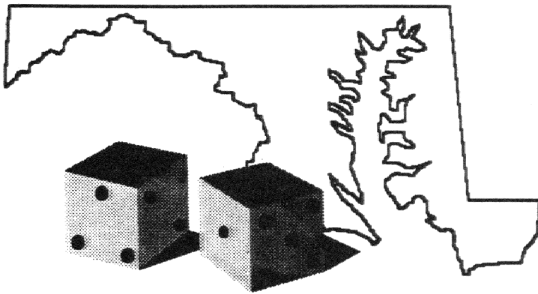


**Final Report of the  
Joint Executive-Legislative Task Force  
to Study Commercial Gaming Activities  
in Maryland**

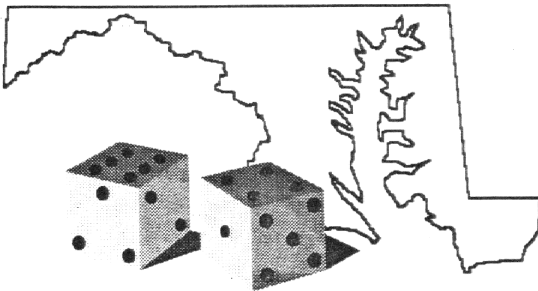


**December 1995**

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**Final Report of the  
Joint Executive-Legislative Task Force  
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**The Joint Executive-Legislative Task Force  
to Study Commercial Gaming Activities  
in Maryland  
prepared this document,  
December 1995.**

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**JOINT EXECUTIVE-LEGISLATIVE TASK FORCE  
TO STUDY COMMERCIAL GAMING ACTIVITIES IN MARYLAND**

**The Honorable Joseph D. Tydings, Chairman**

**Room 1400**

**301 West Preston Street  
Baltimore, Maryland 21201**

**(410) 225-1279**

**FAX: (410) 333-5480**

December 15, 1995

The Honorable Parris N. Glendenning  
Governor, State of Maryland

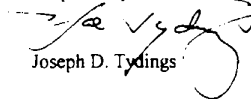
The Honorable Thomas V. Mike Miller, Jr.  
President, Maryland Senate

The Honorable Casper R. Taylor, Jr.  
Speaker, Maryland House of Delegates

Dear Sirs:

Pursuant to Chapter 579 of the Chapter Laws of Maryland of 1995, I am hereby submitting the report of the Joint Executive-Legislative Task Force to Study Commercial Gaming Activities in Maryland.

Respectfully submitted,



Joseph D. Tydings



## Task Force Members

### Joseph D. Tydings, Chairman

Senator Tydings is a partner with the Washington, D.C. law firm, Anderson, Kill, Olick & Oshinsky. He served in the Maryland Legislature for seven years and was the United States Attorney for the District of Maryland, appointed by President John F. Kennedy, from 1961 through 1963. He was a United States Senator from Maryland from 1965 through 1971.

### Walter M. Baker, Vice-Chairman

Senator Baker, of Cecil County, has served in the Maryland Legislature since 1979 and is currently Chairman of the Senate Judicial Proceedings Committee.

### Thomas L. Bromwell

Senator Bromwell, of Baltimore County, has served in the Maryland Legislature since 1979 and is currently Chairman of the Senate Finance Committee.

### Benjamin L. Brown

A former District Court Judge, Judge Brown now practices law with the law firm of Alexander, Aponte & Marks in Lutherville, Maryland.

### Robert B. Embry

Mr. Embry is currently President of the Abell Foundation, which is headquartered in Baltimore.

### Sheila Ellis Hixson

Delegate Hixson, of Montgomery County, has served in the Maryland Legislature since 1976 and is currently Chairman of the House Ways and Means Committee.

### Edward T. Lewis

Dr. Lewis has served as President of St. Mary's College since 1983.

### William J. Reuter

Mr. Reuter serves as Chairman of the Board, President and Chief Executive Officer of Farmers & Merchants Bank and Trust in Hagerstown, Maryland.

### Joseph F. Vallario, Jr.

Delegate Vallario, of Prince George's County, has served in the Maryland Legislature since 1975 and is currently Chairman of the House Judiciary Committee.

### Staff:

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#### **Kevin Hughes, Counsel**

Office of the Governor

#### **Brian Fisher**

State Lottery Agency



## Acknowledgments

The Task Force would like to express its gratitude to the following individuals for their assistance. Without their willingness to share their time and skill the Task Force's hearings, work and report would not have been possible.

Numerous persons helped arrange our series of public hearings. Jean G. Stahl, Assistant to the Chairman of the Senate Judicial Proceedings Committee, was particularly helpful in making arrangements for our hearings which were held across the state. The Task Force wishes to thank the organizations which allowed us to use their facilities for the public hearings. They are: the Talbot County Historical Society; the University of Maryland, University College Inn and Conference Center; the School of Public Affairs, University of Maryland at College Park; Frostburg University; and the University of Maryland at Baltimore.

The Task Force is also thankful to the individuals whose assistance enabled the Task Force to gain first hand knowledge of gambling activities in Maryland; Atlantic City, New Jersey; St. Louis, Missouri; and East St. Louis, Illinois. They are: Delegate Clarence Davis, Chairman of the Finance Resources Subcommittee of the House Ways and Means Committee; Delegate Mary Louise Preis, Chairman of the Gambling Subcommittee of the House Judiciary Committee; Mayor James Whelan of Atlantic City; Frank Catania, Director of New Jersey's Gaming Enforcement Division; Bradford Smith, Chairman of the New Jersey Casino Control Commission; Sergeant Steve Mangum of the Atlantic City Police Department; Dr. John Cosby of the Atlantic County Office of Community Development and Economic Assistance; Shermaine Gunter Gary of the Atlantic City Office of Health and Human Services; Don Parker of the Atlantic City Mental Health Center; Barry Durman of the Atlantic City Rescue Mission; Atlantic County Prosecutor Jeffrey Blitz; Mayor James Wager of Wildwood, New Jersey; Bernie Murphy of Bally Entertainment Corporation; Manny Solomon of the Strand Restaurant in Atlantic City; Mayor Freeman Bosley of St. Louis, Missouri; Scott Intagliata, St. Louis Mayor's Office; Robert Bedell, Executive Director, St. Louis Convention and Visitors Commission; Larry Bushong, Executive Director, St. Louis Development Corporation; Mary Nelson, General Counsel, St. Louis Development Corporation; Mike Ryan, Executive Director, Missouri Riverboat Gaming Association; Thomas Irwin, Executive Director, Missouri Gaming Commission; Pat Bergauer, Regional Director, Missouri Restaurant Association; Michael Ravetta, Chief Warrant Officer, St. Louis Circuit Attorney's Office; and representatives of The Casino Queen, East St. Louis, Illinois and The President's Admiral, St. Louis, Missouri.



The work of the Task Force could not have been done without the cooperation and work of individuals at various State Agencies and Departments, including: Attorney General J. Joseph Curran, Jr.; Carolyn Quattrocki and Philip Deters of the Attorney General's Office; William Ratchford, Director of the Department of Fiscal Services; Victoria Crangle, Steve Ports, LaTaunya Howard, Lisa Kleinschmidt, Doug Mann and David Roose, all of the Department of Fiscal Services; Doug Nestor of the Department of Legislative Reference; Thomas Davis of the Department of Health and Mental Hygiene; Jay Ladin of the Department of Budget and Fiscal Planning; Pradeep Ganguly, Massoud Ahmadi and Dean Kenderdine of the Department of Business and Economic Development; Lloyd Jones, Director of the State Lottery Agency; Bill Saltzman, Deputy Director of the State Lottery Agency; Gene Lynch, Secretary of the Department of General Services; and Richard Pecora, Deputy Secretary of the Department of General Services.

The Task Force is also grateful to Joseph Gibson, Counsel to the House Judiciary Committee, United States House of Representatives, for taking time to brief the Task Force on issues relating to the proposed National Gambling Impact and Policy Commission.

Finally, the Task Force wishes to thank all of the individuals, groups and organizations that took the time to participate in the public hearings of the Task Force.

## EXECUTIVE SUMMARY

This Summary consists of two sections. The first describes the setting for the Task Force's work and the Task Force's findings concerning the probable consequences of introducing commercial casino gaming into Maryland. The second part consists of the Task Force's recommendations.

### FINDINGS

#### I. The Setting for the Decision

##### Introduction

A. In reaching its decision about casino gaming, the State of Maryland should be mindful of the actions -- or the probable responses -- of contiguous states. Although it cannot be stated with any certainty that if Maryland approves casino gaming, neighboring states will follow its lead, common sense and recent experiences in other regions of the Nation suggest that they will. The Task Force notes that Delaware has already authorized its race tracks to install slot machines. It is, therefore, unrealistic to develop projections of economic gains from casinos on the assumption that neighboring states will not respond.

B. If the State decides against casinos, it should develop strategies, such as interstate compacts, to encourage its neighbors to maintain their prohibitions on casinos. Absent these strategies and agreements, Maryland may find itself under increased pressure to allow casinos if one of its neighboring states introduces them.

C. On the basis of an opinion from the Maryland Attorney General, the Task Force believes that there is little prospect of an Indian tribe gaining authority to operate a casino in Maryland pursuant to the Indian Gaming Regulatory Act (IGRA) in the near future. The Governor's office believes there is also little prospect for Indian-operated casinos opening in any of Maryland's neighboring states -- Delaware, Pennsylvania, Virginia or West Virginia.

D. Given that the Maryland government promotes the State lottery and authorizes certain other forms of gambling, including casino gaming for charitable purposes, the Task Force does not believe its role is to question the morality of gaming *per se*. The State has already addressed that issue. The Task Force does recognize, however, that commercial casinos do change the culture and the quality of life of the locales in which they exist -- often in ways that many Maryland citizens find offensive and troubling.

##### Public Opinion

A. Recent public opinion polls show that a majority of Marylanders are opposed to the introduction of casinos. Riverboat casinos receive more support than land casinos in the polls but a plurality of Marylanders also opposes this form of gaming.

B. The Task Force found little evidence of popular support for casinos. Holding four public hearings throughout the State, the Task Force heard from many citizens opposed to casinos on moral or social grounds, as well as from representatives of existing economic interests who argued that they would be hurt by the introduction of casinos into their area of the State. Along with casino developers and building trade unions whose members presumably would be employed in the casino construction phase, the proponents of casinos included representatives of a few local and regional governmental organizations and industries who testified that their communities would benefit economically upon the opening of casinos.

The Task Force received 235 letters; of these 92 percent opposed casinos and only 8 percent were in favor. Of the 492 witnesses that signed up to appear before the Task Force, 40 percent wished to testify in favor of casinos; the majority of these individuals had ties to the casino industry. There seemed to be little grass roots support for casinos.

C. Nonetheless it is clear, as attested by the approximately 2 million trips by Marylanders annually to Atlantic City casinos, that numerous Marylanders like to gamble in casinos.

## **II. Economic Consequences**

### **Generally**

A. The principal argument for introducing casinos into Maryland rests with the possible economic benefits that casinos might bring to the State and the communities in which they would be located. Consequently, the Task Force asked two State agencies to provide State-level assessments of the economic impact of casinos.

Those studies produced very different estimates of the potential scale of casino gaming and the broad economic consequences. With multiple casinos in three locations, the Department of Business and Economic Development (DBED) estimates a total win as high as \$3.7 billion and 25,000 new jobs. But, because of substitution from other industries, the DBED study also projected a net loss to the Maryland economy of 7,000 jobs. The study by the Department of Fiscal Services (DPS) estimated a potential win of less than \$1.4 billion and the creation of no more than 7,500 new casino jobs and --given a low rate of substitution for other consumer spending and large multiplier effect of casino spending-- a net gain of almost 20,000 jobs. Both studies' projections assumed that no neighboring state would introduce casinos; the Task Force believes that this is a very questionable assumption.

Studies conducted for other sponsors also generated a variety of findings. For example, two casino firms sponsored a study that estimated that, without new competition in the region, Maryland casinos might generate a total win of approximately \$1.6 billion and create 24,000 new casino jobs. Most of the win was

estimated to come from non-Marylanders. The net addition to Maryland employment, even after allowing for substitution of Marylanders' spending on other entertainments, was estimated to be 60,000 jobs. Another study, taking account of new competition from neighboring states, also estimated a total win of around \$1.5 billion but only about 25,000 total jobs.

**B.** A large share of casino visits from non-Marylanders is critical to generating benefits for the State. Also important is the recapture of gaming expenditures by Marylanders in other states, principally New Jersey. Casino expenditures by Marylanders, other than the recaptured moneys, would come largely through reductions in expenditures on other discretionary goods and services in Maryland. It is thus essential to estimate the total or net economic impact of casinos and not just the total employment and revenues generated directly by the casinos.

**C.** The gross economic development gains from casino gaming estimated by the two government studies would be substantially reduced if neighboring states were to introduce competing casinos at the same time or within a few years of Maryland doing so. Under such a scenario, the Maryland casinos would no doubt reduce the flow of gaming dollars leaving the State, but the casinos would also be able to capture fewer dollars from its neighboring states' citizens. The estimates available to the Task Force did not provide much guidance on this important matter.

**D.** It is quite possible that the economic damage to other businesses would result in a net job loss to the Maryland economy, even if no neighboring state introduced casinos, because casinos employ fewer workers per million dollars expenditure than do most other entertainment and service industries. The Task Force was unable to reach a firm conclusion on the impact of such substitution but believes that it cannot dismiss the possibility that the casinos would end up relying largely on expenditures by Marylanders and result in a loss of Maryland jobs.

**E.** The two State agency studies, assuming a tax rate on casino winnings of between 8 percent and 15 percent, estimate casino tax revenues of \$50-375 million. When substitution and multiplier effects are taken into account, the total increase in government revenues from all sources is estimated to be as high as \$250 million. If a higher tax rate for casino win were adopted, and a number of mid-Western states have a tax rate of 20 percent, public revenues might be still higher.

#### **Specific Industries Affected**

**A.** The Task Force believes that the horse racing and breeding industries are economically important to the State and that efforts should be made to strengthen these Maryland industries.

The casino industry competes directly with horse racing. The introduction of casinos -- separate from ownership of the tracks -- would have a very substantial negative impact on horse betting, perhaps cutting racing revenues by one-third. It is likely that one or both of the standardbred (trotting) tracks would be forced out of business by freestanding casinos. Horse breeding and related farming activities in the State of Maryland would also be negatively affected.

B. The casino industry does not directly compete with lotteries. The Maryland State lottery would probably suffer only modest sales losses, between 2 and 5 percent (i.e., \$20 million to \$50 million) each year, if casinos were introduced.

C. The casino industry competes with charitable gaming. Certainly the current charitable casinos in Prince George's County and the slot machines in non-profit organizations on the Eastern Shore would be adversely affected. It is less clear how other major forms of charitable gaming in Maryland, such as church-related bingo and tip jar gaming, would be affected.

### **III. Social Costs**

#### **Generally**

The Task Force found very little credible data or analysis on the social costs of casino gaming, though many strong statements about these costs have been made by both proponents and opponents of casino gambling. The Task Force has cautiously avoided use of what seemed to be extreme projections of the social consequences to the State in making its recommendation as to whether casinos should be permitted.

Although data on the impact of casinos on the extent of pathological gambling are not especially credible, it is reasonable to assume that many more Marylanders will probably experience serious problems if commercial casinos are authorized. The Task Force found no credible estimate of the average annual social costs of an individual becoming a pathological gambler as the result of the introduction of casinos. The costs could be considerable.

#### **Crime**

A. The Task Force found that the evidence from jurisdictions that have introduced casino gaming is mixed. In some jurisdictions, per capita crime rates have actually decreased. In other jurisdictions, even after adjusting for the increase of tourists or visitors to a location in computing per capita crime rates, the number of criminal incidents per capita has apparently increased and has led to higher expenditures for law enforcement, courts and prosecutions. The Maryland Attorney General concluded from his survey of other jurisdictions that crime invariably and substantially increased when casinos were introduced.

B. Atlantic City has been the most studied locality in this respect. In that city, crime rates rose substantially with the introduction of a large casino industry (30 million visits per year) in a small city (37,000 population). Much of that increase is undoubtedly due to the arrival of large numbers of visitors; some portion of the increase in victimizations does, however, appear to fall on the local resident population. Whatever the sources of the increase, the result has been that -- along with significant new revenues to the State -- criminal justice costs in Atlantic City and Atlantic County have increased substantially.

C. The Task Force believes that the introduction of large scale casino gaming in Maryland could lead to increases in crime and substantially higher criminal justice costs for both local and State governments, particularly for small communities.

D. A stringent regulatory scheme, such as that which has been implemented in New Jersey, appears to be able to prevent organized crime involvement in casinos. However, casino gaming does seem to increase the demand for illegal sports betting services.

#### IV. Other Issues

##### Social Service Demands

Given the inadequate evidence available, the Task Force could not determine the added costs of social services related to family break-up or pathological problems caused by casino gaming. Those costs might or might not be substantial.

##### Corruption of the Political System

The licensing of casinos creates a very large new industry which will initially be subject to heavy regulation. The obvious temptation to use campaign or cash contributions to obtain political support for relaxation of these regulations is a major concern to the Task Force.

#### RECOMMENDATIONS

For the purposes of these recommendations, we define the term "commercial casino gaming" to include any for-profit sponsorship of the games that are common to casino operations, regardless of their location: including slot machines, the most common and profitable casino devices, as well as table games (e. g., blackjack, roulette, baccarat and craps).

**1. The General Assembly and the Governor should maintain the current prohibitions against commercial casino gaming activities in Maryland, including slot machines at race tracks.**

The Task Force: (i) was not convinced that commercial casino gaming would bring substantial net economic benefits to the State; (ii) believed that there might be substantial social costs arising from the

introduction of such gaming; and (iii) was concerned that commercial casino gaming might lower the quality of civic and moral life in Maryland. A decision to allow casinos would create large economic interests able to effectively block a return to casino prohibition. These factors led the Task Force to take a cautious approach and recommend the continuation of the existing policies.

**2. The State should explore the possibility of strengthening the current prohibitions against commercial casino gaming by dealing with this issue on a regional basis. Specifically, the Governor and the General Assembly should initiate discussions with the District of Columbia and the states of Delaware, Pennsylvania, Virginia and West Virginia, and negotiate an interstate compact, with the goal of prohibiting the expansion of commercial casino gaming in the mid-Atlantic region.**

The pressure to allow commercial casino gaming in Maryland will increase substantially if its neighboring jurisdictions permit expansion. The introduction of 1,500 slot machines to tracks in Delaware is already creating some pressure. While it is difficult to create effective interstate agreements, the Task Force urges the legislative and executive branches to develop innovative methods to unite the governments of the region.

**3. The Maryland Congressional delegation should support the immediate creation of a national commission to study issues related to commercial gaming and should recommend that the commission complete its work within one year.**

States are unable to confidently make decisions about casino gaming because of competitive concerns about the decisions of their neighbors and because of the inadequate data and analysis available to them. The Task Force believes that the proposed national commission on gambling, currently being considered by Congress, could make a significant contribution to public policy development. The Task Force does, however, urge Congress to deliver final recommendations within the next twelve months and not, as contemplated, three years from now. If Congress cannot move with greater alacrity, many states will already have determined their course and the recommendations of Congress on casino gaming will not matter.

**4. The Maryland Congressional delegation should monitor issues related to Indian gaming and oppose any legislation that would make it easier for an Indian tribe to obtain authority to conduct commercial casino gaming activities in Maryland or its neighboring states.**

As stated in the findings, the Task Force has been informed that there is little prospect that an Indian tribe will gain authority to conduct casino operations in Maryland or in any of its neighboring states. This finding assumes maintenance of the current language of the Indian Gaming Regulatory Act (IGRA).

There have been attempts in recent years to amend the language of the IGRA to dilute the authority of a state to reject an Indian gaming proposal. If the IGRA is amended in such a way, the assumption that has been made by the Task Force regarding the likelihood of Indian gaming operations in Maryland and its surrounding states may well prove to be false. The Task Force believes that the Maryland Congressional delegation should make every effort to ensure that the IGRA is not amended in any way that would make it easier for an Indian tribe to gain authority to conduct casino gaming operations in the region.

**5. The General Assembly and the Governor should: (i) review the existing patchwork of laws governing non-profit gambling in Maryland and develop uniform and tighter regulation; and (ii) strengthen the enforcement of current prohibitions against the unauthorized operation of slot machines, tip jars and other gaming devices.**

Under current Maryland law, certain types of non-profit organizations are authorized to conduct or sponsor numerous types of gambling. The types of gambling that are permitted vary significantly among the local jurisdictions. Regulation is absent or inadequate in many of these jurisdictions. In light of a 1993 Grand Jury Special Report, the 1994 Final Report of the Governor's Task Force to Study Gambling, letters from the Maryland Attorney General and the Speaker of the Maryland House of Delegates that were forwarded to the Task Force, and its own observations, the Task Force believes that a serious public policy problem exists. These same documents and observations also point to problems in the enforcement of current prohibitions against the operation of slot machines (including video poker machines), tip jars, and other gaming devices.





# Table of Contents

	<u>Page</u>
Letter of Transmittal	iii
Task Force Members	v
Acknowledgements	vii
<b>EXECUTIVE SUMMARY</b>	<b>ix</b>
<b>FINDINGS</b>	<b>ix</b>
The Setting for the Decision	ix
Economic Consequences	x
Social Costs	xii
Other Issues	xiii
<b>RECOMMENDATIONS</b>	<b>xiii</b>
<b>The Legislative History and Operation of the Task Force</b>	<b>1</b>
Background	1
The Task Force's Work	2
Structure of the Report	4
Gambling v. Gaming	5
<b>CHAPTER 1 - History of Maryland's Gambling Laws</b>	<b>7</b>
Introduction	7
Lotteries	7
Horse Racing	11
Slot Machines	16
Other Types of Gambling	23
<b>CHAPTER 2 - Gambling in Maryland: The Present Situation</b>	<b>35</b>
Horse Racing	35
Lottery	36
Charitable Gambling	38
For-Profit Bingo	43
Illegal Gambling and Out-of State Gambling	43
Conclusion	43
<b>CHAPTER 3 - Casino Gaming in Other States</b>	<b>49</b>
Origins	49
Modern Era of Casino Gaming	52
Non-Tribal Casino Gaming: A State-by-State Breakdown	55
Revenues and Growth	60
Taxes	62
<b>CHAPTER 4 - The Potential Economic Impact of Casinos in Maryland</b>	<b>71</b>
Introduction	71
Casino Visits	73
Expenditures	75
Jobs	75
Aggregate Economic Effects	76

	<u>Page</u>
Special Industries Affected	81
Conclusions	84
APPENDIX TO CHAPTER 4 - Comparing the Structure and Assumptions of the Models	85
<b>CHAPTER 5 - The Social Costs of Casinos</b>	<b>89</b>
Introduction	89
Pathological and Problem Gambling	89
Crime	97
Black Holes	99
<b>CHAPTER 6 - The Task Force's Deliberations and Findings</b>	<b>101</b>
Introduction	101
Ethical Issues	101
The Interdependence of State Decisions	106
Public Opinion	107
Economic Issues	108
Making a Decision	109
Bibliography	113
Appendix I	Attorney General's Opinion Regarding the Potential for Indian Gaming Coming to Maryland
Appendix II	Attorney General's Letter Regarding Problems with Current Charitable Gambling in Maryland
Appendix III	Attorney General's Opinion Regarding Potential for a State or Local Referendum on Casino Gaming and for Constitutionally Permissible Local Option on Casino Gaming
Appendix IV	Letter from the Speaker of the Maryland House of Delegates Concerning the Unlawful Operation of Slot Machines and Tip Jars in Maryland (with attachments)
Appendix V	Chronology of Task Force Activities

## **The Legislative History and Operation of The Task Force**

### **I. Background**

Over the past several years, a number of bills have been introduced in the Maryland General Assembly to either legalize casino gaming in Maryland or create a regulatory body to oversee existing or prospective gaming activities. The proposals have ranged from authorizing casino gaming in land-based or dockside facilities in the State to authorizing casino gaming on riverboats on the State's waterways. During the 1995 Session alone, House Bills 392, 809, 995 and 1101 and Senate Bill 768 all related to casino gaming. House Bills 392 and 809 would have permitted riverboat gaming on certain bodies of water within the State or bordering the State. House Bill 1101 and Senate Bill 768 would have legalized commercial gaming in land-based facilities and would have created a Maryland Controlled Gaming Commission. House Bill 995 would have created a Maryland Gambling Commission and would have authorized the Commission to license up to five persons to operate casinos. House Bill 995 made no distinction between land-based, dockside and riverboat casinos.

With the exception of House Bill 995, all of these bills failed. House Bill 995 survived only after all of the original substantive parts of the bill were deleted by amendment and new language was added to create a Joint Executive-Legislative Task Force to Study Commercial Gaming Activities in Maryland.<sup>1</sup> The final version of House Bill 995 provided in part that:

- (b) The Task Force shall include in its study a review of the legislative proposals for commercial gaming, consistent with the social and fiscal policies of the State.
- (c) The Task Force shall assess the following issues in its study:
  - (1) The views of the public regarding commercial gaming activities in geographic regions of the State;
  - (2) The impact of commercial gaming activities on other industries in this State, including but not limited to horse racing, hotels, restaurants, agriculture, and tourism;
  - (3) The effect of commercial gaming activities on compulsive gambling disorders;
  - (4) The impact of commercial gaming activities on law enforcement;
  - (5) The impact of commercial gaming activities on the various

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<sup>1</sup> Chapter 579 of the Laws of Maryland of 1995.

nonprofit gaming activities currently allowed in the State;

- (6) The fiscal impact of commercial gaming activities generally on State and local revenues and expenditures, and particularly on the State Lottery;
- (7) The extent of any potential economic development from commercial gaming activities;
- (8) The ethical issues associated with commercial gaming activities;
- (9) The current commercial gaming activities laws and legislative proposals regarding commercial gaming activities in other states, particularly in the mid-Atlantic region of the United States;
- (10) The impact of commercial gaming activities on criminal activity in the State;
- (11) The feasibility of State regulation of all commercial and noncommercial gaming activities in the State through preemption of all local laws governing any type of commercial or noncommercial gaming activities;
- (12) The extent to which the proceeds of commercial and noncommercial gaming activities are distributed to charitable organizations; and
- (13) Any other issues concerning commercial gaming activities.

The bill established a nine-member Task Force, consisting of five individuals from the private sector appointed by the Governor and four legislators appointed by the legislative leadership. The bill required that the Governor appoint the Chairman. The bill also required that a final report of the Task Force be submitted to the Governor and General Assembly.

## **II. The Task Force's Work**

The Task Force held four public hearings in different regions of the State to ascertain the views of the public regarding casino gaming. The Task Force asked all witnesses to address the following issues: (1) Whether or not the General Assembly should allow commercial casino gaming in Maryland; and (2) If the General Assembly should allow commercial casino gaming in Maryland, in what form and where

should it be located? If the General Assembly should not allow such gambling, why not? The Task Force also invited all witnesses to address any of the issues identified in House Bill 995.<sup>2</sup>

The Task Force requested studies from the Departments of Business and Economic Development, Fiscal Services, Health and Mental Hygiene, Legislative Reference and the State Police.<sup>3</sup> The Attorney General submitted his own independent report on the impact of casino gaming on crime.<sup>4</sup> The Task Force conducted an extensive review of prior studies and literature on gaming in other states, reviewed a Maryland-specific study that was prepared at the request of representatives of the casino industry<sup>5</sup> and reviewed a Maryland-specific study that was prepared for the Greater Baltimore Committee.<sup>6</sup>

The Task Force's Chairman and staff participated in a day-long site visit to five existing gambling locations in the State. The site visit was conducted by the Finance Resources Subcommittee of the House Ways and Means Committee and the Gambling Subcommittee of the House Judiciary Committee, which include two task force members (Delegates Vallario and Hixon) who also participated in the site visit. The site trip included visits to the Kent Island Elks Club in Queen Anne's County, the Bladensburg Volunteer Fire Company in Prince George's County, the Owls Club in Frederick County, a restaurant and off-track betting facility in Frederick County (The Cracked Claw) and a tavern and tip jar operator in Frederick County (The Place). The site visit to these gambling locations gave the participants a striking perspective on the broad scope of gambling activities that already exist in Maryland.

The Task Force made two fact-finding visits to other states in which commercial casino gaming is currently lawful. The first site visit was a two-day visit to Atlantic City, New Jersey. The second site visit was a one-day visit to St. Louis, Missouri and East St. Louis, Illinois.

The site visit to Atlantic City included meetings and discussions with: (1) the Chairman of the Casino Control Commission; (2) the Director of the Gaming Enforcement Division of the New Jersey

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<sup>2</sup> Committee Meetings and Hearing Schedule (1995 Interim), Maryland General Assembly, Department of Legislative Reference.

<sup>3</sup> See Economic and Fiscal Impacts from the Introduction of Casino Gambling in Maryland, Department of Business and Economic Development (October, 1995); Projected Impact of Casino Gambling in Maryland, Department of Fiscal Services (November, 1995); and Commercial Gambling Operations in Selected Jurisdictions, Department of Legislative Reference (November, 1995). The Department of State Police did not provide a report.

<sup>4</sup> The House Never Loses and Maryland Cannot Win: Why Casino Gaming is a Bad Idea, prepared by Attorney General J. Joseph Curran, Jr. (October 16, 1995).

<sup>5</sup> Impact of Casino Gaming on Incremental Tax Revenues, Net Job Creation, Tourism and the Existing Economy in Maryland, prepared by Arthur Andersen, LLP and the Jacob France Center, Robert G. Merrick School of Business, University of Baltimore (October 16, 1995).

<sup>6</sup> Casino Economic Impact Report: State of Maryland and Baltimore Area, prepared by Hunter Interests (October, 1995).

Attorney General's Office; (3) the Director of the Slot Laboratory in the Gaming Enforcement Division; (4) the Mayor of Atlantic City; (5) representatives of the Casino Hotel Investigations Unit in the Atlantic City Police Department; (6) the Director of the Atlantic City Office of Health and Human Services; (7) the Director of the Atlantic County Office of Community Development and Economic Assistance; (8) the Executive Director of the Atlantic City Rescue Mission; (9) a representative of the Atlantic City Mental Health Center; (10) the Atlantic County Prosecutor; (11) managers and other representatives of two casino/hotels; (12) the Mayor of Wildwood, New Jersey; and (14) small business owners in Atlantic City. The site visit also included tours of two casino/hotels.

The site visit to St. Louis included meetings and discussions with: (1) a representative of the St. Louis Convention and Visitors Commission; (2) the Executive Director of the St. Louis Development Corporation; (3) managers and other representatives of riverboat casinos located in St. Louis, Missouri and East St. Louis, Illinois; (4) representatives of the Missouri Riverboat Gaming Association; (5) the Executive Director of the Missouri Gaming Commission; (6) representatives of the Missouri Restaurant Association and local restaurant owners; (7) a representative of the horse racing industry in Illinois; and (8) a representative of the St. Louis Circuit Attorney's Office. The site visit also included tours of two riverboat casinos (one that is permanently moored in St. Louis on the Missouri side of the Mississippi river and one that is docked in East St. Louis on the Illinois side of the Mississippi river).

The Task Force sought the advice and counsel of the Maryland Attorney General on several important issues relating to the potential for: (1) Indian gaming in Maryland; and (2) a state or local referendum on casino gaming or the creation of a constitutionally permissible local option mechanism for casino gaming. The two opinions of the Attorney General that address these issues are attached as Appendix I and Appendix III of this report.

In recognition of the national issues that are associated with the growth of casino gaming in recent years, the Task Force monitored the progress of a bill that has been introduced on the federal level to create a National Gambling Impact and Policy Commission. Task Force staff attended the hearing on House Bill 497 on September 29, 1995 before the Judiciary Committee in the United States House of Representatives. The Task Force also reviewed written testimony that was submitted at that hearing.

### **III. Structure of the Report**

This document constitutes the final report of the Task Force. The Report provides the basis for the Findings and Recommendations of the Task Force. The first three chapters provide factual background material. Chapter 1 describes the historic development of legal gambling in Maryland, covering the full

range of gambling activities. Chapter 2 provides a brief description of current gambling activities in Maryland. Chapter 3 summarizes recent developments of gambling in the United States, giving particular attention to the growth and spread of the casino industry in the last five years.

The next three chapters are more analytic. Chapter 4 presents a number of projections of the likely economic consequences of the introduction of commercial casino gaming into Maryland. Chapter 5 assesses the literature on the social costs of casinos, in particular how the introduction of casino gaming might affect pathological gambling, crime and criminal justice costs in the state. Chapter 6 then addresses ethical issues and how the Task Force weighed various considerations in reaching its Findings and Recommendations.

Appendix I is the Maryland Attorney General's opinion on the likelihood of an Indian tribe obtaining authority to operate a casino in Maryland. Appendix II is a letter from the Attorney General regarding problems that relate to the current regulation of charitable gambling in Maryland. Appendix III is an opinion by the Attorney General on the following two issues: (1) whether legislation authorizing commercial gaming in Maryland could be made contingent on, or be subject to, a statewide referendum; and (2) whether legislation authorizing commercial gaming in Maryland could delegate to a local jurisdiction, subject to certain State regulatory parameters, the final decision on whether to allow commercial gaming in that locality. Appendix IV is a letter (with attachments) from the Speaker of the Maryland House of Delegates to the Task Force Chairman, providing further evidence and opinion concerning the unlawful operation of slot machines and tip jars in Maryland. Appendix V is a chronology of Task Force activities.

#### **IV. Gambling v. Gaming**

The legislation that created this Task Force mandated that the Task Force study commercial *gaming* activities in Maryland. Under current Maryland law, the word "gaming" is synonymous with the word "gambling." Both words are used throughout the Maryland Annotated Code to refer to the same types of activities. However, in this report, the words "casino gaming" refer to wagering on the types of games that are commonly associated with casinos (i.e., slot machines and table games). The word "gambling" refers to all types of wagering, including casino gaming.





# CHAPTER 1

## History of Maryland's Gambling Laws

### I. Introduction

The Task Force believes that the decision on whether to authorize commercial casino gaming in Maryland requires an understanding of the history of gambling in the State of Maryland. Over the years, Maryland has authorized various forms of State-sponsored gambling (e.g., lotteries), commercial gambling (e.g., horse racing, slot machines, pinball machines, tip jars and bingo) and charitable gambling (e.g., slot machines, tip jars and casino gaming). The history reflects a continuous effort to satisfy the State's desire for revenues and the public's desire for gambling opportunities while, at the same time, guarding against the two major threats posed by the huge amounts of money that gambling generates -- corruption of public authority and erosion of public trust in government. In deciding whether commercial casino gaming should be added to the currently existing forms of lawful gambling in Maryland, the Task Force reviewed the evolution of the many forms of lawful gambling in the State. Each form has had a distinctive history, representing its particular constellation of opportunities and problems.

### II. Lotteries

#### The Maryland Constitution

Until 1972, the Maryland Constitution prohibited the conduct of any type of lottery. Specifically, §36 of Article III of the Maryland Constitution provided that "[n]o Lottery grant shall . . . be authorized by the General Assembly." In 1935, the General Assembly passed legislation proposing a constitutional amendment that would have repealed this prohibition.<sup>7</sup> However, the proposed constitutional amendment was rejected by the voters in the 1938 General Election.

In 1972, the General Assembly passed legislation that proposed a constitutional amendment to allow the State to conduct a lottery. The constitutional amendment changed the language of §36 of Article III to read as follows: "[n]o Lottery grant shall . . . be authorized by the General Assembly unless it is a lottery to be operated by and for the benefit of the State."<sup>8</sup> This constitutional amendment was adopted by the voters that same year.

The term "lottery grant" has been interpreted by the Maryland Court of Appeals to mean traditional chartered ticket lotteries engaged in or sponsored by the State and to exclude other types of gaming such as bingo and slot machines.<sup>9</sup> In Bender v. Arundel Arena, Inc., 248 Md.181 (1966), the Court

<sup>7</sup> Chapter 463 of the Laws of Maryland of 1935.

<sup>8</sup> Chapter 364 of the Laws of Maryland of 1972.

<sup>9</sup> Bender v. Arundel Arena, Inc., 248 Md. 181, 195 (1966).

noted that “[m]ost states have held coin-operated gambling machines and bingo to be lotteries, finding that they combine the classic elements of a lottery of consideration, chance and prize.”<sup>10</sup> Nevertheless, the Court decided that the then-existing legislative and constitutional provisions relating to gambling in Maryland indicated that there was a “definitive distinction between *games of chance* and *schemes of lottery*” (emphasis in original text).<sup>11</sup>

### The Maryland State Lottery

#### A. Legislative History

Maryland took a strong anti-gambling stance in the early part of the modern era. In 1860, the General Assembly passed a sweeping anti-lottery law.<sup>12</sup> In 1886, the anti-lottery law was expanded to make it applicable to certain “gift enterprises.”<sup>13</sup> In 1890, the General Assembly passed legislation that prohibited bookmaking (unless conducted on county fairgrounds or at established race courses).<sup>14</sup> In 1894, the anti-lottery law was further expanded by legislation that made certain criminal penalties applicable to the possession of lottery tickets, slips or records.<sup>15</sup> The current statutory provisions that prohibit various activities relating to lotteries are codified in Article 27, §§356 through 371A of the Code.

The State’s approach to lotteries changed dramatically in 1972 when the General Assembly passed legislation that established the Maryland State Lottery.<sup>16</sup> The legislation that created the State Lottery was made contingent on the adoption of the constitutional amendment discussed above. The Lottery Law created the State Lottery Agency and the State Lottery Commission within the State Lottery Agency.<sup>17</sup> The purpose of the Lottery Law was to establish a State-operated lottery under the immediate supervision of the Director of the State Lottery Agency and the guidance of the Commission, for the purpose of producing revenue for the General Fund of Maryland. The lottery began its operations on January 2, 1973.

Responding to concerns about the speculative nature of lottery revenues, the General Assembly took a more cautious approach in structuring the Lottery Law than did many other states that had enacted lottery laws in the late 1960s and early 1970s.<sup>18</sup> The 1972 Lottery Law provided that money collected from the lottery would not become available as General Fund revenues until the fiscal year after the year in

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<sup>10</sup> *Id.* at 189.

<sup>11</sup> *Id.*

<sup>12</sup> Chapter 388 of the Laws of Maryland of 1860.

<sup>13</sup> Chapter 480 of the Laws of Maryland of 1886.

<sup>14</sup> Chapter 206 of the Laws of Maryland of 1890.

<sup>15</sup> Chapter 310 of the Laws of Maryland of 1894.

<sup>16</sup> Chapter 365 of the Laws of Maryland of 1972.

<sup>17</sup> Sections 9-101 through 9-125 of the State Government Article and COMAR 14.01.01.01 through 14.01.09.05.

<sup>18</sup> “Repeal of Lottery Ban Backed by 2 House Panels,” *The Baltimore Sun*, March 4, 1972.

which the money was collected.<sup>19</sup> In 1976, however, the desire for immediate revenues led to the passage of legislation that required monthly lottery revenues to be paid over promptly into the General Fund, rather than waiting a year.<sup>20</sup> This payment structure has remained in effect ever since.

One aspect of Maryland's Lottery Law that originally set it apart from the lottery laws of many other states was the absence of any provision earmarking the use of lottery money for specific purposes. The 1972 Lottery Law required all lottery proceeds to be deposited in the General Fund. Other states -- including Connecticut, Massachusetts, New Jersey and New York -- designated the use of lottery proceeds for specific purposes, typically for education or aid for elderly or disabled persons. According to Governor Marvin Mandel, the language of the 1972 bill specifically avoided appropriating money for certain purposes because of the uncertainty involved. The Governor did not want Maryland to "fall into the trap other states did by anticipating" a certain amount of money for a particular purpose.<sup>21</sup>

There have been several attempts over the years to earmark lottery revenues for a particular cause. For example, legislation (Senate Bill 387) that was introduced in 1974 would have required that 25 percent of the money collected from the lottery be used to aid elderly persons and another 25 percent be used to aid disabled persons. This legislation was not passed by the General Assembly. In 1983, in an effort to collect more revenue for their political subdivisions, legislators from Baltimore City and Prince George's County guided legislation through the General Assembly that allocated proceeds of all lotto sales to a political subdivision in proportion to the lotto tickets sold in that political subdivision.<sup>22</sup> This legislation provided significant benefits to Baltimore City and Prince George's County -- the political subdivisions selling the most lotto tickets.<sup>23</sup> In its final form, however, the legislation only applied to Fiscal Year 1984. Thereafter, proceeds from all lotto sales were again deposited into the General Fund.

The only permanent exception to the requirement that all lottery revenues be deposited into the General Fund was established in 1987 with the enactment of legislation that required special lotteries to be held for the benefit of the Maryland Stadium Authority.<sup>24</sup> Under this law, the State Lottery Agency is required to hold between two and four lotteries each year that are specifically publicized as "sports lotteries" for the benefit of the Maryland Stadium Authority. Revenues that are generated by these lotteries are used for the Stadium Authority's operating expenses and to finance the Stadium Authority's capital

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<sup>19</sup> Chapter 365 of the Laws of Maryland of 1972.

<sup>20</sup> Chapter 374 of the Laws of Maryland of 1976.

<sup>21</sup> "Mandel Seeks Windfall by Lottery Law Changes," The Baltimore Sun, December 27, 1975.

<sup>22</sup> Chapter 394 of the Laws of Maryland of 1983.

<sup>23</sup> "New Lotto Game is Given Final Approval in Senate," The Baltimore Sun, April 8, 1983.

<sup>24</sup> Chapter 124 of the Laws of Maryland of 1987.

program, which includes debt service on Oriole Park at Camden Yards and a reserve fund to finance construction of a football stadium at Camden Yards.

Another significant event relating to the Maryland Lottery Law occurred during the 1993 Session, when House Bill 630 was introduced in an attempt to abolish Keno -- a game that had been introduced by the State Lottery Agency less than six months before the start of the 1993 Session. Some legislators were concerned that the introduction of Keno went beyond the legislative intent of the 1972 law because Keno is played in a social climate and resembles some types of casino gaming. The effort to abolish Keno failed.

#### **B. Current Law**

With the exception of proceeds received from "sports lotteries," all moneys received in lottery sales, less agent commissions, are credited to a special account designated as the State Lottery Fund. Proceeds of the State Lottery Fund must be used first to pay expenses of administering and operating the State lottery. The remaining proceeds must be apportioned by the Agency between the holder of each winning ticket or share and the General Fund. Pursuant to Agency regulations, the lottery proceeds are divided equally between the cumulative winners of each lottery and the General Fund. The Lottery Law directs the State Lottery Agency to conduct at least two but no more than four sports lotteries annually. The proceeds from the sports lotteries are distributed to the Maryland Stadium Authority.

The Lottery Law does not specify the types of lottery games that may be played in Maryland. Rather, the Director has broad authority to determine the types of games as well as the rules of the games. The State Lottery Agency has established a number of different lottery games over the past two decades. The following list summarizes the history of the various lottery games that have been introduced by the State Lottery Agency:

- 1973: Weekly Game (this game was phased out in the mid-1980s, coinciding with the introduction of the Lotto in 1983);
- 1976: 1st Instant Game and Pick-3;
- 1981: 2nd Instant Game;
- 1982: 3rd Instant Game;
- 1983: Pick-4 and Lotto;
- 1986: 4th Instant Game and 5th Instant Game;

- 1988: Multiple Instant Games;
- 1990: Winners Take All Game;
- 1991: Match 5 (replaces Winners Take All); and
- 1993: Keno.
- 1995: Bonus Match 5 (replaces Match 5)

The State Lottery Agency currently oversees five types of games: Instant Games, Numbers Games (Pick-3, Pick-4), Lotto, Bonus Match 5<sup>25</sup> and Keno. Tickets generally cost \$1, but there are variations. Pick-3 tickets may be purchased for 50 cents and Instant Games may be purchased for up to \$5. A Keno ticket costs between \$1 and \$20, depending on how much money a person chooses to wager. Instant Games are played with rub-off tickets that allow a player to determine immediately whether the player has won the game. The Numbers Games require a player to select numbers on a ticket and to match them to the numbers that are drawn. Keno is played in licensed restaurants, bowling alleys and other similar venues. Keno drawings occur at five-minute intervals between 6:00 A.M. and 1:00 A.M. the following day. Players choose up to ten numbers from a field of eighty numbers. A player wins when the player's selected numbers match the numbers that are selected by a computer and displayed on a television monitor.

### III. Horse Racing

#### Historical Overview

The roots of horse racing in Maryland reach deep into the State's colonial past to a time when wealthy plantation owners raced their horses down dusty, quarter-mile stretches near tobacco loading points to win money, defend their reputations or simply find relief from boredom.<sup>26</sup> At first, these races were rowdy affairs, unencumbered by stringent rules or any high regard for personal safety. Finally, in 1743, racing in Maryland took its first step toward becoming an organized, regulated activity. To supervise races at an Annapolis track, Samuel Ogle, a wealthy landowner who served as colonial Governor for many years, joined with several friends to form The Maryland Jockey Club. The Club, currently reputed to be the oldest turf organization in continuous existence in the country, started to award plates, purses and cups to the winners of entry fields that were drawn from all over the Chesapeake region.

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<sup>25</sup> "Bonus" refers to the drawing of an additional winning number, increasing the players' odds of winning.

<sup>26</sup> Bruggar, Robert J., Maryland: A Middle Temperament 1634-1980 (1980).

Seasonal racing meetings were established in later years in Upper and Lower Marlboro, Joppatowne, Elkridge and Chestertown. Regulation of these meetings was left to local jurisdictions.

Racing began attracting mass audiences in 1870, when The Maryland Jockey Club began seasonal horse racing at an oval track in the Pimlico section of Baltimore City. However, it was not until the early years of the twentieth century that Maryland horse racing became "big business." Between 1911 and 1914, tracks opened at Laurel, Havre de Grace, Bowie and Marlboro. The pari-mutuel system of betting was introduced in 1912.<sup>27</sup> This system, which is still in effect, allows bettors themselves and not an outside oddsmaker to set the odds for races. The pari-mutuel system ensures that the precise amount of money wagered by unsuccessful bettors is returned to successful bettors after certain deductions, such as for taxes and purse money, are made. After 1917, the prestigious Woodlawn Cup was awarded to the winner of the Preakness Stakes, which then began to gain national recognition as the "second jewel" in the "triple crown" of thoroughbred racing. Purses awarded to owners of winning horses also increased -- but so did the level of corruption in the sport. During the 1920 Session, the General Assembly repealed the local laws that controlled racing and created the Racing Commission to establish State control over tracks and betting.<sup>28</sup> The Racing Commission continues to be the State agency responsible for the regulation of horse racing in Maryland. The Racing Commission sets the percentage of wagers to be taken out of the pool and allocated to purses and other uses. The take out varies by type of wager and track. For regular one horse wagering at thoroughbred tracks, the take out is 17 percent; 7.7 percent goes to purses, 7.7 percent to the track, 1.1 percent to the breeder fund and 0.5 percent to the state.

Until the late 1980s, racing legislation related primarily to adjustments in the number of authorized racing days, the setting of new tax rates on betting, the authorization to open new tracks or close old tracks in the State and experimentation with new forms of racing.<sup>29</sup> In 1933, the first State tax on betting on horse races was imposed.<sup>30</sup> The tax -- 1 percent on betting at mile tracks -- was adjusted many times in subsequent years. In 1937, the General Assembly gave the Commission authority to license harness racing in the State "at its discretion" for a period not exceeding ten days in any one year.<sup>31</sup> Until that time, the only racing authorized in Maryland was thoroughbred racing conducted on mile or half-mile tracks. Rosecroft and Ocean Downs (renamed Delmarva Downs in 1986), the only two harness tracks that are still

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<sup>27</sup> Department of Fiscal Services, Maryland Horse Racing Historical Overview, p. 1 (1992).

<sup>28</sup> Chapter 273 of the Laws of Maryland of 1920.

<sup>29</sup> Department of Fiscal Services, Maryland Horse Racing Historical Overview, pp. 1-18 (1992).

<sup>30</sup> Chapter 324 of the Laws of Maryland of 1933.

<sup>31</sup> Chapter 408 of the Laws of Maryland of 1937.

in operation today, did not open their gates until 1949. These two tracks received express authorization to operate pari-mutuel betting in 1951.<sup>32</sup> In 1953, steeplechase racing was allowed at a track in the Fair Hill Natural Resources Management Area in Cecil County.<sup>33</sup>

In 1989, the Prince George's County Equestrian Center was authorized to hold two days of horse racing each year (later increased to four days) with pari-mutuel wagering in conjunction with a county fair or an equestrian activity.<sup>34</sup> The Center joined the half-mile track in Timonium, at which races are held during the Maryland State Fair, in hosting special thoroughbred racing in conjunction with annual events. The addition of the Equestrian Center brought the complement of tracks hosting authorized racing in the State to its present total of seven.

### Fund Programs

To encourage thoroughbred breeding and racing in the State, the General Assembly created The Maryland-Bred Race Fund in 1962.<sup>35</sup> Today, the Fund is supported by an assessment on each thoroughbred track licensee of a portion of the mutuel pool of all horse races held by the licensee. The Fund is then apportioned between a purse for races involving Maryland-bred horses and awards given to the breeders and owners of Maryland-bred horses. The Maryland Standardbred Race Fund was established in 1971 to encourage the standardbred industry in the State.<sup>36</sup> Two sets of races, the Foaled Stakes Program and the Sires Stakes Program are run for horses foaled in the State and for offspring of sires that were at stud in the State for a full breeding season.

To improve revenues for horsemen and to bolster racing's sagging infrastructure, the General Assembly in 1985 enacted the most sweeping change in Maryland's history in the tax structure governing racing.<sup>37</sup> For example, the State tax collected at the mile thoroughbred tracks was reduced from 4.09 percent to .5 percent and the daily license fee was cut from \$1,000 per day to \$25 per day. At the same time, the track share, purse and allocations to the Maryland Bred Race Fund were increased significantly. Much of the increased revenue was required to be spent on capital improvements, marketing and payments to communities directly affected by racing activity. The same legislation made similar changes to the laws governing harness tracks.

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<sup>32</sup> Chapter 696 of the Laws of Maryland of 1951.

<sup>33</sup> Chapter 781 of the Laws of Maryland of 1953.

<sup>34</sup> Chapter 773 of the Laws of Maryland of 1989.

<sup>35</sup> Chapter 137 of the Laws of Maryland of 1962.

<sup>36</sup> Chapter 771 of the Laws of Maryland of 1971.

<sup>37</sup> Chapter 7 of the Laws of Maryland of 1985.



### Simulcasting

Racing in Maryland entered a new era in 1988. In that year, the General Assembly authorized the Commission to establish a system of intertrack wagering between thoroughbred race tracks, enabling patrons at one track (even on days when racing was not taking place at that track) to place bets on races held at the other track.<sup>38</sup> Intertrack wagering at Delmarva Downs on races simulcast from Laurel or Pimlico was also authorized. Intertrack wagering, in turn, paved the way for the most significant development in racing in recent times: the passage of legislation in 1993 authorizing full scale simulcasting in the State.<sup>39</sup> Today, simulcasting allows patrons who watch screens set up at State tracks or at any of four off-track betting locations around the State to place bets on races that are simulcasted (i.e., televised live) from any tracks in the nation. In addition, races that are run in Maryland are beamed to betting locations throughout the country. Simulcasting has quickly become a major factor in the racing industry's financial health. Wagering on out-of-state races through simulcasting now accounts for more money than wagering on live races run at the Laurel and Pimlico tracks. The allocation of the money wagered on simulcast races is not determined by law. Each off-track-betting facility operator negotiates the allocation of handle privately with the race tracks and the horse owners.

### Current Law

Currently, six types of racing are allowed in the State: (1) harness racing; (2) mile thoroughbred racing; (3) special thoroughbred racing; (4) steeplechase or hurdle racing; (5) flat racing; and (6) quarter horse racing. Harness racing, in which standardbred horses trot or pace in harness while pulling drivers in sulkies, is conducted at Rosecroft Raceway in Prince George's County and at Delmarva Downs Raceway in Worcester County. Thoroughbred racing, in which thoroughbreds race at a track that is at least one mile long, is conducted at Laurel Race Course in Anne Arundel County and at Pimlico Race Course in Baltimore City. Special thoroughbred racing refers to those races for thoroughbreds that are held on half-mile tracks by the Maryland State Fair and Agricultural Society, Inc., or the Maryland-National Park and Planning Commission in conjunction with fairs or other special events. Steeplechase racing (in which horses jump over wooden barriers), hurdle racing (in which horses jump over hedges) and flat racing (in which horses race without obstacles) are held on at least two, but not more than eight, one-day race meetings each year at the Fair Hill Natural Resources Management Area in Cecil County. Lastly, statutory

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<sup>38</sup> Chapter 305 of the Laws of Maryland of 1988.

<sup>39</sup> Chapter 3 of the Laws of Maryland of 1993.

law permits two race meetings a year to be held at the Fair Hill Natural Resources Management Area for quarter horse racing; however, quarter horse races have never been conducted there.

Maryland law regulates any horse race in the State at which a stake, purse or award is allowed to be presented to the top finishers.<sup>40</sup> Races are conducted during race meetings, which are periods of time that extend between specific dates over a number of racing days at a single track. The Maryland Racing Commission of the Department of Labor, Licensing and Regulation regulates all facets of horse racing and betting on horse racing in the State. Statutory law gives the Commission the extraordinarily broad power not only to adopt racing regulations but also to unilaterally issue racing conditions, which need not go through the regulatory review process of the General Assembly. The Commission is empowered to conduct investigations, require record keeping, issue subpoenas and hold hearings.

The Commission consists of nine members who are appointed for four-year terms by the Governor with the advice and consent of the Senate. An Executive Director of the Commission serves at the pleasure of the Secretary of the Department. The Commission also employs a host of employees, including stewards and harness judges to supervise the holding of thoroughbred and harness races. The Commission's regulatory purview may be broken into the following three broad categories: (1) licensing; (2) racing; and (3) wagering

The Commission licenses individuals who participate in horse racing, including owners, trainers, jockeys, jockey's agents and grooms, as well as the corporate entities that own the race track (i.e., track licensees). The Commission awards "racing days" to track licensees -- i.e., permission to conduct races on particular dates. Subject to certain hearing provisions, the Commission may deny a license to an applicant or discipline a licensee for a violation of any statute, regulation or condition set by the Commission. Officials of track licensees, individual licensees and prospective buyers of race tracks are subject to personal and financial background checks conducted by the Commission.

The Commission adopts all regulations governing the actual conduct of races, from the price of admission and the charge for any article or service sold at the races to the type of equipment that must be worn by jockeys and drivers. The Commission determines the qualifications of horses for entering races and enforces the rules under which races are run. In addition, the Commission maintains a testing laboratory for drugs and medications at the University of Maryland at College Park campus and has tests on individuals and horses done in that laboratory and other laboratories throughout the country.

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<sup>40</sup> Title 11 of the Business Regulation Article and COMAR 09.10.01 through 09.10.05.

The Commission authorizes the types of wagers that may be placed on horses. These wagers include "straight wagers," in which a bettor places a bet that a particular horse will finish either first, second or third in a race and "exotic wagers," in which a bettor places a bet that two or more horses will finish in a specified order, either in the same race or in different races. Examples of exotic wagers are exactas (selecting two horses that will finish first and second in a particular race), triples or trifectas (selecting three horses that will finish first, second or third in a particular race), daily doubles (selecting two horses that will finish first in two particular races) and Super Bet (selecting two horses that will finish first and second in each of two races designated as Super Bet races and three horses that will finish first, second and third in a third race designated as a Super Bet race). Allocations of the "takeout" of each race (i.e., amounts from the pool of money or "handle" bet on a race that are dedicated for a specific purpose, such as taxes and purses) are set by statute.

#### **The Future of Racing in Maryland**

Two emerging developments may have a significant impact on the future of racing in Maryland. First, in the fall of 1994, Laurel and Pimlico owner Joseph A. DeFrancis announced that his tracks will end twenty years of year-round racing and will not conduct live racing for four months in the summer to avoid competing with a race track near Richmond, Virginia. Conversely, it has been agreed that when the Maryland tracks reopen, the Virginia track will close and its six off-track betting sites will carry Maryland races for free. It should be added, however, that this marketing agreement may not be put into effect in 1996 as planned, in light of the fact that the Virginia track has not yet been built.

Secondly, in January 1995, the Racing Commission approved the test marketing of an "interactive" betting system in the State. An interactive system would allow bettors to watch races on their television at home and place bets by punching in selections on a remote control panel. Interactive betting could have an enormous impact on how racing is conducted in the future. Test marketing, however, has been delayed by the Commission pending submission of this report to the Governor and General Assembly.

#### **IV. Slot Machines**

##### **Slot Machines Throughout the State**

In 1937, the General Assembly enacted legislation that authorized the maintenance, operation and licensing of pinball and other coin-operated machines for the purpose of public entertainment throughout the State.<sup>41</sup> This legislation was designed to enhance revenues for aid to the needy during the last remnants

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<sup>41</sup> Chapter 11 of the Laws of Maryland of 1937.

of the Great Depression.<sup>42</sup> The legislation provided that it would terminate on April 30, 1939. Notwithstanding its termination date, there were several legislative attempts to continue the legal operation of pinball and other coin-operated machines in some counties after April 30, 1939.

During the 1939 Session, the General Assembly passed four bills which provided for: (1) the licensing of coin-operated or token-operated devices of skill or chance and for the licensing of distributors of such devices in Montgomery County; (2) the licensing of pinball machines or games played with balls and plungers and other similar devices in Anne Arundel County; (3) the licensing of pinball machines and legalizing the distribution, possession and operation of such machines in Charles County for the benefit of a local hospital; and (4) the licensing of slot machines and pinball games and legalizing the distribution, possession and operation of such machines and games in Prince George's County. Governor Herbert R. O'Connor vetoed all four bills.

The Governor based his vetoes on a desire to terminate the practice of resorting to pinball machines and other gaming devices as a means of raising revenue. He had promised during his election campaign to veto any bills that would continue this practice regardless of whether the bills were limited in scope to particular counties. The Governor expressed doubt that what was considered detrimental to the interests of the State as a whole would be beneficial to particular subdivisions of the State.<sup>43</sup>

#### Slot Machines in Southern Maryland

In 1941, Governor O'Connor again vetoed legislation that would have legalized the licensing, operation and maintenance of pinball and slot machines in Anne Arundel and Garrett counties. In 1943, the General Assembly again passed the Anne Arundel County legislation. This time, however, Governor O'Connor signed the legislation into law.<sup>44</sup> This new law, together with other laws that were enacted in 1945 and 1949, gave the Anne Arundel County Commissioners broad authority to license "amusement devices" and exempted such devices from State gambling laws.<sup>45</sup> In 1947, 1948 and 1949, respectively, the State enacted other laws legalizing the licensing and operation of slot machines in St. Mary's, Calvert and Charles counties.<sup>46</sup>

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<sup>42</sup> The Report of the Slot Machine Committee, p.3 (January, 1963).

<sup>43</sup> Governor's Veto Message in the Laws of Maryland of 1939, pp. 1728-1730

<sup>44</sup> Chapter 321 of the Laws of Maryland of 1943; and Bender v. Arundel Arena, 248 Md. 181, 186-187 (1967).

<sup>45</sup> Chapter 1013 of the Laws of Maryland of 1945; and Chapter 625 of the Laws of Maryland of 1949.

<sup>46</sup> Chapter 601 of the Laws of Maryland of 1947 and Chapter 32 of the Laws of Maryland of 1947 (Extraordinary Session); Chapter 13 of the Laws of Maryland of 1948; and Chapter 678 of the Laws of Maryland of 1949.

### The Aftermath of Legalizing Slot Machines in Southern Maryland

In 1949, Southern Maryland was the only place in the continental United States outside of Nevada where slot machines were legal.<sup>47</sup> The number of slot machines in Anne Arundel, St. Mary's, Calvert and Charles counties was so large that this area became known throughout the United States as "Little Las Vegas."<sup>48</sup> At the peak of the slot machine era, approximately six thousand slot machines were licensed in the four counties.<sup>49</sup> These machines were widely available on a "strip of neon-festooned casinos that sprouted up on U.S. Highway 301, a busy north-south trunk highway."<sup>50</sup> As noted by one observer, "there was a time when nearly every bar, grocery store, and motel in this dusty, tobacco-growing region was jammed solid with slots."<sup>51</sup>

For years, some parents, ministers, civic leaders and political reformers argued that the slot machines enriched a few people at the expense of many, corrupted the morals of children, created an unwholesome atmosphere, encouraged political corruption and spawned honky-tonk communities.<sup>52</sup> In response, supporters of slot machines argued that the machines generated significant public revenues and brought thousands of jobs to Maryland.<sup>53</sup>

A 1962 grand jury for Anne Arundel County conducted an investigation into the operation of slot machines. The grand jury report, issued in April of 1962, outlined numerous problems relating to slot machines. The report stated that "it is the opinion of the Jury that the present regulatory measures governing the operation of slots are wholly inadequate."<sup>54</sup> The report also noted that there was widespread illegal use of slot machines by minors, that slot machines were causing crime to increase in the County and that slot machine receipts were not always reported.<sup>55</sup> The grand jury described the whole situation as a "sordid mess."<sup>56</sup> During the 1962 gubernatorial campaign, whether to repeal the laws authorizing the use of slot machines in Southern Maryland became a major political issue. The controversy reached its climax during a remarkable Session of the General Assembly in 1963.

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<sup>47</sup> "Little Las Vegas' End: The Slot Machines Die in Maryland," The National Observer, July 8, 1968.

<sup>48</sup> Id.

<sup>49</sup> "Tawes, Hume Reach an Understanding on Slot Machines Issue," The Baltimore Sun, September 15, 1962.

<sup>50</sup> "Little Las Vegas' End: The Slot Machines Die in Maryland," The National Observer, July 8, 1968.

<sup>51</sup> Id.

<sup>52</sup> Id.

<sup>53</sup> Id.

<sup>54</sup> Report of the Grand Jury for Anne Arundel County, p.31 (April Term, 1962).

<sup>55</sup> Id. at 32.

<sup>56</sup> Id.

In 1962, J. Millard Tawes was completing his first term as Governor of Maryland. For many years, Governor Tawes had espoused the belief that the slot machine issue should be decided by individual counties and not by the State legislature. He abandoned this "local option" approach after the 1962 Democratic gubernatorial primary election, when a challenger named David Hume made an unexpectedly strong showing against him. Mr. Hume had argued throughout the campaign that there were many evils associated with slot machines and that the machines were so entwined with local governments in Southern Maryland that only statewide action could free the region from the grip of slot machines and the evils associated with them.<sup>57</sup> In the fall of 1962, Governor Tawes announced his revised thinking on the subject of slot machines -- i.e., that their presence in the four counties in Southern Maryland was not a local issue and that their abolition was a State concern.<sup>58</sup>

In the fall of 1962, Governor Tawes called for legislation that would make slot machines illegal throughout the State and appointed a Committee to study slot machines and recommend procedures to eliminate the use of the machines with the least possible damage to the economies of Anne Arundel, Calvert, Charles and St. Mary's counties. The Committee, which was chaired by Richard W. Emory, concluded unanimously that "the abolition of slot machines will cause serious economic impact upon the four Southern Maryland Counties" and urged the Governor "to make every effort toward the development of the Counties to help offset the loss of revenues from slot machines."<sup>59</sup> However, the Committee could not reach a unanimous decision on the manner in which slot machines should be phased out (i.e., immediately or over a specified number of years).<sup>60</sup>

#### **Phasing out Slot Machines in Southern Maryland**

Governor Tawes made the abolition of slot machines one of his key legislative initiatives in the 1963 Session. Early in the Session, the Governor's bill, which mandated the gradual phase-out of slot machines over a five-year period, seemed assured of easy passage. The bill was approved by the House Judiciary Committee by an overwhelming voice vote.<sup>61</sup> The bill hit an unexpected snag, however, when it failed to receive a favorable vote by a majority of the full House of Delegates. After intense lobbying on

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<sup>57</sup> "Tawes, Hume Reach An Understanding on Slot Machines Issue," The Baltimore Sun, September 15, 1962; and Editorial, The Baltimore Sun, September 20, 1962.

<sup>58</sup> "Tawes Calls for Ban on Slot Machines in 4 Southern Counties," The Baltimore Sun, September 20, 1962.

<sup>59</sup> Report of the Slot Machine Committee, p. 15 (January, 1963).

<sup>60</sup> Id.

<sup>61</sup> "Slot Machine Bill Backed By House Unit," The Baltimore Sun, February 28, 1963.

both sides of the issue, the House voted seventy to fifty to adopt the bill -- two votes shy of the necessary constitutional majority of seventy-two.<sup>62</sup>

A total of twenty-two legislators either abstained or were absent from the roll-call vote, which was taken, according to one observer, during "one of the most dramatic hours in recent General Assembly history -- an hour in which open allusions to bribery were made on the House floor."<sup>63</sup> The day after the vote, Delegate Clarence M. Mitchell (Baltimore City) stated that he had received a bribe offer to help defeat the Governor's bill.<sup>64</sup> Less than a week later, after another round of intense lobbying that focused on the pressures that had been placed on legislators by slot machine lobbyists, the House reconsidered its previous action and voted ninety-three to forty-two to approve the bill.<sup>65</sup> The bill was subsequently passed by the Senate and enacted into law.<sup>66</sup>

The 1963 slot machine law established a four-step process for phasing-out slot machines. For any establishment having slot machines as of January 1, 1963, the law allowed a maximum of thirty machines per establishment after July 1, 1965, twenty machines per establishment after July 1, 1966 and ten machines per establishment after July 1, 1967. No person could legally operate or maintain a slot machine after July 1, 1968. Not surprisingly, there were several legislative attempts to evade or soften the impact of the law after it went into effect in 1963.

In 1965, the operators of slot machines supported legislation that would have delayed the date of the final phase-out of the machines, but the General Assembly did not approve the measure. In the same Session, there was an attempt to circumvent the law by adding a provision that would permit the easy transfer of machines from establishments having more than the legal limit to some other location. That effort also failed. During the 1967 Session, slot machine operators offered to pay taxes totaling perhaps \$1 million in exchange for a year's delay in the final phase-out. The General Assembly did not accept their offer and, as the 1963 legislation provided, the ban on slot machines in the four Southern Maryland counties went into effect on July 1, 1968.

Despite the ban on the maintenance and operation of slot machines, many fraternal organizations, particularly on the Eastern Shore, continued to operate them. It was widely believed that they were legal under State laws that permitted gambling for charitable activities. In 1984, however, the Attorney General

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<sup>62</sup> "Tawes Bill to Ban Slot Machines Fails By 2 Votes in House," The Baltimore Sun, March 13, 1963.

<sup>63</sup> Id.

<sup>64</sup> "House Passes Tawes Anti-Slots Measure By 93-to-42 Measure," The Baltimore Sun, March 18, 1963.

<sup>65</sup> Id.

<sup>66</sup> Chapter 617 of the Laws of Maryland of 1963.

decided that the operation of the slot machines for charitable activities was illegal. Subsequently, the State police raided nineteen organizations and seized one-hundred and forty-nine machines.<sup>67</sup>

### Slot Machines on the Eastern Shore

After being vetoed for two consecutive years by Governor Harry Hughes, the General Assembly passed and Governor William Donald Schaefer signed legislation in 1987 that reauthorized slot machines in eight counties on the Eastern Shore.<sup>68</sup> Generally, the law enacted in 1987 remains in effect today.<sup>69</sup> The eight counties in which the operation of slot machines is permitted are: Caroline, Cecil, Dorchester, Kent, Queen Anne's, Somerset, Wicomico and Talbot. Worcester County is not included in the list of counties in which slot machines may be lawfully operated because elected officials in Ocean City wanted to keep the resort city free from gambling.

The slot machine law allows fraternal clubs, veterans' organizations and religious groups in the eight counties to operate a maximum of five slot machines if they give at least 50 percent of the proceeds to charity. Each machine must be licensed by the local Sheriff's Office. The eligible organizations are required to file annual reports under affidavit with the State Comptroller's Office, outlining the disposition of their slot proceeds. There is no provision in the law, however, for a review of the reports nor is there any source of funding for such a review. The law prohibits these organizations from using any of the proceeds for the financial benefit of any individual. All slot machines must be equipped with a tamper-proof meter to record gross receipts. In addition to the meter, the organizations are required to maintain a separate record of the gross receipts and payoffs for each machine.

Forty-five organizations immediately took advantage of the new law by purchasing and operating slot machines in 1988. By 1992, fifty-two organizations owned and operated slot machines on the Eastern Shore. Between 1988 and July 1992, the total amount wagered on slot machines was reported to be \$117 million. Of that amount, the groups paid out approximately \$100 million in winnings and retained net proceeds of over \$18 million. Of that \$18 million, \$9 million was donated to charities and \$9 million was kept by the groups for their own use.

### The Aftermath of Legalizing Slot Machines on the Eastern Shore

After keeping a campaign promise to sign legislation that made the ownership and operation of slot machines lawful on the Eastern Shore, Governor Schaefer became uneasy with the apparent lack of control

<sup>67</sup> "Slot Machines Return," The Capital Newspaper, July, 1 1987; and "Assembly Enacts Bill Allowing Use of Slots on the Shore," The Baltimore Sun, April 8, 1987.

<sup>68</sup> Chapter 157 of the Laws of Maryland of 1987.

<sup>69</sup> Article 27, §264B of the Code.



over the operation of slot machines and the great profitability of slot machines. In 1992, the Governor requested that the Attorney General initiate a grand jury investigation into compliance with the law. The investigation was initiated by the Criminal Intelligence Division of the Maryland State Police in conjunction with the Criminal Investigations Division of the Attorney General's Office.

After analyzing the annual reports that the fraternal clubs, veterans' organizations and religious groups are required to file, as well as the internal records of certain organizations with questionable payouts, the grand jury found no evidence of criminal conduct.<sup>70</sup> However, the grand jury uncovered numerous inadvertent violations of law, which the grand jury attributed to insufficient guidance from the State as to the type of information that should be included in annual reports, the absence of any State review of annual reports and ignorance of the law on the part of eligible organizations.<sup>71</sup> Among other things, the grand jury recommended that the State establish, fund and staff an agency or commission to regulate slot machines. The grand jury believed that such oversight authority was needed in order to standardize reporting requirements and otherwise provide a better enforcement mechanism for the slot machine law.

The grand jury report on slot machines concluded with the following statement: "Given that Maryland has decided to permit slot machine gambling in the Eastern Shore clubs, it behooves the State to provide guidance to the clubs to ensure compliance with the law. Regular audits should be established to monitor compliance, resources should be allocated to fund and staff such audits and violations should be punished. The law should be clarified to explicitly provide for perjury prosecutions of any material misrepresentations in the Annual Reports. The term "charity" should be defined and regulations should be promulgated as guidance to the clubs and Sheriffs. Having permitted the creation of a gambling industry that grosses \$30 million a year, the Legislature should create and fund a mechanism to insure that the laudable purposes behind the law's creation are realized."<sup>72</sup> The General Assembly never implemented these recommendations or any other recommendations outlined in the grand jury report.

In August of 1993, Governor Schaefer established the Governor's Task Force to Study Gambling.<sup>73</sup> The Task Force was given the responsibility of reviewing and analyzing all forms of legal and illegal gambling in Maryland. The Task Force was also given the responsibility of making recommendations regarding the need for any new laws or regulatory structure in Maryland. The Task

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<sup>70</sup> The Grand Jury Special Report for Anne Arundel County, p. 4 (July Term, 1993).

<sup>71</sup> *Id.* at 5.

<sup>72</sup> *Id.* at 17-18.

<sup>73</sup> Executive Order 01.01.1993.19 (August 3, 1993).

Force came to several significant conclusions regarding the regulation of slot machines in Maryland. First, the Task Force made several findings and recommendations regarding the inadequate regulation of slot machines that essentially mirror the findings and recommendations that were outlined in the grand jury report discussed above.<sup>74</sup> Second, the Task Force noted that there was widespread illegal use of slot machines in Maryland. With regard to the use of illegal slot machines, the Task Force stated that "the biggest most complex money makers in Maryland's illegal gambling industry are video slot and poker machines. These video gambling devices have saturated all areas of the state and are commonly found in restaurants and taverns."<sup>75</sup>

The Speaker of the House of Delegates recently raised similar concerns about the illegal use of slot machines in Maryland. In a letter to the Task Force dated October 26, 1995, the Speaker expressed concern about the unlawful use of video gaming devices (i.e., slot machines) by various entities throughout the State.<sup>76</sup> The Speaker attached to his letter a copy of a memorandum from the State's Attorney for Allegany County in which the State's Attorney notes that there is abundant evidence of the unlawful use of video gaming devices by "clubs" in Allegany County.<sup>77</sup> The problems identified by the Speaker and the State's Attorney for Allegany County are consistent with the findings of the Governor's Task Force to Study Gambling regarding the widespread, illegal use of slot machines in Maryland.

## V. Other Types of Gambling

### General Background

At common law, gambling was a lawful activity unless it became a nuisance.<sup>78</sup> Over the years, however, the State of Maryland has enacted many laws that prohibit various types of gambling. Today, a number of overlapping statewide statutory provisions prohibit most types of gambling activities.<sup>79</sup> Current law specifies that the statewide statutory prohibitions against "gambling and betting" must be construed "liberally, so as to prevent the mischiefs intended to be provided against."<sup>80</sup> Despite the broad statutory prohibitions against gambling activities of any kind, many forms of gambling are lawful in Maryland today because the General Assembly has carved out numerous exceptions to the statewide prohibitions. Most of these exceptions are applicable only in particular local jurisdictions. Finally, there are statutory provisions

<sup>74</sup> Final Report of the Governor's Task Force to Study Gambling, p 8 and p.15 (January 10, 1994).

<sup>75</sup> *Id.* at 6.

<sup>76</sup> See Appendix IV.

<sup>77</sup> See *Id.*

<sup>78</sup> *Bender v. Arundel Arena, Inc.*, 248 Md. 181, 188 (1967).

<sup>79</sup> Article 27, §§236 through 264C of the Code.

<sup>80</sup> Article 27, §246 of the Code.

that add yet another layer of confusion to current law governing gambling in Maryland by creating exceptions to the local exceptions to the statewide prohibitions.<sup>81</sup>

### **General Prohibitions Against Gambling**

A person may not “keep” any “gaming table” or any “house, vessel or place, on land or water for the purpose of gambling.”<sup>82</sup> Similarly, a person may not: (1) keep any gaming table or other place of gambling; (2) deal at any such gaming table or other place of gambling; or (3) have any interest in any gaming table or the profits of a gaming table.<sup>83</sup> Under Article 27, §239 of the Code, a person is prohibited from leasing or renting any house, vessel or other place to be used for gambling. Similarly, under Article 27, §242 of the Code, the owner, tenant or occupant of a house, vessel or other “place” may not knowingly permit any gaming table to be kept at such place.

The term “gaming table” is defined under Article 27, §238 of the Code to mean “any . . . table (billiard table excepted), at which any game of chance shall be played for money or any other thing.” The term gaming table specifically includes any “faro table,” “E.O. table,” or “equality table.” Under Article 27, §244 of the Code, the term “gaming table” is defined to include “all games, devices and contrivances at which money or any other thing shall be bet or wagered.”

Under Article 27, §240 of the Code a person is prohibited from: (1) betting, wagering or gambling in any manner or by any means; (2) making or selling a book or pool on the result of any race, contest or contingency of any kind; (3) keeping, renting, using or occupying any place on land or water in Maryland for the purpose of betting, wagering or gambling in any manner or by any means; and (4) receiving, recording or forwarding any bet or wager. Article 27, §240 of the Code does not apply to pari-mutuel betting on horse races. Under Article 27, §240A of the Code, a person is prohibited from willfully, knowingly and unlawfully causing or attempting to cause the prearrangement or predetermination of the results of a horse race. Under Article 27, §245 of the Code, a person may not play, for money or any other thing, the following games: (1) thimbles; (2) little joker; (3) dice; or (4) craps.

With one exception, Article 27, §246A of the Code prohibits a person from gambling on any vessel upon any of the waters of Maryland or any pier, wharf or similar structure. The exception, which is set forth in §6-209 of the Transportation Article, allows gambling aboard certain types of passenger cruise

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<sup>81</sup> Article 27, §§236 through 264 of the Code.

<sup>82</sup> Article 27, §237 of the Code.

<sup>83</sup> Article 27, §241 of the Code.

vessels if the vessel: (1) is underway; (2) is east of the Francis Scott Key Bridge; and (3) is operating under an itinerary that either originates or terminates in a foreign port outside the continental United States.

### **Statewide Exceptions to the General Prohibitions Against Gambling**

#### **A. Raffles of Real Property**

Any bona fide charitable organization may conduct a raffle for the exclusive benefit of the charitable organization, where the prize awarded is real property to which the organization holds title or as to which the organization has the ability to convey title. An organization may not conduct more than two raffles of real property in any calendar year.<sup>84</sup>

#### **B. Political Raffles**

A bona fide political committee, as defined in Article 33, §1-1(a)(14) of the Code, or candidate for public office may conduct a raffle from which prizes in the form of cash or merchandise are awarded. The cost of the raffle ticket may not exceed \$5 and an individual may not purchase more than \$50 worth of tickets.<sup>85</sup>

### **Local Exceptions to the General Prohibitions Against Gambling**

#### **A. Commercial (For-Profit) Bingo**

Commercial "for profit" bingo is lawful in the following three counties. Anne Arundel, Calvert and Washington. For-profit bingo is regulated differently in each jurisdiction. Anne Arundel County is authorized by State statutes and local ordinances to issue a maximum of six commercial bingo licenses each year to applicants that demonstrate "good moral character."<sup>86</sup> Calvert County is authorized by State statutory provisions to issue seven different types of commercial bingo licenses.<sup>87</sup> There is no maximum limit on the number of licenses that may be issued. Prior to January 12, 1995, Washington County was authorized by State statutory provisions to issue an unlimited number of permits to conduct for-profit bingo. Under legislation that was enacted during the 1995 Session, the County was prohibited from issuing new permits to conduct for-profit bingo on or after January 12, 1995. Any person or entity that held a permit on January 12, 1995 is allowed to continue to conduct games of for-profit bingo but the bingo permit may not be transferred to any other person or entity.<sup>88</sup>

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<sup>84</sup> Article 27, §236 of the Code

<sup>85</sup> Article 27, §261D of the Code (all jurisdictions); and Article 27, §§261C (Baltimore City) and 261C-1 (Anne Arundel and Baltimore counties) of the Code.

<sup>86</sup> Bender v. Arundel Arena, Inc., 248 Md. 181 (1967) and §§2-301 through 2-330 of the Anne Arundel County Code.

<sup>87</sup> Article 27, §259A of the Code

<sup>88</sup> Article 27, §259 of the Code

Although there is no State statutory authority for the conduct of for-profit bingo in any local jurisdiction other than Anne Arundel, Calvert and Washington counties, a report by the Department of Fiscal Services<sup>89</sup> indicates that for-profit bingo is also being conducted in the following five counties: Allegany, Montgomery, Prince George's, Talbot and Wicomico.

#### **B. Non-Profit Bingo**

Bingo may be conducted in all twenty-four local jurisdictions in Maryland by various types of non-profit entities. Depending on the jurisdiction, these non-profit entities may include: (1) volunteer fire companies; (2) bona fide fraternal, civic, war veterans', religious or charitable organizations; (3) bona fide amateur athletic organizations; (4) bona fide educational organizations; (5) bona fide hospital organizations; (6) municipal corporations; or (7) tax exempt sportsmen's associations. Like commercial bingo, this type of gaming is regulated differently in each jurisdiction.<sup>90</sup>

#### **C. Non-Profit Raffles, Bazaars and Carnivals**

With the exception of Montgomery County, raffles, bazaars or carnivals that include the awarding of prizes in cash or merchandise by such devices as paddle wheels, wheels of fortune and chance books may be conducted throughout Maryland by certain types of non-profit entities. The types of non-profit entities that may lawfully conduct such gaming activities varies from jurisdiction to jurisdiction, as do the regulatory parameters governing various aspects of these gaming activities.<sup>91</sup> In Montgomery County, non-profit entities may conduct raffles but may not conduct carnivals or bazaars.<sup>92</sup>

#### **D. Non-Profit Casino Gaming**

##### Generally

Most of the non-profit casino gaming in Maryland occurs in Prince George's County. However, it is important to note that casino gaming is expressly authorized in two other jurisdictions. In Anne Arundel County, until October 1, 1997, the following types of non-profit entities may conduct one casino event in each calendar year: volunteer fire companies and bona fide fraternal, civic, war veterans', religious, amateur athletic and charitable organizations.<sup>93</sup> A casino event in Anne Arundel County may include games of blackjack, five-card showdown poker and under/over dice. In Baltimore County, the following types of non-profit entities may conduct one casino event in each calendar year: volunteer fire companies

<sup>89</sup> Projected Impact of Casino Gambling in Maryland, pp.105-106 (November, 1995).

<sup>90</sup> Article 27, §§236 through 264C of the Code.

<sup>91</sup> Article 27, §§236 through 264C of the Code.

<sup>92</sup> Article 27, §255B of the Code.

<sup>93</sup> Article 27, §255(b) and (h) of the Code.

and bona fide fraternal, civic, war veterans', religious and charitable organizations.<sup>94</sup> A casino event in Baltimore County may include card games, dice games and roulette. However, no cash prizes may be offered or awarded to any player in a card game or roulette game.

With the exception of a prohibition against casino events in Howard County under Article 27, §255(g) of the Code, there is no express statutory reference to casino events in any jurisdiction other than Prince George's, Anne Arundel and Baltimore counties. However, under Article 27, §255(b) of the Code, certain non-profit entities in the following eleven jurisdictions are allowed to hold fund-raising affairs that include the use of "paddle wheels, wheels of fortune, chance books, bingo, or any other gaming device" (emphasis added): Allegany, Calvert, Caroline, Carroll, Dorchester, Frederick, Garrett, St. Mary's, Somerset, Talbot and Washington. The words "any other gaming device" have been interpreted by the Maryland Court of Appeals to include the types of games that are commonly conducted at casino events.<sup>95</sup>

A report by the Department of Fiscal Services indicates that casino gaming is currently being conducted in six counties: Calvert, Cecil, Kent, St. Mary's, Talbot and Worcester.<sup>96</sup> Non-profit casino gaming is authorized in five of these jurisdictions under general statutory language relating to "gaming devices."<sup>97</sup> There is no clear statutory authority for casino events in Cecil County.

#### Prince George's County - History

The statutory history of casino gaming in Prince George's County begins in 1973, when the General Assembly passed two legislative proposals that created exemptions from the general prohibitions against all forms of gambling in the State.<sup>98</sup> The two exemptions allowed church groups and other nonprofit organizations in Prince George's County to operate certain casino-type games at fund-raising events. The law, however, prohibited a casino event from benefitting any individual or group of individuals financially; consequently, only volunteers worked the tables. The early casino events that began in 1973 were small-scale events and were held only a few nights a year.

In the late 1980s, this picture changed radically. The major cause of the change was the enactment in 1987 of laws that banned casino gaming in Howard County and severely limited such events in Baltimore County.<sup>99</sup> These actions were taken in response to the influx of loan sharks, cheaters and

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<sup>94</sup> Article 27, §255(b) and (f) of the Code.

<sup>95</sup> *State v. Crescent Cities Jaycees*, 30 Md. 460, 470-471 (1993).

<sup>96</sup> *Projected Impact of Casino Gambling in Maryland*, pp.105-106 (November, 1995).

<sup>97</sup> Article 27, §§251B (for Worcester County), 253 (for Kent County), 255(b) (for Calvert and Talbot counties) and 255(d) (for St. Mary's County) of the Code.

<sup>98</sup> Chapters 342 and 438 of the Laws of Maryland of 1973.

<sup>99</sup> Chapters 7 and 190 of the Laws of Maryland of 1987.

professional gambling managers who took large portions of casino proceeds in these counties. With its nearest competition thus quieted, casino gaming in Prince George's County suddenly became "big business."

Sixteen casinos currently operate on a regular basis in Prince George's County and five others operate on an occasional basis. In 1994, the casinos reported gross proceeds of about \$31 million. Each of the sixteen regular casinos are allowed to operate a maximum of two days a week throughout the year. Consequently, a casino enthusiast has the opportunity to patronize three to six casino halls every day of the week. The halls are open Monday through Thursday from noon to 11:00 P.M., on Friday and Saturday from noon to 2:00 A.M. and on Sunday from 2:00 P.M. to 11:00 P.M. All casinos are open free of charge to any person who is at least twenty-one years old. The size of the casinos range from the casino operated by the Hyattsville Fire Department, which grossed nearly \$4 million in 1994, to the casino operated by the Ritchie Volunteer Fire Department, which grossed \$72,997 in 1994. The Hyattsville operation consists of ten poker tables, fifteen blackjack tables, two roulette tables and twelve other tables devoted to other card games -- making the operation comparable (in terms of table games) to one of the larger casinos in Las Vegas, Nevada, according to the Office of the Sheriff for Prince George's County.

According to testimony by Steve Novak, a representative of the Prince George's County Jaycees and the Crescent Cities Jaycees, proceeds of casino nights during the past ten years have been used to purchase \$22 million worth of fire equipment. Mr. Novak testified that casino nights have generated another \$31 million during the same period for other charitable purposes. The extent to which casino gaming has changed the dynamics of fundraising for charitable organizations that operate casino events in Prince George's County can be illustrated by the following example, as reported in the Washington Post: Before the casino operated by the Combined International Philippine-American Association (CIPAA) opened in 1991, it took eighteen years for the CIPAA to collect \$45,000 through donations. In 1994, the CIPAA, through its casino, earned \$400,000 after expenses.<sup>100</sup>

#### Prince George's County - Enforcement

In prior years, County officials voiced concern about possible corruption in casino operations in Prince George's County. A 1987 Task Force, established to study gaming laws in Prince George's County, concluded that "casino nights are on the verge of getting out of control. Without some sort of

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<sup>100</sup> "Mr. Chips," The Washington Post, April 30, 1995.

reasonable regulatory scheme, a real potential for unlawful activity and an influx of outside interests into Prince George's County promoting casino nights is possible."<sup>101</sup>

Since 1993, enforcement of casino gaming laws has been entrusted to the Office of the Sheriff, which last summer created a Casino Enforcement Bureau. The Bureau currently conducts criminal background checks on casino workers and audits the casinos. According to the Office of the Sheriff, the activity that has caused the greatest concern in the past has been "skimming," or the under-reporting of receipts by the casinos to avoid taxes. In 1993, the Internal Revenue Service, in cooperation with local law enforcement officials, raided four casinos, seizing records and gambling equipment. Another activity that has concerned the Office of the Sheriff is the payment of gratuities to casino workers. The Office of the Sheriff fears that a casino may attempt to pay money to its workers by disguising it as gratuities from patrons.

Despite these concerns, the Office of the Sheriff believes that the casinos generally operate their games honestly. Casinos employ their own monitoring techniques to spot players who cheat. In this regard, it should be noted that State law prohibits games in which dice are used from being conducted in casinos that are operated in Prince George's County. Dice games are the most difficult games to monitor because they require dice to be handled by players.

Among all of the issues relating to casino gaming in Prince George's County, one has dominated the legal landscape since large-scale casino gaming first came to the County a decade ago, namely whether workers who staff casino events may be paid for their labor, either by salary or through gratuities. Two years ago, the Court of Appeals ruled in *State v. Crescent Cities Jaycees*, 330 Md. 460 (1993), that State law prohibits tipping of volunteer dealers and other workers at casino events. The General Assembly, however, overturned that decision in 1995 when it passed legislation that allows workers to accept gratuities and prohibits the payment of salaries.<sup>102</sup>

#### Prince George's County - Current Law

The laws regarding casino gaming in Prince George's County are set forth in two places: (1) the State statute that enables the County to authorize casino gaming,<sup>103</sup> and (2) the County ordinance enacted under this State statutory authority.<sup>104</sup> The term "casino night" is defined under these laws to mean a benefit or performance at which card games, wheels of chance or roulette are played and money winnings

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<sup>101</sup> The Report of the Task Force on Gaming Laws in Prince George's County, Maryland, p.2 (September 1, 1987).  
<sup>102</sup> Chapter 557 of the Laws of Maryland of 1995.

<sup>103</sup> Article 27, §258B of the Code and in §2-309(r)(8) of the Courts and Judicial Proceedings Article.

<sup>104</sup> Sections 10-270 through 10-282 of the Prince George's County Code.



or tokens redeemable in money are awarded as prizes. "Casino night" does not include a benefit performance such as a carnival, fair or bazaar at which the only form of gambling is a wheel of fortune, big wheel or other wheel of chance.

State law requires an organization that seeks to operate a casino night to obtain a permit from the County. The County ordinance designates the Office of Business and Regulatory Affairs or, if specified in an Executive Order, the Office of the Sheriff as the issuing authority for permits. Any person who works at a casino night must obtain a license each year from either the Office of Business and Regulatory Affairs or the Office of the Sheriff. All license applicants must be fingerprinted and the licensing authority may conduct a criminal background check on the applicant.

State law limits the maximum permissible number of permits that may be issued for casino nights to twenty-one.<sup>105</sup> Legislation that has recently been introduced on the County level would allow the issuance of a "rotating part-time permit" or a "joint permit."<sup>106</sup> These proposals would allow more than twenty-one individual organizations to conduct casino nights. A rotating permit would be issued to an organization to hold a specific event and would then be returned to the County and made available for reissuance to another organization for a single event. A joint permit would allow an organization to share its permit with another eligible organization. According to a recent opinion of the Attorney General, the County has the authority to allow the use of rotating or joint permits.<sup>107</sup>

An application for a permit to conduct a casino night must be rejected if a determination is made that any information in the application is false or misleading, that the operation of a casino night is not necessary for the accommodation of the general public or that the operation of a casino night would disturb the peace, create a nuisance or be detrimental to the morals, health or welfare of the community. The proceeds of a casino night may not be used for any purpose other than the promotion of charitable, benevolent, patriotic, fraternal, educational, religious or civic objects of the entity that operates the casino night.

Quarterly and annual reports must be filed by the casino operator with the Office of Business and Regulatory Affairs or the Office of the Sheriff and, on or before July 1 of every year, the casino operator must report the total gross receipts and total expenses directly relating to gaming activities for the previous

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<sup>105</sup> Article 27, § 258(B)(c)(5)(i) of the Code.

<sup>106</sup> Bill No. CB-98-1995.

<sup>107</sup> Opinion of the Attorney General (unpublished) No. 95-051 (November 16, 1995).

twelve-month period to the Comptroller of the Treasury, County Executive, County Council and Prince George's County House and Senate Delegations.

The County ordinance imposes a 20 percent levy on the gross receipts from gaming activities at casino nights -- the maximum rate allowed under the State statute. The proceeds from the levy may be used for general purposes. The State statute also enables the County to establish permit fees to pay for the administrative costs associated with the regulation of casino nights. It is important to note that casino gaming will be illegal in Prince George's County after May 25, 1997. The State statute authorizing casino nights in Prince George's County will automatically terminate on that date unless the General Assembly chooses to pass legislation extending the life of the statute.

#### **E. Tip Jar Gambling**

Tip jar gambling is common in many parts of the State. The term "tip jar" refers to a game of chance that involves the selling of a packet of tickets for chances to win a prize. There are many types of tip jar games, including Club Jar, Cookie Jar, Fireman, Buckeye, Batting for Bucks, Twin 50, First and Cash, Wizard, Little Bills Baby, Super Hog, Duck Bucks, Biker Baby, Pick-A-Pecker, Moo-Money, Fireman Bonus, 52 Pick-up and King-of-the-Hill. The rules of the game vary, including the number of tickets that are sold in each tip jar packet.

A standard packet has three-hundred and eighty to four-hundred tickets, sold to patrons for \$1 each. The packets are sold by gambling distributors to tip jar operators for approximately \$8 to \$10 each. The tickets are generally sold from a fishbowl-like jar, hence the name "tip jar." The three-hundred and eighty ticket jar, known as the "true jar," contains no duplicate numbers. A four-hundred ticket game includes twenty nonwinning duplicates, resulting in an additional \$20 profit per game. In one type of tip jar game, each ticket includes four numbers, ranging from 0001 to 1600, giving the ticket holder four chances to win. There are thirty instant winners and fifteen chances to win a "holder" for a chance at the \$100 grand prize. The jar's fifteen numbers ending in "77" win \$5 each. The jar's fifteen numbers ending in "55" win \$10 each. Numbers ending in "00" are "holders" that can pay as much as \$100. The person with a "00" ticket "holds" the ticket until the entire jar is sold, at which point someone breaks a seal on a card designated for that game, revealing the winning "holder" number. Each tip jar packet returns approximately 80 percent of the take to players in the form of winnings.

Under Article 27, §255(b) of the Code, tip jar gambling is lawful for certain non-profit entities in fifteen counties: Allegany, Anne Arundel, Baltimore, Calvert, Caroline, Carroll, Dorchester, Frederick, Garrett, Howard, Prince George's, St. Mary's, Somerset, Talbot and Washington. Section 255(b) allows

volunteer fire companies and bona fide fraternal, civic, war veterans', religious and charitable organizations to hold carnivals and bazaars at which the organizations "award prizes in cash or in merchandise by such devices as are commonly designated as paddle wheels, wheels of fortune, chance books, or *any other gaming device*" (emphasis added). The Maryland Court of Appeals has interpreted the words "any other gaming device" to include the packets of tickets that are used in tip jar gambling.<sup>108</sup>

Tip jar gambling is the dominant form of legal gambling (apart from the lottery) in Western Maryland, including Allegany, Carroll, Frederick, Garrett and Washington counties. However, according to a report by the Department of Fiscal Services<sup>109</sup> tip jars are also currently operated in St. Mary's County. Until recently, there was little or no regulation of tip jar gambling in any local jurisdiction. However, in 1992 and 1995, respectively, the General Assembly passed legislation to regulate tip jar gambling in Frederick and Washington counties.<sup>110</sup> Tip jar gambling remains entirely unregulated in Garrett, Allegany, Carroll and St. Mary's counties.

It is important to note that tip jars have lawfully found their way into taverns and restaurants in Washington and Frederick counties and, in Washington County, into carry-out liquor stores.<sup>111</sup> In Washington County, a tavern, restaurant or carry-out liquor store is allowed to operate tip jars on its premises and may retain \$35 from each tip jar game to offset the costs of operating the tip jar. The remainder of the gross proceeds from tip jars must be deposited in the Washington County Gaming Fund, which, after deducting an amount that covers the administrative costs of the Fund, distributes the tip jar proceeds to charitable organizations (60 percent) and volunteer fire and rescue companies (40 percent). In Frederick County, any establishment that is licensed to serve food and alcoholic beverages for consumption on the premises is allowed to operate tip jars for certain non-profit entities. The tip jar operator is permitted to retain up to 30 percent of the gross proceeds from a tip jar. The remainder must be forwarded to the non-profit entity for whom the establishment operates the game.

In its 1994 report, the Governor's Task Force to Study Gambling described a "gambling turf war" that was being waged between private and non-profit entities that operate tip jars in Western Maryland.<sup>112</sup> The report stated that many bar and restaurant owners believed that fraternal clubs had an unfair competitive advantage because they were not required to give any portion of their gambling proceeds to

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<sup>108</sup> American Legion v. State, 294 Md. 1 (1982).

<sup>109</sup> Projected Impact of Casino Gambling in Maryland, pp.105-106 (November, 1995). This report also indicates that similar devices known as "pull tabs" are currently used in Charles and Wicomico counties.

<sup>110</sup> Chapter 540 of the Laws of Maryland of 1992; and Chapter 636 of the Laws of Maryland of 1995.

<sup>111</sup> Article 27, §§255C and 258A of the Code

<sup>112</sup> Final Report of The Governor's Task Force to Study Gambling, pp.11-12 (January 10, 1994).

charity and were able to offer lower prices for food and drinks that were subsidized by gambling proceeds.<sup>113</sup> The report also stated that fraternal clubs received significant "breaks" on federal and state income, property and amusement taxes, were issued liquor licenses at a fraction of the usual cost of a liquor license and, according to some witnesses, allowed non-members to enter, dine, drink and gamble on club premises even when they were not accompanied by a member of the club.<sup>114</sup>

The current Task Force does not know whether the recent attempt to regulate tip jar gambling in Frederick County has brought the turf war to an end in that county. However, it appears that, despite the enactment of a recent regulatory scheme, the war is still raging in Washington County. The most recent controversy relates to the issue of whether private clubs should be required to distribute a certain percentage of their tip jar proceeds to charity. Under current law, private clubs are not required to distribute any portion of tip jar proceeds to charity. An investigation conducted by the Herald-Mail in Hagerstown earlier this year indicated that fifteen of the largest private clubs in the County were donating only 5 percent of tip jar proceeds to charity.<sup>115</sup> The investigation revealed that the fifteen clubs grossed at least \$5.2 million in 1993 but distributed only \$260,000 to charity.<sup>116</sup> The Washington County Commissioners have requested that the General Assembly pass legislation during the 1996 Session that would require clubs to distribute 20 percent of their tip jar proceeds to charity.<sup>117</sup> The president of the Washington County Club Association, which represents more than thirty local fraternal and veterans groups, has stated that the clubs would probably agree to such a proposal but that they would object to a requirement that the money be deposited into the Washington County Gaming Fund.<sup>118</sup> The clubs would like to retain the power to distribute the money to charities of their own choice.<sup>119</sup>

#### **F. Regulation of Non-Profit Gambling - Generally**

Numerous deficiencies in the current regulation of gambling by non-profit entities have been outlined above in this Chapter. These deficiencies have been previously identified by various sources, also cited above in this Chapter. Recently, in a letter to the Task Force dated October 6, 1995, Maryland's Attorney General expressed his belief that significant gaps remain in the current regulatory scheme

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<sup>113</sup> Id.

<sup>114</sup> Id.

<sup>115</sup> "Washington County Wants Clubs to Share More Tip Jar Revenue With Charities," The Daily Record, December 7, 1995.

<sup>116</sup> Id.

<sup>117</sup> Id.

<sup>118</sup> Id.

<sup>119</sup> Id.

governing non-profit gambling.<sup>120</sup> He noted that some counties with various forms of gambling are not subject to any regulation at all. He also expressed concerns about: (1) the lack of oversight for charitable organizations that use slot machines on the Eastern Shore; and (2) enforcement difficulties that have been experienced in Prince George's County with regard to casino gaming. The Attorney General believes that "a serious effort to overhaul the current regulatory scheme should be undertaken regardless of whether or not Maryland ends up with casino gaming."<sup>121</sup>

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<sup>120</sup> See Appendix II.

<sup>121</sup> Id.

## **CHAPTER 2**

### **Gambling in Maryland: The Present Situation**

#### **I. Horse Racing**

Maryland currently has four major tracks: two one mile thoroughbred tracks and two harness tracks. The oldest of these is Pimlico Race Course, a thoroughbred track located in Baltimore City and home to the Preakness Stakes. The other thoroughbred track is Laurel Race Course, located in Anne Arundel County. A third thoroughbred track, Bowie, closed in 1985. Both Pimlico and Laurel are operated by the Maryland Jockey Club. Maryland's harness tracks, Rosecroft Raceway and Delmarva Downs, are located in Prince George's County and Worcester County, respectively. Ownership of these tracks was recently transferred from Colt Enterprises, Inc. to Cloverleaf Enterprises, Inc. To finance the acquisition, Cloverleaf obtained a loan and other forms of financial assistance totalling approximately \$10.6 million from Bally Entertainment Corporation. The loan agreement contains options for Bally to purchase a 50 percent ownership interest in Cloverleaf if Bally locates a casino within certain market areas of the harness tracks. Horse racing is also conducted at the Timonium Fair Grounds in Baltimore County (ten days during the Maryland State Fair), the Prince George's County Equestrian Center (four days during the Prince George's County Fair) and Fair Hill Natural Resource Management Area in northeastern Cecil County (two days of steeplechasing).

In addition to the live horse racing taking place at Maryland's tracks, there is also simulcasted racing. Simulcasting allows patrons to watch television monitors at a track or at an off-track betting (OTB) location and to place bets on races that are simulcasted (i.e. televised live) from either Maryland tracks or tracks outside the State. In addition, races run at Maryland tracks are beamed to betting locations around the country. Simulcasting has quickly become a major factor in determining the racing industry's financial health. More money is wagered on out-of-state races through simulcasting than is wagered on live races run at the Laurel and Pimlico tracks. The five OTB facilities in Maryland are located at: The Cracked Claw (Urbana, Frederick County); Shoals (Cambridge, Dorchester County); Poor Jimmies (Elkton, Cecil County); Port Tobacco Marina (Port Tobacco, Charles County); and a pier located on the Potomac River accessible from Colonial Beach, Virginia.

Handle and attendance at the tracks declined through most of the 1980's. Track attendance (for all types of racing) peaked at 4.21 million in 1988 and fell to a low of 3.47 million in 1992. In constant dollars, handle fell from \$570 million in 1988 to \$390 million in 1992. The introduction of simulcasting has stabilized the industry. Last year, 1994, was a banner year for wagering at the thoroughbred tracks,

which saw increases from 1992 to 1994, even after accounting for inflation. While the harness tracks also realized an increase from 1992 to 1994 in constant dollars, wagering decreased by 2 percent between 1993 and 1994. Moreover, for the harness tracks, 1992 was the worst year for wagering since 1982 (see Table 2.1).

The revenue to the State derived from the State share of the handle (.5 percent) and track related license fees have increased in nominal dollars over the past seven years, except between 1990 and 1992. In Fiscal Year 1994, the State collected a total of \$3,273,014 from license fees and the State's share of the handle. The reduction between 1990 and 1992 was directly attributable to the decline in total handle between those years.

## II. Lottery

Started in 1973, the Maryland Lottery is one of the oldest in the country. It is the largest single gaming activity in Maryland with annual sales in excess of \$1 billion. Due to the broad playership of the Lottery (over half of all adults in Maryland have played a Lottery game within the past two months), the profile of the average Lottery player is in line with the general population -- middle aged, at least a high school education, middle income and white. The profile of the players of the individual games vary significantly, however (see Table 2.2). For example, Keno players are younger, more educated, wealthier, and more likely to be male compared to Pick-3 and Pick-4. Currently, the Lottery oversees five types of games: Instant Games, Number Games (Pick-3 and Pick-4), Lotto, Bonus Match 5, and Keno. Tickets generally cost \$1, but there are variations. Pick-3 tickets may be purchased for 50 cents and Instant Games may be purchased for up to \$5. A Keno ticket costs between \$1 and \$20, depending on how much a person chooses to wager.

Instant Games involve rub-off tickets in which players can immediately determine whether they have won. Instant ticket sales account for 13 percent of net Lottery revenues. Revenue for the Maryland Stadium Authority is derived from this type of lottery.

The Number Games require the player to select numbers on a ticket and match them to the numbers drawn. Players may either select their own numbers or have the lottery terminal select the numbers (Quik Pik). Pick-3 is played twice a day (noon and evening). A player must match all three numbers to win. The size of the prize depends on the number variation (straight, front or back pair, etc.).

Established in 1973, Pick-3 is the oldest lottery game still being played and accounts for approximately 39 percent of Lottery revenues. The maximum payoff per ticket is \$500. Like Pick-3, Pick-4 is played twice a day and its winnings depend on a number variation. It is played in the same manner as

**Table 2.1**  
**ON-TRACK ATTENDANCE AND WAGERING AT MARYLAND TRACKS**  
 Calendar Years 1987 through 1994

	1987	1988	1990	1992	1994	Chng 88-90	% Chng 88-90	Chng 90-92	% Chng 90-92	Chng 92-94	% Chng 92-94
<b>Attendance</b>	<b>3,955,750</b>	<b>4,210,771</b>	<b>3,892,312</b>	<b>3,473,998</b>	<b>3,245,774</b>	-7.6%	-10.7%	-10.7%	-6.6%	-6.6%	-17.9%
Mile Tracks	2,480,968	2,866,137	2,899,593	2,605,438	2,371,888	1.2%	-10.1%	-10.1%	-9.0%	-9.0%	-4.4%
Harness Tracks	1,387,604	1,243,038	903,345	784,497	601,344	-27.3%	-13.2%	-13.2%	-23.3%	-23.3%	-56.7%
County Fair	70,684	69,118	56,921	71,258	83,041	-17.6%	25.2%	25.2%	16.5%	16.5%	17.5%
Steeplechase	16,494	32,478	32,453	12,805	20,925	-0.1%	-60.5%	-60.5%	63.4%	63.4%	26.9%
<b>Out-of-State Fans*</b>	<b>664,566</b>	<b>707,410</b>	<b>653,908</b>	<b>583,632</b>	<b>545,290</b>	-7.6%	-10.7%	-10.7%	-6.6%	-6.6%	-17.9%
<b>Amount Wagered</b>	<b>\$509,212,688</b>	<b>\$569,881,198</b>	<b>\$570,857,630</b>	<b>\$488,027,377</b>	<b>\$603,068,669</b>	0.2%	-14.5%	-14.5%	23.6%	23.6%	18.4%
Am't Wag Cnst S**	\$411,443,852	\$427,980,780	\$369,915,744	\$260,606,619	\$276,808,519	-13.6%	-29.5%	-29.5%	6.2%	6.2%	-32.7%
Mile Tracks	\$351,366,509	\$420,761,281	\$435,874,022	\$375,582,714	\$461,524,827	3.0%	-13.8%	-13.8%	22.9%	22.9%	31.4%
Harness Tracks	\$150,367,940	\$141,873,339	\$128,122,382	\$104,712,095	\$123,823,007	-9.7%	-18.3%	-18.3%	20.2%	20.2%	-16.3%
County Fair	\$6,837,973	\$6,835,951	\$6,388,127	\$7,381,929	\$15,345,114	-6.6%	15.6%	15.6%	107.9%	107.9%	124.4%
Steeplechase	\$640,266	\$860,627	\$473,099	\$350,639	\$375,721	-45.0%	-25.9%	-25.9%	7.2%	7.2%	-41.3%
<b>Net Takeout</b>	<b>\$101,208,915</b>	<b>\$113,267,070</b>	<b>\$113,461,242</b>	<b>\$97,535,348</b>	<b>\$120,538,590</b>	0.2%	-14.0%	-14.0%	23.6%	23.6%	19.1%
<b>Net Take Cnst S**</b>	<b>\$81,776,803</b>	<b>\$85,063,570</b>	<b>\$73,522,885</b>	<b>\$52,083,876</b>	<b>\$55,327,213</b>	-13.6%	-29.2%	-29.2%	6.2%	6.2%	-32.3%
Race Days/Nights	635	608	583	558	634	-4.1%	-4.3%	-4.3%	13.6%	13.6%	-0.2%
Avg Daily Attend	6,230	6,926	6,676	6,226	5,120	-3.6%	-6.7%	-6.7%	-17.8%	-17.8%	-17.8%
Avg Daily Handle	\$801,910	\$937,305	\$979,173	\$874,601	\$951,212	4.5%	-10.7%	-10.7%	8.8%	8.8%	18.6%
<b>State Revenue</b>	<b>\$2,514,989</b>	<b>\$2,834,646</b>	<b>\$3,111,104</b>	<b>\$2,690,587</b>	<b>\$3,273,014</b>	9.8%	-13.5%	-13.5%	21.6%	21.6%	30.1%
<b>State Rev, Cnst S**</b>	<b>\$2,032,111</b>	<b>\$2,128,819</b>	<b>\$2,015,995</b>	<b>\$1,436,773</b>	<b>\$1,502,313</b>	-5.3%	-28.7%	-28.7%	4.6%	4.6%	-26.1%

\*These numbers were obtained by applying the Maryland Racing Commission's estimate that 16.8% of total on-track attendance is attributable to out-of-state fans.  
 \*\*In Constant Dollars using 1983 base year.  
 Source: Department of Fiscal Services and reported in Projected Impact of Casino Gambling in Maryland (November, 1995)



Pick-3 Pick-4 accounts for 16 percent of Lottery revenues. The maximum payoff per ticket is \$5,000. The Lotto Game requires the player to select six of forty-nine numbers. To win, the player must match any four, five or six numbers. This game is played twice a week. Jackpots begin at \$1 million weekly. If there is no winner, the jackpot is rolled over to the next drawing. Lotto accounts for 13 percent of net revenues. Bonus Match 5 requires the player to select five of thirty-nine numbers. The player must match three, four or all five numbers to win. There are five drawings per week. The maximum prize is \$50,000. Bonus Match 5 accounts for 4 percent of net revenues.

Keno is played in licensed restaurants, bowling alleys and similar venues. Keno drawings occur at five-minute intervals from 6:00 A.M. to 1:00 A.M. the following day. Players choose ten numbers from the field of eighty. They win when their selected numbers match those that the computer selects, which are displayed on television monitors. Wagers range from \$1 to \$20. Prizes range from \$1 to \$100,000. Introduced in 1993, Keno accounts for approximately 15 percent of net revenues.

Cumulatively, these games generated \$366.6 million for the State's General Fund and \$19.1 million for the Maryland Stadium Authority in Fiscal Year 1995. The Lottery is the State's third largest source of General Fund revenue, providing about 3 percent of the total revenue. It has become a fairly mature revenue source, with only modest growth in the last decade. Total revenues remained almost constant between 1986 and 1993, ranging between \$323 and \$352 million until a sudden increase of 15 percent in 1994 because of the introduction of Keno. Maryland's \$195 per capita wagering on lottery is the second highest figure among states that are not heavily reliant on non-resident purchases.<sup>122</sup> Tables 2.3 and 2.4 reflect data on per capita spending on lottery games in Maryland's twenty-four jurisdictions.

It is worth noting that spending on lottery tickets is higher in low income counties. Of the five largest counties, accounting for 77 percent of total sales, the highest per capita sales figure, \$316, is in Baltimore City, which has the lowest per capita income. Conversely, the lowest sales figure, \$115, is in the richest county, Montgomery, with per capita income of \$30,081. The figures indicate that lottery taxes are borne disproportionately by low income households.

### **III. Charitable Gambling**

Generally, in order for an organization to be eligible to participate in charitable gaming activities, it must be a bona fide fraternal, religious, patriotic, educational or charitable organization or a volunteer fire

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<sup>122</sup> The District of Columbia and South Dakota lie between Massachusetts and Maryland in terms of lottery sales per capita; for both a substantial share of sales are to non-residents.

**Table 2.2**  
**DEMOGRAPHIC PROFILE OF PLAYERS BY GAME**

	<b>Pick 3</b> %	<b>Pick 4</b> %	<b>Match 5</b> %	<b>Lotto</b> %	<b>Instant Games</b> %	<b>Keno</b> %
Male	45	43	45	49	39	54
Female	55	57	55	51	61	46
18-34	26	30	26	25	36	38
35-54	47	44	43	49	43	44
55+	28	25	30	26	20	18
Median Age	43 yrs.	42 yrs.	44 yrs.	43 yrs.	39 yrs.	39 yrs.
Less than High School grad	18	17	13	10	15	10
High School Completed	49	46	45	41	46	44
1-3 years college	21	23	20	22	22	22
College grad+	13	13	22	27	18	23
Under \$20,000	29	29	24	18	22	14
\$20,000-\$49,999	52	52	55	51	55	54
\$50,000	19	20	21	32	24	32
Median income	\$29K	\$30K	\$31K	\$38K	\$33K	\$38K
White	50	36	56	70	65	73
Black	47	59	38	26	31	23
Other	3	6	7	4	5	4
Baltimore Metro	63	64	57	60	58	55
Washington Metro	27	28	31	31	31	33
Other	10	8	12	8	11	12
(BASE)	(339)	(258)	(170)	(615)	(358)	(186)

Source Maryland State Lottery Annual Penetration Study 1995 Survey Report

**Table 2.3**  
**PER CAPITA LOTTERY SALES AND INCOME**

County	Income Per Capita (1990)	Sales Per Capita (1994)
Anne Arundel	\$22,797	\$166.80
Baltimore	\$23,470	\$227.79
Baltimore City	\$17,263	\$316.76
Montgomery	\$30,081	\$114.96
Prince George's	\$19,568	\$301.94

Sources: Information for this table was obtained from a report by the Department of Fiscal Services entitled Projected Impact of Casino Gambling in Maryland (November, 1995) and the 1994-1995 Maryland Manual.

**Table 2.4**  
**FISCAL YEAR 1995 LOTTERY SALES BY COUNTY**

County	Total Sales*	Population	Percent of Sales	Percent of Population
Allegheny	\$8,907,128	75,138	0.87%	1.49%
Anne Arundel	\$80,966,201	485,439	7.88%	9.08%
Baltimore	\$163,782,591	719,072	15.95%	14.25%
Baltimore City	\$226,800,003	716,853	22.08%	14.21%
Calvert	\$10,456,323	62,163	1.02%	1.23%
Caroline	\$5,304,163	30,090	0.52%	0.60%
Carroll	\$17,459,125	139,059	1.70%	2.76%
Cecil	\$10,555,313	81,212	1.03%	1.61%
Charles	\$26,638,730	109,851	2.59%	2.18%
Dorchester	\$5,707,272	31,451	0.56%	0.62%
Frederick	\$20,629,992	166,624	2.01%	3.30%
Garrett	\$2,305,022	31,119	0.22%	0.62%
Harford	\$27,977,813	209,463	2.72%	4.15%
Howard	\$23,881,078	213,226	2.32%	4.23%
Kent	\$3,609,390	19,596	0.35%	0.39%
Montgomery	\$91,591,678	796,737	8.92%	15.79%
Prince George's	\$227,665,051	754,995	22.16%	14.96%
Queen Anne's	\$4,887,659	37,063	0.48%	0.73%
St. Mary's	\$14,987,668	85,376	1.46%	1.69%
Somerset	\$3,494,673	24,431	0.34%	0.48%
Talbot	\$6,107,148	33,160	0.59%	0.66%
Washington	\$15,296,074	129,380	1.49%	2.56%
Wicomico	\$12,498,440	81,419	1.22%	1.61%
Worcester	\$15,657,675	40,489	1.52%	0.80%
<b>Total</b>	<b>\$1,027,166,210</b>	<b>5,046,406</b>	<b>100%</b>	<b>100%</b>

\*Figures do not include subscription sales.

Source: Maryland State Lottery Agency  
Prepared by: Department of Fiscal Services and reported in Projected Impact of Casino Gambling in Maryland (November, 1995).

company that uses the revenues generated from charitable gaming for charitable purposes or in a furtherance of its own purposes. Detailed information about the structure and scale of charitable gaming is provided in Tables 2.5 and 2.6; the current law governing charitable gaming in Maryland is discussed in detail in Chapter 1 of this report.

### **Casino Events**

Casino events have been reported in Anne Arundel, Calvert, Cecil, Kent, Queen Anne's (card games only), Prince George's, Somerset, Talbot and Worcester counties. However, they are especially popular in Prince George's County. Presently, sixteen casinos operate on a regular basis in Prince George's County and five others operate on an occasional basis. More than eleven-hundred licensed (non-salaried) individuals work in the casinos.

In 1994, the casinos in Prince George's County reported gross proceeds of about \$31 million, of which almost \$12.4 million or 40 percent was paid in federal, state and local taxes, more than \$10.5 million or 34 percent was used to pay expenses associated with operating casino nights (including license fees, equipment rental, food and hall rentals), about \$7.4 million or 24 percent was retained by the organizations and about \$458,000 or 1 percent was donated to charity. The size of the casinos range from the Hyattsville Fire Department, which grossed nearly \$4 million in 1994, to the Ritchie Volunteer Fire Department, which reported a gross of \$72,997 in 1994.

Charitable organizations that benefit from casino nights in Prince George's County include three Boys and Girls Clubs (sporting events and other activities), the Combined International Philippine American Association (building fund for a planned cultural and education center) and the Crescent Cities Jaycees (child day care centers). Casino night proceeds are also largely used to help pay for firefighting equipment. Nine of the twenty-one organizations operating casinos are volunteer fire departments. Six of the top ten grossing casinos, including the top three, are operated by fire departments.

### **Slot Machines**

Slot machines are devices that are operated by depositing paper money, a coin or a token into the device causing an unpredictable outcome that entitles the player to receive either money or tokens that can be converted into money. Slot machines can only be lawfully operated in the eight Eastern Shore counties of Caroline, Cecil, Dorchester, Kent, Queen Anne's, Somerset, Talbot and Wicomico. Organizations that operate slot machines are required to donate at least 50 percent of their gross receipts (after payments to winners) to other charitable/non-profit organizations.

Cecil County generated the highest gross receipts from slot machines in Fiscal Year 1994; it generated more than \$1.4 million in gross receipts or 26 percent of the total gross receipts on the Eastern Shore. During the same period, Cecil County Memorial Post #6027, a non-profit fraternal organization for veterans of war, generated the most revenues from slot machines in Cecil County -- \$318,710. Revenues generated from slot machines represent about 80 percent of Post #6027's total budget.

### **Tip Jars**

In general, a tip jar is a game in which a player removes a sealed piece of paper (the tip) from a jar and uncovers it to reveal a sequence of numbers or symbols. There are a variety of ways in which tips jars can be played and the cost per tip and the value of awards vary among the establishments operating the games. These types of games are described in detail in Chapter 1 of this report. Although tip jars are found mostly in the Western Maryland counties of Allegany, Frederick, Garrett and Washington, they are also reported in Carroll and Saint Mary's counties.

Data on tip jar proceeds is spotty. Reports from approximately 90 percent of licensed organizations operating tip jars in Frederick County indicate that gross receipts totaled nearly \$3.9 million in 1994. Typical of the operators is the Brunswick Moose Club #371, one of the smaller tip jar operations in Frederick County. The club has been in existence since 1910 and has been operating tip jars for at least ten years. The club's net receipts from tip jar operations from September 1, 1994 through September 1, 1995 totaled approximately \$150,000, of which nearly \$25,000 or 17 percent was spent on expenses associated with operating the tip jars. Net proceeds from tip jars constitute about 40 percent of the club's budget. The remaining 60 percent comes from annual membership dues, the social quarters (bar and dining area) and weekly dances. The club donates between 33 percent and 50 percent of its tip jar proceeds to other charitable organizations such as the multiple sclerosis organizations, heart associations and booster clubs.

### **Bingo**

Various types of bingo are authorized under current law, including "members only bingo," which can only be played by members of the organization sponsoring the game and their guests, and "instant bingo," which is similar to regular bingo but requires the player to scratch a coating off a playing card to reveal the numbers to be played. Current law dictates who and what types of organizations can participate in these games, limitations on the hours or days per week or year that the games may operate, limits on the value of cash and prize awards and the manner in which bingo revenues may be used.

As one example, Worcester County is authorized by law to collect 3 percent of the total amount wagered from bingo operations. The remaining 97 percent of the total amount wagered is retained by the organizations for charitable use or furtherance of the organization's purposes. The amount collected from annual and temporary bingo licenses, gaming permits and the statutory 3 percent assessment in Worcester County totaled \$24,867 in Fiscal Year 1995.

#### **IV. For-Profit Bingo**

Another form of bingo that is permitted in some areas of the State is commercial or for-profit bingo. According to the State Comptroller's Office, which collects an admissions and amusement tax on commercial activities, for-profit bingo is operating in Allegany, Anne Arundel, Calvert, Montgomery, Talbot, Washington and Wicomico counties. The largest commercial bingo revenues are generated in Anne Arundel, Calvert and Washington counties. In total, the gross receipts from commercial bingo operations in Anne Arundel, Calvert and Washington counties were nearly \$18.4 million in Fiscal Year 1995.

#### **V. Illegal Gambling and Out-of-State Gambling**

No systematic data is available on the extent of illegal gambling in Maryland. It is believed that sports wagering is readily available throughout much of the State but the Task Force was able to obtain no specific information on this matter. Marylanders also have the option of visiting out-of-state gaming destinations. Nevada and Atlantic City, New Jersey are the most commonly visited destinations. According to 1994 figures from the Las Vegas Convention and Visitors Authority and the Reno/Sparks Convention and Visitors Authority, Marylanders accounted for approximately 250,000 visits to Nevada casinos. A 1994 report by Solomon Brothers estimated that Marylanders accounted for almost 2 million visits to Atlantic City.<sup>123</sup>

#### **VI. Conclusion**

Marylanders have a wide and increasing variety of forms of gambling available to them. There is considerable variation in the patterns of gambling among the regions of the State. Except for horse racing, the major forms of gambling are subject to heavy taxation at the state and/or local level or are intended to fund non-profit activities. Gambling has become both a significant source of funding for government and a substantial economic activity.

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<sup>123</sup> Solomon Brothers, United States Equity Research-Gaming, Atlantic City: Worthy of a Second Look, p. 38 (May, 1995).

Table 2.5  
COUNTY BY COUNTY DESCRIPTION OF CHARITABLE GAMING REVENUES

County	Reporting Period	Licensee Fee Revenues	County Revenues	Type of Gaming	Number of Organizations	Total Amount Wagered	Gross Receipts
Allegany	N/R	N/R	N/R	All*	30-35	N/R	N/R
Anne Arundel	July 1, 1994- June 30, 1995	\$9,000	\$9,000 to general fund	All*	33	\$1,698,548 for bingo and wheels of fortune during CY 1994	N/A
Baltimore City	July 1, 1994- June 30, 1995	\$41,025	\$41,025 to 2% special fund for pensions \$27,227 to general fund; \$28,840 to Widow's Pension Fund	All*	450-500	N/A	N/A
Baltimore	July 1, 1994- June 30, 1995	\$56,067	\$120 to offset administrative costs of issuing licenses	All*	1,218	N/A	N/A
Calvert	July 1, 1994- June 30, 1995	\$950	\$950 to general fund	slot machines	10-15	N/A	\$11,831
Caroline	Permits issued for all games at no charge	N/R	N/R	All*	4	\$2,729,005 for FY 1994	\$351,213 for FY 1994
Carroll	N/R	N/R	N/R	All*	25	N/R	N/R
Cecil	N/R	N/R	N/R	slot machines	8	\$9,877,407 for FY 1994	\$1,473,021 for FY 1994
Charles	July 1, 1994- June 30, 1995	\$1,400	\$1,400 to general fund	All*	20-30	N/A	N/A
Dorchester	July 1, 1994- June 30, 1995	\$508*	\$508 to general fund	slot machines	6	\$3,408,418 for FY 1994	\$518,421 for FY 1994
Frederick	January 1, 1994- December 31, 1994	\$107,827	\$107,827 to general fund	tip jars	133	N/A	\$3,891,959*
Garrett	N/R	N/R	N/R	All*	10-12	N/R	N/R
Hartford	July 1, 1994- June 30, 1995	\$10,000	\$10,000 to general fund	All*	300-400	N/A	N/A
Howard	N/R	N/R	N/R	All*	15-20	N/R	N/R
Kent	N/R	N/R	N/R	slot machines	7	\$1,319,435 for FY 1994	\$193,600 for FY 1994

**Table 2.5**  
**COUNTY BY COUNTY DESCRIPTION OF CHARITABLE GAMING REVENUES**  
(continued)

County	Reporting Period	License Fee Revenues	County Revenues	Type of Gaming	Number of Organizations	Total Amount Wagered	Gross Receipts
Montgomery	July 1, 1994- June 30, 1995	\$7,500 <sup>1</sup>	\$7,500 to general fund	All*	45-55	N/A	N/A
Prince George's	January 1, 1994 December 31, 1994	\$680,000	\$680,000 <sup>2</sup> to general fund	casino nights	17	\$371,707,848	\$30,975,654
Queen Anne's	July 1, 1994- June 30, 1995	\$175	\$175 to general fund	slot machines	8	\$8,830,088 for FY 1994	\$901,376 for FY 1994
St. Mary's	July 1, 1994- June 30, 1995	\$15	\$15 to general fund	All*	27	N/A	N/A
Somerset	July 1, 1994- June 30, 1995	\$1,750	\$1,750 to general fund	slot machines	5**	\$1,904,928 for FY 1994	\$318,470 for FY 1994
Talbot	July 1, 1994- June 30, 1995	\$1,300	\$1,300 to general fund	slot machines	6	\$3,916,441 for FY 1994	\$557,020 for FY 1994
Washington	July 1, 1994- June 30, 1995	\$72,262 <sup>3</sup>	\$72,262 to general fund	All*	25	N/A	N/A
Wicomico	July 1, 1994- June 30, 1995	\$10,247	\$10,247 to general fund	slot machines	11**	\$8,894,789 for FY 1994	\$1,126,157 for FY 1994
Worcester	July 1, 1994- June 30, 1995	\$24,867 <sup>4</sup>	\$19,531 to general fund; \$5,336 to Ocean City	bingo	9	\$754,054	N/A

KEY: N/R=No regulation of charitable gaming. N/A=The jurisdiction does not require this information to be reported.

NOTE: Revenue information is provided for the same dates as the reporting period unless otherwise indicated.

\*See Table 2.6 for details.

\*\* Excludes one organization because financial reports were improperly completed.

<sup>1</sup> Reflects license fee collections for slot machines and charitable bingo.

<sup>2</sup> Based on 90% of licensed organizations reporting.

<sup>3</sup> This is an estimate for FY 1995 for charitable bingo only.

<sup>4</sup> This figure does not include revenue received from the County's 20% Gross Proceeds Tax.

<sup>5</sup> This reflects license fee and sticker fee collections for tip jars only; there is no license fee for charitable bingo in Washington Co. The Washington Co. Gaming Commission began operating on July 1, 1995.

<sup>6</sup> Includes 3% of the total amount wagered from charitable bingo.

Sources: Charitable Gaming Survey conducted by the Department of Fiscal Services, the General Accounting Division of the State Comptroller's Office, information provided by regulatory entities  
Prepared by: Department of Fiscal Services and reported in Projected Impact of Casino Gambling in Maryland (November, 1995)



Table 2.6  
**CHARITABLE GAMING ACTIVITIES IN MARYLAND**

County Allegany	Bingo X*	Carnivals /Fairs	Bazaars	Raffles	Casino Nights	Slot Machines	Tip Jars	Paddle wheels	Wheels of Fortune	Chance Books	Pull- Tabs	Card Games	Other
Anne Arundel	X*	X	X	X	X		X	X	X	X		X	X**
Baltimore City	X	X	X	X				X	X				
Baltimore	X	X	X	X				X	X	X			
Calvert	X*	X	X	X	X			X	X	X		X	X**
Caroline	X	X	X	X		X		X	X	X			
Carroll	X	X	X	X			X	X	X	X			
Cecil	X	X	X	X	X	X		X	X	X			
Charles	X	X	X	X							X		
Dorchester	X	X	X	X		X		X	X	X			
Frederick	X	X	X	X			X	X	X	X			
Garrett	X	X	X	X			X	X	X	X			

Table 2.6  
**CHARITABLE GAMING ACTIVITIES IN MARYLAND**  
 (continued)

County	Bingo	Carnivals /Fairs	Bazaars	Raffles	Casino Nights	Slot Machines	Tip Jars	Paddle wheels	Wheels of Fortune	Chance Books	Pull-Tabs	Card Games	Other
Harford	X	X	X	X				X					
Howard	X	X	X	X				X	X	X			
Kent	X	X	X	X	X	X		X	X	X			
Montgomery	X*	X	X	X									
Prince George's	X*	X	X	X	X			X	X	X			
Queen Anne's	X	X	X	X		X		X	X	X		X	
St. Mary's	X	X	X	X	X		X	X	X	X			
Somerset	X	X	X	X		X		X	X	X			
Talbot	X*	X	X	X	X	X		X	X	X			
Washington	X*	X	X	X			X	X	X	X			
Wicomico	X*	X	X	X		X		X	X	X	X		
Worcester	X	X	X	X	X			X	X	X			

\*Includes for-profit bingo

\*\*Includes big six wheels, blackjack, teardrums and number wheels

Sources: Charitable Gaming Survey conducted by the Department of Fiscal Services and the Annotated Code of Maryland  
 Prepared by: Department of Fiscal Services and reported in *Projected Impact of Casino Gambling in Maryland* (November, 1995)



## CHAPTER 3

### Casino Gaming in Other States<sup>124</sup>

This Chapter provides a brief survey of the development, form and extent of casino gaming in the United States generally. It is not intended to be comprehensive but to provide an overview of the national context for the decisions of the Task Force. The first section summarizes the development of the lottery and horse racing industries. The second section provides an overview of the development of casino-type gaming throughout the United States. The third section describes the types of non-tribal casino gaming that currently exist. The last two sections focus on taxes and revenues.

#### I. Origins

##### Lotteries

Lotteries in America, private as well as public, are as old as the country itself, and their history, of prohibition and resurgence, follows that of this country. As early as 1612, the Virginia Company sponsored a lottery to offset expenses of colonization. As colonized America expanded, so too did the prevalence of lotteries. Lotteries became an essential financial tool for the development of the colonies. Governments relied considerably on lotteries for additional revenue and for financing projects that were too large for local governments to handle or for private institutions to finance alone. Institutions of higher learning, such as Princeton, Harvard, Yale and Columbia received considerable funding from lotteries in their early days.

Sponsored by public-minded individuals and kept on a manageable scale, the early lotteries were respectable operations. In essence, these authorized lotteries were not considered a form of gambling and were not subject to the common objections raised against games of chance. To the leaders of colonial America, lotteries were an efficient method of voluntary contribution to worthwhile causes -- i.e., a voluntary tax for constructing buildings, streets and schools.

Like America, lotteries grew at an astonishing rate. By 1831, there were four-hundred and twenty lotteries in eight states; and the ticket sales of these lotteries totalled \$66 million, five times greater than that year's federal budget. However, the lottery boom on which much of America was built soon ended as a series of high-profile scandals involving bogus lottery tickets, fixed numbers and corrupt lottery agents severely damaged the public's trust and forced state legislatures to ban lotteries. In 1833, Massachusetts,

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<sup>124</sup> Most of this chapter is derived from a report by the Department of Fiscal Services entitled Projected Impact of Casino Gambling in Maryland, (November, 1995).

New York and Pennsylvania abolished their lotteries. By the start of the Civil War, all but three states had declared lotteries to be illegal.

For years, lotteries were almost non-existent. However, fiscal necessity brought lotteries back. Following the Civil War, governments were faced with paying for a war that was not overwhelmingly popular and was devastating to the economy. The Southern states were in financial chaos and the North was unwilling to lend them materials or funds to rebuild. In order to generate the funds needed for initiating the reconstruction process, the Southern states turned to lotteries. The most popular and long-lasting of these post-Civil War lotteries was Louisiana's. Unlike the lotteries of the other Southern states, Louisiana's lottery enjoyed great success and circulation; its tickets were sold in every major city of the United States. However, like their predecessors, the Louisiana lottery and all others soon vanished. This time, allegations of bribery and scandal in state legislatures, as well as changes in federal law, caused their demise. By 1895, virtually all lottery activity had ceased.

The New Hampshire Sweepstakes, begun in 1963, was the first state lottery in almost seventy years. There was almost overwhelming support in the state for the initiative. For New Hampshire voters, the choice was simple: Either approve the lottery, or the state would have to institute a sales or income tax to pay for services. Revenue from this lottery depended heavily on the ability to attract bettors from larger nearby states such as Massachusetts, Connecticut and New York. It is not surprising, then, that New York and Massachusetts became the next states to adopt a lottery. Throughout the 1970s, there was a slow but steady adoption of lotteries, mostly by northeastern states. However, in the 1980s, there was a virtual explosion in lottery activity. Of the thirty-eight lotteries currently operating in the United States, over 75 percent of them were started after 1980.

Lottery sales have grown even more rapidly than casino revenues over the last decade. Sales were just over \$5 billion in 1983; in 1994 the total was \$27.5 billion, more than a fivefold rise. The lotteries are all state operated and promoted principally as a device for expanding state tax revenues. Contribution to state governments totaled approximately \$10 billion, 3.2 percent of total state revenues for those states with lotteries. Table 3.1 provides figures for each state on lottery contributions to the state, expressed first as a share of state revenues and then on a per capita basis.

### Horse Racing

Like the lottery, horseracing in the U.S. today is a product of nineteenth-century events. In 1900, all but three states (Maryland, Kentucky, and New York) had prohibited horseracing. However, the Depression of the 1930s, like the Civil War seventy years prior, forced states to search for means other

**Table 3.1**  
**NET STATE FISCAL REVENUE FROM LOTTERIES**  
**FISCAL YEAR 1994**

State	% of State Tax Revenue	Per Capita
Total - U.S.	2.8%	\$38
Total - Lottery States	3.2	45
Arizona	1.5	22
California	1.4	21
Colorado	1.9	21
Connecticut	2.9	57
Delaware	2.5	49
D.C.	2.8	115
Florida	5.7	63
Georgia	4.4	54
Idaho	1.1	14
Illinois	3.8	47
Indiana**	2.3	29
Iowa	1.2	20
Kansas	1.4	20
Kentucky	2.1	33
Louisiana	2.8	29
Maine	2.6	37
Maryland	3.3	77
Massachusetts	5.6	101
Michigan	4.3	55
Minnesota	1.0	18
Missouri	1.9	21
Montana	0.9	12
Nebraska	0.7	9
New Hampshire	4.6	34
New Jersey	4.7	78
New York	3.2	56
Ohio	4.6	56
Oregon*	5.4	71
Pennsylvania	3.8	53
Rhode Island	4.0	56
South Dakota*	11.3	97
Texas	4.7	53
Vermont	2.1	29
Virginia	3.9	47
Washington	1.2	19
West Virginia	1.7	24
Wisconsin**	2.1	33

Note: Lottery revenue for FY 1994 is after payments for administrative expenses and prizes. Total state tax revenue is for January-December 1993.

\* Includes video lotteries.

\*\*State tax revenue only available for 1992

Source: 1992 tax revenue: U.S. Census Bureau, Government Finances: 1991-1992. 1993 tax revenue: U.S. Census Bureau, Quarterly Summary of Federal, State and Local Tax Revenue, Oct.-Dec. 1993. 1994 lottery revenue: La Fleur's Lottery World, Vol. 2, No. 6, Feb. 1995.

Prepared by: Steven Gold, Center for the Study of States (July 1995).

than raising conventional taxes to generate much needed revenue. Between 1930 and 1940, the number of states with regulated tracks jumped to eighteen, and in the following decade, to twenty-five. Today, thirty-seven states allow betting on horse racing and at least thirteen states allow off-track betting, first legalized in New York in 1970.

The horse racing industry has been in substantial decline for about a decade nationally. Attendance at tracks has dropped from 73 million in 1985 to 46 million in 1993; total handle has dropped from \$12.2 billion in 1985 to \$6.1 billion in 1993 in constant dollars. The national industry seems to be undergoing major structural change as the result of off-track betting; an increasing share of revenues are generated by bettors at off-track sites, who are betting on smaller number of higher quality tracks. A critical issue for the Maryland industry is whether it can become one of the national hubs for betting at OTB facilities.

The economic devastation of the Depression also helped produce Las Vegas as we now know it, and subsequently the modern era of casino gaming. During the Depression, proponents of gambling in Nevada argued that the legalization would bring the state a new influx of money and help reduce property taxes. The opposition was so fierce, however, that most legislators were hesitant to introduce a legalization bill. Finally, a legislator submitted a bill along with the argument that legalized gambling would help control the already-present illegal gambling business. After much resistance, Nevada legalized gambling in the spring of 1931, one of the worst years of the Depression. And so, with Governor Balzar signing the "wide open gambling" bill into law, the modern era of casino gaming began.

Table 3.2 provides data on the financial growth of the major gambling industries in recent years.

## **II. Modern Era of Casino Gaming**

Originally, Nevada's casinos catered to the narrow regional gaming market, attracting customers primarily from southern California, which in the 1940's was one of the nation's fastest growing regions. However, with the increased affordability of air travel and the rapid development of massive resort-style hotel/casinos, Nevada began to attract visitors from around the country. For almost fifty years, Nevada held a monopoly on casino gaming and its economy, once based on cattle ranching and mining, was transformed by the millions of out-of-state visitors and the money they left behind when they left Nevada.

In 1978, the state of New Jersey legalized casino gaming in Atlantic City in an attempt to revitalize the once grand seaside resort. The Casino Control Act described casinos as a "unique tool of urban development for Atlantic City," which would "facilitate the redevelopment of existing blighted areas, and the refurbishing and expansion of existing hotel, convention, tourist and entertainment facilities." Although

**Table 3.2**  
**U.S. CHANGE IN GROSS REVENUES BY GAMBLING INDUSTRY, 1982-1994\***  
 (revenue in millions)

Gambling Category	1982 Revenues	1994 Revenues	Growth 1982-1994	Percent Increase	Share of Growth
Lotteries	\$2,170	\$14,126	\$11,956	551%	40.6%
Casinos	\$4,200	\$15,372	\$11,172	266%	37.9%
Pari-Mutuels	\$2,792	\$3,645	\$853	31%	2.9%
Indian Reservations	\$0	\$3,416	\$3,416	N/A	11.6%
Charitable Games	\$396	\$1,355	\$959	242%	3.3%
Bingo	\$780	\$1,041	\$261	33%	0.9%
Card Rooms	\$50	\$731	\$681	1362%	2.3%
Legal Bookmaking	\$25	\$209	\$183	714%	0.6%
<b>Total Gaming Revenues</b>	<b>\$10,413</b>	<b>\$39,898</b>	<b>\$29,484</b>	<b>283%</b>	<b>100.0%</b>

Source: Casino Economic Impact Report, State of Maryland and Baltimore Area, Hunter Interests, Inc. (November, 1995)

\* Gross revenues measure what bettors lose to the operator.

New Jersey's results failed to duplicate Nevada's for many reasons, the Atlantic City casinos were certainly successful in generating sizable revenues for the state of New Jersey and large numbers of visitors to and jobs in Atlantic City.

For the ten years after the legalization of casinos in New Jersey, the landscape of the industry remained relatively unchanged, with no other state following New Jersey. Then Congress passed the Indian Gaming Regulatory Act (IGRA) in 1988, establishing a statutory framework for the regulation and control of gaming on Indian lands. The IGRA created three classes of Indian gaming: (1) Class I, gaming that occurs in connection with traditional festival and ceremonies played for prizes of minimal value; (2) Class II, including bingo, pull-tabs, tip jars and non-banking card games (player versus player, i.e., no "House"); and (3) Class III, consisting of all other types of gambling that are not Class I or Class II activities (slot machines, keno, lotteries, off-track betting, dice games, etc.).

To conduct Class III gaming, a tribe and the state must enter into a compact addressing regulatory and jurisdictional issues. In any state allowing gambling (in any form), a tribe may request negotiation for a compact and the state must respond. The tribe may offer any form of gambling that is not criminally prohibited by the state. Two states, Utah and Hawaii, appear to be exempt from tribal gaming because neither authorizes any type of gaming activity whatsoever.



The original intent of Congress in passing the IGRA was to provide a statutory foundation for tribal gaming operations as a means of promoting self-sufficiency and economic development on the reservations. Ultimately, however, the IGRA and associated court decisions led to the opening of dozens of Indian casinos across the United States. Currently, there are one-hundred and thirty-nine approved compacts in twenty-four states involving one-hundred and twenty-three tribes. Casino-style Indian gaming is conducted in Arizona, California, Colorado, Connecticut, Idaho, Iowa, Louisiana, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New York, North Dakota, Oregon, South Dakota, Washington and Wisconsin.

The enactment of the IGRA transformed the landscape of the casino industry in this country. It effectively ended the traditional restriction of casinos to Nevada and Atlantic City and placed casinos in the backyards of many states. As many of these states began to see their own revenues from lotteries, horse racing tracks or other gambling operations fall as a result of Indian casinos, the pressure to expand taxable gaming operations in these states increased, subsequently increasing pressure on neighboring states to expand their gaming operations as well, as a matter of survival. Some states have even reluctantly considered developing casinos as a proactive measure. The issue is no longer whether casinos should be allowed in the state but who should operate and tax those casinos.

Nowhere is this situation better illustrated than in New England. The Mashantucket Pequot tribe erected New England's first casino in Ledyard, Connecticut. This casino quickly became the largest casino in the nation in terms of total win. Connecticut's politicians began efforts to legalize non-Indian casinos in Bridgeport and Hartford. As a result of Connecticut's venture into casinos, a state Senate subcommittee in the neighboring state of Massachusetts proposed that casinos be developed in each corner of the state to (1) discourage surrounding states from developing casinos of their own and (2) to persuade the residents of Massachusetts to spend their gambling dollars in-state. According to the Senate subcommittee, casinos in the corners of Massachusetts would "block the development of a competing casino in Providence, Rhode Island; deter Massachusetts residents from Foxwoods Casino in Ledyard Connecticut; and deter the development of a competing casino in lower New Hampshire or Maine."<sup>125</sup>

Still, some states initiate casino development willingly. Iowa, a state not traditionally associated with gambling, legalized the country's first modern riverboat casino in 1989 as a strategy to counter the economic devastation that the state endured in the recession of the late seventies and early eighties. By

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<sup>125</sup> Report of the Senate Subcommittee on Post Audit and Oversight, Towards Expanded Gaming: A Preview of Gaming in Massachusetts, p. 85 (September, 1993).

venturing into riverboats, and by strictly limiting the amount and type of gaming on the riverboats, Iowa hoped to create harmless tourist entertainment while capitalizing on the historic image of Mississippi riverboats. Support for the riverboats was very strong. Developers talked of spending millions of dollars to build amusement parks, hotels and riverfront promenades while newspaper editorialists praised the riverboats as the path to economic prosperity. In April of 1991, amid much fanfare and celebration, Iowa's first riverboat, the *Diamond Lady*, made its maiden voyage.

Just as the IGRA had the unintended result of casino proliferation, so too did Iowa's riverboats. It was not long after the opening of Iowa's riverboats that politicians in surrounding states began to take notice. In fact, less than a year after Iowa's riverboat act became law, Illinois had legalized its own brand of riverboat gambling and positioned itself as a major competitor. Mississippi, further downstream, also permitted riverboat casinos. Thus, began the escalating battle in the Midwest over the consumer's gambling dollars. Unlike Iowa, the state legislatures in Mississippi and Illinois passed liberal gambling laws with no limits on total player losses and unlimited betting on individual games. Mississippi's law did not even require its riverboats to move from the docks and both states allowed virtually any kind of traditional casino games.

Not surprisingly, Iowa's riverboats could hardly compete. After only a little more than a year in operation, two of Iowa's four riverboats, including the *Diamond Lady*, announced plans to move to Mississippi. Casino competition in the Midwest continued to increase as Indiana, Louisiana and Missouri each legalized riverboats by 1993. By 1994, Iowa, now dependent on gambling revenues, and having created a new political constituency of riverboat owners and workers, was forced to remove almost all of its restrictions on riverboat gaming in order to compete in the fierce market they unknowingly created in 1989.

### **III. Non-Tribal Casino Gaming: A State-by State Breakdown**

This section reviews major non-tribal casino gaming activities in other states; it includes Foxwoods Casino in Connecticut because of its size and location near major metropolitan areas. Specifically, this section describes the authorizing legislation, identifies the type of gambling permitted and reports the estimated gross gaming revenues from gaming operations. A summary of the information reviewed in this section can be found in Exhibit 3.1. and a summary of recent legislative actions pertaining to casino gaming can be found in Exhibit 3.2.

#### **Colorado**

Limited-stakes gambling (legalized in 1990) is permitted in three mountain towns: Black Hawk, Central City and Cripple Creek. Gaming was approved as a way of revitalizing these communities. The

first casinos opened in October 1991. In addition, two Indian casinos are operating in the southwestern part of the state. Only slot machines (which include video poker, blackjack and keno), live blackjack and poker are permitted, and bets are capped at \$5. Gross gaming revenues totaled \$325.7 million in 1994, a 25.3 percent increase over 1993 (including the tribal gaming revenues). Attempts to expand gaming in the state have been unsuccessful. In 1992, voters rejected four initiatives that would have expanded the list of approved gaming locations to twenty-seven cities and six counties. Furthermore, the voters passed a measure requiring any future gaming expansion plans to be decided by a local vote following statewide approval.

### **Connecticut**

Foxwoods Casino, owned and operated by the Mashantucket Pequot Tribal Nation, is the most successful Indian casino in the United States. The casino is located within two hours driving time of Boston and New York City and thus draws from a highly populous market. The Pequot tribe recently purchased land for a high-speed ferry terminal to improve access from New York City to the casino. In exchange for their monopoly on casino gambling, the tribe shares 25 percent of its slot revenues with the state. With the addition of a newly renovated bingo hall in Ledyard, the casino is now the largest in the world, employing over 10,000 people and paying over \$100 million per year to the state of Connecticut. Four other Connecticut tribes have petitioned for federal recognition to become eligible for casino compacts.

### **Illinois**

Riverboat gaming was approved in February 1990. Ten gaming licenses, each valid for up to two boats (1,200 passenger maximum), were authorized. All vessels are required to cruise except during times of navigational or mechanical difficulty. The first riverboat commenced operations in September 1991 and in 1994 ten riverboat casinos were navigating Illinois waters. The Illinois riverboats generated over \$980 million in gross revenues in 1994, up from \$606 million in 1993. The strong growth in the market is due partially to an increase in the number of boats on the waterways. Slot machines and a variety of table games are permitted and the state imposes no wagering restrictions. Gaming is specifically prohibited in Chicago, the rest of Cook County, and on Lake Michigan. All attempts to expand the maximum permissible number of gaming licenses were defeated in the 1994 legislative session.

### **Indiana**

Indiana promulgated gaming legislation in June 1993 when the state legislature overrode the Governor's veto of riverboat gaming on Lake Michigan, the Ohio River and Patoka Lake. The legislation

allowed for gaming only in those counties that approved gambling in a local referendum. In 1994, however, the Porter County Superior Court ruled that two sections of the Indiana riverboat gaming law violated the state constitution. The decision was then appealed to the Indiana Supreme Court. All legal issues were resolved earlier this year, however, and riverboats should begin cruising shortly.

### Iowa

In April 1991, Iowa became the first state in the nation to have riverboat gambling. The gaming restrictions imposed initially, however, severely impeded play. Vessels were required to cruise four times a day for a minimum of three hours per cruise. Bets were limited to \$5 per play and loss limits were set at \$200 per cruise. Lastly, gaming space was restricted to 30 percent of the boat's total square footage. These conditions were so limiting that of the four vessels that opened in the summer of 1991, only two remained in operation by 1994.

After the Illinois riverboats opened without similar restrictions, the revenue disparity and the threat of riverboat and customer loss compelled the Iowa legislature to relax the rules. In 1994, legislation retracted the bet, loss and gaming space limitations. Lastly, the state eased considerably the cruising requirements. This same legislation also authorized slot machines at the state's ailing horse tracks. The new legislation proved successful. Total gross gaming revenues from the riverboats rose from \$45.2 million in 1993 to \$104.8 million in 1994. As of December 1994, there were seven boats operating on Iowa's waterways.

### Louisiana

Riverboat gaming was authorized in 1991 and the first cruise sailed in October 1993. As of December 1994, there were ten riverboats in operation, although legislation permits up to fifteen riverboats in the state. The term "riverboat" is misleading, however, in that only one of the casinos actually cruises; the rest are permanently moored to piers. These riverboats are known as dockside casinos. All games using cards, dice or mechanical or electrical devices are permitted as well as wagering on horse racing. Lotteries, bingo, pull tabs, raffles, dog race wagering, and sports betting are not permitted. Louisiana riverboats generated \$602.5 million in gross gaming revenues in 1994.

In 1992, the legislature authorized the building of one of the largest land-based casinos in the country in New Orleans. A temporary 76,000 square-foot casino opened in May 1995 and was intended to operate until a permanent 200,000 square-foot casino was complete in the summer of 1996. Harrah's Casinos, the owner/operator of the casino, estimated that it would generate an average of \$33 million per

month in gross gaming revenues.<sup>126</sup> Three months after opening, however, the best gaming month had brought in less than half that amount.<sup>127</sup> In November 1995, Harrah's abruptly closed the temporary casino and abandoned its efforts to build the permanent facility.

Louisiana is the only state that has two separate regulatory agencies, one for the riverboats and a second for the land-based casino in New Orleans. The two-commission system, however, is proving to be cumbersome and inefficient. Consequently, plans to unify the agencies are currently being explored.

### Mississippi

Mississippi riverboat gaming was legalized in 1990 and the inaugural cruise sailed on August 1, 1992. Five riverboats were operating on the Mississippi river or on the Gulf Coast by the end of the year. Since then, the Mississippi gaming market has expanded rapidly. At the beginning of 1994, the industry had seventeen facilities generating approximately \$110 million per month in gross gaming revenues. By August of 1994, thirty-one facilities were operating and generating \$130 million per month. Overall, in 1994, Mississippi riverboats generated approximately \$1.5 billion in gross gaming revenues, up from \$789.8 million in 1993. Since August 1994, however, three riverboats in Tunica have closed and a number of riverboats on the Gulf Coast are in precarious financial condition. In addition, the introduction of riverboat gaming in Louisiana intruded upon the Gulf Coast monopoly Mississippi once enjoyed. Further erosion may occur from nearby states considering the authorization of casino gaming: Texas, Alabama and Arkansas.<sup>128</sup>

Currently, all types of casino games are permitted on Mississippi riverboats. Bingo, raffles and other types of gaming off-premises, however, are not permitted. State law authorizes gaming only on the navigable waters in counties adjacent to the Mississippi River or the three southern counties adjacent to the Mississippi Sound, and then only after the particular local jurisdiction has passed a local referendum approving riverboat gaming.

### Missouri

In 1992, a total of thirteen Missouri communities legalized riverboat casino gambling on the Mississippi and Missouri Rivers. Two more added gambling in 1993. In January 1994, however, the Missouri Supreme Court ruled that casino gambling was in direct violation of the state constitution. A

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<sup>126</sup> "Gambling is proving to be a poor wager for state of Louisiana," The Wall Street Journal, September 11, 1995, p. A5.

<sup>127</sup> *Id.*, and Louisiana Gaming Monthly, Smith Barney (August 14, 1995).

<sup>128</sup> Casino gaming was considered in Florida as well, but voters rejected casinos in a 1994 statewide referendum. See Exhibit 3.2.

constitutional amendment, passed in November 1994, permits lotteries, gift enterprises and games of skill and chance. In addition, there is a \$500 loss limit per excursion.<sup>129</sup> The amendment does not specify a maximum permissible number of riverboats and does not restrict the location of the riverboats. These decisions were reserved for the state's gaming commission.

Authorizing legislation in 1992 specified that all boats must cruise, except where passenger safety and disruption of river traffic and commerce are at issue. On numerous occasions, the gaming commission has issued exemptions that permit permanently moored facilities. As of December 1994, six riverboats were operating in five locations: St. Charles, St. Louis, Kansas City, Riverside and St. Josephs. During eight months of operation in 1994, the riverboats drew 4.7 million visitors and generated \$110.3 million in gross gaming revenues.

### Nevada

Nevada is the oldest and largest legalized casino gaming center in the United States. Authorized in 1931 in the middle of the Great Depression, gambling has become an enormously successful economic development initiative for the state. In 1994, the casinos generated over \$7 billion in gross gaming revenues. Over half the revenue came from Clark County, home of the Las Vegas Strip. Las Vegas alone drew 28 million visitors in 1994 and generated gross gaming revenues of \$4.4 billion, up 16.6 percent from 1993. The Nevada Gaming Commission permits a multitude of gambling activities, including bingo parlors, card rooms, casinos (table games and slots), keno and off-track betting. The only form of gambling not permitted in Nevada is raffle-type lotteries.

Nevada gaming differs significantly from gaming in most other states in that it is almost entirely dependent upon outside visitors. With only 1.2 million residents in the state (more than half of whom live in Clark County), the local population does not provide much of the base for the state's gaming industry. Despite a dependency on out-of-state visitors, and the rapid proliferation of gaming opportunities elsewhere in the United States, the Nevada gaming industry continues to thrive, driven primarily by new developments on the Las Vegas Strip. Gaming-related taxes account for most of Nevada's public revenues.

### New Jersey

Prior to 1989, Atlantic City was one of only two locations in the United States that permitted casino gaming activities. The first casino opened its doors in 1978, two years after a statewide referendum

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<sup>129</sup>To enforce the loss limit, Missouri requires casino patrons to purchase coupon booklets (maximum value \$500) prior to boarding the riverboat. These coupons are then used to wager on the riverboat games. Dealers and other gaming operators are prohibited from taking cash from casino patrons. Highway patrol officers are stationed aboard the riverboat to prevent gamblers from scalping additional coupons from other players.

legalized gambling. Currently, ten gaming venues exist on the Atlantic City boardwalk and two are located in the marina. Between 1985 and 1990, gross gaming revenues grew at an average annual rate of 6.7 percent. Since then, however, growth has slowed to an average rate of 3.8 percent per year, perhaps reflecting increased competition with other new gambling forums in addition to a generally weaker economy. Atlantic City drew 31.3 million visitors in 1994, 3.6 percent more than in 1993, but approximately 1 million visits below the average visitation levels of between 1988 and 1990.

Legislators in New Jersey spent their 1994 session dealing with possible gaming competition from nearby locations such as Philadelphia, New York City and the Catskills. The legislature considered several "poison pill" type initiatives that would have expanded casino gaming opportunities in New Jersey in the event that nearby competitor states or jurisdictions adopted their own gaming laws.

#### South Dakota

Another limited-stakes state, South Dakota legalized gaming in 1989 to revive the former mining town of Deadwood. Limited gaming venues are permitted in storefront locations but tight restrictions govern the size of the casino as well as the amount of wagering and loss. Attempts to remove the wager limits have consistently failed. In 1994, eighty-six casino venues generated \$45.9 million in gross gaming revenues. Nine Indian tribes have compacts for casino operations in South Dakota. Six of the tribes already have Class III casino operations located in the central and eastern portions of the state. Plans are underway for Class III gaming facilities on the remaining reservations.

#### **IV. Revenues and Growth**

The casino industry has grown rapidly in the last decade. Measured in terms of what the casinos win from their patrons,<sup>130</sup> the total has more than tripled, from about \$4.5 billion in 1984 to \$16.3 billion in 1994. The industry can sensibly be divided into four segments -- Nevada, Atlantic City, Indian casinos and Riverboats, each with a very different history. Figure 3.1 from Ernst and Young provides more details.

#### Nevada

Notwithstanding the introduction of casinos in a number of other states, the Nevada casino industry continues to grow very rapidly and accounts for about 49 percent of the national industry. The total casino win for Nevada in 1994 was \$7 billion, compared to less than \$2.5 billion in 1982. The total win in 1994 grew by more than 12 percent, notwithstanding the expansion of Indian casinos and riverboat gaming. The Nevada casinos have diversified their entertainment offerings, so that hotels and other services now provide

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<sup>130</sup> As casinos move to provision of a wide variety of other entertainments, total win becomes a less accurate measure of the scale of their activities.

a substantial share of total earnings. The total number of hotel rooms in Las Vegas was about 80,000 in 1992, comparable to the figure for New York City or Orlando; 16,000 new rooms were added in the last two years alone. The major casinos still plan large growth, perhaps as many as 40,000 rooms, in the near future.

### **Atlantic City**

Started in 1978, the Atlantic City casino industry has maintained steady but not spectacular growth in the last decade. Total win in 1984 was about \$2 billion. In 1994 the total win was \$3.4 billion. After adjusting for inflation, this change amounts to an increase of less than 19 percent. Growth has been substantially less than in Nevada since the late 1980s and the Atlantic City industry has not greatly diversified its offerings. While all of the casinos are associated with reasonably large hotels, Atlantic City has not become a "destination tourism" site, as has Las Vegas. Day trippers are still dominant, with 30 percent of players arriving by bus. There is little evidence of expansion. Only 9,000 hotel rooms are available. An expected expansion of 2,000 rooms in the next year will be considered a major accomplishment. In comparison, Laughlin, Nevada, the secondary casino center of Nevada, already has over 11,000 hotel rooms, up from 1,600 rooms in 1986.

### **Indian Gaming**

There are now twenty-two states in which Indian tribes are permitted to offer gaming. Although the majority of the casinos are small facilities in fairly remote areas, some tribes have developed large casinos near major population areas. As already mentioned, the Foxwoods Casino, operated by the Mashantucket Pequot Tribe in Connecticut, had a larger win than any other casino in the world in 1994 (\$430 million from slots alone and perhaps \$800 million total).<sup>131</sup> Total win for all Class III Indian casinos was estimated to be \$2.6 billion in 1994 and rising rapidly. Wertheim Schroder projected a total win of \$4 billion for 1996, comparable to Atlantic City's win.<sup>132</sup>

### **Riverboats and Other Casinos**

Since 1989, five states have authorized riverboat gambling. Though there have been many local vicissitudes, total win from these facilities totaled \$3.3 billion in 1994. Wertheim Schroder projects an

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<sup>131</sup> Because they are not subject to state regulation, the Indian casinos do not routinely provide figures on total win; the figures for slot machines at Foxwoods is known only because of the agreement to provide 25 percent of total slot win to the state of Connecticut.

<sup>132</sup> Gaming Industry Update: Annual Review, Wertheim Schroder & Co. (March, 1995).



expansion of about 40 percent in 1995 to \$4.7 billion,<sup>133</sup> mostly from the addition of new boats in new locations. Gaming in the limited stakes states (Colorado and South Dakota) seems to have peaked.

#### V. Taxes

All jurisdictions subject casinos to special taxation. Nevada taxes casino win relatively lightly at 6.25 percent of win plus some smaller related levies. In 1994, Nevada collected approximately \$500 million from the 6.25 percent gaming tax, nearly 35 percent total state revenues of \$1.4 billion. The entire state economy is built around the casino industry and supporting activities (e.g. the hotel room tax yields \$122 million to local governments). New Jersey imposes a variety of levies on the industry, some dedicated to economic development of the community affected by the casinos; the total of these levies is slightly less than 10 percent. A number of Midwestern states are at the high end of the taxation spectrum, with levies of 20 percent in addition to a patron entry tax as high as \$2.50, which is usually dedicated to local governments.

Although Indian gaming may not be taxed by state governments, this type of gaming is still generating some public revenues. Connecticut's compact with the Mashantucket Pequot Tribal Nation, offering the tribe a monopoly on slot machines in the state in return for a share of the revenues (minimum payment of \$115 million), has expanded the potential for Indian gaming and gaming generally. Massachusetts is negotiating with the Wampanoags to provide a similar monopoly in return for a \$105 million annual payment to the state. Both Connecticut and Massachusetts are also in the process of modifying their compacts. Connecticut has put up for bids a license to operate a casino in Bridgeport; the bidder must include a line of credit for \$610 million to pay to the Mashantucket Pequot Tribal Nation as a buy-out of their monopoly. In Massachusetts, each of the four race tracks in the state will be allowed to install about seven-hundred and fifty slot machines, in return for a reduction of about \$10 million in the tribe's annual payment to the state.

Gaming tax rates and revenues for each state are given in Table 3.3. Table 3.4 shows the distribution of these revenues in their respective states.

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<sup>133</sup> *Id.*

**Table 3.3**  
**STATES' TAXATION OF CASINO GAMING**

State	Type of Gaming	Tax Structure	Wagering and Admission Tax Revenue (1994)
Colorado	Limited Stakes	2% on 1 <sup>st</sup> \$2 million 8% on next \$2 million 15% on next \$1 million 20% on remainder	\$41,672,668
Illinois	Riverboat	20% of AGR*	\$236,644,461
Indiana	Riverboat	20% of AGR	Operations commence December 1995
Iowa	Riverboat	5% on 1 <sup>st</sup> \$1 million 10% on next \$2 million 20% on remainder	\$19,348,655
Louisiana	Riverboat Land-based Casino	18.5% of net gaming proceeds Greater of 18.5% or \$100 million (25% of AGR from temporary casino)	\$172,670,000 (est) \$6,100,000 (est) (began operations 5/95)
Mississippi	Riverboat	4% on 1 <sup>st</sup> \$50,000 monthly 6% on next \$84,000 monthly 8% on remainder	\$189,289,451
Missouri	Riverboat	20% of AGR	\$87,499,017
Nevada	Land-based Casino	3% on 1 <sup>st</sup> \$50,000 monthly 4% on next \$84,000 monthly 6.25% on remainder	\$411,295,787
New Jersey	Land-based Casino	8% of AGR	\$272,318,000
South Dakota	Limited Stakes	8% of AGR	\$3,670,845

Source: Department of Fiscal Services and reported in Projected Impact of Casino Gambling in Maryland (November, 1995)

\* AGR: Annual Gross Revenue

**Table 3.4**  
**STATES' DISTRIBUTION OF CASINO TAX REVENUE**

State	General Fund	Special Fund (Purpose)	Local Governments
Colorado	50% (after costs of commission)	28% (after costs) (state historical fund)	22% (after costs)
Illinois		Remainder after certain costs (Education Assistance Fund)	25%
Indiana	75% (after costs of Commission)		25% (after costs)
Iowa	93.5%	1.5% (Gamblers' Assistance)	5%
Louisiana (Riverboat)	81%	19% (Riverboat Gaming Enforcement Fund)	
Louisiana (Land-Based)		100% (after costs of regulation) (Casino Gaming Proceeds Fund)	
Mississippi	Remainder	25% of revenue from 8% bracket (Gaming Counties Bond Sinking Fund - to pay for transportation infrastructure)	Separate Local License Fee (10% of state fee)
Missouri		90% (Gaming Proceeds for Education Fund)	10%
Nevada	100%		
New Jersey		100% (Casino Revenue Fund - funds benefits for elderly and disabled)	
South Dakota	40%	Remainder after certain costs (Deadwood Historic Restoration and Preservation Fund)	10%

Source: Department of Fiscal Services and reported in Projected Impact of Casino Gambling in Maryland (November, 1995)

**Exhibit 3.1**  
**STATES WITH NON-TRIBAL CASINO GAMING**

<b>State</b>	<b>Type</b>	<b>Description</b>	<b>Gross Gaming Revenues (Total Win)</b>
<b>Colorado</b> <i>(authorized 1990)</i>	Limited stakes, land-based casino gaming	Limited stakes gaming (\$5 maximum single bet) is legal in three mountain towns: Cripple Creek, Central City, and Black Hawk. Casino operations commenced with a total of 11 casinos statewide. As of December 1994, there were 59 casinos operating within these three towns (down from 65 in 1993).	The combined win for all 59 casinos for 1994 was \$326 million (92% from slot machines, 8% from table games) -- a 25.3% decrease from 1993.
<b>Illinois</b> <i>(authorized February 1990)</i>	Riverboat casino gaming	Riverboat casinos in Illinois must cruise the waterways. The state initially limited the number of licenses to ten, although each license provides for up to two riverboats, depending on capacity. Illinois riverboats are subject to geographical restrictions. The first riverboat casino opened September 1991 with another following in November 1991. Four new riverboats opened in 1993 and as of December 31, 1994, there were ten operating riverboats. Current proposed legislation would allow an additional five riverboats.	Total gross operating revenues from the riverboats totaled \$980 million for 1994 -- a 62% increase over 1993.
<b>Indiana</b> <i>(authorized June 1993)</i>	Riverboat casino gaming	Riverboat casino gaming was established on the legislature's override of a gubernatorial veto. Since then, sections of the authorization legislation have been declared unconstitutional. Pending appeal to the Supreme Court, riverboats are on hold.	Not applicable
<b>Iowa</b> <i>(authorized March 1990)</i>	Riverboat casino gaming	Three riverboats commenced operations on April 1, 1991. Initially, the state restricted the amount a patron could wager per play (\$5) and per cruise (\$200). These restrictions forced two riverboats to move to Mississippi and another ceased operations altogether. In May 1994, legislation eliminated the limited stakes. As of December 31, 1994, there were seven riverboats in operation.	The total win for 1994 was \$105 million, an increase of 132% over 1993.
<b>Louisiana</b> <i>(authorized July 1991)</i>	Riverboat, dockside and land-based casino gaming	The state has authorized 15 riverboat casinos in the state, 13 riverboats have been licensed and ten are in operation. Riverboats must cruise unless weather requires the vessel to remain docked. In 1993, the Louisiana legislature approved the largest land-based casino in the world to be built in New Orleans. A temporary facility opened in May 1995; the permanent facility was slated to open in 1996. However, amid lack-luster profits, the investors (Harrah's) abandoned their plans for the permanent casino and closed the temporary casino as well.	The total win for Louisiana's riverboats was \$602.5 million in 1994, up from \$16.2 million in 1993. Revenues from the temporary land-based casino in New Orleans averaged \$12.2 million per month -- only one-third of the casino operator's monthly projections.
<b>Mississippi</b> <i>(authorized 1990)</i>	Riverboat and dockside casino gaming	Mississippi riverboat gaming was legalized in 1990 and licensed gaming began in August 1992. By the end of the year, five riverboats were in operation. Twelve riverboats were added in 1993. In 1994, three riverboats discontinued operations while 17 riverboats were added to the state's waterways. In total, 31 riverboats were in operation at the end of 1994. Of these, over half are barges or boats docked along the Mississippi River. The remainder consist of barges or boats docked off the beaches of the Gulf of Mexico. There is no limit on wagers and riverboats are not required to cruise. In fact, most are permanently moored, often with functionally integrated shore-side buildings.	Total gross gaming revenues for 1994 were \$1.5 billion -- an increase of 85.8% over 1993.

**Exhibit 3.1**  
**STATES WITH NON-TRIBAL CASINO GAMING**  
**(continued)**

State	Type	Description	Gross Gaming Revenues (Total Win)
<b>Missouri</b> (authorized 1992)	Riverboat casino gaming	<p>Although 15 communities on the Mississippi and Missouri rivers had legalized riverboat casino gaming through local referenda by 1993, in January 1994 the Missouri Supreme Court ruled riverboat casino gaming unconstitutional. A constitutional amendment was passed in November 1994, and as of December 1994, six riverboats were operating in five locations.</p> <p>Currently, both St. Louis and Kansas City are permitted an unlimited number of riverboat operations while other counties are limited to one riverboat for the first three years of operation. There is a \$500 loss limit per cruise. Missouri legislation mandates that in most areas of the state riverboats must cruise, but applicants may apply for dockside operation if they can prove cruising would be a danger to passengers or that cruising would be physically impossible.</p>	Six riverboat operations generated \$110.3 million in eight months of 1994, the first year of operation.
<b>Nevada</b> (authorized 1931)	Land-based casino gaming	The Las Vegas Strip remains the premier gaming destination in the United States, luring over 28 million visitors in 1994. Originally designed to cater to the local gamblers, changing attitudes toward casino gaming and the development of theme-park like entertainment hotel/casinos have attracted growing numbers of vacationing families. Aside from Las Vegas, Nevada's largest casino gaming markets are Lake Tahoe, Laughlin and Reno.	In 1994, the Las Vegas Strip alone generated gross gaming revenues of \$4.4 billion (16.6% more than 1993). Statewide, Nevada's casinos grossed over \$7 billion (an increase of 12%).
<b>New Jersey</b> (authorized 1976)	Land-based casino gaming	Casino gaming is legal only in Atlantic City. Atlantic City is the most frequented casino destination in the U.S. with 31.3 million visitors in 1994, primarily because of the enormous market potential in such close geographic proximity to the casinos. In 1994, there were 12 casino hotels in operation. The city's master plan designates two casino hotel zones, one along the boardwalk (where 10 of the 12 are located) and another in the marina area in the northeastern section of the city.	The total win for the Atlantic City market increased slightly from \$3.3 billion in 1993 to \$3.4 billion in 1994.
<b>South Dakota</b> (authorized 1989)	Land-based casino gaming	Gaming is legal only in Deadwood. Each licensed location may operate up to 30 gaming devices (any combination of slot machines, blackjack tables and poker tables). As of December 31, 1994, there were 86 casinos operating in Deadwood.	Total win from casino operations increased slightly from \$43 million in 1993 to \$46 million in 1994 (89% from slots and 11% from table games).

Source: Department of Fiscal Services and reported in Projected Impact of Casino Gambling in Maryland (November, 1995)

**Exhibit 3.2**  
**CURRENT AND PENDING LEGISLATION IN OTHER STATES**  
**(as of September, 1995)**

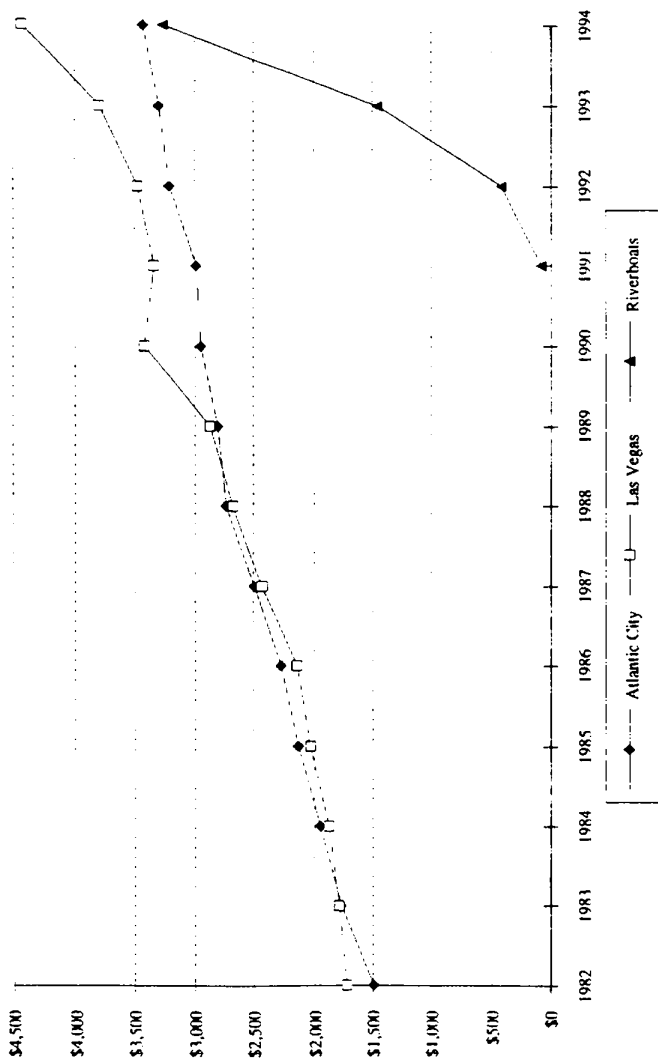
State	Description
<b>California</b>	In 1994, Canyon Lake voters rejected card rooms for their community
<b>Colorado</b>	In 1994, voters statewide rejected casinos in Manitou Springs, a small mountain town near Colorado Springs, as well as slot machines at commercial aviation airports
<b>Delaware</b>	In 1994, the state approved slot machines at Delaware horse racing tracks. Current plans include 1,000 slot machines at Delaware Park Racetrack and 500 at Dover Downs. Delay in developing a regulatory structure, however, has indefinitely postponed operations.
<b>District of Columbia</b>	In 1994, a referendum to bring riverboat casino gaming to the District failed to make the ballot due to lack of voter support.
<b>Florida</b>	In 1994, voters overwhelmingly rejected the Proposition for Limited Casinos which would have legalized up to 51 casinos and riverboats, 12 freestanding, 5 on riverboats and the remainder at existing racetracks and jai alai fronts.
<b>Illinois</b>	In 1994, various local jurisdictions considered casino gaming bills. Voters in Des Plaines rejected casino gaming within city limits, while voters in Carpentersville, Palos Hills and dozens of other communities passed legislation approving their own right to determine casino gaming plans in their towns. Willow Springs rejected a referendum that would have placed gaming initiatives on the ballot. Ward 23 in Chicago approved a referendum that would require 50% of revenues from riverboat gaming to be remitted to the city and approved the right to vote on gaming initiatives in the city of Chicago.
<b>Indiana</b>	In 1994, voters in Perry County approved riverboat gaming -- the seventh Ohio River county that will compete for 5 riverboat licenses in southern Indiana (see Exhibit 3.1).
<b>Iowa</b>	In 1994, voters in Polk County rejected relaxed regulations thus continuing to prohibit riverboats from entering the Des Moines market.
<b>Maryland</b>	During the 1995 legislative session, the Maryland General Assembly considered four bills that would legalize and regulate casino gaming. Although none passed, the legislature did create a joint task force to study legalized casino gaming, and is expected to reintroduce casino gaming legislation during the 1996 session.
<b>Massachusetts</b>	In 1994, the Springfield and Agawan communities in western Massachusetts rejected non-binding referenda that would have legalized casino gaming.
<b>Missouri</b>	In 1994, the state passed a constitutional amendment legalizing "games of chance," thereby permitting the state's riverboat casinos to add slot machines to their gaming options. After four tries, voters in Parkville agreed to permit riverboat gaming in their town.
<b>New Jersey</b>	In 1994, the New Jersey state legislature passed a bill that would expand gaming of any type once border states introduce it. In 1996, the state may introduce legislation governing a riverboat casino at the Meadowlands.
<b>New Mexico</b>	In 1994, voters statewide approved a state lottery and video gambling, while the Navajo Indian tribe rejected the establishment of gaming on tribal lands in New Mexico and Arizona.  In 1995, however, full-scale Indian casino development was approved, allowing for unlimited slot machines and all other casino games. Governor Johnson signed 11 compacts with tribal authorities in February.

**Exhibit 3.2**  
**CURRENT AND PENDING LEGISLATION IN OTHER STATES**  
**(continued)**

State	Description
<b>Pennsylvania</b>	In 1995, the Pittsburgh and Philadelphia delegations to the state legislature reached an agreement to permit riverboat casinos. A bill that would allow 25 riverboats statewide has been introduced and is given a reasonable chance of passing in 1996. However, the governor along with legislators from rural regions of the state are strongly against casino gaming in Pennsylvania.
<b>Rhode Island</b>	In 1994, state and local voters rejected casinos in five cities, forcing the Narragansett Indian tribe to build its casino on a rural reservation in Charlestown rather than on land in West Greenwich.
<b>South Dakota</b>	In 1994, after the state Supreme Court ruled them unconstitutional, voters approved a constitutional amendment legalizing video lottery terminals.
<b>Vermont</b>	In 1994, the town of Pownal passed a referendum, by a 70% plurality, that approved a 180,000 sq. ft. racetrack/casino facility on 144 acres.
<b>Virginia</b>	For the third time in as many years, the 1995 Virginia legislature decided against legalizing riverboat casino gaming. Disagreements over the distribution of gaming revenues has been a major stumbling block to approval.
<b>West Virginia</b>	In 1994, three of four West Virginia counties approved video lottery terminals at Charles Town Racetrack. However, the measure failed in Jefferson County. Consequently, the racetrack will close (video lottery terminals remain in operation at Mountaineer Park).
<b>Wyoming</b>	In 1994, voters rejected a referendum (by a three to two margin) that would have legalized limited casinos.
<b>U.S. Virgin Islands</b>	In 1994, voters approved a non-binding referendum that would permit casino gaming in island hotels.

Source: Department of Fiscal Services and reported in Projected Impact of Casino Gambling in Maryland (November, 1995)

Figure 3.1  
**CASINO INDUSTRY GROSS GAMING REVENUES**  
 For the Years Ended December 31, 1982 Through 1994  
 (in millions)



Source: Compilation of Gaming Data, Ernst & Young (1994)





## CHAPTER 4 The Potential Economic Impact of Casinos in Maryland

### I. Introduction

The principal argument for introducing casinos into Maryland rests with the possible economic benefits that casinos might bring to the state and the communities in which they would be located. Consequently the Task Force asked two state agencies, the Department of Business and Economic Development (an executive agency) and the Department of Fiscal Services (an agency of the General Assembly), to provide state-level assessments of the economic impact of permitting casinos at three locations in the state (Baltimore, Prince George's County and Cumberland). In addition, the Task Force was furnished with two other detailed economic impact studies; one prepared for casino interests, the other for the Greater Baltimore Committee, a civic organization.<sup>134</sup> Those four studies produced very varying estimates of the potential scale and broad economic consequences of allowing casinos in Maryland.

With multiple casinos in three locations, and no new competition from neighboring states, the Department of Business and Economic Development (DBED) projected a potential win of as much as \$3.7 billion and 25,000 new jobs. But, because of substitution from other industries and the flow of money to non-Maryland investors, the DBED study also showed a net loss to the Maryland economy of 7,000 jobs. The study by the Department of Fiscal Services (DFS) also assumed no new competition from neighboring states. It estimated a potential win of less than \$1.4 billion, the creation of no more than 7,500 new casino jobs and --given a low rate of substitution for other consumer spending -- a net gain of almost 20,000 jobs. Both studies estimated substantial net increases in government revenues (ranging from \$100 to \$250 million) as the result of taxes on the casinos' win.

Table 4.1 compares the two agency studies with respect to their basic results for each of the three proxy sites: total number of visits, casino win i.e. what players leave at the casino tables and in slot machines; casino employment; casino employee earnings, and total employment effects, taking account of both negative and positive economic consequences of casinos. Since each study produced low, medium and

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<sup>134</sup> The Jacob France Center at the University of Baltimore, in collaboration with Arthur Anderson, prepared a study for Primadonna Resorts and Harrah's entitled Economic Impact Study on the State of Maryland (October, 1995). Hunter Interests prepared a two volume study for GBC entitled Casino Economic Impact Report, State of Maryland and Baltimore Area (November, 1995); the study was still only in draft form when this Report was prepared and a third volume was not yet available. Promus Companies also submitted a report which used methodologies and data developed by the WEFA organization, an economic consulting company. The available documentation for the Promus report was too slight to allow its inclusion in this review.

high estimates, reflecting uncertainty about critical parameters, the Table presents the medium figures wherever possible.

**Table 4.1**  
**PROJECTIONS OF CASINO IMPACTS BY SITE**

	Baltimore Metro		Western Maryland		DC Metro	
	DFS	DBED	DFS	DBED	DFS	DBED
Number of visits	5,252,500	19,883,409	2,256,000	6,848,240	5,145,000	15,671,043
Casino win (in thousands)	\$393,937	\$2,085,000	\$169,200	\$726,400	\$385,875	\$930,300
Number of casino jobs	2,015	14,026	836	4,885	2,177	7,257
Earnings of casino workers	\$46,356,366	\$398,400,000	\$19,217,778	\$138,700,000	\$50,064,808	\$206,100,000
Net job impact	6,087	-12,742	3,206	5,542	6,283	878

Sources: Department of Fiscal Services and Department of Business and Economic Development studies (November, 1995).

The studies conducted for other sponsors also generated discrepant findings, though both showed a substantial positive net impact from casinos. For example, the University of Baltimore study on behalf of casino firms, assuming no new competition in the region, estimated that Maryland casinos might generate a total win of between \$1.16 billion and \$1.97 billion, with about 24,000 casino jobs and net job creation of 62,000. The Hunter Interests study for the Greater Baltimore Committee, assuming the introduction of casinos in several states in the region, estimated total win between \$870 million (with substantial limitations imposed on casino operations) to \$1.7 billion (with minimal restrictions). The casino employment was estimated to lie between 9,500 and 19,000 casino jobs and net employment to be 15,000 to 27,000 jobs.<sup>135</sup>

Interpreting and comparing the four studies is not easy. Each had to make numerous assumptions concerning critical parameters (e.g. casino win per visit at a landbased casino) about which reasonable persons might differ, given the thinness of prior analyses.<sup>136</sup> Nor were the analyses entirely parallel; each segmented demand in a somewhat different fashion. The goal of this chapter is to present the various

<sup>135</sup> The net employment estimates represent an interpretation of figures in the study. There is no explicit statement of net employment impact but only of net direct impact (5,600 to 12,300), which should then be subject to a multiplier factor, assumed here to be 1.2.

<sup>136</sup> For example, which is the more relevant number for estimating win per visit in Maryland: average win per visit at the only landbased casinos, which are in the mature Las Vegas or Atlantic City markets, or in the riverboat casinos now operating near Chicago, which are new and near a major metropolitan area?

studies, explain why their results differ and then integrate the findings. Most attention will be given to the two state sponsored studies, because they were done to assist the Task Force and because of the presumptive objectivity. The other studies will also be considered but in less detail and mostly to help understand differences between the two state studies.

The Appendix to the Chapter outlines the structure of models, the differences in assumptions and the variety of data sources used. The body of the chapter will focus on the results. It will also discuss, as required by House Bill 995, the likely impact of Maryland casinos on three related gambling activities in the state: horse racing, the lottery and charitable gaming.

## II. Casino Visits

The differences between the two agency study results are dramatic in almost every dimension. Focusing just on casino visits to Baltimore, clearly the most important potential site, DFS estimates (medium level) that total casino visits would be no more than 5.2 million, barely one sixth of Atlantic City's visits.<sup>137</sup> The DBED analysis produces an estimate (medium level) of visits for Baltimore of almost 20 million or two thirds of Atlantic City's. Though this latter figure may seem high, given the time that Atlantic City has had to build its industry, it is worth noting three points: (1) Atlantic City achieved this visit level within approximately five years of the construction of the first casino. (2) The population living within 50 miles of the casinos is much larger for Baltimore than Atlantic City, since it includes most of the Washington metropolitan area as well as Baltimore. (3) Baltimore's air and rail connections with the rest of the nation are much better than Atlantic City's.

Hunter Interests also developed projections specific to Baltimore. Their total for Baltimore, assuming that casinos are allowed to promote their activities aggressively, is 13.7 million visits, about two thirds of the DBED figure, which assumed no new casinos in other states of the region. The University of Baltimore did not produce site-specific estimates.

The difference between the projected number of Baltimore casino visits in the two agency studies arises from differences in assumptions about both propensity to game and frequency of visits within the local population (see Appendix to this Chapter). The DFS model uses extraordinarily low casino-visit rates for the 100 mile population. Visit rates are the product of the share of the population that will go to casinos (propensity) and the average number of times they will go (frequency). DFS assumed that the product of those was just 0.38 for the population within 50 miles and 0.12 for the population in the 50 to 100 mile radius. However, as shown in Exhibit 4.1, between one-third and two-thirds of those within 50

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<sup>137</sup> All figures represent long-run projections.

miles of an existing casino will make an average of eight to fifteen visits a year. Only the Joliet, Illinois area shows a lower figure. For the population 50-100 miles from the casino, the propensity figures, again with the exception of Joliet, Illinois, range from one-fifth to two-fifths. Hunter Interest figures for the propensity and frequency seem close to those of DBED.

**Exhibit 4.1**  
**COMPARATIVE PROPENSITY AND FREQUENCY CHARACTERISTICS**  
**Selected Existing Gaming Jurisdictions By Radius**

<u>Jurisdiction</u>	<u>0-50 Miles</u>		<u>50-100 Miles</u>	
	<u>Propensity</u>	<u>Frequency</u>	<u>Propensity</u>	<u>Frequency</u>
Tunica, MS	64%	15	41%	9
Quad-Cities, IL, IA	45%	8	20%	2
Joliet/Aurora, IL	35%	3	8%	1
Ledyard, CT	50%	10	38%	7
Atlantic City, NJ	50%	10	38%	7

Source: Smith Barney, Deloitte & Touche LLP

For the state as a whole, Table 4.2 presents figures for all four studies<sup>138</sup> on total visits, total casino win, casino employment, total employment and state revenues. In general DBED has the highest figures for the total casino industry and DFS has the lowest.

**Table 4.2**  
**PROJECTION OF MARYLAND STATE IMPACTS**

	<b>DFS</b>	<b>DBED</b>	<b>Hunter Interests</b>	<b>University of Baltimore</b>
Number of visits	12,653,500	42,402,692	25,763,970	13,498,427
Casino win	\$949,012,500	\$2,277,300,000	\$1,700,422,040	\$1,567,300,000
Number of casino jobs	5,028	26,168	18,900	24,139 <sup>139</sup>
Earnings of casino workers	\$115,638,952	\$742,200,000	\$425,250,000	\$555,200,000
Net job impact	15,576	-6,322	26,000	62,085
State Casino Taxes	\$75,920,000	\$182,400,000	\$331,582,298 <sup>140</sup>	\$125,400,000

Sources: DFS, DBED, Hunter Interests, and University of Baltimore studies

<sup>138</sup> For DFS this involves summing across the individual sites, which overstates DFS estimates of the total since that study analyzed each site as though it alone had casinos in Maryland.

<sup>139</sup> This figure includes non-gaming jobs within casinos; the pure gaming jobs are estimated to be 8,500.

<sup>140</sup> This figure is the mean of the estimated range of tax revenue using a tax rate of 17-22 percent; all other studies used an 8 percent tax rate.

The DFS projected visit figures seem generally to be substantially too low, if interpreted as estimates of the potential market demand. The DBED figures may be too high, ignoring the impact of the likely response of neighboring states to Maryland permitting the development of a large casino industry and perhaps understating the relative attractiveness of Atlantic City.

### III. Expenditures

DFS set win per visit at between \$50 and \$75 for a landbased casino and \$15 and \$30 for riverboat casinos. These are low figures when compared with experiences in other cities which considered land-based casinos only; Atlantic City's win per visit is \$110 and Louisiana's riverboat win is \$51. Hunter Interests (with only land-based casinos) also specified a low expenditure per visit, between \$60 and \$66.

DBED used Atlantic City figures for landbased casinos and the Chicago area riverboat figure of \$62 for Port America. While the existence of numerous casinos at Atlantic City might imply that expenditures per visit could be higher there, attention also needs to be given to the relative wealth of the market that the Baltimore and Port America sites tap into. The University of Baltimore study specified expenditure per visit within each category (daytrip, current tourists, new tourists etc.); these ranged between \$100 and \$125. These differences have enormous implications for the projections. As already mentioned, there is no obvious way of reconciling the differences.

### IV. Jobs

Both agencies' estimates of the gross number of jobs generated by casinos seem low, given their win projections. In Atlantic City a casino win of \$3.4 billion in 1994 generated 43,000 jobs (12.5 jobs per million dollar win). DFS based its job estimate on the amount of gaming space per employee in Atlantic City. Using DFS's estimate with \$50 expenditure per visit, the total number of jobs generated by a \$395 million win is only 3,021 (7.5 jobs per million dollar win). DBED's employment estimate assumes a certain number of employees per gaming device. The \$2.08 billion of projected win in Baltimore generates 14,000 jobs, or again about 7 jobs per \$1 million win. Yet the larger casino industry in Atlantic City is likely to have fewer rather than more employees per million dollars.

The other two studies produce casino job estimates close to those from DBED. However, the University of Baltimore figure includes non-gaming jobs within casinos, it is unclear whether the others have broken up the total or just how narrowly the University of Baltimore study defined gaming related jobs (e.g. whether slot machine mechanics are categorized as gaming or support staff in the study). This

uncertainty about classification of employment is characteristic of the difficulties in interpreting these complex studies in a uniform fashion.

#### V. Aggregate Economic Effects

The casino win and employment figures, as described in the Appendix, are just the start of the process by which new casinos might affect Maryland's wealth. On the negative side, account must be taken of the substitution of Maryland gaming expenditures for Maryland non-gaming expenditures (substitution). On the positive side are casino-related expenditures (like hotel rooms and food and drink) arising from new visits to Maryland. Then these "direct" effects have to be subjected to the multiplier effect, as those who make money from casino employment etc. then spend some of that money.

##### Substitution

Edward Gramlich, a highly regarded economist at the University of Michigan, in commenting on the Deloitte and Touche economic study for the state of Michigan,<sup>141</sup> stated: "One problem is that added spending for casino gaming must come from somewhere. The studies normally just treat the added spending as a gain, without considering that spending on other business, and even other types of gambling (horse racing, lotteries) will fall in response to the introduction of casinos."<sup>142</sup> Substitution of other goods and services for casino visits is the single most important issue to address in an economic analysis. Unfortunately there appears to be little literature that addresses the issue directly.

Indeed in thinking about this matter, the reader might simply use some introspection to test the reasonableness of this view. Assume that casinos were accessible in Maryland; would your expenditures on wagering there be new expenditures or would they replace something else, like trips to musicals or Ocean City, leaving your total entertainment expenditure unchanged? However, even if your total expenditures remained unchanged, you might decide that, with Maryland casinos accessible, you were less likely to spend money out of state, e.g. for a trip to Washington, D.C., and spend that money in Maryland; even though substitution was total, in that case, the amount you spent in Maryland would rise.

Much of the projected casino win generated by Maryland residents and current tourists is clearly substitution for other expenditures or for saving. The economic gains to the state, as measured in terms of jobs, would come heavily from expenditures by non-Marylanders and from recapturing Marylander

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<sup>141</sup> Deloitte and Touche, Economic Impacts of Casino Gaming on the State of Michigan (1995).

<sup>142</sup> Gramlich, the head of the University of Michigan's Institute of Policy Studies, was hired by the Michigan Governor's Blue Ribbon Commission on Gaming to advise and review the modeling work. His letter is Appendix H to the report entitled Report of the Commission (April, 1995).

expenditures at casinos in other states. The state revenues may increase, even with total substitution, because casino win is subject to special and high taxes compared to other expenditures.

The higher the share of casino win generated by out of state residents, the larger the economic gain to the state. Nevada's casino win is more than 90 percent from non-Nevada residents. Atlantic City's casino win also has a very high out-of-state component, about two thirds, but the principal goal in establishing the Atlantic City casinos was to rebuild the economic base of Atlantic City, so that large transfers from other parts of the state were acceptable. Only a negligible percentage of total win comes from Atlantic City or even Atlantic County.

The variation in substitution among the Maryland studies is very broad and that has substantial effects on estimates of the total economic impact of casinos. Of course the substitution rate is different for different segments of the market; Table 4.3 gives the differences among the four studies in the substitution rate for Maryland daytrip casino expenditures:

**Table 4.3**  
**EXPENDITURE SUBSTITUTION RATES, BY STUDY**

	<b>DFS</b>	<b>DBED</b>	<b>Hunter Interests</b>	<b>Univ. of Baltimore</b>
Substitution rate	0.17	0.90	0.60	0.70
Dollars substituted (millions)	67	1,076	535	800

DBED assumed that substitution for Maryland residents was at least 80 percent and might be as high as 100 percent; i.e. no more than 20 percent of casino win represent new expenditures by Maryland residents. The DFS study is not explicit about substitution but it appears that the rates used for daytrips and existing visitors was between 11 and 17 percent.<sup>143</sup> This would explain much of the difference in net job generation of the two studies. The Hunter Interest study took a sophisticated view of the matter, distinguishing the substitution rates for five different expenditure types (e.g. Marylanders, current tourists and convention visitors); the substitution rates were as low as 20 percent for those coming from nearby but secondary markets and were no higher than 60 percent (for Marylanders). The University of Baltimore study assumed substitution rates to lie between 60 and 80 percent for Marylanders and existing tourists.

There is no simple method for determining the appropriate level of substitution, as is indicated by Edward Gramlich's other comments concerning the Deloitte study. However a figure of less than 80

<sup>143</sup> Table prepared for the Task Force by Victoria Crangle, a DFS analyst with primary responsibility for the economic analysis in the DFS report.



percent is hard to justify for local and current tourist expenditures at casinos; a lower rate suggests that casino expenditures are driving down savings rates noticeably and perhaps that many casino players are betting beyond their means.

#### **Non-Casino Expenditures by Casino Visitors**

Casinos do generate additional non-gaming expenditures, principally associated with the travel, hotel and food and beverage industries. Las Vegas exemplifies this, with its large array of associated non-gaming tourist attractions serving visitors primarily attracted by the gaming opportunities in the city. If Baltimore casinos were to attract substantial numbers of new tourists, then other tourist-oriented industries might benefit substantially.

Two studies attempted to estimate these effects. DBED estimated non-gambling expenditures (mid-level) to be \$480 million, about 20 percent of casino win. The University of Baltimore estimated non-gaming expenditures associated with casino visits at about \$800 million, about one half of estimated casino win. DFS did not separate out non-gaming expenditures in its Tables, presenting just the net effect of substitution and non-gaming expenditures by casino players. Hunter Interests identified only food and beverage and retail expenditures within the casinos; the assumption was that these would amount to only about 7 percent of gaming expenditures themselves. However Hunter Interests did separately identify a substantial potential increase in Baltimore convention visits (273,000 to 750,000) because of the availability of casinos; that might generate another \$250 million to \$700 million in convention spending.

#### **Aggregate Effects**

The aggregate economic effects, even for a given total casino win, depends on (1) how much of the total comes from various sources such as out-of-state visitors and recaptured Maryland expenditures in Atlantic City and Nevada; (2) assumptions about the payroll<sup>144</sup> and other Maryland operational expenditures; (3) non-gaming expenditures, and (4) substitution. Thus it is not surprising that the net economic effect projected by each of the studies is quite different.

Indeed, as striking as the difference in projected casino win in the DFS and DBED studies is the difference in net economic effects. DBED assumes a high substitution rate (80 to 100 percent for in-state residents), while DFS assumes a low rate (0 to 17 percent). DBED combines that with a substantial flow of payments from the casinos to out-of-state providers of capital; the result is that a large casino win translates into a major loss of employment. Though a reasonable fraction of the estimated casino win

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<sup>144</sup> Not all employees of the casinos would be Maryland residents. In both Prince George's County and Cumberland, the labor pool on which the casino would draw includes a large portion in neighboring states.

comes from out of state residents, that cannot overcome the negative impact on employment resulting from Marylanders substituting low labor intensity casino expenditures for current expenditures. With the low substitution in the DFS study and a lower casino win, the net employment effect is substantially positive.

The other two studies both project substantial positive net economic impact but the difference between them is substantial. The University of Baltimore study produces a total effect of increased output of \$3.3 billion and 62,000 jobs. Hunter Interests appears to estimate a total of about 26,000 net new jobs.<sup>145</sup>

### Construction Jobs and Revenues

Neither state agency developed estimates of the costs of casino construction or the benefits that would flow to the state economy from the construction phase. Both the University of Baltimore and Hunter Interest studies did provide such estimates. Hunter Interests estimated the total construction expenditure to fall between \$475 million and \$945 million, generating between 3,250 and 6,500 jobs<sup>146</sup>; taking into account all other effects, the total expenditure impact is between \$815 million and \$1.6 billion, with net employment of 10,400 and 20,700. The University of Baltimore study produces no figure for the construction expenditures and jobs alone but only for their net impact. Total output is estimated to increase by about \$2.15 billion, with a total of about 23,500 jobs in the two year period. Those are non-recurring gains, unlike those associated with casino operations.

### Tax Revenues

Casino win is subject in every state to high specific taxes; the plausible range is 8 percent to 22 percent. Presumably higher tax rates would discourage investment in casinos but none of the models attempted to estimate the relationship between tax rates and investment levels.

The win tax is estimated to be between \$90 million by DFS, assuming its mid-level projections of win and an 8 percent tax, to \$300 million estimated by DBED with its highest level estimate of casino win. However there are numerous other relevant tax effects, including increases in state personal income tax arising from higher employment, in sales taxes from non-gaming expenditures and property taxes.

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<sup>145</sup> The only figure offered in the study is that for net direct employment; that has not been subjected to the multiplier effect, which in other parts of the report appears to be 1.2. If that is applied to the 12,324 net direct jobs, the total is about 27,000 jobs.

<sup>146</sup> Note that, unlike operational jobs, these are not annual figures but cumulative over the period of construction; if construction occurred evenly over two years, that would mean between 1,625 and 3,250 jobs in each of the two years, with no further jobs in following years.

### Comparisons with the Michigan Study

Given the great variation in projections for Maryland from the various studies, it seemed useful to make some comparisons of the Maryland studies with good analyses for another state. The Deloitte and Touche study for the state of Michigan<sup>147</sup> seems perhaps the best of the studies from other states.

Like DFS, Deloitte and Touche assumed that the win per visit for a Detroit casino would be much lower than that found in Atlantic City or Las Vegas, only about \$50. They pointed to the fact that in the nearby casinos at Windsor (Ontario), win per visit was only \$62, at a time when the facility was running well above capacity and thus was able to effectively screen out lower spending visitors.

Total win for Detroit (in a metropolitan area comparable in size to Baltimore) was estimated at \$655 million, from approximately 12 million visitors. One factor keeping this figure somewhat low was the existence of the casino in Windsor, just across the border in Canada. Detroit also has a lower average per capita income (\$9,443) than Baltimore (\$11,994).<sup>148</sup>

Compared to the Maryland estimates, a much greater share of the Michigan win estimates come from recapturing revenues currently going to other sites, precisely because so much of Windsor's business is generated by Michigan residents. Windsor appears to have no natural or important historic advantage as a site for Michigan players, consequently Deloitte assumed that all of that play returned to Michigan. They assumed that the state could capture back one quarter of Michigan expenditures at Atlantic City.

Interestingly they assumed no net recapture of Las Vegas gaming expenditures by Michiganders, put at a total of \$650 million. On the one hand some current gamblers would make fewer visits to Las Vegas because the local casinos would be more convenient, on the other hand some locals would acquire a taste for casino gaming and would find Las Vegas more attractive than before. These were assumed to cancel each other out, a pure convenience which points to the weakness of the data base on which all this analysis depends.

The Michigan study estimates quite modest construction employment associated with the casino industry. A total annual win of \$1 billion is estimated to produce a total of only \$119 million in construction costs, this is surprising given the claimed billions invested in construction in Atlantic city.

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<sup>147</sup> Deloitte and Touche, Economic Impacts of Casino Gaming on the State of Michigan (1995).

<sup>148</sup> 1989 Per Capita Money Income. United States Department of Commerce, Table 7-34 Statistical Abstract of the United States (1993).

## Concluding Comments

Taking account of competition from other states, the potential gross win is likely to be substantially less than DBED estimates but still higher than estimated by DFS; a figure in the range of \$1-1.5 billion seems quite reasonable. The extent to which the casino revenues are derived from non-Marylanders and recaptured Maryland out-of-state expenditures is not clear but DBED makes a credible case that the substitution effects are large enough that the net economic consequences for the state as a whole are possibly negative and probably much more modest than suggested by the projected size of the casino industry itself.

Nonetheless, it is probably the case that the introduction of casinos would have at least a modest positive effect on the state's economy, even allowing for the introduction of casinos in neighboring states. The recapturing of a share of the flow of Maryland expenditures in other states' casinos, a flow which may well increase in the near future, is one important source of that effect. The casino industry would probably have substantial adverse affects on many existing businesses but would still make a net contribution. Note that we have not yet dealt with possible social costs arising from casinos, so this is not yet a final judgment on the net economic benefits.

What is striking is the uncertainty underlying these estimates. The range of analyses of prior casino developments is small. Atlantic City and Nevada are the only sites for which substantial analysis is available and one must acknowledge the potential for large differences between new casinos in Maryland and their experiences. Other sites (apart from Foxwoods) have not included land based casinos and the impact of restrictions surrounding riverboat casinos is hard to judge.

### **VI. Specific Industries Affected**

Maryland already has numerous legal gambling activities as described in Chapters 1 and 2. A major concern, expressed at the Task Force's hearings and in H.B. 995, is that the introduction of casinos would have substantial negative effects on those activities. This section assesses the likely impact on three major forms; horse racing, the state lottery and charitable gambling.

#### Horse Racing

DFS presented a detailed analysis of the data available on the impact of casinos on horse racing in other states. As was stated at the Task Force hearings by numerous witnesses, casinos have had strong negative effects on attendance and handle at nearby racetracks.

The statistical evidence is powerful. Some marginal tracks have been closed or turned into locations for other kinds of betting. For example, Quad Downs, an Illinois standardbred racing track near

two of Iowa's riverboats, closed down after its handle declined by one third within one year. Another minor track in Iowa, Prairie Downs, faced with competition from first riverboats in 1991 and then Indian gaming in 1993, closed as a live racing facility in 1994; it reopened as the site for slot machines in 1995.

Even major tracks appear to be vulnerable to the competition. Arlington International, a nationally prominent thoroughbred racing track outside of Chicago, has reduced the number of planned racing days by 60 percent, following a decline of 15 percent in attendance and almost 15 percent in the real value of handle in two years following the operation of riverboat casinos in Northern Illinois.

DFS concluded that "the average reduction in average daily handle and attendance in the first full year of competitive casino implementation tends to be in the range of 15 percent to 30 percent." It goes on to note that independent studies,<sup>149</sup> estimate the ultimate impact to be closer to 40 percent.

The introduction of casinos, other than slot machines at the track, into Maryland would likely have a very substantial negative impact on horse betting, perhaps cutting racing revenues by one third. It is likely that one or more of the standard bred (trotting) tracks would be forced out of business by freestanding casinos. The horse racing industry is estimated by DFS, using an earlier study by the Department of Economics and Economic Development,<sup>150</sup> to have generated about \$500 million in spending in Maryland in 1994, including related expenditures by racing customers (e.g. hotel and restaurant expenditures). A loss of one third would be about \$170 million per annum in handle.

Horse breeding and related farming activities in the state of Maryland, estimated by DFS to provide roughly 12,443 jobs in 1993, would also be negatively affected. Though the breeding industry services the national racing industry as well as Maryland, the strength of Maryland tracks is important for the breeding industry. It would also be sharply reduced if the revenues available from racing itself declined.

### The Lottery

The Lottery, as discussed in Chapter 2, is a major source of state revenues, accounting for \$380 million in 1994, about 3.2 percent of general fund revenues. If casinos were to substantially reduce lottery sales, this would have a noticeable impact on state revenues.

However, a number of reports have found that lottery revenues are only moderately affected by casinos. For example, in Illinois, the arrival of riverboat gambling in September 1991 did not prevent the

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<sup>149</sup> Thalheimer, R. and R. Lawrence. An Economic Analysis of the Effects of Casino Gambling on the Kentucky Race Horse Industry (1994).

<sup>150</sup> Department of Employment and Economic Development. The Economic Impact of Professional Sports on the Maryland Economy: Prepared for the Special Advisory Commission on Professional Sports and the Economy (January, 1985).

growth of lottery sales by 6 percent in 1992. There was, nonetheless, a drop of 7 percent in the following two years. Connecticut showed a similar pattern following the opening of the tribally operated Foxwoods casino in Ledyard in February 1992. Revenues were up in 1992 by 5 percent and then fell by 3.2 percent in 1993. In each state the game most substantially affected was Lotto.

The consensus is that casino industry does not directly compete with lotteries. Differences in the structure of the games, both as gambling and social activities, probably explain that observation. As suggested in a report to the Task Force from the Maryland State Lottery,<sup>151</sup> the Maryland state lottery would probably suffer only modest losses, between 2 and 5 percent (i.e. \$20 million to \$50 million), if casinos were introduced.

### Charitable Gaming

Experience in other states suggests that the casino industry competes somewhat with charitable gaming, though data are particularly flimsy here. In Louisiana, where riverboat casinos were introduced in 1993 and where bars and truck stops are also allowed to install video poker machines, there has been a significant drop in receipts of the various forms of charitable gambling (bingo, video bingo, casino nights, pull-tabs and raffles). The total declined by about 20 percent from the \$400 million recorded in Fiscal Year 1992. In Missouri, where riverboats are more limited in their number and distribution than in Louisiana, the reported decline (following installation of slot machines in the casinos) was only about 3 percent. Iowa also saw relatively modest declines following the arrival of riverboats.<sup>152</sup>

It seems very likely that the current charitable casinos in Prince George's County would be greatly affected, particularly if casinos were allowed to operate at the Port America site. The charitable casinos offer simply what commercial casinos do, except that they do not have slot machines or the related entertainment and dining facilities commonly found in the commercial operation. Similarly, the slot machines in non-profit organizations on the Eastern Shore would be adversely affected, though none of the contemplated sites is very accessible to the populations of that area.

It is less clear how other such major forms of charitable gaming in Maryland as church related bingo and tip jars in Western Maryland would be affected. The experiences of other states suggest that the effect might be slight.

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<sup>151</sup> The Maryland Lottery Report to the Joint Executive-Legislative Task Force to Study Commercial Gaming Activities in Maryland (November, 1995).

<sup>152</sup> Department of Fiscal Services, Projected Impact of Casino Gambling in Maryland, pp. 116-118 (November, 1995).

## **VII. Conclusions**

Projecting the economic consequences of introducing casinos into Maryland is a complex task. This Chapter focused on the private and non-profit sector effects, considering the public sector only with respect to potential taxes.

Yet there are important public sector consequences which merit further analysis. The public sector provides services which are used by residents and visitors alike, such as roads, sewers and police. Casinos themselves are charged for the direct regulatory costs but there may be additional infrastructure costs that are not readily imposed on them. The Task Force was unable to find basis for projecting these other costs.

## APPENDIX TO CHAPTER 4

### Comparing the Structure and Assumptions of the Models

The general approach of all studies is to divide the potential market (i.e. the set of individuals who might visit a Maryland casino) into a number of segments and analyze each separately. The usual division is local visitors (living within 100 miles or two hours drive), existing tourists and new tourists. Finer divisions are possible and were used by some of the four studies; e.g. the Hunter Interests distinguished among "secondary markets", those living within 100 miles but in Pennsylvania, New Jersey and Delaware (Northern) and parts of Virginia and West Virginia (Southern), while DBED distinguished between overnight visitors who stayed at hotels and those who stayed with friends or relatives. For each segment the basic parameters are (a) the propensity to gamble at casinos (i.e. the fraction of the eligible population that will visit a casino in the course of a year) (b) the frequency of visits (i.e. the number of annual visits by those who do play) (c) the amount spent per visit and (d) the reduction in other expenditures on other Maryland goods and services as a result of spending money at the casino (substitution).

The studies seek to avoid double counting and make sure that there is no overlap among the segments. For example, some of the current overnight visitors come from within 100 miles of the sites; they should be counted only in one category. Attention has to be paid to the recapturing of current Marylander expenditures at out-of-state casinos. These dollars are not subject to the same substitution parameter; the recaptured dollars substitute for out-of-state expenditures, whereas other local visits substitute mostly for in-state expenditures on other items. Obviously it is important generally to distinguish casino expenditures by Marylanders from non-Marylanders, since the latter substitute fewer Maryland goods and services for each dollar spent at casinos.

Having estimated the number of visits and total casino win (visits multiplied by expenditure per visit), the studies then have to estimate the total economic impact. The casinos spend money in Maryland on employees and certain operating expenses; some of the money leaves the state, either in the form of payments to the providers of capital or for purchase of out-state goods and services. The payments to Maryland individuals and corporations then generate other expenditures and so on; this is the multiplier effect. But the reduction in initial expenditures on other goods by Maryland residents and current visitors also has a multiplier effect, though in the opposite direction. The studies do not disagree about the size of the multipliers, which are drawn from standard government publications.



Expenditures are turned into jobs, again with fairly standard data sources on how much expenditure in a broad category (e.g. entertainment industry, retailing) supports an average job in that industry. Jobs are then converted into earnings by using known average wage rates for that industry. For the casino industry, DFS used employees per square foot of gaming space, while DBED used employees per device, both drawing on Atlantic City data.

Fiscal impact estimates are dominated by specific taxes on casino win, subject to between 8 percent and 22 percent. However there are also taxes on increased value of property and income taxes on any additional earnings. Substitution, i.e. the loss of business in other sectors, will lead to lower property taxes and sales taxes that need to be subtracted from these figures.

Both agency studies assumed that no other neighboring states introduced casinos.<sup>153</sup> DFS considered each site on its own (i.e. in estimating the demand for casino services in Baltimore, DFS took no account of potential competition from a casino in Prince George's County). Thus adding the individual site figures overstates the projected state total. DBED took account of intra-state competition. Each took account of the existence of Atlantic City casinos but with no expansion. Only the Hunter Interest study allowed for new casinos in the region. One way that affected the projections was to generate a large increase in the expenditures by Marylanders at out-of-state casinos if Maryland did not introduce casinos itself.

The agency studies took assumptions about siting from the Task Force, which specified Baltimore, Cumberland and Port America as plausible sites. In Port America, DBED assumed the casinos to be riverboats. DFS put a landbased casino there. DFS allowed also for harbor cruising casino boats in Baltimore.<sup>154</sup> The two other studies were not specific about sites, though both assumed that Baltimore would be one of the sites.

Figures on the additional number of tourist that might come to a specific site because of the presence of casinos is an assumption rather than a piece of data. There simply is too little experience on which to draw; the studies differed dramatically in this respect. E.g. DBED assumed that only an additional 1 percent tourists would be attracted with casinos; DFS assumed that 5 percent was a more reasonable figure, with 20 percent for the Western Maryland site where current tourism is quite slight. Hunter Interests also projected a larger increase in tourist visits to Maryland because of the presence of

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<sup>153</sup> DBED, in response to a request from the Task Force, did some additional estimates to take account of limited potential competition, particularly to the proxy Cumberland site; these will be reported later in the chapter.

<sup>154</sup> Given that riverboat casinos generally operate under some restriction with respect to the length of visits, they generate much lower expenditures per visit.

casinos, perhaps as much as 10 percent. The University of Baltimore also assumed an increase of 5 to 10 percent.

DFS allowed only one casino at each site, though the casino size was unconstrained and could fit demand. DBED let the market dictate the number of casinos, as did the other two studies.



## CHAPTER 5 The Social Costs of Casinos

### I. Introduction

Casinos do more than provide a new economic activity; they can have a major impact on the social fabric of a community. This chapter deals with two major elements of that impact.

Some people find gambling such a compelling activity that they are unable to control how much time and money they devote to it. They get heavily into debt, shirk their duties as family and community members, as well as employees, and may engage in various kinds of crime. The American Psychiatric Association classifies pathological gambling as a progressive behavior disorder.<sup>155</sup> Given current access to attractive forms of gambling, the policy question is how much more pervasive such problematic behavior would become among Marylanders if casinos were to be allowed to operate in Maryland and what costs any increase would impose on the citizens of the state.

Casinos are also thought to lead to more crime in a community. In the early days of the industry, the principal concern was organized crime, through its participation in the operation of casinos. That reflected the tawdry history of Las Vegas casinos, initially built with Mafia money. More recently, with the experience of Atlantic City in mind, concern has focused on increased street crime arising from the influx of bettors.

### II. Pathological and Problem Gambling

The Task Force found little compelling evidence available on pathological and problem gambling. There is a dearth of systematic research on the extent of these behaviors, with or without casinos. Estimates of the prevalence in the general population, based on surveys, are inconsistent and unpersuasive. Estimates of the costs of problem gambling are based on small scale studies of Gamblers Anonymous members or persons in treatment as a result of their gambling behavior. These studies generalize too rapidly to the general population of pathological gamblers, about which little is known. Estimates of the impact of casinos on the prevalence of gambling problems are even sparser, poorly constructed and also ungeneralizable. Given the spread of casinos, as well as other forms of legal gambling, throughout the nation, a substantial and systematic research effort is called for.

We start with definitions. "Pathological gambling" is the most severe form: "The essential features ... are a continuous or periodic loss of control over gambling; a progression, in gambling frequency and

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<sup>155</sup> See Lesieur, H., "Compulsive Gambling," *Society*, pp. 43-50 (May/June, 1992), for a brief discussion of the definition.

amounts wagered, in the preoccupation with gambling and in obtaining moneys with which to gamble; and a continuation of gambling involvement despite adverse consequences."<sup>156</sup> Problem gambling is broader; "all of the patterns of gambling behavior that compromise, disrupt or endanger personal, family or vocational pursuits."<sup>157</sup>

### Prevalence

The only authoritative national estimate is that by the Commission on the Review of the National Policy toward Gambling done 20 years ago.<sup>158</sup> Its 1975 survey estimated that 0.77 percent of the population was classified as "probable compulsive gamblers" while another 2.4 percent was classified as "potential compulsive gamblers"; the term "compulsive" reflected the earlier conceptualization of gambling problems. These estimates were generated when few states had lotteries and only Nevada allowed casinos and they should thus be regarded as very likely to be lower than the current figure. The questionnaire used in the survey was less sophisticated than to-day's instruments. Goodman<sup>159</sup> states that there may already be as many as 9.3 million adults and 1.3 million teenagers with some form of problem gambling behavior in 1994 but he provides no credible basis for this figure.<sup>160</sup>

A number of more recent state level studies, each of them amenable to stringent criticism, have found that between 0.5 and 2 percent of the adult population shows behavioral problems related to gambling that are severe enough to merit a label of "pathological gambling". A larger group, perhaps 2-4 percent, are labeled "problem gamblers"; Table 5.1, from Volberg<sup>161</sup> presents the most complete set of relevant data on rates of lifetime problem gambling and more recent data on rates of current problem gambling.

Since these numbers play an important role in the following discussion, it is useful to describe their origins and the precise meaning of the labels. Each comes from a survey of a state population, with a sample of between about 750 and 2,000 adults. The respondents are contacted by telephone and are then

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<sup>156</sup> American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (1994).

<sup>157</sup> National Council on Problem Gambling, The Need for a National Policy on Problem and Pathological Gambling in America (1994).

<sup>158</sup> Kallick M., Suits D., Dielman T. and J. Hybels, A Survey of American Gambling Behavior and Attitudes (1979).

<sup>159</sup> Goodman, R., The Luck Business: The Devastating Consequences and Broken Promises of America's Gambling Explosion (1995).

<sup>160</sup> "Based on projections of existing research." The footnote cites an unpublished 1991 paper by Henry Lesieur and an article from The Christian Science Monitor. Lesieur, who publishes a great deal in this field, has not chosen to publish this estimate, reducing the credibility of this citation.

<sup>161</sup> Volberg, R. and R. Stuefen, Gambling and Problem Gambling in South Dakota: A Follow Up Survey (1994).

asked a series of questions from an instrument called the South Oaks Gambling Screen (SOGS). Those who score 5 or more on SOGS are classified as having, *at some stage in their lives probably* engaged in gambling pathologically. The emphasis is provided to make clear that the numbers are not estimates of the number of persons who are currently experiencing serious difficulties with gambling. The same holds for measures of the broader behavior of problem gambling; until 1991 all estimates were of life time rates and were only persons listed as "probable" with respect to this behavior. Since 1990 a more refined set of questions allow estimation of current rates of probable pathological or problem gambling. The earlier literature tends to obscure the fact that the reported rates are lifetime figures.

The figures in Table 5.1 indicate that there is substantial regional variation. The Midwest seems to

**Table 5.1**  
**PREVALENCE OF PROBLEM GAMBLING ACROSS JURISDICTIONS**

Year	State	Lifetime Prevalence	Current Prevalence
<b>Northeast</b>			
1986	New York	4.2%	---
1988	New Jersey	4.2%	---
1988	Maryland	3.9%	---
1989	Massachusetts	4.4%	---
1991	Connecticut	6.3%	---
<b>Midwest &amp; Central</b>			
1989	Iowa	1.7%	---
1990	Minnesota*	2.4%	1.5%
1991	South Dakota	2.8%	1.4%**
1992	Montana	3.6%	2.2%
1992	North Dakota	3.5%	2.0%
1995	Iowa	5.4%	3.3%
<b>West</b>			
1990	California	4.1%	---
1992	Texas	4.8%	2.5%
1992	Washington	5.1%	2.8%
<b>South</b>			
1994	Georgia	4.4%	2.3%
1995	Louisiana	7.0%	4.8%

Source: Volberg, R. and R. Stuefen, *Gambling and Problem Gambling in South Dakota: A Follow Up Survey* (1994).

\* In Minnesota, the current (past year) prevalence data were subsequently adjusted for an estimated lifetime prevalence rate (Laudergan 1992).

\*\* In South Dakota, a 6-month timeframe was used for the current South Oaks Gambling Screen items.

show lower lifetime rates than the rest of the nation, as might have been expected on the basis of urbanization and the extent of prior illegal gambling. More surprising is the relatively high rate for Georgia. Note the large variation within regions; Connecticut's 6.3 percent rate even before the introduction of casinos was 60 percent higher than Maryland's 3.9 percent.

#### Impact of Casinos on Prevalence

The extent of pathological or problem gambling in Nevada is not usually thought to be a good measure of the impact of casinos because the casinos have been established there so long and are such a prominent part of the social and economic milieu that the state presumably attracts persons who are inclined to heavy gambling. Thus little weight has been given to the observed difference between the rates for Nevada and the rest of the nation in the 1975 survey. New Jersey seems to provide a more relevant case study, because casinos were established relatively recently and still are not economically dominant, except in one small region of the state. Volberg's<sup>162</sup> estimate of probable pathological gamblers for New Jersey in the late 1980s is 1.4 percent, well below that for lottery-oriented Massachusetts (2.3 percent) and about the same as Maryland and California.

There is not much direct empirical evidence on the impact of casinos. Calls to gambling hotlines increase substantially when casinos become available but that is a weak indicator for at least four reasons: (a) the casinos themselves typically provide information about these hotlines; (b) those numbers are small (thousands annually rather than hundreds of thousands), (c) a single individual may be responsible for a number of calls and (d) no one has any understanding of the relationship between the number of calls and the population of problem gamblers. Moreover, most callers report their principal gambling activity to be some form other than casino gaming; sports betting is frequently mentioned.

Few studies have looked directly at the impact of changes in the prevalence resulting from casinos. Volberg conducted a replication study in Iowa<sup>163</sup> comparing the prevalence of problem gambling in a year prior to the introduction of casinos with that some time afterward. She reports that the percentage of adults that may have experienced a gambling problem some time in their life rose from 1.7 percent in 1989 to 5.4 percent in 1995. In 1995 she estimates that 3.3 percent of the adult population could be classified as currently "probable problem gamblers"; no baseline is available for 1989. In South Dakota, where casinos were introduced into the town of Deadwood in 1989 and other forms of gambling expanded rapidly after

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<sup>162</sup> Volberg, R., "The Prevalence and Demographics of Pathological Gamblers: Implications for Public Health," *American Journal of Public Health*, pp. 237-241 (1994).

<sup>163</sup> Volberg, R., *Gambling and Problem Gambling in Iowa: A Replication Survey* (1995).

1987, the lifetime rate of problem gambling in 1991 was 2.8 percent and the rate for current problems was 1.4 percent.. The 1993 survey found rates that were slightly lower but the difference was not statistically significant.<sup>164</sup>

Volberg recently published a paper in a leading public health journal which made important claims about how legalized gambling generally affects the prevalence of problem gambling.<sup>165</sup> This paper examined 1988-1990 estimates of the fraction of the population that could be considered, on a lifetime basis, "probable pathological gamblers" for California, Iowa, Maryland Massachusetts and New Jersey. For Iowa, the rate was estimated to be 0.1 percent (compared to 1.7 percent for *problem gambling* lifetime, as shown in Table 5.1) and for Massachusetts the rate was 2.3 percent; the others were all between 1.2 percent and 1.5 percent. Maryland and New Jersey have essentially the same rate; 1.5 percent for Maryland as compared to 1.6 percent for New Jersey, though the latter had casinos for many years.

Volberg concluded: "In states where legal gambling has been available for less than ten years, less than 0.5 percent of the adult population were classified as probable pathological gamblers. In states where legal gambling has been available for more than twenty years, approximately 1.5 percent of the adult population were classified as probable." There are at least three problems with this important conclusion:

1. Only one state, Iowa, is in the class of "less than ten years". However, not only has it offered fewer forms of legal gambling but it differs in many other dimensions from the other states that are known to affect gambling participation and might also affect the extent of pathological gambling e.g. its population is more rural and less Catholic. These may be just as important as availability in explaining the difference in rates.

2. The Iowa figure (0.1 percent) is far lower than any reasonable estimate of the baseline figure for any large modern American population given that it refers to "lifetime" rates. Given the extent to which the US population moves among states, it is implausible that the rate for Iowa should be less than one fifteenth that of most other states.

3. The other four states are hardly a homogeneous group in terms of either the availability of gambling or population characteristics. For example, California has had horse tracks for a century, relatively easy access to Nevada casinos and an Asian population that may be much more culturally disposed to gambling than a rural, Protestant population; it has had a lottery for only ten years. On the

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<sup>164</sup> Volberg, R. and R. Stuefen, Gambling and Problem Gambling in South Dakota: A Follow Up Survey (1994).

<sup>165</sup> Volberg, R., "The Prevalence and Demographics of Pathological Gamblers: Implications for Public Health," American Journal of Public Health, pp. 237-241 (1994).



other hand Massachusetts had no access to casinos prior to 1992, poor racing tracks and a long history of illegal numbers betting. These states should not be grouped together on the basis of availability of legal gambling.

In any case, as the state allows an increasing number of attractive forms of gambling in easily accessible settings, the incremental effect of casinos on the rate of compulsive gambling is likely to decline. Video lottery terminals, accessible in many stores and bars in four states, provide a highly stimulating form of wagering, comparable perhaps to casinos, though lacking most of the reinforcement provided in modern American casinos. It is hard to go beyond that broad statement.

### **Consequences of Pathological Gambling**

Gambling can lead to many behavioral problems, mostly rooted in excessive expenditures. Figures are often quoted for the debt level of problem gamblers. Those data usually come from studies of people in treatment for compulsive gambling, a very select group within the problem gambling population, likely to have particularly severe problems.<sup>166</sup> The other source of data is clients in Gamblers Anonymous (GA), again a self-selected sample who may have experienced exceptionally severe problems.

Lesieur and Puig<sup>167</sup> report that 47 percent of a sample of GA members admitted to some form of insurance-related fraud, embezzlement or arson related to their gambling. Another study reports that an estimated 18 percent of male GA members and males in treatment for compulsive gambling go into bankruptcy as a result of their gambling. Goodman cites Valerie Lorenz, Executive Director of the National Center for Pathological Gambling as stating that: "Virtually all research studies show that, minimally, 65 percent of the compulsive gambling population sampled admits to criminal activity."<sup>168</sup>

As in any area of social policy where there has been little empirical research, some numbers with respect to gambling acquire mythic status and, though lacking any discernible foundations, achieve broad currency.<sup>169</sup> Two claims about the aggregate damage caused by problem gambling behavior are particularly egregious in this respect:

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<sup>166</sup> For example Volberg is cited as estimating the "cost to the public of the average pathological gambler in 1981 was approximately \$13,600" (Goodman, p.61). The figure turns out to be based on reports from gamblers in the Johns Hopkins gambling treatment clinic in that year.

<sup>167</sup> Lesieur, H. and K. Puig, "Insurance Problems and Pathological Gambling," Journal of Gambling Behavior, 3 (2): pp.123-136 (1987).

<sup>168</sup> Goodman, R. The Luck Business: The Devastating Consequences and Broken Promises of America's Gambling Explosion, p. 50 (1995).

<sup>169</sup> Reuter, P., "The Continued Vitality of Mythical Numbers," The Public Interest (Fall, 1984).

(i) Forty percent of white collar crime originates in gambling problems. This is widely cited<sup>170</sup> and is usually identified as coming from a study by the American Insurance Institute (AII), apparently a non-partisan organization. Kelly,<sup>171</sup> writing in the pro-industry *Gaming and Wagering Business*, tried to find the source for this number and claimed to find no-one who could give an explanation or defense of it. The AII did not even exist and other insurance industry organizations said they had developed no comparable estimate. The author's research tracked down the first appearance of the number to a Tennessee Baptist convention publication in 1987. Certainly no-one has identified the original document or described the methods that generated the estimate.

(ii) Compulsive gamblers cost the nation \$75 billion nationally. This originates with the Florida Council on Compulsive Gambling. It is constructed as a pastiche of figures of questionable origins (e.g. on the fraction of pathological gamblers who commit crimes) and is one of a class of high figures produced by various state level organizations concerned with compulsive gambling. These organizations are advocates for gambling control. Their numbers should be treated as advocacy numbers and be subject to the same intense and skeptical scrutiny that is applied to the casino industry's claims on economic growth potential.

It is not clear how serious the problem is to those who are compulsive gamblers. For some it is certainly as consuming and troubling as drug addiction but for others it may be only something that they would like to get under control, not a major harm to themselves or their families. Assessing how many fall into each category is impossible.

Treatment of compulsive gambling is still weak in terms of measured effectiveness and the number and variety of available programs. This is scarcely surprising since the funds available for either research or programs have been typically just a few hundred thousand dollars. Increases in compulsive gambling problems are likely to generate long waiting lists at the few programs competent to handle this class of behavioral disorders.

### Maryland

A 1990 Maryland state report<sup>172</sup> made some alarming statements. The report asserted that "the prevalence of gambling addiction is on a disturbing rise in Maryland. The prevalence of pathological gambling is conservatively [estimated at] 1.5 percent of the adult population or about 50,000 addicted

<sup>170</sup> Goodman, R., *The Luck Business: The Devastating Consequences and Broken Promises of America's Gambling Explosion*, p. 50 (1995).

<sup>171</sup> Kelly, J., "New Light on Old Casino Ghosts," *International Wagering and Gaming Business* (May, 1995).

<sup>172</sup> Department of Health and Mental Hygiene, *Final Report of the Task Force on Gambling Addiction in Maryland* (1990).

gamblers. These figures represent a near doubling of the estimated prevalence in the mid-1970s. An additional 2.5 percent or 80,000 people are problem gamblers.” (p.13) “Pathological gamblers cost Maryland ...about \$1.5 billion in lost work productivity and embezzled, stolen or otherwise abused (sic) dollars.” “Over 850,000 people in Maryland are affected by pathological gambling”. (p.2)

All of these statements have very shaky bases:

1. The basis for the claim of an increase in recent years is the difference between a national prevalence figure developed in 1976 by a federal commission (Commission on the Review of the National Policy toward Gambling, 1976) and the Volberg study of Maryland in 1989.<sup>173</sup> “The percentage for the state of Maryland, when compared to the state estimate for 1976 (by extrapolating the national estimate), reveals that prevalence has nearly doubled in the state.” (p.55) However methodological differences are so great that it is hard to make comparisons of the two studies and the earlier study’s national prevalence figure should not be extrapolated onto Maryland. In 1976 Maryland was one of a small number of states with a lottery, had a very large horse racing industry and was relatively well endowed with illegal numbers operations; it was very likely to have had a substantially higher gambling rate than the nation as a whole.

2. The prevalence figure cited for 1989, as explained at the beginning of this chapter, is not the *current* prevalence of pathological or problem gambling but covers lifetime occurrence i.e. 1.5 percent of the population, at some time in their lives, experienced this problem. Indeed, they only “probably” experienced this problem.

3. The estimates of the social costs of pathological and problem gambling come from sources that are likely to overstate the average financial and behavioral damages experienced by persons with gambling problems.

The Department of Health and Mental Hygiene also provided materials to the Task Force.<sup>174</sup> Since no new work has been done in Maryland since the 1990 study, the Department was able only to provide summaries of studies done in other states. It then attempted to extrapolate those figures to Maryland.

### Conclusion

Maryland already provides many legal gambling opportunities to its citizens. Despite estimates of 50,000 or more pathological gamblers provided by the Maryland Department of Health and Mental Hygiene, it is unclear just how serious is the problem of uncontrolled gambling in the state’s population.

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<sup>173</sup> Volberg, R. and H. Steadman, “Prevalence Estimates of Pathological Gambling in New Jersey and Maryland,” *American Journal of Psychiatry*, p 1618 (December, 1989).

<sup>174</sup> Department of Health and Mental Hygiene, *Pathological Gambling and Its Resultant Social Costs in Maryland and Other States* (October, 1995).

With Atlantic City casinos within two hours drive for much of the state's population and two million Marylander visits there annually, it is possible that the introduction of casinos into the state itself will have little impact on the extent of gambling problems among Marylanders. However too little is known to provide any basis for confidence on this matter.

### III. Crime

Casinos bring large numbers of tourists to a specific location. Many are likely to be intoxicated and leave the casino late at night, they carry large quantities of cash. These are attractive targets for predatory criminals. Bettors may also commit crimes in order to be able to finance their wagering, though much of that may occur in their own communities rather than near the casino. Finally, the large accumulations of currency at casinos serve to attract both embezzlement and corruption.

The most widely cited figure on the local crime effect is that Atlantic City went from 50th to 1st among cities in terms of per capita crime rate in the decade following introduction of casinos. However, with 30 million visitors per year in a community of only 37,000 residents, the population base used for these calculations is suspect. There are twice as many visitors as residents in Atlantic City each day; how that should be taken into account is difficult to tell.<sup>175</sup>

It is interesting to note that the number of homicides fluctuated a great deal between 1977 and 1994. In 1977 there were 10 homicides; by 1982 that figure had risen to 20 but then fell precipitously to 3. In 1994 there were 9 homicides. The big increases in violent crimes were in robberies and aggravated assaults, both of which more than doubled.

The most relevant measure of crime change would be the level of victimization of the resident population. Unfortunately this kind of measure is not generated by current statistical procedures. However, some crimes are peculiarly associated with residency e.g. residential burglary<sup>176</sup> and domestic violence. The number of burglaries fell dramatically, from 1,457 to 828; there was a similar decline in the rest of the county. Statistics for domestic violence do not seem to be available.

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<sup>175</sup> 30 million visitors in a year produces about 80,000 visitors per day. Some stay more than one day. However, many spend less than a full day in the city. They have different exposure to various kinds of predatory crime than do the resident population. For all these reasons it is difficult to provide a sensible estimate of the base population for crime rate calculations.

<sup>176</sup> It appears that any theft within the casino hotels themselves would be handled outside of the regular reporting system for local police burglaries, probably by hotel security personnel.

The most sophisticated analysis of the crime effects of Atlantic City casinos did find a substantial positive effect outside of Atlantic City.<sup>177</sup> The authors estimated that by 1984 in towns that were readily accessible to Atlantic City,<sup>178</sup> the casinos raised violent crime rates by 78 percent, burglaries by 41 percent and thefts by 30 percent, even after controlling for the increase in population, wealth etc. Certainly there is evidence of a massive increase in the county level criminal justice costs. For example, the prosecutor's office budget grew from \$1.13 million in 1977 to \$6.89 million in 1995 and the number of assistant prosecutors almost tripled, from 11 to 32 over the same period.

The reports for other areas in which casinos have been located provide a very mixed picture. In some small towns there have been reports of massive increases in both violent and property crimes. For example, in Deadwood, South Dakota, where a large number of limited stakes casinos have been permitted since 1989, it is reported that the number of crimes rose by 60 percent from 1989 to 1992 and the city had to double its police force. Similar statements are made about the towns in Colorado in which limited stakes gaming is permitted. One of them, Cripple Creek, increased its police force rise from 3 in 1991 to 24 in 1994.

On the other hand, a former Superintendent of the Illinois State Police, who headed that agency during the period that 13 riverboats began operation in the state, testified before Congress that "crime has, simply put, not been an issue at all. ...crime has not been a problem."<sup>179</sup> He highlighted the experience of the city of Joliet, the site for four of the boats, which had seen a 10.8 percent decrease in crime in the year following the opening of the riverboats; even more striking was the substantial decrease in the immediate neighborhood of the downtown riverboat. The Task Force itself was told by St. Louis officials that there had been no discernible increase in crime as the result of the operation of a large river boat casino there; indeed, the presence of larger numbers of persons at night was thought perhaps to have increased the safety of that particular neighborhood.

There simply is no basis for projecting increases in crime that might arise from the introduction of casinos. Clearly a great deal depends on the setting of the casinos. They may bring activity and community to areas that previously had high crime rates because of abandonment or they may, in other locations, simply provide attractive targets and new offenders.

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<sup>177</sup> Friedman, J., S. Hakim and J. Weinblatt, "Casino Gambling as a 'Growth Pole' Strategy and its Effect on Crime," *Journal of Regional Science*, 29, No. 4 pp. 615-623 (1989).

<sup>178</sup> I.e. communities immediately adjacent to the city or within 30 miles and on the major highways.

<sup>179</sup> Testimony of Jeremy D. Margolis, Former Assistant U.S. Attorney and Director of the Illinois State Police, before the United States House of Representatives Committee on the Judiciary, hearing of September 29, 1995 to study H.R. 497 "National Gambling Impact and Policy Commission Act"

There are no studies of how casinos affect the criminality of those who bet there. As discussed above, studies of GA members and others who are in treatment for gambling problems indicate that they are criminally active and that this is related to their gambling. However, that cannot be translated into a figure for all casino gamblers.

#### IV. Black Holes

On two major topics there is simply no useful information or analysis available.

##### Illegal Gambling

When state lotteries were initiated in the early 1970s, a major rationale was that they would eliminate, or at least drastically reduce the extent of, illegal gambling. Many observers claim that the state lotteries have in fact smoothed the operation of the illegal numbers game by providing the winning number and making gambling more acceptable. Similarly, it is occasionally asserted that legal casinos increase the demand for various kinds of illegal gambling. Recently William Jahoda, at one time a senior organized crime figure in Chicago, testified before Congress that each expansion of legal gambling, including casinos, had increased the demand for sports bookmaking services.<sup>180</sup>

Law enforcement officials make claims on both sides of this proposition. No one has offered any evidence that would help sort out the competing views. Clotfelter and Cook,<sup>181</sup> in the most authoritative study of lotteries, cite various stray bits of evidence on both sides of the proposition and then conclude that the best one can say is that illegal numbers operations continue even after the state lotteries offer products very similar to those provided illegally.

##### Organized Crime

When gambling was not respectable, only the unrespectable would finance it. Las Vegas was initially built on criminal capital, mostly provided by the Mafia and related gangs. But since the late 1970s, with the change in popular attitudes toward casino gaming and the entry of major public corporations into the industry, the connection with the Mafia has become essentially historic.<sup>182</sup> New Jersey, perhaps as the result of an extremely expensive and intrusive regulatory system, has managed to keep organized crime influence to a minimum, though there is no doubt that various union locals have been racketeer controlled. Beyond that, there is little evidence. Accusations about organized crime influence in

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<sup>180</sup> September 29, 1995 Hearing of the United States House of Representatives Committee on the Judiciary on H.R. 497 "National Gambling Impact and Policy Commission Act"

<sup>181</sup> Clotfelter, C. and P. Cook, Selling Hope: State Lotteries in America (1989).

<sup>182</sup> A good account of this is provided by J. Skolnick in House of Cards: The Legalization and Control of Casino Gambling (1978).

the casinos of other states are remarkable for their absence, with the exception of Louisiana. In that historically corrupt state, recent indictments have alleged that a number of organized crime figures were involved in the bribing of state officials.<sup>183</sup> The bribery seems to have been specifically aimed at the video-poker industry, operating in bars and truck stops, rather than the riverboat casinos.

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<sup>183</sup> "Bayou Backlash," Wall Street Journal, September 11, 1995.

## CHAPTER 6 The Task Force's Deliberations and Findings

### I. Introduction

The decision as to whether to recommend relaxing the prohibition against commercial casino gaming in Maryland involves weighing the numerous issues that have been discussed in the previous chapters; economic development, taxes, crime and pathological gambling. It also involves even less tangible issues, such as whether casinos possibly encourage less prudent and productive behavior and altering the moral character of the state. This chapter sets out what factors the Task Force took into account, what it concluded about each of them and how they were weighed in the decision.

### II. Ethical Issues<sup>184</sup>

Given that the state of Maryland operates and promotes the lottery, as well as authorizing a variety of other forms of gambling, the principal ethical question is whether it is morally coherent for a state to run lotteries but prohibit casino gambling. Some have maintained that "[a state lottery's] moral status, whatever it turns out to be, is the same as that of the collection of revenues from casino gambling, and the decision to emphasize one rather than the other is a simple business decision." However, there are several morally relevant differences between the two, so that the decision to authorize or promote one or the other may be far more than a "simple business decision." Some of these differences point to ways in which casino gambling is more problematic than lotteries; others suggest the opposite. Taken together, these differences suggest that a state is not compelled by consistency to adopt the same posture toward casinos and lotteries; the considerations favoring the adoption of a state lottery may have only limited relevance for the decision about whether to authorize or how to regulate casino gambling.

A threshold issue is whether consistency ever compels a state to legalize one activity because it has legalized another. As has been pointed out with respect to drug policy,<sup>185</sup> it may be reasonable, and it is certainly coherent, for a community to tolerate familiar vices while prohibiting less familiar ones, whatever their similarity. Even if alcohol were worse in every respect than marijuana, a society that has traditionally tolerated alcohol may reasonably draw the line there. Of course, the case for selective legalization is even stronger if the already-legalized activity is not as bad or risky in important respects as the still-illegal ones.

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<sup>184</sup> This section draws on a helpful analysis prepared for the Task Force by David Wasserman of the Institute for Philosophy and Public Policy, School of Public Affairs, University of Maryland, College Park.

<sup>185</sup> Robert Fullinwider, cited in *The War on Drugs: Is It Time to Surrender?* Institute of Philosophy and Public Policy, University of Maryland, 1989.



State lotteries and state-regulated casinos may differ on several dimensions ethically relevant to their authorization and regulation:

**(1) Their distributive impact:**

a) how concentrated gambling expenditures and losses are among individuals -- a lot of small losers vs. a few big ones. Gambling that redistributes large sums amongst a few people i.e. where small numbers lose a lot and even smaller numbers gain a lot, may be viewed as more disturbing than wagering in which large numbers bet a small amount each.

b) how gambling expenditures are distributed by race, ethnicity, and income-level

Even in the context of free choice, large expenditures on gambling by low income groups is potentially troubling. Lottery betting and casino wagering are both subject to high tax rates, in the case of lotteries a rate far higher than for any other good or service,<sup>186</sup> because society in some way disapproves of them or thinks that they lead to harms, as do cigarettes and alcohol.<sup>187</sup> Thus large proportionate expenditures by poorer persons are likely to be judged as a harm, not just a preference of poorer people on how to spend their money.

c) spillover benefits and competitive harm to other products and businesses.

If the growth of the casino industry comes at the expense of existing economic activities, then there are some persons and groups that are harmed; they have a legitimate stake in the issue of whether casinos should be allowed

**(2) the harm or wrong done to prospective consumers of the legalized services, apart from their actual economic losses:**

a) the potential for promoting addiction and compulsive behavior

b) the improper exploitation of the vulnerabilities of potential gamblers -- their poverty, hopes, and misconceptions about probability

**(3) the potential for other social harm, such as organized crime infiltration and street crime.**

This will overlap with (2) to the extent that organized crime infiltration or the increase in street crime is attributable to increased addiction, and with (1) to the extent it is attributable to the economic and social pressures created by gambling losses. But much indirect social harm may be attributable to neither.

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<sup>186</sup> The lottery tax is the share of total revenues taken by the state as profit, after paying for operation and promotion and paying winners. Of each dollar wagered, roughly 55 cents are returned as winnings, 10 cents used for operation and promotion, and 35 cents retained as public revenues. The implied tax rate is either 35 percent or 77 percent, depending whether one uses as the base total wagering or the amount spent by players.

<sup>187</sup> This argument with respect to lotteries is amplified in Clotfelter, C. and P. Cook, Selling Hope: State Lotteries in America (1989).

#### (4) the educational and moral significance of legalization and promotion:

a) the effect of legalization and promotion on social and civic virtues -- does state approval and sponsorship of gambling subvert the habits of thrift and hard work and the values underlying them, or make it harder to instill those habits and values in children?

b) the expressive significance of legalization -- Some contemporary moral philosophers argue that the "statement" the government makes in tolerating or punishing an activity has moral significance apart from any adverse effect that the government's policy has on social behavior. Regardless of whether the legalization of gambling actually subverts thrift and the work ethic, it may express insufficient respect, or even contempt, for those virtues.

The harms to the gambler's dependents and associates from his gambling expenses and compulsive behavior might be classified as adverse distributive effects under 1), as harm to consumers under (2), or as indirect harms under (3).

In analyzing how lotteries and casinos differ on these dimensions, it is important to take account of two partially cross-cutting distinctions: among types of gambling and among gambling environments. Types of play can be distinguished along several dimensions besides odds-of-winning/size-of- payoff: the contribution of skill to outcome; the activity or passivity of players<sup>186</sup>; frequency of play; cost of single play; delay in outcome; delay in payoff; and the extent to which the activity is social: e.g. roulette vs. slots. The gambling environment also varies by how accessible it is, how much it is under the control of the gambling operator, the mix of gambling and other activities, and the presence of features that promote (or inhibit) compulsive gambling, e.g. alcohol.

Both type of play and type of environment affect the distribution of lottery expenditures [(1)a)] and the risk of compulsive behavior (3). For example, some researchers have found social, economic, and psychological differences among the people drawn to different games in different settings.<sup>189</sup> While the contribution of skill to result appears to be the variable distinguishing the two general types of gambling studied by Lorenz, the social setting seems to be the distinguishing variable in Kroeber's study, where the

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<sup>186</sup> Langer's classic locus-of-control studies, in which subjects bet more on the toss of a fair die when they tossed it themselves, distinguish skill from activity; Langer, E.J., et al. (eds) *The Psychology of Control* (1983).

<sup>189</sup> Kroeber, H-L., *Roulette Gamblers and Gamblers at Electronic Game Machines* (1992), found that German slot machine players tended to be poorer than roulette players, started playing at a younger age, and were more likely to have depressive than narcissistic personality problems; Lorenz, V., "State Lotteries and Compulsive Gambling," *Journal of Gambling Studies* (1989, 388) found that in the United States, "the casino /sports/horse race gambler tended to be full time employed and have better health insurance coverage than the bingo/lottery/poker machine addicts. . . ."

games were equal in the lack of skill and timing of results. Obviously, more research is needed on the interactions among demographic variables, types of play, and type of environment.

Type of environment is obviously relevant to expenditures by race, ethnicity, and income-level [(1)b]; economic spillover and competition [(1)c)]. Type of play is relevant to the exploitation of need, hope, and ignorance [(2) b)], e.g. the vanishingly small but highly salient possibility of winning a jackpot; the illusion of control in picking one's own numbers.

Lotteries involve pure chance, but vary in player activity. As Clotfelter and Cook<sup>190</sup> observe, there has been a strong trend toward more participatory games. Some lotteries have delayed outcomes and payoffs, but since the early 1970s, as Clotfelter and Cook note, lottery games have been designed to reduce both kinds of delay. Casino games vary in contribution of skill and participation. Casinos have, almost by definition, high levels of operator control and pervasive gambling activity. In contrast, lottery sales, although made by agents with an economic interest in them, are made in settings that offer a range of other activities and goods (and where alcohol can rarely be consumed while playing). While lottery outlets proliferate, access to casinos is limited by location, and, in theory, by admission fee, dress code, etc.

Broadly, casinos raise the specter of more localized and concentrated benefits and harms than lotteries. If casinos provide significant economic benefits, those benefits are likely to be concentrated in the areas where the casinos are located. Although states have the general power to spend lottery or casino revenues wherever they want, as a practical, legal, or moral matter, they may be compelled to earmark a significant proportion of the tax revenues from casinos for the communities where they are located, either because they agreed to do so, or because they recognize a special duty to alleviate the problems caused by casinos to the communities in which they are located.

Highly relevant is how widespread is the economic hardships resulting from lottery play and casino play. Sixty percent of the adult population estimated to buy lottery tickets but it is important to recognize that play is quite concentrated, since as Clotfelter and Cook observe, "most lottery sales go to players who spend more than \$20 a week" (viii). The economic hardships resulting from casino play may be even more concentrated among "hard core" gamblers but little meaningful data are available. The losses from all forms of gambling may be distributed very unevenly.

One feature that may promote compulsive gambling in casinos -- the total control by a single operator of an environment with pervasive gambling and cheap drink, food and accommodations, -- may also be a significant factor in limiting economic spillover. Restrictions on casino provision of drink, food,

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<sup>190</sup> Clotfelter, C. and P. Cook, Selling Hope: State Lotteries in America (1989).

and accommodation might have a salutary effect on both gambling behavior and the diffusion of economic benefit.

Concerning the potential for pathological gambling, casinos may be far more conducive to creating problems than any lottery game, however packaged and advertised. The research is spotty, in part because threshold issues have not been adequately addressed, e.g., what constitutes compulsive or problem gambling? is gambling ever addictive? As lotteries rely increasingly on high payoffs, illusory participation, and aggressive advertising, there may be little to distinguish them from casinos on (2) b).

It might be argued, however, that the exploitation of need and hope is less objectionable when done by a private casino than a state lottery. Further, many poor people who go to casinos may be motivated mainly by the recreational aspect of the experience -- a day at the slots, tables, and boardwalk in Atlantic City, with gambling losses regarded as part of the expense -- than by any expectation of coming back richer.

Moreover, there may be significant differences between lotteries and casinos at the intersection of (2) b) and (1) b) -- demographic differences in the exploitation of need, hope and ignorance. Clotfelter and Cook cite studies showing that blacks, Hispanics, and people with less education gamble more. These may all be groups, who, by dint of limited opportunities and education, are more susceptible to unfair exploitation. As suggested in the studies by Kroeber and Lorenz cited above, casinos habitués appeared to be older, more affluent, and better educated than regular lottery players. Casinos may be able to limit increases in the incidence and adverse impact of compulsive gambling to the extent that their location, cost, etc. exclude more vulnerable groups. But such exclusion is also troublesome.

The tension between open access and laissez faire, on the one hand, and the control of exploitation and compulsive gambling on the other, are reflected in the sharp contrast between casino regulation in Europe and the United States. As Eadington<sup>191</sup> observes, European casinos often charge membership fees, impose a waiting period for admission, prohibit locals from playing, ban irresponsible gamblers; they are often prohibited from advertising, selling liquor at gaming tables, offering live entertainment or extending any form of credit. These paternalistic restrictions are largely unknown at American casinos; most would be regarded as violating the spirit of free enterprise and egalitarianism.

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<sup>191</sup> Eadington, W., "Problem Gambling and Public Policy: Alternatives in Dealing with Problem Gamblers and Commercial Gambling," Shaffer, H., S. Stein, B. Gambino and T. Cummings (eds.), Compulsive Gambling (1989).

Educational and moral significance will be of limited interest for casino legalization, since most concerns about the state endorsement of gambling or denigration of thrift and hard work would appear to be at least as acute for state lotteries as private casinos. Nevertheless, there may be some concern that the social atmosphere created by legal casinos would convey public approval of reckless, spendthrift behavior even more clearly than the operation of lotteries. Finally, there may be concern about the cumulative effects of legalization. It might be felt that in operating lotteries, states have already reached the limits of acceptable tolerance, and that the legalization of casinos would exceed that limit.

### III. The Interdependence of State Decisions

As discussed in Chapter 3, the modern history of legal gambling in this nation is of states reacting to each other's decisions. The state of New Hampshire created a lottery in 1963; once Massachusetts also introduced a lottery in 1972, all but one New England states had created lotteries by 1974. The midwestern states showed a similar pattern of responding to the leader: Michigan introduced a lottery in 1972 and within two years Illinois and Ohio had also created lotteries.

Nonetheless, the spread of lotteries has by no means been continuous; rather it has occurred in waves. For example, after ten were created between 1971 and 1974, only two more state lotteries were created between 1975 and 1981; then between 1982 and 1986, another eight were started, this time spreading into the West. Southern lotteries have generally started only since the late 1980s. For some states the decision was driven by concern about the flow of monies from their population to the tax revenues of the neighboring state that introduced the lottery earlier; the adoption of a lottery was frequently a defensive decision by a state.

The casino movement initially looked different. Nevada had a monopoly for forty-seven years and after New Jersey authorized casinos in 1978, no other state followed for a decade; even now none of New Jersey's immediate neighbors has introduced casinos. That unwillingness to adopt in part reflected the unsavory sources of funding of the early Las Vegas casinos and the consequent organized crime cloud that hung over the industry.<sup>192</sup> Nonetheless, the regional pattern is emerging again as discussed in Chapter 3. Iowa's riverboat casinos pressured Illinois, Indiana and Missouri into allowing similar casino facilities within five years. Mississippi's riverboats were authorized in 1990 and were followed by Louisiana's in 1991. Massachusetts now appears to be following Connecticut in allowing the operation of a large Indian tribal casino, following the extraordinary commercial success of the Foxwood's casino. The possible

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<sup>192</sup> On the history of the Nevada casino industry through 1976 see J. Skolnick, House of Cards: The Legalization and Control of Casino Gambling (1978).

development of a casino in Bridgeport, in the southern part of Connecticut and readily accessible to the New York City population, has apparently encouraged the New York state legislature to begin the long legislative process necessary for introduction of casinos into some regions of New York.<sup>193</sup>

Thus Maryland cannot make its decision on casinos in a vacuum. Delaware's authorization of slot machines at its principal race tracks is one sign that other states in the region are also exploring this issue. Maryland must take into account that other neighboring states may react to a decision to allow casinos by also introducing them. Economic projections that assume Maryland's neighbors maintain the prohibition are unrealistic. On the other hand, the state must also take into account the possibility that neighboring states may decide to allow casinos in locations close to its population centers, so that Maryland would lose still more expenditures to other states.

#### IV. Public Opinion

The authorizing legislation for the Task Force, House Bill 995, explicitly required that the Task Force ascertain public opinion in the state concerning casinos.

There have been two 1995 public opinion polls of the Maryland population attitudes toward casino gambling being allowed in the state. In January, the Mason Dixon poll<sup>194</sup> found that 59 percent were opposed to any casinos. By October, that opposition had weakened slightly; only 57 percent opposed allowing casinos. The difference was not statistically significant. When riverboats were listed as an option, the percentage opposed fell to 47 percent; 43 percent were in favor, with the remainder not having an opinion. Those opposed to casinos usually cited concerns about crime and morality; those in favor cited the economic development impact of casinos.

The Task Force found no evidence of strong popular support for casinos at its four public hearings throughout the State. It heard from many citizens opposed to casinos on moral or social grounds, as well as from existing economic interests who argued that they would be hurt by the introduction of casinos into their area of the State. Along with casino developers and building trade unions whose members presumably would be employed in the construction phase, the proponents of casinos included a few local and regional governmental organizations and industries who stated that the state would benefit

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<sup>193</sup> At this writing, in November 1995, the Connecticut senate has voted against allowing casinos in Bridgeport (*New York Times*, November 18, 1995). The New York state legislature must vote in two successive sessions to authorize a statewide referendum on casinos; the legislature did vote positively on this in 1995 but the earliest the referendum could be held is 1998.

<sup>194</sup> Mason-Dixon Political/Media Research, Mason-Dixon Maryland Poll: Survey Report November, 1995.

economically. For example, elected officials from the town of Cambridge testified, along with a casino development company, that a casino would help their town economically.

The Task Force received 235 letters; of these 92 percent opposed casinos and only 8 percent were in favor. Of the 492 witnesses that signed up to appear before the Task Force, 40 percent wished to testify in favor of casinos. With the exception of the labor groups, however, there seemed to be little grass roots support.

Nonetheless it is clear as attested by the approximately 2 million trips by Marylanders annually to Atlantic City casinos, that numerous Marylanders wish to gamble in casinos.

#### **V. Economic Issues**

The principal argument for introducing casinos into Maryland rests with the possible economic benefits that casinos might bring to the state and the communities in which they would be located. Chapter 4 presented a summary of the various studies of the potential economic impacts of casinos on the state of Maryland.

Though all projected a large potential casino industry if the state wished to allow casinos to develop freely, there was little consensus among them on the overall economic impact. Critical to generating benefits for the state is a large share of casino visits from non-Marylanders and the recapturing of Maryland gaming expenditures in other states, principally New Jersey. Casino expenditures by Marylanders, other than the recaptured monies, would come primarily through reductions in expenditures on other discretionary goods and services in Maryland. It is thus essential to estimate the net economic impact of casinos and not just the total employment and revenues generated directly by the casinos. The Department of Business and Economic Development assumed that substitution was large and a large share of casino revenues going to out of state investors might result in a substantial negative effect on the state economy. Other studies had lower substitution rates and produced positive effects, though they also tended to produce lower estimates of gross casino win.

The gross economic development gains from casino gaming estimated by the two government studies would be substantially reduced if neighboring states were to introduce casinos at the same time or within a few years of Maryland doing so. Under such a scenario, the Maryland casinos would no doubt stem the flow of gaming dollars leaving the state but the casinos would also be able to capture fewer dollars from its neighboring states' citizens. The estimates available to the Task force did not provide much guidance on this matter.

The Task Force was unable to reach a firm conclusion on the impact of substitution but believes that it cannot dismiss the possibility that the casinos would end up relying largely on expenditures by Marylanders and hence yield little net benefit to the state's economy.

The two state agency studies, assuming a tax rate on casino winnings of either 8 percent or 15 percent, estimate potential casino taxes of \$50-375 million. When substitution and multiplier effects are taken into account, the total increase in government revenues from all sources is estimated to be as high as \$250 million. Given the high rate of taxation on gaming expenditures, even if the net economic effect of casinos was modest, public revenues might increase substantially.

#### **Specific Industries Affected**

As stated in Chapter 4, the casino industry competes directly with horse racing. The introduction of casinos separately from tracks would have a substantial negative impact on horse betting, perhaps cutting racing revenues by one third. It is likely that one or more of the standard bred (trotting) tracks would be forced out of business by freestanding casinos. Horse breeding and related farming activities in the state of Maryland would also be substantially negatively affected.

The casino industry does not directly compete with lotteries. The Maryland state lottery would probably suffer only modest losses, between 2 and 5 percent (i.e. \$20 million to \$50 million), if casinos were introduced.

The casino industry competes with charitable gaming but not as directly as it does with horse racing. Certainly the current charitable casinos in Prince George's County and the slot machines in non-profit organizations on the Eastern Shore would be adversely affected. It is less clear how other such major forms of charitable gaming in Maryland as church related bingo and tip jars in Western Maryland would be affected.

### **VI. Making a Decision**

The Task Force had to weigh many competing considerations and take into account numerous uncertainties. Though there is a potential for a large casino industry and substantial public revenues, the overall economic impact of casinos on the state, taking into account other states' reactions and the substitution effect, is much less clear. The horse racing and breeding industry would certainly be substantially and negatively impacted. The Task Force believed that the introduction of casinos might well increase the criminal victimization of the Maryland population and would certainly raise criminal justice costs but it was not able to project whether these would represent large effects when compared to the economic impacts. It could find no guidance on the likely increase in the prevalence of pathological



gambling in the state's population or the impact that such an increase might have on the quality of family life and the demand for related social services.

These uncertainties led the Task Force to give particular weight to the irreversibility of allowing commercial casino gaming into the state. Once the industry is formed and numerous Marylanders have a direct stake in its continuation, both as employees and customers, reinstating the current ban will be extremely difficult, even if the industry turns out to have substantial negative consequences. History in other states suggests that restrictions on the number and scale of casinos written into initial legislation are likely to be eroded, both as the result of interstate competition and the creation of strong state economic interests. Thus to allow even limited forms, such as slot machines at existing racetracks, is to create substantial risk of the emergence of large independent casinos.

In contrast, a decision to maintain the current prohibition can be reversed if more data and analysis reduces the uncertainties. Studies of the extent and consequences of pathological gambling may show that current fears are unfounded. Analysis of the experiences of states such as Connecticut, Mississippi, now with only a very few years' of data on the consequences of casinos, may show that the crime effects are modest and the net economic impacts substantial. The state of Maryland can then revisit the decision.

But even if there was no uncertainty about the relatively tangible consequences of casinos, the Task Force would have to weigh other considerations. Three played a significant role:

1. Gambling does not encourage saving or hard work; it encourages faith in chance as the primary determinant of an individual's economic well-being. Gambling is now widely promoted by the state but, as discussed in this chapter's section on ethics, that is not to say that more gambling would not worsen matters. No empirical analysis provides insight on this matter but the Task Force did consider it a potential problem when making its decision.

2. Similarly, there was a concern that the quality of life in the state, and particularly in the communities in which casinos would be located, would be negatively affected. Casinos, even if they bring entertainment and other leisure time activities with them, are not the kinds of enterprises that many communities want as a major source of economic activity in their midst.

3. The casino industry poses a threat to the integrity of political finance in the state. The profitability of casino operations is highly dependent on discretionary decisions by state regulatory authorities, decisions for which there is little guidance in existing practice or standard principles of economics or justice. Even with restrictions on political contributions by casino companies and their licensed employees, there was a concern that large sums of money would flow into the political system.

Historic experience with regulation of the horse racing industry in Maryland, where that kind of discretionary power rested in state authorities led to major scandal, points to the potential problem.

Thus, there are significant intangible costs involved with casino gaming that need serious consideration.



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\* Report conducted at the request of the Task Force

**APPENDIX I**

**Attorney General's Opinion Regarding the Potential for Indian Gaming Coming to Maryland**





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September 15, 1995

The Honorable Joseph D. Tydings, Chairman  
Joint Executive-Legislative Task Force  
to Study Commercial Gaming Activities in Maryland  
Room 1400  
301 West Preston Street  
Baltimore, Maryland 21201

Dear Senator Tydings:

In your July 31, 1995 letter, you asked the Attorney General to respond to several questions related to casino gaming by Indian tribes in Maryland. As counsel to the Maryland Commission on Indian Affairs, I follow the developing law on Indian casino gaming, both in general and as that law might apply in Maryland. The Attorney General has asked me to respond to your specific questions.

1) Is there currently any "Indian tribe," as defined in 25 U.S.C.A. §2703(5), located in Maryland?

The federal Indian Gaming Regulatory Act (the "IGRA") defines an "Indian tribe" as:

Any Indian tribe, band, nation, or other organized group or community of Indians which (a) is recognized as eligible by the Secretary [of the Interior] for the special programs and services provided by the United States to Indians because of their status as Indians, and (b) is recognized as possessing powers of self-government.

25 U.S.C.A. §2703(5).

Under regulations adopted under the IGRA by the National Indian Gaming Commission, to be an "Indian tribe" under the IGRA a group must be recognized by the Secretary of the Interior as eligible for those programs and services and as having those self-government powers. 25 CFR §502.13. The Department of the Interior is required under 25 CFR Part 83 ("Procedures for Establishing that an American Indian Group Exists as an Indian Tribe") to publish in the Federal Register at least every 3 years a list of all Indian tribes entitled to receive services from the Department's Bureau of Indian Affairs by virtue of their status as Indian tribes. 25 CFR §83.5(a). On February 16, 1995, the Department of the Interior published its latest list of "Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs." 60 Federal Register 9250-9255. This is a list of Indian tribes acknowledged by the federal government pursuant to 25 CFR Part 83 or act of Congress. These are the entities the Department of the Interior deals with as "Indian tribes" and which are considered "Indian tribes" as "a matter of law by virtue of past practices." 60 Federal Register 9250. On this list of 562 tribes and Native Alaskan corporations there is no "Indian tribe" located in Maryland. The Bureau of Indian Affairs recently confirmed that no Indian tribes located in Maryland have been added since this list was published earlier this year.<sup>1</sup>

Agencies of the federal government other than the Department of the Interior administer programs for the benefit of Indians and Indian tribes. These include the Departments of Agriculture, Education, Health and Human Services, Housing and Urban Development, Justice, Labor, and Veterans Affairs, and the Environmental Protection Agency and the Indian Arts and Crafts Board. See generally, United States Government Manual 1994/1995, National Archives and Records Administration, Washington, D.C., 1994. Of these agencies only the Administration for Native Americans in the Department of Health and Human Services has made a grant to an Indian tribal organization located in Maryland. This grant was awarded for the limited purpose of assisting that group to prepare its petition for acknowledgement of tribal existence by the Department of the Interior.<sup>2</sup> Any other assistance that has

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<sup>1</sup> Telephone conversation with Holly Record, Chief of the Branch of Acknowledgement and Research, Bureau of Indian Affairs, August 16, 1995.

<sup>2</sup> Conversation with Elaine Eff, Acting Administrator of the Maryland Commission on Indian Affairs, September 13, 1995.

been made available to Indian residents of Maryland has been based on their membership in Indian tribes located in other states.<sup>3</sup>

2) Is there currently any "Indian land", as defined in 25 U.S.C.A. §2703(4), located in Maryland?

The IGRA defines "Indian lands" as lands within the limits of an Indian reservation, or lands over which an Indian tribe exercises governmental power and which are held by the United States in trust for an Indian tribe or individual or held by an Indian tribe or individual subject to restriction by the United States against alienation. 25 U.S.C.A. §2703(4); 25 CFR §502.12; Cheyenne River Sioux Tribe v. State of South Dakota, 3 F.3d 273, 280 (1993). There are currently no Indian reservations in Maryland. In addition, no lands in Maryland are held in trust by the United States for an Indian tribe or individual or subject to restriction by the United States against alienation.<sup>4</sup> The last Indian reservation in Maryland was terminated by the colonial/state government in the late 1700's.<sup>5</sup>

3) Is there any group of people located in Maryland that is seeking or could foreseeably seek to obtain recognition as an "Indian tribe," as defined in 25 U.S.C.A. §2703(5)?

Although there are no federally recognized Indian tribes located in Maryland, there are some 20,000 individuals living in Maryland who assert their Indian heritage. Many of these are affiliated with tribes recognized in other states. Approximately 6,000 either are affiliated in some way with groups or communities in Maryland that have self-identified as Indian, or are not

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<sup>3</sup> The Administration for Native Americans makes assistance available to State-recognized tribes (with or without reservations) under the Native American Programs Act (42 U.S.C. § 2991 et seq.) under the ANA's interpretation of the broad ranging purposes and the specific language of that Act. (1979) Op. Comp. Gen., 699, 706.

<sup>4</sup> Telephone conversation with the Bureau of Indian Affairs Trusts Lands Branch, September 14, 1995. In addition, that tribe must exercise governmental power over the land. 25 U.S.C. § 2703(4)(B). See State of Rhode Island v. Narragansett Tribe of Indians, 816 F.Supp. 796, 805-806 (1993), aff'd on appeal, 3 F.3d 685 (1994), for an example of actions satisfactory to establish that a tribe exercises governmental power over specific lands.

<sup>5</sup> Conversation with J. Rodney Little, Director of the Maryland Historical Trust, September 14, 1995.

affiliated with any Indian group. As many as 10 of these Maryland groups or communities have formally organized, usually as tax-exempt non-profit corporations.<sup>6</sup> Some or all of these might seek to file petitions for federal recognition as Indian tribes. However, to date, only 3 have filed letters of intent to do so,<sup>7</sup> and only one of these, the Piscataway Conoy Confederacy and Subtribes, Inc., has filed a documented petition that is under active consideration by the Department of the Interior.

The barriers to obtaining federal recognition under the current federal administrative process are formidable.<sup>8</sup> A petitioning group must thoroughly explain and document that it meets all 7 criteria for recognition, including that:

- The group has been identified as an American Indian entity on a substantially continuous basis since 1900;

- The group's predominant portion comprises a distinct community and has existed as a community from the first sustained contact with non-Indians until the present;

- The group has maintained political influence or authority over its members as an autonomous entity from the first sustained contact with non-Indians until the present; and

- The group's members descend from a tribe or combined tribes that existed at the time of first sustained contact with non-Indians. 25 CFR § 83.7.

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<sup>6</sup> These include the Piscataway Indian Nation, Inc., the Piscataway Conoy Confederacy and Subtribes, Inc., the Maryland Indian Heritage Society, Inc., the Nause Waiwash Band of Indians, Inc., the Remnant Bands of American Indians of the Eastern Shore of Maryland, Inc., the Pocomoke/Occohannock Indian Tribal Association, Inc., the Accohannock Tribal Association, Inc., and the Yougiogaheny River Band of Shawnee Indians, Inc. Conversation with Elaine Eff, Acting Administrator of the Maryland Commission on Indian Affairs, September 13, 1995.

<sup>7</sup> Piscataway Indians (1978), Accohannock Indian Tribal Association, Inc. (1995), and Piscataway Conoy Confederacy and Subtribes, Inc. (1978).

<sup>8</sup> The State has no formal role in federal recognition decisions. See, generally, 25 CFR Part 83. Formal recognition by the State of Indian tribes indigenous to Maryland under Article 83B, § 5-406, and COMAR 05.08.06 is not a factor in the federal recognition process.

This process takes considerable time, assuming first that the petitioning group can afford the research and legal costs involved.<sup>9</sup> Since the federal recognition administrative process was established in 1978, 10 petitioning tribes seeking recognition for the first time have successfully completed the process and received federal recognition.<sup>10</sup> For that reason, in part, a number of groups have petitioned the Congress directly for recognition, a few successfully.<sup>11</sup>

4) Is there any property located in Maryland that any group has claimed or foreseeably could claim to be "Indian land"<sup>12</sup>, as defined in 25 U.S.C.A. §2703(4)?

Under the IGRA, lands can be acquired by an Indian tribe for gaming or nongaming purposes.<sup>13</sup> However, lands acquired by an

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<sup>9</sup> After receiving a documented petition, the BIA reviews the petition and within 90 days issues a technical review letter, requesting the petitioner to submit any missing parts or re-submit unacceptable parts, such as missing membership lists or genealogies, unusable bibliographies, or unreadable copies. The petitioner has unlimited time to respond. The petition will be placed on active consideration within 6 months after the petitioner submits the additional documentation requested. Proposed findings are issued by the BIA within the next 12 months, and BIA final action takes another 11 months. Final action on the Piscataway Conoy petition will not likely occur until the beginning of 1998. Telephone conversation with Holly Reckord, Chief, Branch of Acknowledgement and Research, BIA, August 16, 1995.

<sup>10</sup> Statement by Bud Shapard, formerly with the Bureau of Indian Affairs acknowledgement staff, The Arizona Republic (July 7, 1995), p. 1. Congress is currently considering at least 2 bills (S. 479 and H.R. 671) that would codify the current recognition criteria and process, but transfer petition review and approval from the Bureau of Indian Affairs to a new federal Commission on Indian Recognition.

<sup>11</sup> No bill is currently pending in Congress to acknowledge any Indian tribe in Maryland.

<sup>12</sup> For the definition of "Indian land" under the IGRA, see p. 2 above.

<sup>13</sup> Property to be acquired in trust need not be on or contiguous to an existing reservation, or even in the same state. For nongaming land acquisitions, see 25 CFR §151.10 and 151.11.

Indian tribe after the effective date of the IGRA (October 17, 1988) ("after-acquired lands") can be used for gaming generally only if the acquired lands: (1) are within or contiguous to reservation lands existing on that date, or (2) are acquired for an Indian tribe that had no reservation on that date and the lands are within the state in which the tribe is presently located and within the tribe's last recognized reservation. 25 U.S.C.A. §2719(a). Since there are no reservations in Maryland, and there have been no reservations in Maryland since the establishment of the federal government, this general rule would not permit an Indian tribe to acquire new lands in Maryland for gaming purposes.

However, the IGRA creates several exceptions to this rule. Gaming may be permitted on after-acquired lands when:

- 1) the lands are taken into trust as part of a land claim settlement;
- 2) the lands are taken into trust as part of the initial reservation of an Indian tribe acknowledged under the federal administrative recognition process;
- 3) the lands are taken into trust as part of the restoration of lands for an Indian tribe restored to federal recognition; or
- 4) . . . the Secretary [of the Interior], after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination.

25 U.S.C.A. §2719(b).

Under the first exception, gaming could be established on lands taken into trust for an Indian tribe as part of a land claim settlement if a tribe successfully pursued such a claim. 25 U.S.C.A. § 2719(b)(1)(B)(i). However, in 1988, at the time the

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The Department of the Interior previously proposed, then withdrew for later proposal, regulations including criteria for taking lands into trust for gaming purposes. See proposed regulation 25 CFR §151.12, 56 Federal Register 32280 (July 15, 1995), deleted for later resubmittal, 60 Federal Register 32874, 32878 (June 23, 1995).

Legislature enacted Maryland's statute for State recognition of indigenous Maryland tribes (Chapter 6, 1988 Laws of Maryland; Article 83B, §5-406), the Department of Housing and Community Development researched whether any Indian group could successfully assert rights of ownership with respect to lands in the State and found that highly unlikely.<sup>14</sup>

The second exception would allow gaming on lands owned by an Indian tribe and included in its first reservation when the tribe receives federal recognition from the Secretary of the Interior. 25 U.S.C.A. §2719(b)(1)(B)(ii). In Maryland, therefore, if an Indian group (such as the Piscataway Conoy Confederacy and Subtribes) obtains federal recognition as an Indian tribe through the federal recognition process, gaming under the IGRA could be established on lands designated by a Congressional Land Settlement Act,<sup>15</sup> and proclaimed as reservation lands by the Secretary of the Interior. 25 U.S.C.A. § 467.<sup>16</sup> Lands acquired by the Secretary of the Interior for an Indian tribe are held in trust by the United States for the tribe. 25 U.S.C.A. § 465. See, State of Rhode Island v. Narragansett Tribe of Indians, supra, 805 at note 11. However, the Secretary must determine that certain criteria have been met in order to declare a reservation<sup>17</sup>, or Congress must

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<sup>14</sup> Letter to Governor Schaefer from the Attorney General re: House Bill 126 and Senate Bill 421, May 23, 1988, page 2, fn. 1.

<sup>15</sup> Telephone conversation with Paula Hart, National Indian Gaming Commission, September 15, 1995.

<sup>16</sup> The provisions of 25 U.S.C. § 465 (Secretary's authority to acquire lands for Indian tribes) and § 467 do not apply to the Delaware, Shawnee, or certain other tribes located in Oklahoma, or their members. 25 U.S.C.A. § 473.

<sup>17</sup> The criteria include:

- (a) The statutory authority for the acquisition;
- (b) The need of the tribe for additional land;
- (c) The purposes for which the land will be used;

(d) If the land is held by the tribe as unrestricted fee ownership, the impact on the State and its subdivisions of removing the land from the tax rolls;



enact special legislation that expressly or by implication establishes the reservation.<sup>18</sup>

The third exception would not apply in Maryland. There are no Indian tribes that have lost federal recognition, and therefore none that can be restored to federal recognition and have their lands restored under the third exception. 25 U.S.C.A. § 2719(b)(1)(B)(iii).

Finally, under the fourth exception, the Secretary of the Interior can take lands into trust for an Indian tribe for gaming purposes if: (1) the Secretary after necessary consultations determines it to be in the best interests of the tribe and its members and not detrimental to surrounding communities, and (2) the Governor of the State in which the lands are located concurs. 25 U.S.C.A. § 2719(b)(1)(A). In Maryland, if an Indian tribe (such as the federally recognized Absentee-Shawnee Tribe of Indians of

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(e) Jurisdictional problems and potential conflicts of land use which may arise;

(f) Whether the BIA is equipped to discharge the additional responsibilities resulting acquisition of the land as trust lands;

(g) The extent to which the tribe has provided information that allows the Secretary to comply with National Environmental Policy Act and hazardous substances reviews required by law;

(h) The location of the land relative to state boundaries and its distance from the boundaries of the tribe's reservation. The Secretary must greater scrutiny to the tribe's justification of anticipated benefits from the acquisition, and greater weight to the comments of State and local governments with regulatory jurisdiction over the lands on the acquisition's potential impacts on regulatory jurisdiction, real property taxes, and special assessments, as the distance between the tribe's reservation and the lands to be acquired increases;

(i) The tribe's plan specifying the anticipated economic benefits associated with the gaming use; and

(j) The comments of state and local jurisdictions having regulatory jurisdiction over the land.

25 CFR § 151.11

<sup>18</sup> See, for example, State of Rhode Island v. Narragansett Tribe of Indians, supra, 805 at fn. 11.

Oklahoma or Delaware Tribe of Western Oklahoma<sup>19</sup>) exercises governmental power over lands in the State, and persuades the Secretary of the Interior that acquiring the lands in trust for the tribe is in the best interest of the tribe and its members and not to the detriment of the surrounding community, the tribe could establish gaming operations on those lands under the IGRA IF the Governor concurs. If the Governor does not concur, the Secretary may not take those lands into trust for gaming purposes.<sup>20</sup>

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<sup>19</sup> Both tribes recently have expressed to the Governor their interest in pursuing opportunities for operating gaming in Maryland. Letter from Lawrence F. Snake, President of the Delaware Tribe of Western Oklahoma, June 1, 1995, and letter from James L. Silvester regarding Absentee-Shawnee interest, June 8, 1995. Other federally recognized Indian tribes may have historic contacts with Maryland, including the Eastern Shawnee Tribe of Oklahoma. Although evidence of historic tribal relationships with the land is not required for the Secretary to take lands into trust for a tribe, such contacts logically could be a factor. In addition, there are many groups that are not yet federally recognized (but may be recognized by other states) that have begun discussions with White House, Senate, and Executive Branch staff about proposed changes in the recognition process and access to federal government services through the Department of the Interior and other agencies. See Report on the White House Conference for Non-Recognized Tribes, October 28, 1994 (Loretta Avent, Special Assistant to the President for Intergovernmental Affairs and White Liaison for Indian Country). Some of these groups, including the Nanticoke Indian Association [Delaware], the Nanticoke-Lenni-Lenape Indians [New Jersey], the Delaware Tribe of Indians of East Oklahoma, Delawares of Idaho, Inc., the Delaware-Muncie [Kansas], Upper Kispoko Band of the Shawnee Nation [Indiana], the Shawnee Nation United Remnant Band [Ohio], Pigua Sept of Ohio Shawnee Indians [Ohio], and the Loyal Shawnee Tribe [Oklahoma], may have historic contacts with Maryland. Other tribes, some federally recognized, may have historically accepted remnants of Maryland tribes under their protection and may assert claims based on that lineage. There are also several tribes organized in Canada that may include descendants of tribes historically located in Maryland.

<sup>20</sup> The Secretary of the Interior previously proposed regulations establishing criteria the Secretary must apply when considering a request that lands be taken into trust for gaming purposes. These include:

- (1) The statutory authority for the acquisition;
- (2) The need of the tribe for additional land;

You have also asked whether and under what circumstance the State has authority under the IGRA to **PROHIBIT** Indian gaming in Maryland, and whether and under what circumstances the State has authority under the IGRA to **REGULATE** Indian gaming in the State.

The IGRA provides that a state may prohibit a proposal for Indian gaming in the state in two situations: (1) No gaming of any kind is legal in the State, or (2) the Indian tribe has no Indian lands in the State. 25 U.S.C.A. § 2710(b)(1) and (d)(1). Gaming is totally prohibited in only two states: Utah and Hawaii.

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- (3) The purposes for which the land will be used;
  - (4) If the land is held by the tribe as unrestricted fee ownership, the impact on the State and its subdivisions of removing the land from the tax rolls;
  - (5) Jurisdictional problems and potential conflicts of land use which may arise;
  - (6) Whether the BIA is equipped to discharge its additional responsibilities resulting from acquisition of the land as trust lands;
  - (7) The extent to which the tribe has provided information that allows the Secretary to comply with National Environmental Policy Act and Hazardous Substances determinations required by law;
  - (8) The location of the land relative to state boundaries and its distance from the boundaries of the tribe's reservation. As the distance between the tribe's reservation and the lands to be acquired increases, the Secretary must give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition, and greater weight to the comments of State and local governments with regulatory jurisdiction over the lands on the acquisition's potential impacts on regulatory jurisdiction, real property taxes, and special assessments;
  - (9) The tribe's plan specifying the anticipated economic benefits associated with the gaming use; and
  - (10) The tribe's analysis showing that it explored the feasibility of all reasonable alternatives which would provide equivalent economic benefits from the property.

Proposed as 25 CFR § 151.12, 56 Federal Register 32280 (July 15, 1991), deleted for purposes of separate re-proposal, 60 Federal Register 32874 and 32878 (June 23, 1995).

Comments of Sen. Daniel Inouye, Joint Hearing of the Senate Committee on Indian Affairs and the Subcommittee on Native American and Insular Affairs of the House Committee on Resources, June 22, 1995, Committee Minutes, p. 7. Therefore, since Maryland permits some forms of gaming, the State can only prohibit Indian gaming in the state if an Indian tribe does not acquire Indian lands in the state for gaming purposes.

If the Secretary of the Interior determines to acquire particular lands in Maryland in trust for an Indian tribe to establish gaming under the IGRA, only through the Governor's decision not to concur in the Secretary's decision can the State prohibit all Indian gaming. The Attorney General has previously advised that the IGRA provides for this decision to be made by the Governor alone, and no State law provides otherwise.<sup>21</sup> Although Sen. McCain recently proposed in a bill in Congress (S.487) to reduce this veto power to a consultative role, last month the Senate Committee on Indian Affairs voted favorably on an amended bill leaving the Governor's concurrence power unchanged.<sup>22</sup>

The Governor's required concurrence in Secretary's decisions to take land in trust for gaming has been challenged in federal court on several constitutional grounds. One tribe has successfully argued at the trial level that the Governor's required concurrence is an unauthorized delegation by Congress of Executive Branch authority otherwise placed in the Secretary of the Interior, and as such violates the Appointments Clause<sup>23</sup> and general separation of powers principles of the U.S. Constitution. Confederated Tribes of Siletz Indians v. United States, 841 F.Supp.

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<sup>21</sup> Letter from Robert A. Zarnoch, Assistant Attorney General, to the Speaker of the House of Delegates Casper R. Taylor, Jr., dated October 24, 1994.

<sup>22</sup> Telephone conversations with Philip Bakershenk and Craig Ferra, Senate Committee on Indian Affairs staff, August 16, 1995.

<sup>23</sup>The Appointments Clause, Article II, Section 8, Clause 17 of the United States Constitution, provides:

. . . He [the President] shall . . . appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law; but the Congress may by law vest the Appointments of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

1479, 1489 (1994). The federal government and the State of Oregon have argued instead that no delegation is involved; Congress has only preempted State authority to a limited degree, and the Governor by his concurrence decision continues to rightfully exercise the general authority of states over land use decisions.<sup>24</sup> This court decision applies only in the state of Oregon, pending appeal.

2) The State's authority under the IGRA to regulate Indian gaming in the State is a more complicated question. The IGRA was enacted principally for the purpose of establishing a predictable process for states and tribes to know where, under what management, and under what controls (Federal and state) Indian tribes could operate the types of gaming operations otherwise legal in the state. In brief, the principal method for regulating Class III Indian gaming (any gaming other than Class I gaming - social gaming for minimal prizes or traditional Indian gaming at tribal ceremonies or celebrations, or Class II gaming - bingo, including pull-tabs, lotto, and tip jars, and card games not explicitly prohibited by the State, except banking card games and slot machines<sup>25</sup>) in any state is through state-tribal compacts. What can or must be included in such compacts is detailed in the IGRA and regulations adopted by the National Indian Gaming Commission.<sup>26</sup> If gaming of any sort (as defined by the IGRA) is permitted in the state, and a tribe controls Indian lands in the state, the state in good faith must negotiate a compact upon request of the tribe to permit the tribe to conduct Class III gaming operations on those lands. The conditions placed on those operations are to be determined through negotiation, and finalized via the compact. Once the compact is approved by the Secretary of the Interior, the compact establishes the extent of the state's authority to control those gaming operations. The Attorney General has previously advised that under current Maryland law, approval of any compact negotiated with an Indian tribe for Class III gaming on Indian

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<sup>24</sup>This decision is now on appeal. The Ninth Circuit Court of Appeals has heard oral arguments and may issue its decision in the next 2 to 9 months. (Telephone conversations with Edward J. Passarelli, Esq., U.S. Department of Justice, September 8, 1995, and Oregon Assistant Attorney General Michael D. Reynolds, September 11, 1995.)

<sup>25</sup> 25 U.S.C. § 2703(6), (7), and (8).

<sup>26</sup> 25 CFR Parts 501 through 599.

lands in the State would require approval by both the General Assembly and the Governor.<sup>27</sup>

Other states have refused to enter into negotiations for tribal-state compacts and raised constitutional challenges to the IGRA. Some have asserted that under the Tenth Amendment to the U.S. Constitution<sup>28</sup> the IGRA "imposes mandatory duties on the states," and therefore is "an impermissibly coercive scheme." Cheyenne River Sioux Tribe v. State of South Dakota, supra, 281. However, most courts have found that IGRA, instead of coercing the states to enter into tribal-state compacts, only creates incentives for them to do so. If a state refuses to negotiate a compact, under the IGRA a federal mediator will select, and the Secretary of the Interior will approve, the compact terms proposed by the tribe or the state that the mediator determines best comport with the IGRA, other applicable Federal law, and court orders. 25 U.S.C.A. § 2710(d)(7)(B)(4); see Cheyenne River Sioux Tribe v. State of South Dakota, supra, 281.

Several states have raised Eleventh Amendment challenges to law suits brought by tribes to force states to negotiate gaming compacts in good faith.<sup>29</sup> The IGRA expressly permits Indian tribes to bring such suits. 25 U.S.C.A. § 2710(d)(7). A few states have successfully argued that under the Eleventh Amendment states cannot be sued by an Indian tribe unless the state consents, and that Congress in enacting the IGRA did not intend to abrogate state immunity against suit. Poarch Band of Creek Indians v. Alabama, 776 F.Supp. 550, 554-63 (1991), rev'd on appeal, 11 F.3d 1016 (1994); Ponca Tribe v. Oklahoma, 834 F.Supp. 1341 (1992), rev'd on appeal, 37 F.3d 1422 (1994); and Sault Ste. Marie Tribe of Chippewa Indians v. Michigan, 800 F.Supp. 1484 (1992), aff'd on appeal, 5 F.3d. 147 (1993). Many trial and appellate courts have instead held that Congress, acting under the Indian Commerce Clause of the

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<sup>27</sup> Letter from Robert A. Zarnoch, Assistant Attorney General, to the Speaker of the House of Delegates Casper R. Taylor, Jr., dated October 24, 1994.


<sup>28</sup> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

<sup>29</sup> "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

U.S. Constitution,<sup>30</sup> expressly provided for federal jurisdiction over tribal suits to compel states to negotiate compacts in good faith, and in so doing had the authority and made clear its intentions to abrogate the states' immunity from suit. Seminole Tribe v. Florida, 801 F.Supp. 655, 657-63 (1992), aff'd on appeal, 11 F.3d 1016 (1994). The Supreme Court is considering petitions for certiorari in several of these cases and has granted certiorari in the Seminole Tribe case. A decision in that case may resolve conflicting rulings among the appellate courts.<sup>31</sup>

I hope that this letter is fully responsive to the questions you raised. If further issues arise, we will be happy to respond.

Sincerely,

  
Phillip J. Deters  
Assistant Attorney General

PJD/lms/4794

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<sup>30</sup> "The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States and with the Indian Tribes . . . ." Article I, Section 8, Clause 3 of the U. S. Constitution.

<sup>31</sup> The final form of S. 487, if enacted as reported by committee, would not substantively alter the compacting process. An alternative bill sponsored by Reps. Solomon and Torricelli, H.R. 1512 (to be heard in committee during September), if enacted would shift to a tribe the burden of proving the state did not negotiate a tribal-state compact for Class II gaming in good faith. This change could affect a state's willingness to accept various compact terms proposed by a tribe or the state's willingness to negotiate at all, particularly if a state such as Maryland has no mechanism in place for approving compacts.

**APPENDIX II**

**Attorney General's Letter Regarding Problems with Current Charitable Gambling in Maryland**





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October 6, 1995

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The Honorable Joseph D. Tydings  
Chairman, Joint Executive-Legislative Task Force  
to Study Commercial Gaming Activities in Maryland  
Room 1400  
301 West Preston Street  
Baltimore, Maryland 21201

Dear Senator Tydings:

In response to your letter of September 18, 1995 regarding the ability of the State to regulate the gaming which currently exists in Maryland, I should clarify that I believe this issue is really distinct from the questions before the Task Force. If Maryland decides not to allow casino gaming, the current regulatory mechanisms in place for casino nights, slot machines, tip jars, etc. should nonetheless be examined and improved. If, on the other hand, the decision is to permit casino gaming, we will need to create an entirely new regulatory and law enforcement structure, in which case the current problems would either become moot or would presumably be addressed. We did not intend to suggest that the scope of the Task Force's mandate involved reforming current regulatory problems.

With respect to those problems, the first and most simple is that there are significant gaps in our regulatory scheme. Some counties with various forms of gaming are not subject to any regulation whatsoever. Enclosed for your information in this regard is a summary of local gaming statutes as of December, 1994; this summary does not include any changes made in the 1995 session of the General Assembly.

Second, the problems in Anne Arundel County are outlined in full in the 1993 Grand Jury Special Report. In addition, as you know, fraternal organizations operating slot machines must file reports with the Comptroller regarding the amount of money taken in and the amount distributed to charitable organizations. I have confirmed once again that the Comptroller's office has no funding for reviewing or monitoring any of these reports.

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The Honorable Joseph D. Tydings

October 6, 1995

Page 2

Finally, the multiple lawsuits coming out of Prince George's County regarding the volunteer fire departments' casino nights paint a troubling picture of how difficult it is to police these activities. The problem, in essence, is that these so-called "charitable organizations" are in fact attempting to operate casinos for the financial gain not only of the charitable entity, but also, if not instead, for the benefit of individual members. Although the law precludes the payment of salaries to members operating the casinos, these organizations have proven quite adept at circumventing this restriction. They allow the payment of tips to dealers, and they contract out many services, such as food and entertainment, to members of the organization. One casino currently operating shows that it is losing money, and yet has taken in over \$100,000 in tips for casino workers. Despite losses on its books, it continues to operate.

The end result is that many members of these organizations are, contrary to the intent of charitable gaming, using these casino nights to make a living. As such, they try one tactic after another to avoid regulatory restrictions. They have spent a lot of time and money in litigation to preserve these practices and to undermine further the County's ability to regulate them. One recent case turned up problems like paying salaries under the table, allowing gambling with jewelry, violating the check-cashing maximum, and threatening witnesses. Another case involved criminal charges relating to the payment of salaries, false affidavits, and skimming profits. Sean Wallace of the Prince George's County Attorney's office states that despite his office's best efforts, they have had very little success in regulating these organizations. If you desire, we can provide you with the names of persons who can fill in more detail about these problems.

In sum, I believe there are serious inadequacies in the regulation of current gaming in Maryland, and those I have addressed may be only the tip of the iceberg. Although it is beyond the scope of your Task Force, a serious effort to overhaul the current regulatory scheme should be undertaken regardless of whether or not Maryland ends up with casino gaming.

Please let me know if you have any further questions. Otherwise, I look forward to seeing you on October 16.

Very truly yours,

  
Attorney General

encl.

**APPENDIX III**

**Attorney General's Opinion Regarding Potential for a State or Local Referendum on Casino Gaming and for Constitutionally Permissible Local Option on Casino Gaming**





(410) 576-7003

(410) 576-6311

STATE OF MARYLAND  
OFFICE OF THE ATTORNEY GENERAL

TELECOPIER No.

November 10, 1995

WRITER'S DIRECT DIAL No.

The Honorable Joseph D. Tydings, Chairman  
Joint Executive-Legislative Task Force to Study  
Commercial Gaming Activities in Maryland  
Room 1400  
301 West Preston Street  
Baltimore, Maryland 21201

Dear Senator Tydings:

You have requested advice on two topics: whether legislation authorizing commercial gambling in Maryland could be made contingent upon, or be subject to, popular referendum; and whether such a measure could delegate to a local jurisdiction, subject to certain State regulatory parameters, the final decision on whether to allow commercial gambling in that locality.<sup>1</sup>

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<sup>1</sup>Specifically, your request notes that:

The following is a list of several potential ways of creating a local option that have been considered by the Task Force:

(1) Legislation that authorizes commercial gambling *throughout the entire State* subject to certain State regulatory parameters, contingent upon either:

(i) a vote by the people in a particular jurisdiction to allow commercial gaming in that jurisdiction;

(ii) the passage of a local ordinance in a particular jurisdiction that allows commercial gaming in that jurisdiction; or

(iii) the passage of a local ordinance in a particular jurisdiction that allows commercial gambling in that jurisdiction and that is made subject to a referendum petition process that exists under local charter provisions or is created by State law; and

For the reasons detailed below, it is my view that:

1. The General Assembly has the discretion to authorize commercial gambling by means of a constitutional amendment. Were it to do so, the amendment would necessarily be submitted to the statewide electorate for approval.

2. A single piece of legislation, or a package of bills enacted at a single session, for the purpose of authorizing, regulating, and taxing commercial gambling, with the tax proceeds devoted to various public purposes, is probably exempt from petition to statewide referendum under Article XVI, §2 of the Maryland Constitution.

3. If the General Assembly chose to enact legislation simply authorizing and regulating commercial gambling, *without* taxing and related fiscal measures, that legislation could be petitioned to statewide referendum. Non-referable tax and funding provisions could be enacted at a subsequent session.

4. Legislation authorizing, regulating, and taxing commercial gambling, whether throughout the State or in particular jurisdictions, would constitute a public general law that, under the Constitution, cannot be conditioned on a statewide or local referendum.

---

(2) Legislation that authorizes commercial gambling *in one or more jurisdictions (but not throughout the entire State)*, subject to certain State regulatory parameters, contingent upon either:

(i) a vote by the people in a particular jurisdiction to allow commercial gaming in that jurisdiction;

(ii) the passage of a local ordinance in a particular jurisdiction that allows commercial gaming in that jurisdiction; or

(iii) the passage of a local ordinance in a particular jurisdiction that allows commercial gambling in that jurisdiction and that is made subject to a referendum petition process that exists under local charter provisions or is created by State law.

The Task Force is uncertain as to whether any of these options will pass constitutional muster or whether there are any other constitutional means to achieving the end of creating a local option in the context of commercial gambling legislation.

5. Legislation authorizing commercial gambling, either throughout the State or in one or more jurisdictions, may have its effectiveness in a specific jurisdiction conditioned on the enactment of a local ordinance sanctioning such gaming within the locality.

6. Legislation described in Paragraph (5) above, conditioning the local effectiveness of commercial gambling on enactment of a local ordinance, can contain provisions to facilitate the petitioning of such an ordinance to a local vote.

## I

### Commercial Gambling Legislation

To respond to your questions without an actual bill in hand, I must make certain assumptions about its likely features. The first reader version of House Bill 995, which was amended to create the Joint Executive-Legislative Task Force to Study Commercial Gaming Activities in Maryland (Chapter 579, Laws of 1995), contains the likely elements of such a measure. It would have established a State regulatory and licensing agency to license and police gambling establishments. This agency would also have collected fees from the establishments and could have civilly fined them for infractions.

The bill also would have authorized a State admissions and amusement tax on the gross receipts derived from regulated gambling activity. These tax proceeds, which were estimated at up to \$50 million, *see* Fiscal Note on House Bill 995 (March 2, 1995), would have been distributed to the counties and to components of the Department of Health and Mental Hygiene.

## II

### Constitutional Amendment

One way to ensure a statewide vote before commercial gambling could be undertaken is by the Legislature's embodiment of its approval in a constitutional amendment. Under Article XIV, §1, all amendments affecting more than one county must be submitted to the voters statewide.<sup>2</sup> To be sure, it would be unprecedented to include such detail in a constitutional amendment to be submitted to Maryland voters. However, there are few, if any, restrictions on what may be included in a state constitution. In my opinion, it would be possible for the General

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<sup>2</sup>For the reasons explained in Part IV below, even if commercial gambling were limited to a single jurisdiction, the regulatory and fiscal impact would affect more than that jurisdiction.



Assembly to propose a constitutional amendment expressly "authorizing" commercial gambling at casinos with separate legislation, akin to the first reader version of House Bill 995, made contingent upon voter approval of the amendment. See Chapters 364 and 365 of the Laws of Maryland 1972, amending the Constitution to sanction State-run lotteries. It also would be possible to amend the Constitution to require a referendum before any commercial gambling measure could take effect.

### III

#### Referendum Under Article XVI

Article XVI of the Maryland Constitution generally authorizes voters to petition to referendum most enactments of the General Assembly. However, Article XVI, §2 expressly exempts from this petition process a law "making any appropriation for maintaining the State Government." In *Kelly v. Marylanders for Sports Sanity*, 310 Md. 437 (1987), the Court of Appeals concluded that the quoted language exempted from referendum three bills which together authorized the construction of sports stadiums and their financing via bond issues and sports lotteries. The judges found that this package was a revenue-raising and spending measure in furtherance of public recreational purposes and thus was exempt from voter consideration even though other portions of the legislation, if considered in isolation, would have been subject to referendum. 310 Md. at 461, 467, and 468.

In my view, commercial gambling legislation like House Bill 995 would similarly be exempt from referendum by petition. Whatever one might say about the effects of such a bill as a whole, in the short run it would be a revenue-raiser, and the objects of the tax -- promotion of public health and aid to local governments -- are public purposes that would be considered as "maintaining ... the State Government."<sup>3</sup>

Because a key holding in the stadium litigation was that the "appropriation" portion of the legislative package was legally inseparable from non-exempt portions, I have considered whether a commercial gambling measure might be split into a referendum-exempt "appropriation" component and a non-exempt regulatory/licensing component, each with an express severability clause. In my opinion, it is doubtful that such a device, if enacted at a single session, would achieve the desired purpose of permitting the petitioning of the regulatory/licensing bill. A severability clause does not bind a court to find severability. See *State v. Schuller*, 280 Md. 305,

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<sup>3</sup>I would reach the same conclusion if the tax proceeds were earmarked for the General Fund and thereafter appropriated via the budget bill for general governmental purposes.

319 (1977). Thus, "even if the actual intention of the Legislature were to sever," a court would conclude otherwise if it found that the bills were not independent, see *Board of Public Works v. Baltimore County*, 288 Md. 678, 684 (1980) — a likely conclusion in the case of a subdivided House Bill 995.

An alternative would be the enactment at one session of a regulatory/licensing bill without any revenue-raising or appropriation component. The General Assembly could await the likely petitioning of such a measure to referendum and, if it is approved by the voters, enact a revenue-raising/appropriation bill at the following session. Although I have found no case law considering such an enactment, I believe this approach would be constitutionally permissible.

#### IV

##### Mandatory Referendum

It has long been the law of Maryland that the General Assembly may not enact a public general law contingent upon a referendum of the people, either on a state-wide or local level, although a public local law may be conditioned on a referendum of those in the affected area. See *Board of Public Works v. Baltimore County*, 288 Md. at 681 (collecting cases). The rationale for this constitutional rule was set forth in *Browner v. Supervisors*, 141 Md. 586, 595 (1922):

[W]e rest our conclusion upon two grounds, one, that the people of Maryland, having delegated to the legislature of Maryland the power of making its laws, that body could not legally or validly redelegate the power and the authority thus conferred upon it to the people themselves; and two, that people of the State, from whom the Legislature itself derives its powers, having prescribed in the Constitution of the State the manner in which its laws shall be enacted, it is not competent for the Legislature to prescribe any other or different way in which its laws may be enacted.

Commercial gambling legislation akin to the regulatory, taxing, and funding measures in House Bill 995, whether authorizing casinos statewide or in only one or a handful of jurisdictions, would, in my view, be a public general law. As such, it could not be conditioned on either a statewide or a local vote.

A somewhat closer question is whether such a public general law might nevertheless contain a "local option" mechanism — that is, a requirement for a local vote approving commercial gambling within the particular locality before the law could take effect there. It might be argued that support for such an approach is found in cases such as *Burgess v. Pae*, 2 Gill 12 (1844) and

The Honorable Joseph D. Tydings

November 10, 1995

Page 6

*Fell v. State*, 42 Md. 71 (1875).<sup>4</sup> In *Burgess v. Pue*, the Court of Appeals rejected a constitutional attack on Chapter 162 of the Laws of 1825, a public general law that authorized a system of primary school instruction throughout the State, included local taxing authority exercised by the inhabitants of the school district, and contained a contingency submitting the act to the vote of the people of each county to determine its effectiveness within each county's boundaries.<sup>5</sup> In *Fell v. State*, 42 Md. 71 (1875), the Court of Appeals rejected an antidelegation attack on a General Assembly enactment that authorized the voters of four counties to determine whether certain alcoholic beverage laws would apply to their locality. In so doing, the Court rejected the contention that the enactment was not a complete law in itself but was made to depend for its existence and operation on a popular vote. 42 Md. at 92.<sup>6</sup>

However, the premise of both cases is that the "local option" feature of the challenged legislation was a public local law. See *Cole v. Secretary of State*, 249 Md. at 434. *Cole* distinguishes these statutes from single-county measures whose immediate object appeared local in character but which "indirectly affected matters of significant interest to the entire State," such as the "protection of State revenues derived from licenses." 249 Md. at 435.<sup>7</sup>

In my view, commercial gambling legislation falls clearly on the "significant State interest" side of the line. Aside from the practical impact the licensing of a casino would have on those

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<sup>4</sup>In a March 4, 1992 letter of advice to the Honorable Ellen R. Sauerbrey, this office concluded that these cases would permit the General Assembly, in a statewide bill, to condition on a local vote the effectiveness within a subdivision of a local "piggyback tax" increase.

<sup>5</sup>Although it is possible to contend that *Burgess* did not involve a challenge premised on an unconstitutional delegation of power to the voters, see *Hammond v. Haines*, 25 Md. 541, 560 (1866), later cases have treated it as resolving such a claim. See, e.g., *Cole v. Secretary of State*, 249 Md. 425, 434 (1968).

<sup>6</sup>There was little discussion in the Court's opinion of the fact that the legislation impacted more than one county. Rather, the focus of the Court was on the law's operation within a single county. 42 Md. at 87.

<sup>7</sup>On this point, *Cole* cited *Gaither v. Jackson*, 147 Md. 655 (1925), which conclude that a Baltimore City law licensing auctioneers was a public general law, and *Dash v. Jackson*, 270 Md. 251 (1936), which reached a similar conclusion regarding a State law licensing paperhangers in Baltimore City. *Gaither* noted that the statute was not a local law "because it provided revenue for the whole State," 147 Md. at 667, and *Dash* concluded that the paperhanging statute was a general law "because it affects the general revenues of the State." 170 Md. at 261. While neither case involved a mandatory referendum, they have been cited and relied upon in such cases. See, e.g., *Steimel v. Board*, 278 Md. 1, 6 (1976).

outside a particular jurisdiction, legislation like House Bill 995 clearly affects a scheme of State licensing and regulation and the provision of State revenues for statewide purposes.<sup>4</sup> The operation of such a law, even within a single locality, cannot be made contingent on a local referendum. To do so would unconstitutionally mandate to referendum public general law.

V

**Local Ordinance Contingency**

Mandating that the effectiveness of commercial gambling legislation within a particular jurisdiction hinge on the enactment of a local ordinance does not raise the same constitutional problem as requiring a vote of the people. In my view, such a proposal involves a delegation of power that the courts are likely to uphold.

First, the General Assembly has wide latitude in placing contingencies on the effectiveness of legislation. See *Baltimore v. Clunet*, 23 Md. 449, 469-70 (1865); *State v. Kirkley*, 29 Md. 85, 102 (1868). And my office has previously approved the constitutionality of legislation whose effectiveness was conditioned on certain findings of Executive Branch officers. See Letter of Advice on House Bill 651 (March 25, 1986); letter of advice on House Bill 398 (March 16, 1987). I do not see why a different result should be warranted with respect to conditioning effectiveness of State law on approval by a political subdivision through enactment of an ordinance. It raises no separation of powers concerns. See *County Council v. Investors Funding*, 270 Md. 403, 436 (1973). In addition, the counties are arms and agents of the State. See *Baltimore County v. Churchill, Ltd.*, 271 Md. 1, 7 (1974). Finally, virtually any delegation of legislative power may be constitutionally justified if an appropriate standard governs the discretion of the recipient of the delegation. See *Montgomery County v. Walsh*, 274 Md. 502, 523-24 (1975).<sup>5</sup> Your proposal indicates that a subdivision would be given a local option by ordinance, "subject to certain regulatory parameters." Any reasonable standard would ensure that a local option by local ordinance would raise no question of unconstitutional delegation of power.

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<sup>4</sup>Neither *Burgess*, in which local voter approval would have triggered local taxation and local regulation, nor *Fell*, where voter approval would have authorized local licensing, is remotely comparable to the statewide impact of House Bill 995. The same conclusion is true of the proposed "piggyback tax" referendum approved in the March 4, 1992 letter of advice to Delegate Sauerbrey.

<sup>5</sup>There is some authority for the proposition that a law delegating authority to a local legislative body, rather than an executive body, need not contain a standard to govern discretion. See 16 C.J.S. *Constitutional Law* §161.

## VI

### Petition of Local Ordinance

In my view, a local option ordinance described above can be petitioned to referendum without offending any constitutional requirement, and State law may facilitate such a voluntary referendum. See Letter of Advice on Senate Bill 356 and Senate Bill 836 (March 22, 1990) (legislative contingency facilitating referendum by petition of alternative abortion law changes is constitutional because "it is up to the citizens of Maryland to initiate" the process.)

A referendum by petition is "not a power to enact the law itself," *Cheeks v. Cedlair Corporation*, 287 Md. 595, 612 (1980), and is less of an exercise of legislative power by the people than that conferred by mandatory referendum, see 63 *Opinions of the Attorney General* 291, 293 (1978). It is also an optional act not within the control of the Legislature or local legislative body. Finally, in the March 4, 1992, letter of advice on a "piggyback tax" local option, this office noted that:

An alternative method of achieving the same end might be found in a provision that authorizes the locality to impose the tax, but subject to the power of the voters to *petition* the issue to referendum either pursuant to local charter provisions or some state-specified standard. See, e.g., Art. 25A, §5(P)(1)(ii) on referendum of charter county bond issues.

For all of these reasons, I believe that the additional element of a local opportunity to petition a county ordinance on commercial gambling to local referendum is not unconstitutional. I should note, however, that care should be taken in drafting any provision on this subject, because not all county voters have the right to petition an ordinance to referendum.<sup>10</sup> Thus, a petition mechanism for subdivisions without referendum must be included within the State legislation.

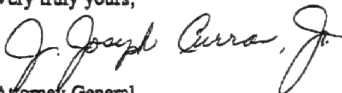
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<sup>10</sup>Every charter subdivision has such a general referendum procedure in its charter, except for Baltimore City. Code home rule counties have referendum pursuant to Article 25B, §10(h). Commissioner counties have no general referendum provisions.

The Honorable Joseph D. Tydings  
November 10, 1995  
Page 9

I hope that this analysis is responsive to all of your inquiries. Obviously this letter is not intended as an implicit comment on the policy wisdom of any of these alternatives. As you know, I have strong views on the subject, and I stand by them, especially my conclusions about the dire effect on the crime rate that I reported to your commission. I shall continue to speak out on the issue — but not when I give legal advice.

Very truly yours,

  
Attorney General

W76.1/104:3-735



APPENDIX IV

Letter from the Speaker of the Maryland House of Delegates Concerning the Unlawful Operation  
of Slot Machines and Tip Jars in Maryland (with attachments)








OFFICE OF  
THE SPEAKER

MARYLAND  
HOUSE OF DELEGATES  
ANNAPOLIS, MARYLAND 21401-1991

STATE HOUSE  
ANNAPOLIS, MARYLAND 21401-1991

TO: Members Joint Executive-Legislative Task Force  
To Study Commercial Gaming Activities in Maryland

FROM: Casper R. Taylor, Jr.   
Speaker

DATE: October 26, 1995

Please find enclosed the most recent evidence I have of the fundamental hypocrisy that exists in Maryland's current public policy on gaming. The attached letter from the State's Attorney of Allegany County and editorial from the Cumberland Times-News outline current gaming activities in the western part of the state - activities which are similar to those going on in many other parts of the state as well and raise similar issues. I hope you will include a consideration of this and all of the other aberrations in Maryland's existing legal framework and current practices as you deliberate in preparation for your final report.





OFFICE OF  
STATE'S ATTORNEY  
FOR ALLEGANY COUNTY  
CUMBERLAND, MARYLAND  
21502  
—  
30 REAR WASHINGTON STREET

MEMORANDUM

LAWRENCE V. KELLY  
STATE'S ATTORNEY

BARRY R. LEVINE  
DEPUTY STATE'S ATTORNEY

ROBERT A. COHEN  
ASSISTANT STATE'S ATTORNEY  
  
TRACEY A. DUNN  
ASSISTANT STATE'S ATTORNEY  
  
REBECCA L. FREELAND  
ASSISTANT STATE'S ATTORNEY

TO: Allegany County Delegation

*OK* FROM: Lawrence V. Kelly, State's Attorney

DATE: October 20, 1995

RE: Reform of Gambling Laws

This is to request the Delegation address my long-standing concern with legislation to address the issue of gambling in Allegany County. I would specifically request a Bill to Amend Article 27, Section 264B (Slot Machines), to add Allegany County.

2. Amend Tax-General Article, Section 1404(a), to remove the exemption as to organizations.

I attach previous Memos on this subject.

LVK:cjm

Attachments: As stated above



GOVERNMENT OF MADHYA PRADESH  
 DEPARTMENT OF AGRICULTURE  
 AND  
 COOPERATION

1954-55  
 No. 1000  
 Dated: 10/10/54

Subject: Grain Marketing Commission  
 Reference: 1000/1000  
 The Government of Madhya Pradesh, through the Grain Marketing Commission, has decided to...

1. The Government of Madhya Pradesh, through the Grain Marketing Commission, has decided to...

2. The Government of Madhya Pradesh, through the Grain Marketing Commission, has decided to...

3. The Government of Madhya Pradesh, through the Grain Marketing Commission, has decided to...



LAWRENCE V. KELLY  
STATES ATTORNEY

OFFICE OF  
STATE'S ATTORNEY  
FOR ALLEGANY COUNTY  
CUMBERLAND, MARYLAND  
21502

BARRY R. LEVINE  
DEPUTY STATES ATTORNEY

EDWARD A. MALLOY, JR.  
DEPUTY STATES ATTORNEY

30 REAR WASHINGTON STREET

MEMORANDUM

TO: Allegany County Delegation  
FROM: Lawrence V. Kelly, State's Attorney for Allegany County  
DATE: February 21, 1991  
RE: Article 27, Section 255, Gaming Laws Generally, Video Games

This is to direct your attention to a problem which exists in Allegany County. The whole subject of club gambling is a difficult one to address for law enforcement, as the nature of the crime is victimless, which means it necessarily does not demand our attention. This problem is compounded by a long tradition of ignoring the problem; and further, as an elected official, the State's Attorney has, for good political reasons, remained aloof. The downside side is law enforcement officers are required to ignore the law; the people involved are typically good citizens who are uncomfortable with what they know are violations of the law; and finally, the erosion of respect for the law in the community is hardly an inconsequential consequence.

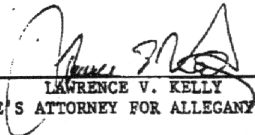
The present problem is the clubs' use of video gaming devices. The law, currently, clearly prohibits this. Last year, the State Police conducted massive raids and seized numerous video machines. The State's Attorney elected not to prosecute in favor of individual agreements with organizations and forfeiture of the machines and monies contained therein. I would not employ such a device, because I do not believe such a proposition does anything but punish the honest, acts as no deterrence to the dishonest, and generally encourages a lack of respect for law enforcement. I am also satisfied the problem will not go away. The State Police are anxious to again address the problem. Last year's activities were not carried out in the City of Cumberland, and that police department feels a need to do something in the area.

I have addressed the matter with knowledgeable persons, and I asked this - why, with the available gaming devices, do the clubs feel compelled to resort to this clearly illegal device when other forms of gaming are permitted? The answer I am given is the other devices are not popular, labor intensive, and the video devices are the clear choice of those who are inclined to gambling.

Finally, one of the many troublesome questions is: The present law does not insure financial accountability. The law permits gaming on the theory the club provides valuable services in the community either directly or indirectly use of gaming proceeds. As you are aware, many of the gambling provisions in other counties have licensing, reporting, and other devices which insure the very reason for permitting the gambling is reality. Club gambling in Allegany County has no such guarantee.

This brings me to my proposed resolution which is to expand the law to permit use of video devices by appropriate clubs with provisions requiring licensing, reporting, and final insurance the law will achieve its objectives. Only you can bring the necessary legislation into being.

I have not had the opportunity to study the alternatives available; but if you will address the problem, I will provide any and all assistance you require.

  
\_\_\_\_\_  
LAWRENCE V. KELLY  
STATE'S ATTORNEY FOR ALLEGANY COUNTY

LVK:cjm







LAWRENCE V. KELLY  
STATE'S ATTORNEY

OFFICE OF  
STATE'S ATTORNEY  
FOR ALLEGANY COUNTY  
CUMBERLAND, MARYLAND  
21902

30 REAR WASHINGTON STREET

BARRY R. LEVINE  
DEPUTY STATE'S ATTORNEY

EDWARD A. MALLOY, JR.  
DEPUTY STATE'S ATTORNEY

September 17, 1991

The Honorable William Donald Schaefer  
Governor of the State of Maryland  
State House  
Annapolis, Maryland 21401

RE: Reform of Gambling Laws in Allegany County

Dear Governor Schaefer:

My purpose in writing is to acquaint you with what I believe is a significant law enforcement problem in Allegany County and my proposed solution to that problem. While reluctant to trouble you, I am convinced that your assistance is essential.

Gambling, as a victimless crime, does not typically concern this office. While State's Attorney from 1974 to 1982, I essentially ignored the matter. The only occasions I had to address it were when there were specific complaints (which rarely occurred) or when someone with an economic interest would encourage prosecution to gain some advantage over competitors. Obviously, we use our limited resources to address clear criminal concerns. Also, I did not have an appreciation of the economic impact gambling has, as it occurs out of the public limelight.

After returning to this office this past January, I was resolved to follow my previous approach but became convinced of the need to address this matter. My reasons are that West Virginia now permits video gambling in establishments holding liquor licenses, and that State's proximity will inevitably have an impact on Allegany County. Also, the need to address this subject came about due to a Maryland State Police Raid in early 1990 which resulted in the seizure of 94 machines which I had to address. The raid highlighted inconsistencies in law enforcement, as only one (1) section of the County was raided while the municipalities and larger populated areas were not touched. My predecessor chose to enter into agreements with the clubs affected, whereby they agreed not to violate the law with video machines in return for charges not being prosecuted. Obviously, elected State's Attorneys are not inclined to prosecute the fraternal clubs which is why ignoring the problem becomes very convenient but is increasingly not an appropriate response.

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I want to stress my proposal only relates to fraternal non-profit clubs which are already permitted various forms of gambling. I do not advocate any expansion of gambling, nor permitting gambling which does not ultimately incur to the benefit of the community. Further, I seek only to amend existing laws to permit Allegany County Clubs the same form of gambling presently enjoyed by Eastern Shore Counties. My investigation convinces me first, the changes would only recognize present realities and second, gambling is, unfortunately, essential to the existence of a number of our clubs who otherwise would close their doors. The economic necessity indicates the gambling will continue whether or not it is reformed.

Why reform it? So, we can control it and insure the community does in fact benefit. My proposal would allow the County to realize taxes and prevent individuals from profiting from the gambling. Due to its illegality, the situation is ripe for abuse; and I am convinced that substantial funds are diverted from the clubs into the pockets of those who deal directly with the matter for the clubs. No books or accounts are kept, so the larger membership has no idea what is really collected or disbursed. Indeed, I am aware of two (2) situations involving club gambling where funds have been stolen.

My proposal is to amend Article 27, Section 264B, to add Allegany County (the present counties are Caroline, Cecil, Dorchester, Kent, Queen Anne's, Somerset, Talbot, and Wicomico). There are specific provisions requiring the club machines to be linked to a computer in County Offices to allow auditing. The machines would be leased from authorized distributors. The distributors have agreed to provide the computer and connections at no cost to the County. Enclosed is a draft of that legislation. In addition, the exemption from taxation is contained in the Tax-General Article, Section 4-104(a), so the County would receive 10% of gross receipts. The State already has existing enforcement capacity and is entitled to collect the cost of tax collection from the County.

I recognize this request is one which requires you to modify your prior position to not sanctioning any changes in the Gambling Laws. However, to continue with the existing laws simply encourages abuse and results in lack of respect for the law. Also, the loss of tax revenues and the inability to insure the purpose of the law (benefit to the community) are significant factors. I also recognize that if you look favorably on this request, others will inevitably seek changes. Perhaps, it would be advisable to address the whole issue by a Blue Ribbon Commission to address this issue state-wide instead of on a County-by-County basis, although that approach will inevitably cause substantial delay.

The Honorable William Donald Schaefer  
Page 3  
September 17, 1991

I have reviewed this proposal with responsible club leaders, County Officials, Law Enforcement Personnel, and members of the Allegany County Delegation, all of whom are supportive and indeed enthusiastic. Interestingly, local publicity during the last legislative session on this subject was greeted with support and little negative feedback. (See enclosed Memo of February 21, 1991.) In my opinion, the only groups which oppose this proposition are those who generally oppose gambling (who have a sound position but one which would only be satisfied with a total prohibition against all gambling which simply is not feasible), those who profit from the present lack of regulation (essentially thieves who will not and cannot come forward), and private bar/restaurant owners (who must compete without the advantage of illegal gambling proceeds).

Finally, this citizen of Allegany County fully recognizes the extraordinary efforts you have made for Allegany County and appreciates all the benefits which we have realized due to your genuine concern. Should you decide this request cannot be granted, I will understand and respect that decision. However, for the reasons advanced, I sincerely believe these changes are really necessary for the benefit of Allegany County.

Very truly yours,

LAWRENCE V. KELLY  
STATE'S ATTORNEY FOR ALLEGANY COUNTY

LVK:cjm

Enclosures: As stated above

CC: Mr. David S. Iannucci

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**Publisher:** Terry Horne  
**Managing Editor:** Lance White  
**Editorial Page Editor:** Jan Alderton

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# Tip jars

## ■ Kelly proposal would clean up bad law

Despite widespread gambling throughout Allegany County, authorities are looking the other way and not prosecuting violators. But that would change if the county's delegation in Annapolis goes along with State's Attorney Lawrence V. Kelly's suggestion.

Kelly told the Times-News that the present law is so bad he refuses to enforce it.

Visit just about any club or tavern in the area and you will find video poker machines or tip jars. The law stipulates that selling tips is permitted for charitable organizations. But controls are lax and most club members have no idea how much money is made from tip jars and other gaming.

Kelly first pushed the issue when William Donald Schaefer was governor. But the suggestion got nowhere. Now, with a new governor, Kelly is hoping the legalization of gambling in fraternal clubs will be revamped.

Washington and Frederick counties closely monitor tip jars and other activity. The counties also share in the profits. Several months ago in Washington County, controversy surfaced when it was discovered that some of the fraternal organizations were giving only tiny contributions to charities and were keeping most of the gambling profits for themselves.

Cleaning up the present law by tracking each tip jar sold and legalizing video poker will make sure that gaming proceeds are going to charity. At the same time, some of that income could flow to the county's tax coffers, helping to ease the taxpayers' burden.

It's an issue that needs addressed when the General Assembly convenes in January.

1. The first part of the report discusses the general situation of the country and the progress of the work in the various departments. It also mentions the results of the work done during the year.

2. The second part of the report deals with the financial position of the country and the progress of the work in the various departments. It also mentions the results of the work done during the year.

3. The third part of the report deals with the financial position of the country and the progress of the work in the various departments. It also mentions the results of the work done during the year.

4. The fourth part of the report deals with the financial position of the country and the progress of the work in the various departments. It also mentions the results of the work done during the year.

5. The fifth part of the report deals with the financial position of the country and the progress of the work in the various departments. It also mentions the results of the work done during the year.

6. The sixth part of the report deals with the financial position of the country and the progress of the work in the various departments. It also mentions the results of the work done during the year.

7. The seventh part of the report deals with the financial position of the country and the progress of the work in the various departments. It also mentions the results of the work done during the year.

8. The eighth part of the report deals with the financial position of the country and the progress of the work in the various departments. It also mentions the results of the work done during the year.

9. The ninth part of the report deals with the financial position of the country and the progress of the work in the various departments. It also mentions the results of the work done during the year.

10. The tenth part of the report deals with the financial position of the country and the progress of the work in the various departments. It also mentions the results of the work done during the year.

APPENDIX V

Chronology of Task Force Activities





## **Chronology of Task Force Activities**

June 26, 1995: Organizational Meeting.

July 24, 1995: Public Hearing and Work Session in Easton, Maryland (Eastern Shore Region).

August 17, 1995: Public Hearing and Work Session in College Park, Maryland (Washington, D.C. Metropolitan and Southern Maryland Regions).

September 14, 1995: Site visit by the Finance Resources Subcommittee of the House Ways and Means Committee and the Gambling Subcommittee of the House Judiciary Committee to four non-profit gambling facilities in the State, one off-track betting facility and one commercial tip jar operator. The Task Force's Chairman and staff, as well as two other Task Force members, participated in this site visit.

September 18, 1995: Public Hearing and Work Session in Frostburg, Maryland (Western Maryland Region).

September 28, 1995: Briefing by the Department of Fiscal Services.

October 6, 1995 and October 7, 1995: Two-day site visit to Atlantic City, New Jersey.

October 16, 1995: Briefings by: (1) J. Joseph Curran, Jr., Attorney General; (2) Department of Business and Economic Development; (3) Greater Baltimore Committee; (4) Greater Washington Board of Trade; (5) Maryland Racing Commission; and (6) Joseph Gibson, Counsel, House Judiciary Committee, United States House of Representatives.

October 16, 1995: Public Hearing and Work Session in Baltimore, Maryland (Baltimore Metropolitan and Central Maryland Regions).

October 27, 1995: One-day site visit to St. Louis, Missouri and East St. Louis, Illinois.

October 30, 1995: Work Session.

November 6, 1995: Work Session.

November 13, 1995: Work Session.

November 27, 1995: Work Session.