistants and employees as necessary to carry out the Commission's duties and day-to-day operations. Excursion boat gambling is governed by Iowa Code Chapter 99F and Iowa Administrative Code Section 491. The Iowa Racing and Gaming Commission has the full jurisdiction over and supervises all gambling operations in connection with excursion boats.

Qualified sponsoring organizations may apply to the commission for a license to conduct gambling games on an excursion boat at least ninety days before the first day of the next excursion season as determined by the Commission. The application must identify the excursion boat on which the gambling games are to be authorized and shall specify the exact location at which the excursion boat will be docked.

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[177]Cohen, *Indiana Gaming Regulatory Agencies*, American Gaming Summit, Gaming USA '95, pp. 66-71. (1995).

[178]Creighton, *Iowa*, International Casino Law, Cabot, Thompson, and Tottenham, eds., Lionel Sawyer and Collins, Reno, Nevada, 2nd Ed. (1995) pp. 30-35; Longnecker and Thein, *Iowa Regulatory Agencies*, American Gaming Summit, Gaming USA '95, pp. 73-79. (1995).

Louisiana[179]: Louisiana is unique in that the regulatory structure for casino gambling consists of both an entity for riverboats and one for a now-defunct land based casino. The Louisiana Economic Development and Gaming Corporation had the responsibility for the regulation of the single land based casino, which was to be located in New Orleans. The Louisiana Riverboat Gaming Commission is primarily responsible for the regulation of matters relating to riverboats, namely: the design of the riverboats, procedures for negotiable instrument transactions, the hearing of appeals relating to the granting, suspension, revocation or renewal of licenses, permits and applications for licenses or permits granted by the Louisiana State Police, Riverboat Gaming Division. The Gaming Division of the Louisiana Attorney General's office acts as counsel to the Riverboat Gaming Commission and also renders representation in matters relating to the lottery, charitable gaming and Indian Gaming. The Louisiana State Police, Riverboat Gaming Division is primarily responsible for the investigation of applicant qualifications, to issue, deny or restrict licenses or permits, to conduct continuing reviews of gaming activities, and to ensure the continuing suitability of licensees and permit holders.

Missouri[180]: Riverboat gambling in Missouri is subject to the jurisdiction of the Missouri Gaming Commission, a five member panel appointed by the Governor. The Commission also has jurisdiction over both bingo and horseracing operations throughout the state. The Commission has the following powers: the Commission can investigate applicants, select among competing applicants, license operators, distributors and manufacturers, establish fees for licenses, adopt standards under which gaming operations may be held, adopts standards for facilities offering gaming, regulate the wagering structure, including providing a maximum loss of $500 per player per gambling excursion, inspect gambling facilities, take appropriate disciplinary and / or legal action against licensees and employees for violations of law or regulations, require operators or licensees to file annual balance sheets and profit and loss statements, including a list of stockholders and other persons having equity or beneficial interests in gaming operations, issue subpoenas and subpoenas duces tecum, and administer oaths, assess administrative penalties and revoke or suspend licenses, ensure that games are conducted fairly, require operations to use cashless wagering systems, and determine which authorized games will be allowed on each boat.

Mississippi[181]: Following Iowa and Illinois, effective April 1, 1990, the state legislature authorized gaming on boats on the Mississippi River and its navigable tributaries and in Oxbow

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[179]Buchler, Credo, Buchler and Raymond, *Louisiana*, International Casino Law, Cabot, Thompson, and Tottenham, eds., Lionel Sawyer and Collins, Reno, Nevada, 2nd Ed. (1995) pp. 37-43; LeBlanc, *Louisiana Regulatory Agencies*, American Gaming Summit, Gaming USA '95, pp. 98-101 (1995).

[180]Maxwell, *Missouri* , International Casino Law, Cabot, Thompson, and Tottenham, eds., Lionel Sawyer and Collins, Reno, Nevada, 2nd Ed. (1995) pp. 83 - 86; Maxwell, *Missouri Regulatory Agencies*, American Gaming Summit, Gaming USA '95, pp. 147-150 (1995).

[181]Shepherd and Netz, *Mississippi*, International Casino Law, Cabot, Thompson, and Tottenham, eds., Lionel Sawyer and Collins, Reno, Nevada, 2nd Ed. (1995) pp. 65 - 82; Shepherd and Netz, *Mississippi Regulatory Agencies*, American Gaming Summit, Gaming USA '95, (1995) pp. 142-146.

Lakes in counties bordering the River and in the waters of the Mississippi Sound off three Mississippi Gulf Coast counties. A second, more comprehensive act passed during a special session of the state legislature in 1990. This act established a regulatory framework and taxing mechanism for casino gambling on the riverboats and cruise ships.

The state legislature delegated all license and regulation authority to the Mississippi Gaming Commission. The Commission, which conducts monthly meetings, consists of three members appointed by the governor on the advice and consent of the State Senate. Although the members hold staggered four year terms, no member is allowed to serve more than ten total years. The three part-time members of the Commission are responsible for licensing, administering discipline to licensees, and adopting regulations. A full-time Executive Director administers the gaming laws and regulations, and makes recommendations on licensing and other matters to the Commission. Three divisions report to the executive director: the enforcement division, the investigations division, and the bingo division. The Executive Director hires the necessary staff; however, the Attorney General, who advises the Commission and represents it in lawsuits, approves the hiring of legal staff.

The Commission adopts rules and regulations consistent with the gaming laws. Among other subjects, the rules may provide for the forms and procedures used to apply for licenses, procedures for all hearings, payment of investigative costs of applicants, permitted games, the size of the gaming area on each ship or vessel, and procedures for issuing credit and collecting debt.

Local Governments cannot issue licenses, but do have a limited ability to regulate gambling. The Mississippi Attorney General has opined that a local government can adopt zoning ordinances restricting gaming to certain areas within its city or county limits. However, a local government may not prohibit gaming completely.[182]

New Jersey[183]: The State of New Jersey, following Nevada's lead, formed two separate agencies to regulate casinos in Atlantic City, the Casino Control Commission (the "CCC") and the Division of Gaming Enforcement (the "DGE"). The CCC, a full-time independent State agency, comprised of five members appointed by the Governor, with State Senate consent, acts in a quasi-judicial role by deciding all licensing and regulatory matters and promulgating regulations. The DGE, a branch of the State Attorney General's Office, is the law enforcement agency responsible for conducting background investigations of all potential licensees, prosecuting criminal cases and presenting violations of the gaming regulations before the Commission. The DGE's Director reports directly to the Attorney General.

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[182]Mississippi law does allow the citizens of a city or county to prohibit gaming. If a petition is signed by 20 percent or 1,500 of the registered voters may force a vote on the issue.

[183]Henneghan, *Regulation Redefined - Bradford Smith's War on Red Tape*, Casino Executive, Vol. I, No. 4 (July 1995). Casiello, *New Jersey* , International Casino Law, Cabot, Thompson, and Tottenham, eds., Lionel Sawyer and Collins, Reno, Nevada, 2nd Ed. (1995) pp. 113 -129; Stewart, *New Jersey Regulatory Agencies*, American Gaming Summit, Gaming USA '95, (1995) pp. 184 -192.

Nevada[184]: Casino gambling in Nevada, an industry which flourished after World War II, drew the attention of a United States Senate Committee during the 1950s, which determined that Nevada's poor regulatory oversight had permitted associations between casino owners and members of organized crime. Fearing federal intervention and the threat of an outright ban on casino gambling, the State of Nevada created the State Gaming Control Board in 1955. In 1959, the licensing and regulatory authority originally assigned to the State Tax Commission was turned over to the newly created Nevada Gaming Commission. While the primary enforcement responsibilities remained with the Gaming Control Board, the two agencies initiated thorough licensing and investigation processes intended to discourage and detect the infiltration of undesireables. In the 1960s, a time of enormous economic growth, the Nevada legislature enacted a gaming act which permitted publicly traded companies to own casinos, without subjecting each of their shareholders to the burdens of the licensing processes. Consequently, many publicly traded corporations highly respected in the non-gambling hospitality industry, eagerly ventured into ownership of casinos on Nevada's Las Vegas Strip, thereby improving the gaming industry's respectability.

Today, Nevada's system of licensing and regulation is concurrently administered by the State and local governments. The State Gaming Control Board's three members are charged with the full-time enforcement of the gaming laws and regulations and to provide the Gaming Commission with their recommendations concerning licensing. The Gaming Commission's five part-time members are responsible for licensing, administering discipline to licensees and promulgating regulations. While local governments have concurrent licensing and regulatory authority, they reportedly utilize this authority primarily as a tax generator, rarely exercising their regulatory powers.

Local governments have a concurrent right with the state to regulate the gaming industry. Counties have jurisdiction in those areas outside the incorporated towns and cities. Incorporated towns and cities have jurisdiction within their respective boundaries. The extent of local government involvment varies from jurisdiction to jurisdiction.

New York: The New York system of Indian gambling control and regulation was modeled after the State of Connecticut's system of regulating the Pequot Tribe's Foxwoods operation, wherein the responsibilities of licensing the gaming employees and vendors were delegated to the Connecticut Division of Special Revenue and the criminal enforcement and the conduct of background investigations were delegated to the Connecticut State Police. In New York, the role of the Department of Special Revenue is executed by the Racing and Wagering Board, while the role of the Connecticut State Police is fulfilled by the New York State Police.

The New York State Racing and Wagering Board, which has general jurisdiction over all horse racing and pari-mutuel wagering activities conducted both on-track and off-track, also

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[184]Cabot and Rubinstein, *Nevada* , International Casino Law, Cabot, Thompson, and Tottenham, eds., Lionel Sawyer and Collins, Reno, Nevada, 2nd Ed. (1995) pp. 93 - 112; Faiss and Whittemore, *Nevada Regulatory Agencies*, American Gaming Summit, Gaming USA '95, (1995) pp. 168-180. Lionel Sawyer and Collins, Nevada Gaming Law, 2nd. (1995).

regulates the operation of bingo and games of chance conducted by authorized not-for-profit organizations in the State of New York. Because of this gambling experience, the Board was deemed the most appropriate State agency to regulate Indian gaming by the State negotiators of the Indian gaming compacts. Under the provisions of both the Oneida and Mohawk Class III Gaming Compacts, the Board is responsible for the certification of all gaming employees, and the registration of businesses providing gaming supplies or services and the certification of the principals of those gaming vendors.

The Oneida Indian Gaming Commission is the Native American regulatory counterpart to the Board. The results of Board determination of eligibility for Class I, II or III Gaming Employee Certification are forwarded to the Commission which, in turn, determines whether or not the Commission shall grant a license to the Class I, II or III employee applicant pursuant to the criteria set forth in the Compact.

To preserve the integrity of the gaming operations, the Compacts require that Board inspectors and inspectors employed by the Oneida Indian Gaming Commission maintain a constant presence within each gaming facility, ensuring that the casino operator comply with the Approved Games and the Standards of Operation and Management appendices to each of the Compacts. Another appendix, modeled after New Jersey's regulations, requires casino operators to maintain complete and accurate records of all transactions relating to the revenues and costs of the casino operation, to ensure an effective disclosure of financial information, in the form of a Chart of Accounts. The State Police Oneida Casino Investigation Unit, a Bureau of Criminal Investigation detail of the New York State Police, was formed to provide a constant presence of investigators to ensure public order and safety, effect arrests for criminal offenses, take fingerprints, and conduct background investigations of all potential licensees, the results of which are furnished to the Board for review, action and submission to the Oneida Indian Gaming Commission.

Recommendations

After careful review, the Task Force has determined that New York should adopt a bifurcated regulatory structure, using elements of both the Nevada and New Jersey organizational models. Major structural elements would include: a "Casino Control Bureau," headed by an Executive Director appointed for a fixed term, and a separately appointed and operated, multi-member "Casino Review Commission."

Responsibilities of the Casino Control Bureau would include: processing of casino operating license applications; issuance of occupational licenses and registrations; audit and enforcement activities; and liaison with State Police for background and other investigations.

Responsibilities of the Casino Review Commission would include: approval and issuance of casino operating licenses, following application to the Casino Control Bureau; adjudicating appeals by regulated parties from adverse administrative actions by the Casino Control Bureau, such as: denials of occupational licenses; adjudicating certain proposed actions by the Casino Control

Bureau, revocation or suspension of an operating or occupational license, or imposition of fines, or placement of individuals on an exclusion list; issuance of casino operating regulations proposed by the Casino Control Bureau, by the Casino Review Commission itself or by others; issuance of regulations and standards applicable to the conduct and operations of the Casino Control Bureau, and the Commission; and audit and evaluation of the effectiveness and efficiency of the Casino Control Bureau.

B. COMPARISON OF ISSUE RESOLUTION IN SELECTED JURISDICTIONS

Systems of regulation for New Jersey, Nevada and Illinois were used to analyze particular major issues in casino gambling regulation. Nevada was selected for use as it has the greatest number of tested years. Nevada's structure, incidentally, is considered by many industry operators to be the most business friendly of all regulatory structures. New Jersey was selected because of its history as one of casino gambling's best regulated systems of operation. New Jersey, however, in the past has been a target of much criticism, with industry claims of overregulation. The last jurisdiction selected, Illinois, was so because of widespread reports that it utilized the "best" of both the Nevada and New Jersey models. Where applicable, the New York State - Oneida Indian Nations regulatory structure is also mentioned.

1. Unitary v. Bifurcated Systems

Illinois: Illinois uses a "unitary" structure, with one chain of appointment and chain of command. The Illinois Gaming Board appoints an Administrator as a chief executive. The Department of Revenue employs, upon Gaming Board request, individuals to function as staff. The Gaming Board also has authority to hire employees.

Nevada: Nevada uses a type of bifurcated structure. The Nevada Gaming Commission, is essentially a part-time adjudicatory body, and receives support primarily from an administrative agency known as the "Gaming Control Board." The Nevada Gaming Control Board functions as an administrative, investigative and prosecutorial body for the Commission, and is managed by a three member, full time, professional board.

The members of the Nevada Gaming Control Board are not appointed by the Gaming Commission. Rather, each Nevada Gaming Control Board member is separately appointed by the Governor, for a four year term.

The Control Board membership must include a Certified Public Accountant, and an individual with extensive law enforcement experience. The chair of the Control Board is also its Executive Director. The Nevada Gaming Control Board is empowered, subject to Gaming Commission approval, to hire and retain needed employees.[185]

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[185]Nevada Revised Statutes §§ 463.023 *et seq.*

New Jersey : New Jersey uses yet another form of a bifurcated system. Enabling legislation for the Casino Control Commission establishes an "Executive Secretary," who serves at the pleasure of the Commission, and who is responsible for its administrative affairs. The Commission is expressly empowered to employ other support individuals. (Approximately 300 individuals are employed by the Commission). The Commission is also authorized to enter into contracts for needed professional, technical, and other services.

New Jersey enforcement and investigative matters are, however, handled by the Division of Gaming Enforcement. The "DGE" is not a part of, or under the control of the Casino Control Commission. Rather, the DGE is a unit of the Department of Law and Public Safety. The Division of Gaming Enforcement is headed by an Assistant Attorney General, who, in turn, reports to the Attorney General, an appointee of the Governor of New Jersey.[186]

The allocation of duties between the Casino Control Commission, and the Division of Gaming Enforcement has had problems. There are also risks of duplication of effort and, as a consequence, large staffs in both organizations. Critics of New Jersey's system of regulation consider that some of the duties performed by the CCC and DGE are duplicitive and over-regulative. For instance, both the CCC and DGE generate financial reports on casino applicants for license renewal. After considering that the staff employees for both agencies were performing the same function, financial investigation and report writing responsibilities were assigned solely to the DGE, the agency which had conducted the original license application background. Also, some of the duties performed by the DGE investiagtors, such as jackpot verification at slot machines, could arguably be perceived as the responsibility of the gaming inspectors who are on the floor twenty-four hours per day to monitor the gaming activities.

The New Jersey casino industry has expressed serious concerns about duplication of financial reporting requirements, multiple levels of reviews, and overly diffused decision-making. The 1995 amendments to the New Jersey Casino Control Act included specific provisions to address this issue, but preserved the basic, bifurcated structure.

The regulations governing the operations of both a regulatory agency and a law enforcement department in a successful, bifurcated system of casino control must be clearly defined, relative to duties of the two agencies so as to prevent an overlapping of responsibilities.

2. Pre-Licensing Investigations and Decisions

Illinois: Background investigations are conducted by the Illinois State Police. The Illinois Gaming Board makes the final decision.

Nevada: The Nevada Gaming Control Board conducts pre-licensing investigations of

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[186]New Jersey Revised Statutes 5:12-55.

applicants for casino operating licenses. Field work is done primarily by board agents.[187] Subsequent to the investigation, the Gaming Control Board makes a recommendation to the Gaming Commission. The Gaming Commission makes the final decision.

New Jersey: Although New Jersey State Police perform criminal record checks and fingerprint reviews, pre-licensing background investigations are conducted under the lead of the Division of Gaming Enforcement. Background investigations for casino licensees can require specialized accounting and financial skills to analyze corporate interrelationships, ownership interests, equity positions, etc. In New Jersey, the need for specialized accounting skills was a major factor in the decision to have the Division of Gaming Enforcement, rather than the New Jersey State Police, take the lead role in background investigations. The belief was that such specialized skills were better developed by and within a specialized agency, such as the Division of Gaming Enforcement.

As in Nevada, a recommendation is made by the investigatory body to the adjudicatory body, namely, the Casino Control Commission. Frequently, the Casino Control Commission staff conducts a separate review of the material, and the final decision is made by the Casino Control Commission.

Oneida Nation - Turning Stone: Pre-licensing investigations are performed by the New York State Police. With respect to specialized accounting skills, the New York State Police, has, in contrast to the approach taken by New Jersey, attempted to develop this capability within its own organization.

3. Enforcement and Adjudicatory Mechanisms

Under general principles of administrative law, individuals or businesses subject to significant sanctions, such as license revocation, are usually entitled to a fair hearing by an unbiased decision maker. This due process requirement is often implemented through organizational separation among several functions within an agency or agencies. Those functions include (i) investigation of the matter, or fact gathering, (ii) formal presentation of evidence, and (iii) rendering the final administrative decision. The degree of separation among these functions can vary considerably.

Illinois: Enforcement investigations and recommendations are made by staff of the Illinois Gaming Board itself. The Gaming Board makes the final adjudication.

Nevada: The Nevada Gaming Control Board functions as investigator and prosecutor for license revocations, and civil proceedings based on regulatory violations. The Nevada Gaming

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[187]See, p. 135 Cabot and Schuetz, "An Economic View of the Nevada Gaming Licensing Process" from Gaming and Public Policy: International Perspectives, ed, William R. Eadington and Judy A. Cornelius, Institute for the Study of Gambling and Commercial Gaming, University of Nevada-Reno, 1991, pp.123-155, herein cited as "*Cabot and Schuetz.*"

Commission renders the final decision. In criminal matters, the Nevada Gaming Control Board refers the matter to the District Attorney.

New Jersey: In a license revocation proceeding, or a proceeding based on an alleged violation of gaming regulations, the Division of Gaming Enforcement acts as the prosecutor, and the Casino Control Commission functions as the decision-making body. The Division of Gaming Enforcement, along with the New Jersey Division of Criminal Justice, also has criminal investigative and prosecutorial authority.

Oneida Nation - Turning Stone: The Board may suspend, revoke or deny any application or renewal of a gaming employee certification for any violation of the Compact, or if new information concerning facts arising either prior or since the issuance of an initial certification or renewal is received which would justify denial of the initial certification or renewal. The action of the Board is reveiwable in the State Supreme Court upon petition of the applicant.

4. In-House Surveillance and Monitoring

The presence within a casino of law enforcement or regulatory personnel can serve several distinct functions. Not all of those functions are directly related to the usually stated purposes of casino regulation (prevention of organized crime influence and consumer protection against cheating by the casino). Purposes of an in-casino presence could include: cash accounting audits to assure tax collection; public safety, e.g., protecting a gaming patron from assault by an inebriated fellow patron, or guarding the casino's property against armed robbery; casino protection, e.g., protecting the casino against losses from a card counter and past posting of wagers; consumer protection against "rail birds" who steal gaming chips from unsuspecting players; enforcement of gaming regulations, e.g., assuring that all employees have their work permits; and handling of customer complaints.

Illinois: Illinois State Police, detailed to the Gaming Board, are present on each vessel. They are responsible both for public safety and for gaming regulation enforcement. Land-based counting rooms are also monitored.

Nevada: Nevada does not maintain a constant police presence in each casino.[188]

New Jersey: New Jersey State Police, which are also designated as agents of the Division of Gaming Enforcement, are always present on the casino floor. This presence is primarily for public safety purposes, as distinguished from casino regulation purposes. Staff of the Casino Control Commission staff are also present, primarily to confirm that accounting controls on cash and other receipts are in place.

Oneida Nation - Turning Stone: Racing and Wagering Board inspectors maintain a

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[188]See, Senate Report, p. 59.

constant presence on the casino floor. Their primary responsibility is the detection of gaming regulation violations. New York State Police investigators at the casino perform a public safety, criminal law enforcement function rather than a gaming regulation enforcement function.

C. RELATIONSHIP WITH NON-CASINO GAMBLING REGULATION

An issue of great import regarding the creation of a new entity to regulate and control commercial casino gambling is whether casinos are to be regulated by the same entity which regulates non-casino gambling, e.g., parimutuel racing and lottery? At some point in the future, it may be appropriate to consider consolidation of regulatory functions for all forms of gambling, including lottery, pari-mutuel racing and charity events. However, consolidation should be deferred until a casino industry is relatively well-established. Initially, casino regulatory agencies should be operated independently of other regulatory agencies.

In both Illinois and New Jersey, the Casino Control Bureau and the racing agency are operated as separate regulatory entities. In Nevada, the gaming commission regulates both forms of gambling. However, it should be noted that pari-mutuel racing has a very limited presence in Nevada. Currently, in New York State, the sole Native American casino is regulated by a bureau within the Racing and Wagering Board.

There are arguments for a single agency for all forms of gambling: The overall regulatory goals of consumer protection and avoidance of organized crime infiltration apply equally to pari-mutuel wagering and casino wagering; Institutional expertise and experience gained in regulating pari-mutuel wagering is more easily transferred to the regulation of casino gambling; and there may be opportunities for cost reductions by consolidating certain support facilities and staff.

Nevertheless, several factors strongly favor the Illinois and New Jersey models of separate agencies.

There is at least the perception of a significant economic conflict of interest among New York's racing industry, a New York casino industry, charitable organization gaming, and the state-operated lottery. There is concern that a single regulatory agency will necessarily become involved in both the management and resolution of such conflicts. This involvement may shift resources and focus away from the core principles of casino regulation, which are protecting the casino customer from cheating, avoiding the influence of organized crime, and ensuring that state policies are carried out. Managing the economic relationships among competing industries is better left to express legislative policy decisions or based on open market forces.

Casino operations also present certain major regulatory issues which are not necessarily found in other forms of wagering, including approval of casino operating licensees and the licensing of ancillary businesses. Conversely, other forms of wagering may have aspects unrelated to casino operations. For example, regulation of a state run lottery does not require allocating significant resources to prevent organized crime influence. It is not, therefore, self-evident that the relationships

among the forms of wagering are so clear as to warrant immediate consolidation.

Should the constitutional amendment be approved by the people, the regulation of Native American casinos should be transfered from the Racing and Wagering Board to the commercial Casino Control Bureau. To the greatest feasible extent, the degree of regulatory control over each type of casino should be comparable.

D. LICENSING / SELECTION OF CASINO OPERATORS

Licensing of the casino operator is the cornerstone of the entire casino regulatory system. Certainly, controls on gaming equipment, casino floor employees, and casino vendors are important. However, such controls cannot compensate for a fundamentally flawed casino operator. Although license suspension or revocation are essential enforcement tools, a goal of the initial approval process should be to minimize the risk that such drastic action will ever become necessary.

State statutes use a variety of methods to describe criteria for issuing a license. Major points of distinction among statutes can include: **description of moral fitness or similar concepts**. Some statutes use relatively general terms. Other statutes use more specific criteria, such as enumerated crimes; and **relevance of financial criteria.** Some statutes consider financial criteria primarily as an indicator of financial stability or capacity to pay off gambling winnings. Other statutes emphasize the probability of overall business success of the venture, and advancement of the industry.

1. Moral Fitness Criteria

Illinois: The Illinois Gaming Board is statutorily prohibited from granting a license to an applicant who has been convicted of a felony or any violation of gambling laws. Submission of false application information and revocation of a gambling license in another jurisdiction are also disqualifying grounds. Corporate applicants are automatically disqualified if any officer, director, "managerial employee," or gambling operation manager or employee would be barred, as individual applicants, under the automatic disqualification rules.

For applicants who are not automatically disqualified, the Board is statutorily directed to consider the " . . . character, reputation, experience, and financial integrity . . . " of the applicant. Regulations add, as a requirement, that the applicant "is a person or entity whose background reputation and associations will not result in adverse publicity for the State of Illinois and its gaming industry."[189]

Nevada: The current Nevada statutory formulation is relatively brief. The Gaming Commission must be satisfied that the applicant is:

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[189] 86 Illinois Register 3000.230.

> a person of good character, honesty and, integrity . . . [a person whose] prior activities, criminal record, if any, reputation, habits and associations do not pose a threat to the public interest of this state or the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business and financial arrangements . . . in all other respects qualified . . . consistently with declared policy of the state.

Thus, the Nevada statute effectively vests the Gaming Control Board and the Gaming Commission with broad administrative discretion to make determinations of moral fitness.

Nevada legislation previously used a much more inflexible approach. In 1953, a person convicted of a felony was automatically barred, for five years, from any gaming license. However, commentators note that, "[T]hese fixed guidelines were of questionable utility . . . [T]hese fixed criteria were quickly abandoned in favor of greater administrative discretion . . ."[190]

New Jersey: The applicant must establish its "good character, honesty and integrity." In addition, however, the New Jersey statute lists a wide variety of crimes, for which a conviction is a mandatory disqualification.

Other specified grounds of mandatory disqualification in New Jersey include organized or group criminal activities. One such activity is defined as the "pursuit . . . of economic gain in an occupational manner or context which is in violation of the criminal or civil public policies, ... if such pursuit creates a reasonable belief that the participation of such person in casino operations would be inimical to [legalized gambling]." Other activities are described in such terms as "career offender," or "member of a career offender cartel."[191]

2. Publicly Traded Companies

Many analysts regard the involvement of widely held, publicly traded companies as the single most important factor in raising the levels of public confidence in the modern gaming industry. Widely held, publicly traded entities are subject to well-established and universally accepted forms of regulation, primarily by the federal Securities and Exchange Commission (SEC), where there are comprehensive management and financial disclosure requirements. Backed by an array of civil and criminal penalties, these SEC disclosure requirements subject the business entity's financial structure, personnel composition, and operation to constant and thorough scrutiny by professional auditors, investors and investor groups, industry analysts, financial reporters, and others. All of these observers have a strong vested interest in determining and analyzing truly relevant aspects of a

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[190]Cabot and Schuetz, p. 138.

[191]New Jersey Revised Statutes sections 5:12-84; 5:12-86.

company's operations.

Most observers would conclude that the risk of organized crime domination of a widely held, publicly traded enterprise is virtually non-existent. Therefore, any New York licensing mechanism should provide strong incentives to encourage the involvement of these types of entities in New York. A streamlined license application process would, in no way, limit the power of the Casino Control Bureau to suspend or even revoke a license should future developments or discoveries so warrant.

3. Financial Criteria

All statutory schemes structuring license approval should include consideration of financial criteria for the purpose of determining integrity. For example, the licensing authority needs to be assured that the applicant is not receiving funding from criminal organizations. The license applicant must have an acceptable record of tax compliance. Similarly, regulatory programs require assurances that there will be sufficient funds to fulfill its financial obligations to winners.

4. Economic Criteria

The more difficult policy questions are whether the licensing process should consider such purely economic factors as the expected degree of success of the enterprise, impact of a new license on market concentration or existing licensees, and whether granting a license to a particular applicant will "advance the industry." The prime argument in favor of including such economic evaluation criteria is that the government has a stake in maximizing casino volume, i.e., more volume increases tax revenues. The counter-arguments are that a government regulatory authority should not pick business winners and losers. Furthermore, evaluating prospects for business success, or impact on other casinos, etc., will only distract the Casino Control Bureau from its core regulatory functions of promoting consumer confidence in gambling, avoiding infiltration by organized crime and protecting the government's interest.

Illinois: The Gaming Board is statutorily directed, in its determination to grant or deny a license, to consider "...the highest prospective total revenue to be derived by the State from the conduct of riverboat gambling..." It should be noted that the Illinois statute limits the total number of operating licenses to ten. The requirement to allocate a limited number of licenses affects the analysis significantly, as discussed below.

Nevada: Applicants must provide evidence of adequate working capital to finance opening of the establishment.[192] Nevada regulators do list "business competency" as a license decision criteria. However, one commentator notes "situations where applicants are denied licensure because of incompetency are practically nonexistent." On occasion, Nevada regulators do require an applicant

[192]Nevada Regulations 3.040.

to add staff as a condition of licensure.[193]

Assuming that the casino license process is not intended as a means to protect the investment of casino equity shareholders, the real value of "business competency" as a criteria is questionable. Investors in a casino have a powerful incentive to assure that the casino management is competent. If the casino management is incompetent, the investors stand an excellent chance of losing their money.

New Jersey: An applicant must "establish the likelihood of creation and maintenance of a successful, efficient casino operation." Applicants must also produce a market study, analyzing the effect of their project on existing licensees.[194] Prior to the 1995 amendments, the New Jersey Casino Control Act limited any licensee to a maximum of three casinos. The statute thus expressly incorporated a rigid mechanism to limit expansion by any one licensee. The 1995 amendments replaced this numerical cap with a more flexible approach. Current New Jersey law allows the Control Commission to evaluate the risk of undue market concentration, i.e., a type of monopoly analysis with respect to Atlantic City is allowed.

There does not appear to be any reason for a state's casino regulating agency, intended to prevent organized crime influence and to protect gamblers from cheating by the "house" or others, to become involved in this type of market intervention. Federal legislation, including the Sherman Act Section 2, and the Clayton Act merger provisions, vest the Antitrust Division of the Justice Department and the Federal Trade Commission with substantial powers to intervene if market concentration approaches a monopoly situation. However, requiring that an applicant "establish the likelihood of creation and maintenance of a successful, efficient casino operation," in the nature of the New Jersey statute, is important to protect the State's interest in casino legalization. This criterium could be satisfied through proof of relevant gaming experience.

5. Selection Authority

The authority to issue a casino operating license should reside solely with the Casino Review Commission, regardless of whether only one location or multiple casinos are constitutionally allowed. The Casino Review Commission would also be empowered to promulgate, within legislative parameters, selection criteria and the parameters of the application process. The Casino Control Bureau, assisted by the State Police, would process applications in accordance with standards issued by the Casino Review Commission.

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[193]Cabot and Schuetz, pp. 135, 144.

[194]New Jersey Revised Statutes section 5:12-84.

E. REGULATION OF CASINO OPERATORS

1. Introduction

All observers agree that initial casino operational licensing should be followed by regulatory controls over on-going casino operations. However, equally successful regulatory systems demonstrate a relatively wide range of approaches to operational controls. There is substantial agreement that some operational areas must be subject to relatively intrusive and detailed regulation and supervision. These areas include the conduct of actual gaming operations, in terms of "a square deal," and the audit of cash flow in those gaming operations.

However, in other operational areas, there are significant variations among jurisdictions. Some jurisdictions have effectively exercised a presumption in favor of regulation of almost every aspect of casino operations. Other jurisdictions have decided that, since over-regulation can have serious adverse impacts upon casinos, consumer freedom, ancillary businesses, individuals seeking employment, and net government revenue, a more carefully selective approach to operational regulation is required.

The following are just some of the policy questions posed by operational regulation: With respect to suppliers or vendors, i.e., businesses seeking to supply goods or services to casino operations, what degree of regulatory control is appropriate?; What level or levels of occupational licensing or registration are appropriate for individuals seeking employment within the industry?; and What techniques and methods strike an appropriate balance between the interests of legitimate enterprises, and law-abiding employees, and the critical needs for consumer protection and exclusion of organized crime?

2. Internal Controls

All commentators agree that each licensed casino operator must have a comprehensive and effective system of internal accounting controls. The movement of cash from, for example, the gaming table to the casino count room must be subject to a system which assures that revenue is accurately reported.

There are, however, several appropriate regulatory means by which such a control system is assured. The New Jersey regulatory system sets forth very detailed surveillance and organizational requirements, procedures for removal of slot machine drop buckets, credit approval standards and other casino operational issues. In contrast, Nevada uses an approach based on the "end-result." The casino can develop its own internal control procedures, if the end-result is an operation with adequate controls.

3. Regulation of Gaming Enterprises

For obvious consumer protection reasons, virtually all regulatory systems must exercise close scrutiny over manufacturers, distributors, and servicers of the actual equipment used for gaming. Such equipment includes, for example, slot machines, cards, dice, tables, etc. There is usually a certification system for the equipment.

4. Regulation of Non-Gaming Enterprises

Regulation of suppliers of non-gaming goods and services to casinos varies significantly among jurisdictions. One general approach confines actual licensing to those particular suppliers which are most closely related to the gaming activity itself, but still empower the Casino Control Bureau to effectively exclude any particular vendor through an exclusion list or other control over the casino licensee. An alternative approach subjects virtually all suppliers to direct licensing, and some form of background investigation, on the theory that absent such direct licensing, the risk of organized crime influence is too great.

The following summarizes the extent of regulation by the named jurisdictions for suppliers of non-gaming supplies and services:

Illinois: The Illinois statute empowers, but does not require, the Gaming Board to impose a suppliers license requirement upon vendors of non-gaming equipment and supplies. Gaming Board regulations[195] impose a license requirement upon the following types of vendors: security service suppliers; lessors of the Riverboat or of the dock facilities; a provider of any goods or services where payment is calculated by percentage of the riverboat gaming operation's revenues; junketeers; and any other purveyor . . . as deemed necessary by the Board.

Thus, an Illinois chandler selling diesel fuel for the riverboat on a straight per gallon price would not need any license, or registration, unless the Board expressly so required. The Gaming Board would, however, still have the power, through an exclusion listing, to order a casino licensee not to deal with a particular chandler where there was proof of organized crime influence.

Nevada: Under the Nevada gaming statute, any casino supplier where payment is based on a percentage of gaming revenue must be licensed.[196] Also, if the Casino Control Bureau believes any supplier should not be involved in gaming, the supplier can be declared unsuitable and placed on the exclusion list. However, as a general rule, Nevada does not require non-gaming supplier licensing.

New Jersey: In sharp contrast to both Illinois and Nevada, New Jersey imposes extensive licensing requirements on a very wide range of non-gaming vendors. These requirements apply

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[195] 86 Illinois Regulations 3000.100, 3000.200.

[196] Nevada Revised Statutes section 463.162.

regardless of whether employees of the vendor have access to the premises, and extend to companies which do business only with the hotel operations of a casino hotel. The supplier license requirements are not perfunctory, and include, by regulation, such standards as honesty, integrity, etc., usually associated with the casino licensee itself.

The New Jersey Casino Control Act requires the Control Commission to license non-gaming vendors who do business "on a regular and continuing basis." The New Jersey Act specifically names cartage companies, construction companies, linen suppliers, and others, as examples of such vendors, but does not limit the scope of regulation to those industries named. However, the Act does allow the Control Commission to exempt any particular vendor, or industry group, on the grounds that those vendors are already adequately regulated by other means, or the sales to the casino are insubstantial.

New Jersey Control Commission regulations exempt most vendors who perform less than $75,000 annually with any one casino, and less than $225,000 with all casinos. Those regulations also allow for some degree of waivers granted on a transactional basis.

New York - Oneida Compact: The Oneida Nation Gaming Commission is obliged to identify to the New York State Racing and Wagering Board any non-gaming vendor who supplies goods and services in excess of $50,000. The Board then has the discretion to investigate and exclude that vendor. The exclusion is subject to judicial review.

5. Occupational Licenses

All regulatory systems use some type of licensing or registration system as a condition of employment by a casino, or as a condition of performing work in the casino as, or for, an independent contractor (e.g., a cleaning service). All systems also establish various categories of occupational licensure, according to the relative degree of influence and control over casino operations. The scope of these licensing systems does vary somewhat from jurisdiction to jurisdiction. One jurisdiction, New Jersey, recently reduced the number of individuals subject to occupational licensure by a very large degree.

Illinois: Any person employed at a riverboat gaming operation requires an occupational license. The operation includes land-based support facilities, such as hotels and restaurants, which have common ownership with the gaming operation. There are three categories of occupational licensure: managerial (e.g., casino manager, table games manager, chief of security, etc.); other gaming or security (e.g., dealer); and others (e.g., ship's crew) .

Nevada: All "gaming employees" must be registered by either the Gaming Board or the county. "Gaming employees" include virtually all casino floor employees, as well as accounting personnel. Bartenders, cocktail servers, or others serving or preparing food and beverages are

expressly excluded.[197]

Registration for gaming employees usually involves little more than obtaining a work card, usually at the county level. The county also performs a background investigation and completes some general forms. The Gaming Control Board can revoke, subject to an appeal process, the work card of any individual they feel is unsuitable.

New Jersey: Prior to 1995, all employees of the combination of the casino and hotel were statutorily required to be licensed.[198] (All New Jersey casinos are associated with a hotel). For hotel employees, there was some greater degree of statutory tolerance for rehabilitated felons, and the control commission had the discretion to reduce the amount of information required.[199] Nevertheless, assuming that the actual casino operations had adequate controls limiting access to non-public areas, there was a legitimate question why any person should have been required to obtain prior government approval to make beds.

In 1995, the New Jersey Casino Control Act was amended to eliminate the occupational licensure requirement for hotel employees. It is estimated that this will reduce the total number of occupational licenses by nearly 50 percent.

An additional element of New Jersey 1995 amendments, with respect to occupational licensure, is worth noting. The original New Jersey Casino Control Act imposed ability and experience requirements, in addition to the customary moral fitness criteria, upon occupational licensee applicants. At some point, this requirement was perceived as an unnecessary government intrusion into casino operations. Obviously, a casino licensee already had a strong financial interest in assuring that its employees were qualified and trained to perform their duties. The 1995 amendments to the New Jersey Casino Control Act removed references to ability and experience as occupational license criteria.

New Jersey currently has two categories of casino employee licensing:[200] "key employee" - pit bosses, shift bosses, anyone with purchase order authority in excess of $500 (it should be noted that other regulatory systems use "key employee" to refer only to the highest level managers and officers).; and "regular" - all other casino employees.

New York - Oneida Compact: The New York - Oneida gaming compact states that no peron shall commence or continue employment in any capacity requiring access to the casino floor unless they have been certified by the New York State Racing and Wagering Board and licensed by

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[197]Nevada Revised Statutes section 463.0157.

[198]New Jersey Revised Statutes section 5:12-91.

[199]New Jersey Regulations 19:41-1.3.

[200]Id.

the Oneida Indian Nation Gaming Commission. As a condition of certification, each applicant is required to submit to the Board photographs, Division of Criminal Justice Services and Federal Bureau of Investigation fingerprint cards and an application for certification commesurate with the level of employment.

The Board then forwards the application to the State Police, who performs and returns to the Board a background investigation of the applicant. The Board, upon request by the Commission, shall issue a temporary certification to any applicant whose application discloses no grounds reasonably sufficient to disqualify, in the Board's judgment, the applicant and whose fingerprint check with the Division of Criminal Justice Services does not disclose grounds for denial of the application.

Gaming employee applicants are ineligible for certification by the Board if they: are under age eighteen; have been convicted of a felony; have been convicted of any fraud or material misrepresentation in connection with gaming; have been found through an administrative determination to have violated any law, rule or regulation related to gaming for whch termination of employment or revocation of a license might be imposed; have been otherwise determined to be a person whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the effective regulation of gaming or create or enhance the chances of unfair or illegal practices, methods, and activities in the cnduct of the gaming; or have failed to provide any information reasonably required to investigate the applicant for a gaming employee license or to reveal any fact material to such application, or has furnished any information which is untrue or misleading in connection with such application.

6. Exclusion Listing

The exclusion listing is an effective and efficient regulatory mechanism within the gaming industry. Casino control agencies are granted relatively broad powers to order the exclusion of a particular person (or business entity) from any participation in casino activities, whether as an investor, director, operator, supplier, or even patron.

One advantage of the exclusion listing is that it focuses regulatory control on particular problem individuals and entities, without imposing burdensome and expensive licensure, investigation or registration requirements on an unnecessarily very wide group of persons or businesses.

7. Ancillary Issues

a. Labor Unions : Infiltration of labor unions by elements of organized crime has often been a major point of concern by law enforcement officials. This concern has extended to labor organizations representing employees of casinos. On at least two occasions in New Jersey, regulators

required the exclusion of certain individuals from positions within casino employee unions[201].

The National Labor Relations Act and other federal legislation limit the extent to which a state may control union activities, and direct licensing of unions is not within the scope of state powers. However, federal law does permit the type of indirect enforcement mechanism used by New Jersey. New Jersey requires a form of licensure for individuals holding positions in unions representing casino employees. Failures of these individuals to meet or maintain licensure standards limits the ability of a union to collect dues, usually through wage check-offs, from casino employees.[202]

b. Regulatory "Micro-Management" : A highly-regulated environment, such as casino gambling, creates an inherent risk of regulatory "micro-management" or excessive regulatory interference in operational matters. These risks are increased when the costs of the regulatory structure are paid directly by the regulated party.

Excessive regulation can have an adverse impact on a given state's industry, and regulatory restraint can assist a state, as illustrated by the following reports: Iowa, an early participant in riverboat casinos, placed strict wager and loss limits and significantly restricted the on-board space allowed for gaming. Neighboring Illinois subsequently authorized riverboat casinos, but without the Iowa restrictions. Iowa riverboats quickly lost business to Illinois riverboats and Iowa lost tax revenue to Illinois. Several Iowa riverboats literally sailed off to new gaming locations in Mississippi. In 1994, Iowa repealed the restrictions; and on June 24, 1996, the New York Times published a front-page special report describing Atlantic City's biggest economic growth and expansion since the 1978 legalization of gambling. As one reason for the sudden change, the article identified the 1995 deregulatory initiatives which allowed casinos more advertising, reduced labor costs, and newer games.[203]

New Jersey's pre-1995 regulatory system has been consistently cited as including unnecessary provisions. The required licensing of hotel workers has already been noted. The 1994 Senate Finance Subcommittee on Racing, Gaming, and Wagering Staff Report on Casino Gaming Legalization noted:

> New Jersey has had a reputation for regulations that are overly restrictive in terms of business decisions such as requiring permission to change the carpet, getting approval for the color of the walls. Nevada, on the other hand, has been considered much more pro-business, where people were allowed to make business decisions. If the Nevada operators wanted more slot machines and fewer tables,

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[201] See, New York State Senate Finance Subcommittee Report, pp. 51, 52.

[202] Id., p. 51.

[203] K. Johnson, "With Cash Rolling In, Atlantic City Raises Stakes" New York Times, June 24, 1996, p. 1.

they have been allowed to do that.[204]

The goal of avoiding unneeded or counter-productive regulations is not unique to the casino situation. There is no easily applied formula for determining the point at which regulation becomes unreasonable. Bureaucratic pressures tend to move in a pro-regulation direction. Furthermore, there is no one organizational structure or feature which will always avoid or prevent regulatory micro-management.

G. COSTS OF CASINO REGULATION

Due to the wide range of potential variables, it is extremely difficult to provide useful estimates of costs to the government of the regulatory system. (This difficulty exists regardless of whether it is assumed that all such costs would be reimbursed by the industry in some fashion.) Some of those variables include: total number of casinos; degree of state-wide geographic distribution of casinos, i.e. whether at least one casino would actually be sited in each of the areas designated in the constitutional amendment, or whether, for example, only the Catskills have casinos; degree of concentration of casinos within the Catskills, i.e., if casinos are spread out over the three counties, or are sited in one or two small areas; size of each casino; degree to which reciprocity, industry categorical limitations, registrations, monetary thresholds or other exemptions reduce the number of suppliers or employees who require full-scale background investigations; number and types of casino licensee applicants; and, organizational structure and size of the regulatory agency or agencies.

1. Degree of Cost Variation: There are apparently very wide differences between New Jersey and Nevada with respect to regulatory costs. One witness at the New York City Task Force hearing, Jason Ader of Bear Stearns, referred to Nevada procedures as costing approximately 40 percent of New Jersey's procedures. Such a wide cost differential cannot be associated with any particular factor. However, specific points of distinction between the two regulatory systems have been noted previously. It is probable that the cost differential results from the accumulation of these regulatory distinctions, along with the generally lower costs of both government and business associated with Nevada, as compared to New Jersey.

2. Source of Revenue for Regulatory Costs: The Task Force believes that the costs of regulation must be borne by the licensed casino industry, and applicants, through a combination of: license and license application fees; reimbursements for specific expenses (e.g. investigations); equipment charges; and gaming taxes.

It would not be acceptable to impose upon the general taxpayer the costs of regulating the gaming industry. The mechanism for cost-reimbursement can impact the effectiveness of the regulatory system. For example, it is believed that imposing charges for background investigations directly upon a prospective vendor may facilitate the vendor's cooperation during the investigation.

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[204]Senate Report, p. 59.

3. Concerns Regarding Charges to the Regulated Party: There is a serious concern regarding a potential conflict between two principles. On the one hand, the regulated party should bear the costs of regulation. At the same time, the process of regulation should be cost effective, and not detract from the legitimate business goals of the industry. The nature of the problem was described in a 1991 article published by the University of Nevada-Reno Institute for the Study of Gambling and Commercial Gaming by Cabot and Schuetz:

> Assuming [the] investigative fee [of the regulating agency] covers costs, the regulatory agency can grow without having to justify the expenditure of public funds. The Legislature is less likely to deny requests for additional personnel when those same personnel generate revenue equal to their cost. Moreover, applicants are effectively barred from arguing that the agency responsible for recommending the issuance of their license is inefficient or overly expensive. The Legislature is not inclined to retard the growth of the agency because no elected official would want to be characterized as being against strong gaming control.[205]

One of the justifications for establishing both a Casino Review Commission and a Casino Control Bureau is to provide a structure in which costs incurred by one agency are subject to review, and control, by another agency. There is no guarantee that such an approach will be successful. (New Jersey's structure is not that visibly different.) In any event, cost control should be constantly evaluated. Cost experience of other states should be carefully reviewed.

4. Use of Fines: Fines, in accordance with the policy of New Jersey, generated through the enforcement and disciplinary processes, should not be included in the revenue streams of funds to the Casino Control Bureau. Otherwise, there is an appearance that the agency may be motivated to be particularly aggressive in its regulatory enforcement for the purpose of increasing fees. This is the wrong signal to send casino owners, operators, and the entire range of entities that would be licensed. One appropriate recipient of funds generated from fines would be programs devoted to assisting compulsive gamblers.

5. Special Revenue Funding: The budget and funding approaches vary among the states of Illinois, New Jersey and Nevada, but it is instructive to be aware of the mechanisms used.

Illinois: A dedicated revenue source from tax revenues and fines from riverboat gambling operations are deposited into the Education Assistance Fund (EAF). The EAF is drawn down to operate the Illinois Gaming Board (IGB) and for State Police assigned to the IGB. A Memorandum of Understanding (MOU) is established between the IGB and the State Police to address the level of resource commitment by the State Police and the reimbursement that will occur from the IGB to the State Police Department. The Illinois State Budget describes the program and activities of the

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[205]Cabot and Schuetz, p. 138.

IGB and the State Police, and the appropriation requests, and must be approved by the Legislature and the Governor. Any funds unexpended at the end of the fiscal year from the EAF are used for education purposes or transferred to the general operations fund. There are provisions to obtain additional resources throughout the year for IGB operations from riverboat tax revenues, if that becomes necessary.

New Jersey: Funds for the New Jersey Casino Control Commission (CCC) and the Division of Gaming Enforcement (DGE) are requested in a regular appropriation process and must receive legislative and gubernatorial approval. Dedicated revenues from taxation and fees of casino gambling are provided in a dedicated special revenue source to directly fund the CCC and the DGE, which is a part of the Attorney General's Office. Although the DGE is part of the Department of Treasury, it maintains its operation on a dedicated revenue basis, whereas the Department of Treasury operates on general state revenues. Any unused funds appropriated to the DGE or CCC are returned to the casinos as a "credit" at the end of the year. On the other hand, the DGE and the CCC are able to request and receive additional expenditure authority and dedicated revenue funds during the fiscal year, if necessary, by submitting a "Directory Letter" and making an appeal to the legislative appropriation committees.

Nevada: This state takes a traditional budgeting and revenue source approach to casino gambling. Appropriation requests are developed as part of the normal state budgetary process and any appropriations are made from the general fund. The Nevada Gaming Commission (NGC) and the Gaming Control Board (GCB) are funded directly through state appropriation to the Gaming Control Board. Similarly, staff from the Attorney General's Office who work on gaming enforcement issues are funded through budget appropriations to the Attorney General's Office and justified in conjunction with the support of the GCB and NGC. Unexpended funds revert to the Gaming Fund and there are no extraordinary provisions for obtaining additional revenues throughout the year other than seeking deficiency budget appropriations.

H. CONCLUSIONS AND RECOMMENDATIONS

1. Introduction

a. Rigorous regulation of casino gambling in other jurisdictions has been generally effective in preventing or eliminating organized crime influences and in promoting consumer confidence.

b. Most existing casino regulatory systems share some significant structural features. However, the major goals of casino regulation can be successfully achieved within a variety of possible organizations, and with different degrees of regulatory detail.

c. New York should adopt a bifurcated casino regulatory organizational structure, using elements of both the Nevada and New Jersey models. Under this structure, there would be an independent "Casino Control Bureau" headed by an appointed,

fixed-term Executive Director, and a separately appointed and operated, multi-member "Casino Review Commission."

d. Legislative criteria for issuance of a casino license should include financial stability, integrity, and good character. The licensing process should strongly encourage the participation of widely held, publicly traded entities.

e. For those locations in which only one casino would be constitutionally allowed, casino legislation should (i) vest the Casino Review Commission with exclusive selection authority and (ii) clearly specify the the criteria to be considered when the Casino Review Commission is to select one licensee from a pool of qualified applicants. For the Catskills, casino legislation should state explicitly whether purely economic factors, such as impact on existing casinos, or ability to increase government tax revenue, should or should not be a license issuance criteria.

f. The Review Commission should be granted the broadest degree of deference allowed under federal and state constitutional principles to deny, suspend, or revoke a casino operating license, or to otherwise exclude a person or business from involvement in the casino industry

g. The Review Commission should be legislatively empowered to promulgate rigorous operating regulations with respect to a wide range of casino activities, including actual gaming equipment and operations, casino employees, and relationships with casino suppliers. However, the Review Commission should also be granted broad discretion to modify, and amend regulatory requirements in accordance with changes in industry conditions.

h. Reasonable statutory and administrative measures can be taken to avoid imposing unnecessary and unreasonable regulatory burdens on clearly legitimate business activities.

i. The costs to the State of the regulatory system should be borne by the casino licensee.

j. There are significant cost differences among the various regulatory systems. Those cost differences can impact the growth of a gaming industry and net revenue to the State.

2. Regulatory Agency Structures and Organizations

New York should adopt a bifurcated regulatory structure, using elements of both the Nevada and New Jersey organizational models, including a multi-person board and commission as supervisory bodies. Conceptually, a New York regulatory structure should include both a "Casino Review Commission" and a "Casino Control Bureau". The "Casino Control Bureau" should be

headed by an Executive Director, appointed, for a fixed term, by the Governor with the advice and consent of the Senate. The "Casino Review Commission" should be separately appointed and operated. Responsibilities of the Casino Control Bureau should include: processing of casino operating license applications; issuance of occupational (i.e. employee) licenses and registrations; audit and enforcement activities; and liaison with State Police for background and other investigations.

Responsibilities of the Casino Review Commission would include: approval and issuance of casino operating licenses, following application to the Casino Control Bureau; adjudicating appeals by regulated parties from adverse administrative actions by the Casino Control Bureau, such as denials of occupational licenses; adjudicating certain proposed actions by the Casino Control Bureau, such as revocation or suspension of an operating or occupational license, or imposition of fines, or placement of individuals on an exclusion list; issuance of casino operating regulations proposed by the Casino Control Bureau, by the Review Commission itself; issuance of regulations and standards applicable to the conduct and operations of the Casino Control Bureau and the Review Commission; and audit and evaluation of the effectiveness and efficiency of the Casino Control Bureau.

The Casino Review Commission should consist of five. Selection should be by the Governor, with confirmation by the Senate. Due consideration should be given to obtaining an appropriate mixture of professions and occupational backgrounds. Regulatory structure and organization is a subject which the Legislature should carefully analyze prior to the enactment of any casino legislation. Any consolidation of casino control functions with other forms of wagering controls should be deferred until a New York casino industry is reasonably well-established.

3. Unitary v. Bifurcated Structure

A unitary structure has certain potential benefits, such as a simpler structure and clearer chain of decision-making, less potential for duplication of effort and staff redundancies, and reduced risk of conflicting practices or standards by regulators. Nevertheless, it is recommended that New York adopt a bifurcated structure. Several factors indicate that a well designed and carefully implemented bifurcated structure has certain advantages: The fact that both New Jersey and Nevada, which are universally recognized as leaders in casino regulation, have successfully utilized a bifurcated structure should receive considerable weight; in adjudicative situations, a review board separated from the enforcement and prosecutorial arms can operate with greater impartiality; in a unitary structure, there is a greater risk that the sole agency will successfully engage in maximizing behavior, i.e., take regulatory actions or set policies which promote the size of the agency;[206] and statutory clarity as to which regulating body holds final adjudicative and rule making authority can adequately

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[206]See, William Niskanen, Jr. Bureaucracy and Representative Government [Chicago: Aldine-Atherton, 1971].

delineate areas of responsibility.

While modeled after both Nevada and New Jersey regulatory structures, any bifurcated New York system should modify certain characteristics of either structure. The Nevada system uses two multi-person panels: one to operate as the Gaming Commission and one to manage the Gaming Control Board. The Task Force, however, recommends that any New York Casino Control Bureau be headed by a single Executive Director, serving a fixed term. The New Jersey Casino Control Commission uses a relatively large staff to perform administrative functions, such as audit and license administration. It is recommended that the New York Casino Review Commission limit its functions to formal adjudications and regulation issuance, and avoid involvement in administrative or enforcement matters, thus reducing staffing needs.

4. Background Investigations

Utilization of New York State Police as the primary agency for background investigations for casino operating license applicants is appropriate use of an existing and efficient law enforcement resource. However, several points should also be noted: The State Police responsibilities should be clearly restricted to fact-gathering, and should not extend to making licensing recommendations to any other body; and The Casino Review Commission, rather than the Casino Control Bureau, or the State Police, should be empowered to define the parameters for licensing investigations. For example, a reported distinction between the Nevada and New Jersey regulatory systems concerns background investigations of outside directors of widely held, publicly traded corporations. Nevada does not routinely require investigations of such persons, at least where the director does not directly engage in managing casino operations or hold more than 1 percent of the stock.[207] New Jersey does require investigations. Each approach has advantages and disadvantages, and both state regulatory systems are recognized as very effective. This type of investigation parameter should be decided, as an explicit licensing policy, by the Casino Review Commission and should not be left to the discretion of either a police investigatory agency or the Casino Control Bureau.

5. Enforcement and Adjudicatory Mechanisms

As noted earlier, it is recommended that for New York, a sharp organizational distinction between the (i) enforcement and prosecutorial body, i.e., the Casino Control Bureau, and (ii) the adjudicatory body, i.e., the Casino Review Commission. Disciplinary proceedings before the Casino Review Commission should be essentially formal adversary proceedings, in which the Casino Control Bureau must prove its case. Consistent with this approach, the Casino Review Commission should not permit Casino Control Bureau personnel to function as staff to the Review Commission. Restrictions on personnel interchange may also be appropriate.

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[207]See, Testimony of Jason Ader, Bear Stearns & Co. Task Force Hearing, New York City, June 6, 1996.

6. In-Casino Surveillance and Monitoring

The current system used at Turning Stone should be used in any future New York casinos. Any necessary State Police presence would be for public safety purposes only. Gaming inspectors, employed by the Casino Control Bureau, would be utilized to provide a visible regulatory presence on the gaming floor, ensuring compliance with statutory and regulatory provisions.

7. Areas for Legislative Analysis

Due to the critical nature of regulatory enforcement, it is recommended that prior to the enactment of enabling statutes the Legislature carefully analyze and debate the issue of regulatory organizational structure. Such legislative analysis and debate could include the several types of organizational structures which have evolved in the different jurisdictions with legalized casino gambling, and estimates of relative cost-effectiveness of the various regulatory organizations. Such quantitative factors as the number of law enforcement agents, supervisory personnel, support staff, time for background investigations, etc., could be analyzed by the Legislature in comparison to the handle, patron traffic volume, number of sites, crime incident rate, etc.

8. Relationship With Non-Casino Gambling Regulation

At some point in the future, it may be appropriate to consider consolidation of regulatory functions for all forms of gambling, including lottery, parimutuel racing and charity events. However, it is recommended that consideration of consolidation be deferred until a casino industry is relatively well-established. The casino regulatory agencies should be operated independently of other regulatory agencies.

In both Illinois and New Jersey, the casino control agency and the racing agency are operated as separate regulatory entities. In Nevada, the gaming commission regulates both forms of gambling; however, it should be noted that racing has a very limited presence in Nevada. Currently, in New York State, the sole Native American casino is regulated by a bureau within the Racing and Wagering Board.

While there are strong arguments for a single agency for all forms of gambling: the overall regulatory goals of consumer protection and avoidance of organized crime infiltration apply equally to pari-mutuel wagering and casino wagering; institutional expertise and experience gained in regulating pari-mutuel wagering is more easily transferred to the regulation of casino gambling and opportunities for cost reductions by consolidating certain support facilities and staff. Nevertheless, several factors more strongly favor the Illinois and New Jersey models of separate agencies.

There is at least the perception of a significant economic conflict of interest among New York's racing industry, a New York casino industry, charitable organization gaming, and the State operated lottery. A single regulatory agency will necessarily become involved in the management or resolution of such conflicts. This involvement may shift resources and focus away from the core

principles of casino regulation, i.e., protecting the casino customer from cheating, avoiding the influence of organized crime and protecting the state's interest. Managing the economic relationships among competing industries is better left to express legislative policy decisions or open market forces. These principles are especially applicable where control agencies may be vested with extraordinary regulatory powers, or where one industry is in a start-up situation.

Casino operations also present certain major regulatory issues which are not necessarily found in other forms of wagering. Examples include the approval of casino operating licensees and the relationship with such ancillary businesses as connected hotels and vendors. Conversely, other forms of wagering may have aspects unrelated to casino operations. For example, regulation of a state run lottery does not require allocating significant resources to prevent organized crime influence. It is not, therefore, self-evident that the relationships among the forms of wagering are so clear as to warrant immediate consolidation.

A corollary of this position would be the transfer of the regulation of Native American casinos from the Racing and Wagering Board to the commercial Casino Control Bureau. To the greatest feasible extent, the degree of regulatory control over each type of casino should be comparable.

It is recognized that there may be external limits to establishing regulatory parity between Native American and commercial casinos. Such limits include federal legislation and the terms of the binding New York - Oneida compact. Nevertheless, regulatory parity should be a goal.

9. Licensing of Casino Operators

Enabling legislation should specify moral integrity, and financial stability as criteria by which the Casino Review Commission is to grant or deny an operating license. This licensing process should strongly favor enterprises which are widely held and publicly traded entities.

For Niagara Falls, Buffalo, Saratoga County and Warren County, enabling legislation should vest the Casino Review Commission with the authority to select the one allowed operator, and should also specify an appropriate and readily applied selection method. For the Catskills, casino legislation should specify whether such economic factors as estimated volume should, or should not be considered as license criteria in determining whether to grant or deny a license.

10. Licensee Selection Authority

The authority to issue a casino operating license should reside solely with the Casino Review Commission, regardless of whether the location is constitutionally allowed only one or multiple casinos. The Casino Review Commission should also be empowered to promulgate, within legislative parameters, selection criteria, and the parameters of the application process. The Casino Control Bureau, assisted by the State Police, should process applications, in accordance with standards issued by the Casino Review Commission.

11. Moral Fitness Criteria for Operational Licensing

Any enabling legislation should vest the Casino Review Commission with a high degree of discretion in determining moral fitness for a casino gambling license. However, any felony conviction should disqualify an operating licensing applicant.

12. Status as Widely Held, Publicly Traded Business Entities

Most observers would conclude that the risk of organized crime domination of a widely held, publicly traded enterprise is virtually non-existent. Therefore, any New York licensing mechanism should provide strong incentives to encourage the involvement of these types of entities in New York. A streamlined license application process should, in no way, limit the power of the control agency to suspend or even revoke a license should future developments or discoveries so warrant.

13. Economic Criteria

There does not appear to be any reason for a state's casino regulating agency to become involved in this type of market intervention. Federal legislation, including the Sherman Act Section 2, and the Clayton Act merger provisions, vest both the Antitrust Division of the Justice Department and the Federal Trade Commission with substantial powers to intervene if market concentration approaches a monopoly situation.

The New York State situation may present a relatively unique context for the issue of economic license criteria. There are two categories of potential casino locations. Under the proposed constitutional amendment, only one casino would be allowed in three areas: Niagara Falls, Buffalo, and either Saratoga or Warren County. However, within the three Catskills counties, there would be no constitutionally set limit. Of course, local county referendum approval is still required for any site.

Any casino legislation should draw a relatively sharp distinction between the two categories of casino locations. For the one-casino locations, the enabling legislation should establish a bifurcated process. The first stage of the process should be identical to that for the multi-casino locations, and would establish a pool of applicants, any one of whom is fully fit to operate a casino. The second stage of the process would select the one operator allowed. The enabling legislation should establish simple and quantitative selection criteria. One such criteria could be a surety, which would provide guaranteed revenue to the government.

For the Catskills, the casino legislation should expressly and clearly indicate whether or not the licensing authority should consider economic factors, such as business competency, size of operation, or industry impact on existing casinos.

14. Regulation of Licensed Casino Operations

The Control Review Commission should be legislatively vested with the power to exercise strong control over a wide range of licensed casino operations. Imposing a regulatory requirement for strong internal controls is essential. Appropriate legislative and administrative mechanisms must be developed to assure that the degree of regulatory supervision actually exercised over a specific aspect of casino operations is proportional to the true risks of organized crime infiltration or consumer fraud. Caution must be exercised against "micro-managing" casino operations. The use of exclusion listings, monetary thresholds, and selected exemptions as alternatives to universally applied licensing or registration requirements should receive favorable consideration.

15. Regulation of Gaming Equipment Suppliers and Servicers

For gaming equipment suppliers, any New York regulatory system should be consistent with the approach used by other jurisdictions. To avoid unnecessary duplication of effort and to reduce costs, consideration should be given to equipment certifications or service licenses issued by other states, or by the federal government.

16. Vendors of Non-Gaming Supplies and Services

Policy decisions with respect to supplier regulation can have a significant impact in at least two areas. First, excessive supplier regulation can divert investigative and enforcement resources from more critical areas. For example, resources which are expended on routine supplier background investigations may be better allocated to audits of cash flow. Secondly, unreasonable or unnecessary requirements for supplier qualification may act as a barrier or deterrent to entry for legitimate businesses. If substantial costs, including such indirect costs as management time, are imposed as a condition for doing business with a casino, smaller, locally-owned businesses may be placed at a competitive disadvantage compared to larger, national suppliers who can better absorb such entry costs.

A broadly applied supplier license system similar to that of New Jersey can, in theory, lead to anomalous results:

> Example: Acme Construction Company has constructed several elementary school buildings for upstate local school districts. All projects have demonstrated high quality workmanship, and were completed on time and under budget. However, if Acme desires to construct a parking lot for XYZ Casino, the Company, its officers and directors now must make extensive disclosures, and undergo an investigation by state police.

At the same time, there is a recognition that some suppliers can create problems in some

situations. For example, New York City authorities have recently alleged that a refuse firm, which had a contract with the federal General Services Administration to serve an office building housing several federal law enforcement agencies, had ties to organized crime.[208]

The Task Force recommends the following with respect to non-gaming suppliers: vest the Casino Control Bureau with broad powers to review transactions between casino licensees and non-gaming vendors, and the Casino Review Commission with the power to require the casino operating licensee to, upon order, cease doing business with a particular vendor; exempt from supplier licensing requirements suppliers who provide less than certain monetary thresholds of goods or services annually to any one casino, and to all casinos; and require other exemptions, e.g., public utilities, banks, etc. as the casino industry develops.

Also recommended is the following allocation of responsibilities: the Casino Review Commission would set, through rule making, the parameters of supplier registration or licensing; and the Casino Control Bureau would issue any supplier licenses or registrations. A denial of a supplier license could be appealed to the Casino Review Commission.

17. Occupational Licensing of Individuals

Occupational licensure of all casino employees is a reasonable, appropriate, and effective control mechanism. Distinct levels of licensure and background investigations, based upon different responsibilities, are appropriate, but excessive complexity should be avoided. Two catagories of occupational licenses appear sufficient. Any felony conviction should constitute an absolute bar to any individual receiving any form of occupational license, regardless of the nature of the felony or the casino duties of the individual.

With respect to vendor employees who require access to the casino premises, the following steps are recommended: Employees of gaming equipment distributors or servicers should be registered, but should not be required to obtain a separate license. Reasonable employee conduct standards can be imposed upon the employer as a condition of the employer's gaming supplier license; and other vendor employees should be allowed only escorted access, unless they elect to obtain an occupational license.

To minimize delays to persons seeking employment, and to encourage any control agency to develop efficiencies in this area, consideration should be given to mandated time limits for review, and requiring specific license criteria and scope of inquiry to be articulated through rule making.

The Task Force concurs with the 1995 New Jersey amendments which removed most casino hotel employees from the scope of licensing.

The following allocation of responsibilities are also recommended: the Casino Review

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[208]See, "*Private Trash Haulers Indicted,*" New York Post, June 19, 1996, p. 16.

Commission would set, through rule making, the parameters for occupational licensing or registration; The Casino Control Bureau would issue any occupational licenses or registrations; and a denial of an occupational license could be appealed to the Casino Review Commission.

18. Exclusion Listing

The concept of an exclusion listing is also supported. This would provide a strong tool in maintaining a proper regulatory control over industry components and individuals. Casino Review Commission action should be required to place an individual or entity on the exclusion list.

19. Labor Union Issues

The Task Force recommends that any enabling legislation adopt a mechanism for labor union registration as used in New Jersey. The lessons of Atlantic City are not so far removed as to make this unnecessary.

20. Avoiding Regulatory "Micro-Management"

In the past two years, New York State has made great strides in becoming "business friendly." This must continue if casino legalization should occur. Certain general techniques may, however, constrain tendencies to over-regulate.

Enabling legislation should vest the control agencies with broad discretion, rather than compelling regulation in very specific areas. For example, the New Jersey requirement to license hotel workers was statutorily mandated by the original version of the Casino Control Act. At a certain point, it became clear that such a licensing requirement was unnecessary. However, the Casino Control Commission required a statutory change to eliminate the requirement. In retrospect, the original Casino Control Act should have vested the Casino Control Commission with the power to require such licensing, but without mandating the licensing. The Casino Control Commission would, therefore, have had the ability to adjust quickly to changing circumstances.

Vesting the Casino Review Commission with the power to enact rules binding upon the Casino Control Bureau may require the Casino Control Bureau to make a clearer showing of necessity and effectiveness of a rule. Rule making by the Casino Review Commission should be subject to the requirements of the State Administrative Procedure Act, including a cost-benefit analysis.

21. Degree of Control Bureau and Review Commission Authority

Enabling legislation should avoid excessive detail and should vest the Casino Review Commission with broad powers to determine the appropriate level of regulation. To the greatest feasible extent, the Casino Review Commission should be the sole regulatory body for casinos.

22. Degree of Legislative Detail

As noted in the 1994 New York State Senate Finance Subcommittee Staff Report, one of the most difficult policy questions in the field of casino gaming concerns the following issue: Where should a statute end and a regulation begin? Again, the New Jersey experience is illustrative. The original Casino Control Act included such specific operational details as: which games could be played in a casino; the relative proportion of floor space allowed for slot machines versus table games; and hours of operation.

New Jersey casino regulators subsequently sought to remove such issues from the statute, and were largely successful.[209] Any enabling legislation should avoid the error of attempting to specify operational or regulatory details. It is more appropriate for the legislation to set forth a regulatory structure and system, and to articulate relatively general standards.

In Louisiana, there was substantial debate, *after* enabling legislation was enacted, whether the Gaming Commission or the State Police had authority to reject a gaming license. Industry analysts therefore urge that there be a single source for all casino regulations. New Jersey also strongly emphasizes a single ultimate regulatory authority. This concept extends to divesting the state liquor authority of jurisdiction within a casino.

The Task Force concurs with this concept and recommends that ultimate regulatory authority over casino establishment and operations should be clearly vested within the Casino Review Commission. This authority should extend to: empowering the Casino Review Commission with sole rule making authority, even with respect to the Casino Control Bureau operations; granting the Casino Review Commission regulatory authority with respect to liquor and similar matters; and exempting Casino Review Commission and licensee actions from certain statutes of general applicability which could limit the discretionary powers of the Commission (e.g., Corrections Law Section 752, which regulates employment actions with respect to felons).

Prior to the enactment of any casino legislation, the Legislature must carefully review and analyze the relationship between the broad powers granted the Casino Review Commission and the powers of local authorities with respect to zoning and other local land use issues, to determine if any legislative changes are warranted.

24. Costs of Casino Regulation

The cost burden to the government of casino regulation should be borne by casino licensees, and not funded from general revenue. This is true whether the casino is privately or Indian operated. There is apparently a very wide variation in costs among states which have apparently achieved comparable results in regulatory effectiveness. Effective regulation of casino gambling is expensive. However, it is not reasonable to assume that the most expensive form of regulation is also the most

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[209] New York State Senate Finance Subcommittee Report, p. 59.

effective.

The Task Force is concerned that, by requiring the regulated parties to reimburse the state for the costs of regulation, there will be little incentive for the State to become a cost-effective regulator. Appropriate mechanisms must be developed to assure that regulatory structures, organizations, and techniques do not foster excessive bureaucracy, and impose unjustifiable costs on the regulated industry. In this regard, the regulatory experience of other states should be carefully studied and analyzed, to determine "best practices," and cost-effectiveness.

25. Costs to the Government of the Regulatory System

Due to the wide range of potential variables, it is extremely difficult to provide useful estimates of costs to the government of the regulatory system. This difficulty exists regardless of whether it is assumed that all such costs would be reimbursed by the industry in some fashion. Some of those variables include: total number of casinos; degree of state-wide geographic distribution of casinos, i.e., whether at least one casino would actually be sited in each of the areas designated in the constitutional amendment, or whether, for example, only the Catskills have casinos; degree of concentration of casinos within the Catskills, i.e., if casinos are spread out over the three counties, or are sited in one or two small areas; size of each casino; degree to which industry categorical limitations, registrations, monetary thresholds or other exemptions reduce the number of suppliers or employees who require full-scale background investigations; number and types of casino licensee applicants; and organizational structure and size of the regulatory agency or agencies.

There are apparently very wide differences between New Jersey and Nevada with respect to regulatory costs. One Task Force hearing witness, Jason Ader of Bear Stearns, referred to Nevada procedures as costing approximately 40 percent of New Jersey's procedures. Yet, there is a general belief that both Nevada and New Jersey have regulatory systems which are comparable in effectiveness. The wide cost differential cannot, however, be associated with any one factor. However, specific points of distinction between the two regulatory systems have been noted throughout the report. It is probable that the cost differential results from the accumulation of these regulatory distinctions, along with the generally lower costs of both government and business associated with Nevada, as compared to New Jersey.

26. Source of Revenue for Regulatory Costs

Costs of regulation must be borne by the licensed casino industry, and applicants, through a combination of: license and license application fees; reimbursements for specific expenses (e.g. investigations); equipment charges; and, gaming taxes.

It would not be acceptable to impose upon the general taxpayer the costs of regulating the gaming industry.

27. Concerns Regarding Charges to the Regulated Party:

The Task Force has serious concerns regarding a potential conflict between two principles. On the one hand, the regulated party should bear the costs of regulation. At the same time, the process of regulation should be cost effective, and not detract from the legitimate business goals of the industry. In any event, cost control should be constantly evaluated. The cost experience of other states must be carefully reviewed.

28. Use of Fines

The Task Force believes that, following the practice of New Jersey, fines generated through the enforcement and disciplinary processes should not be included in the revenue streams of funds to the control agency. Otherwise, there is an appearance that the agency may be motivated to be particularly aggressive in its regulating enforcement for the purpose of increasing fees. This is the wrong signal to send casino owners, operators, and the entire range of entities that would be licensed. One appropriate recipient of funds generated from fines would be programs devoted to assisting compulsive gamblers.

29. Special Revenue Funding

A special revenue fund supported by taxes and fees from casino gambling operations should be used as the source of funds for New York State's Casino Review Commission and Casino Control Bureau. The funding for the Casino Review Commission and the Casino Control Bureau should be statutorily separated in terms of appropriation to reinforce the separate identities, powers and functions of the bodies.

Some flexibility should be built into the appropriation and segregation process so that unforeseen contingencies, resulting in increased oversight, regulation and enforcement costs during the year can be covered. This is particularly important during the first couple of years of operation, but such a mechanism should exist on a continuing basis. At the end of the year, any balance of revenues received over expenditures can be transferred to another fund to accomplish the objectives of the State of New York as defined in statute.