

UNITED STATES

Gaming Developments in the Northeast

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The landscape of gaming in the Northeast has significantly changed over the last five years. Pennsylvania's established casinos have been doing extremely well, so much so that Pennsylvania gaming revenue exceeded New Jersey's in 2011, making it one of the largest gaming markets in the United States. New York has increased its gaming facilities and is considering further expansion. Maryland has commenced gaming and is expanding with at least two more facilities. Most recently, casino gaming was legalized in Massachusetts. This expansion has significantly impacted the long established New Jersey and Connecticut markets. In response, New Jersey made substantial legislative and regulatory changes with more to come and is adding facilities. This article will explore these different jurisdictions and their current gaming initiatives.

MARYLAND

In 2007, Maryland Governor Martin O'Malley signed into law a bill authorizing a referendum to permit the state to issue up to five video lottery licenses for the primary purpose of raising revenue for public education. Under the terms of the referendum, no more than 15,000 video lottery terminals (VLTs) may be authorized in the state, and only one license may be issued for each specified location in Anne Arundel, Cecil, Worcester, and

Allegany counties, and Baltimore City. On November 4, 2008, voters both statewide and in every county approved the referendum.

Since then, three of the five available licenses have been issued, and two facilities are open and operating – Hollywood Casino Perryville in Cecil County and Casino at Ocean Downs in Worcester County. The two operating casinos generated combined revenue totaling approximately \$12.5 million in December 2011. Mary-



Artist rendering of the \$500 million Maryland Live! Casino

land's third facility, Maryland Live! Casino located at the Arundel Mills Mall in Anne Arundel County, is expected to open in June 2012. The Cordish Group is developing the \$500 million facility, and it will be Maryland's largest to date with approximately 4,750 VLTs and electronic table games, nationally-acclaimed restaurants, an entertainment venue and other amenities.

The remaining two licenses are slated to be awarded in 2012. One will authorize the development of a facility in Baltimore City and the other a facility at Rocky Gap Lodge & Golf Resort located in Rocky Gap State Park, Allegany County. A ven-

ture led by Caesars Entertainment Corporation is currently vying for the Baltimore City license. On January 13, 2012, the State rejected a bid for the Rocky Gap license submitted by Landow Partners LLC, a real estate development company owned by former State Democratic Party Chairman Nathan Landow. As a result, only Evitts Resort LLC (a venture between Lakes Entertainment Inc. and Paragon Project Resources of Irving, Texas) remains in contention for the Rocky Gap license. Notably, there is some discussion in the legislature regarding the possibility of a sixth license.

NEW JERSEY

The growth of gaming in the Northeast has resulted in an overall decline in gaming revenues in New Jersey. In response, Governor Christopher Christie in January 2011 signed into law a bill revamping the New Jersey Casino Control Act and eliminating many of the duplicative functions of the New Jersey Casino Control Commission (“Commission”) and the New Jersey Division of Gaming Enforcement (“Division”). The Commission still exists but has been recently reduced to three members with limited authority consisting generally of

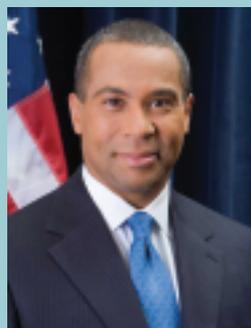
casino licensing matters and appeals from decisions of the Division. The Division assumed many of the functions previously performed by the Commission and remains the enforcement entity. The Division has been revising the regulations and adding details with respect to gaming equipment and has eliminated certain of the requirements for casino licensees to help streamline the regulatory process. The regulatory reforms from January 2011 are still a work in progress and will be some time before the benefits of the reform are known.

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MASSACHUSETTS

On November 22, 2011, Massachusetts Governor Deval Patrick signed into law a bill legalizing casino gaming. Under the legislation, three resort style casinos offering both table games and slot machines (Category 1 licenses) and one slot parlor with a maximum of 1,250 slot machines (Category 2) licenses are permitted. No more than one Category 1 license may be issued in each of three respective regions within the Commonwealth: Region A: Suffolk (Boston), Middlesex, Essex, Norfolk and Worcester counties; Region B: Hampshire, Hampden, Franklin and Berkshire counties; and Region C: Bristol, Plymouth, Nantucket, Dukes and Barnstable counties. In Region C, a limited preference is given to awarding the Category 1 license to an Indian tribe (reportedly, the Mashpee Wampanoag tribe). The Category 2 license may be issued for a slot parlor located anywhere in the Commonwealth.

The licenses will be issued in a public competitive bid process. Licensing fees and capital investment requirements for each of the licenses is to be set by the Massa-



Massachusetts Governor
Deval Patrick

chusetts Gaming Commission, which is currently being formed. However, by statute, the minimum licensing fee for a Category 1 license is \$85 million, and the minimum capital investment requirement is \$500 million. In addition, Category 1 licensees are subject to a 25% tax on gross gaming revenues. The minimum licensing fee for a Category 2 license is \$25 million, and the minimum capital investment requirement is \$125 million. Category 2 licensees are subject to a 40% tax on gross gaming revenues. The steep cost of entry may keep all but the largest established gaming operators from successfully bidding for one of the licenses.

On December 13, 2011, Governor Patrick appointed Mr. Stephen Crosby to Chair the Massachusetts Gaming Commission. Ironically, he is a former critic of legalizing casino gaming in Massachusetts. The Commission is expected to convene for its first meeting in February 2012 after appointment of its four other members.

>> NEW DEVELOPMENTS IN JURISDICTIONS



The Spring opening of Revel Entertainment is expected to change the Atlantic City market



New Jersey Governor Chris Christie (L.) is hopeful that the introduction of sports betting and small-scaled casinos will revitalize Atlantic City

Even with the economic downturn, the number of casinos in the New Jersey market will grow this year. The much awaited opening of Revel Entertainment is scheduled for the spring of 2012, and it is anticipated to change the Atlantic City market. Exactly what the change will be and the effect of the opening of Revel on the other properties in Atlantic City is unknown. In addition, Landry's, which purchased the Trump Marina in 2011 and renamed it the Golden Nugget, has upgraded the property and revenues have increased. Resorts, which changed hands in late 2010, has made changes to its facility, but continues to have declining revenue.

Also in January 2011, Governor Christie signed into law a bill authorizing a pilot program for small scale and staged casinos. The law permits

two of these licenses to be issued and at least one must be a staged casino facility license. A small scale casino must have a minimum of two hundred qualified sleeping units, but it is only allowed a maximum of a 24,000

square feet of casino space. The staged casino requires a minimum of two hundred qualified sleeping units with a mandatory expansion to five hundred qualified sleeping units within five years of initial licensure. The maximum permitted square footage of the casino is 34,000 square feet. However, the size of the casino may be increased if additional

hotel rooms or special amenities are constructed. AC Gateway LLC was issued preliminary approval with respect to their Hard Rock Cafe staged casino project. The Commission is accepting applications for the other license until April 30, 2012. While this

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is a unique form of casino license to promote growth in Atlantic City, only one company applied during the initial application process.

Most recently, on January 17, 2012, Governor Christie signed into law a bill allowing sports betting at Atlantic City casinos if federal law is changed, or the current federal prohibition is found unconstitutional. At a minimum, this legislation permits litigation to consider the constitutionality of the sports betting ban.

The New Jersey Legislature is also working on an intrastate internet gaming bill that will allow casinos to accept wagers from persons in New Jersey. This bill likely will be introduced early in this legislative session and be subject to a public referendum in November. The bill may authorize the immediate adoption of regulations and processing of license applications so that if the referendum is approved operations could commence quickly.

NEW YORK

New York currently has both Native American gaming facilities and certain racetracks with video lottery terminals, expanding certain of its gaming operations and looking at further expansion. As to recent expansion, on October 28, 2011, the Resorts World Casino New York City opened at Aqueduct Racetrack in Queens with 2,280 video slot machines and 205 electronic table games. The casino is operated by a subsidiary of Genting Group, a Malaysian casino and leisure company. A second phase of the casino, dedicated to high rollers, opened in December 2011 and features 2,245 video slot machines and 270 electronic table games. Resorts World Casino New York City generated \$90 million in video lottery terminal revenue between October 28, 2011, and December 31, 2011.

Following the initial success of Resorts World Casino, Governor Andrew Cuomo, in his January 4, 2012, state-of-the-state address, proposed amending the state's Constitution to allow for full-fledged Las Vegas-style casino gaming located off Native

American land. In order to amend the state constitution to legalize full-fledged gaming, the state legislature would be required to pass resolutions in two consecutive legislative sessions and then submit the proposed amendment to the people of New York in a referendum. Thus, November 2013 would be the earliest opportunity for New York voters to vote on the proposed casino amendment.

Governor Cuomo also expressed his support for the construction of a \$4 billion, 3.8 million-square-foot convention center at the Aqueduct Racetrack. The proposed convention center would be funded and operated by Genting Group and would feature three thousand hotel rooms. Additionally, if the state constitution were to be amended, Genting Group has expressed an interest in converting the Resorts World Casino New York City into a Las Vegas-style gaming facility featuring live table games. Despite media reports to the contrary, the Governor's office has indicated that the development of a convention center at Aqueduct Racetrack would not guarantee Genting Group exclusive rights

to casino operations in New York City.

There is also proposed casino development outside of New York City. Casino operators and real estate developers are vying for the right to build a casino at the former site of the Concord Resort in the Catskills. Empire Resorts Inc., the owner of the Monticello Casino and Raceway, has entered into an option agreement with Entertainment Property Trust, whereby Empire Resorts has the right to lease a parcel of land for the development of a destination casino resort. As part of the plan, Empire Resorts would relocate its harness racing track and video gaming casino from Monticello Raceway to the new site. Louis Cappelli, a West Chester, New York-based real estate developer who formerly partnered with Entertainment Property Trust for development of the Concord site, claims that he remains the master developer of the entire Concord site and has partnered with the Mohegan Tribal Gaming Authority to develop a casino on an adjacent piece of land retained by Cappelli at the Concord site.

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Following the initial success of Resorts World Casino (above and right), New York Governor Andrew Cuomo is proposing to amend the state's Constitution to allow for full-fledged Las Vegas-style casino gaming located off Native American land.



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This artist's rendering of Foxwoods Philadelphia shows great potential, but plans for the resort have come to a halt

PENNSYLVANIA

Pennsylvania Governor Edward Rendell signed into law Act 71 on July 5, 2004, allowing for a total of thirteen slot machines licenses in three different categories throughout the Commonwealth. The first slots only casino opened in Pennsylvania on November 14, 2006, and there has been tremendous growth in the Pennsylvania gaming market since this opening. In January 2010, gaming in Pennsylvania was expanded to allow for table games at the slot facilities. While there has been significant growth, there have been some hurdles and two licenses remain unissued. The two resort style casino licenses are not expected to open until this year.

The most turbulent of the licenses is the Foxwoods Casino Category 2 license in Philadelphia which was initially approved in 2006. The construction of the Foxwoods' project was delayed and financing for the project was ultimately lost. Foxwoods requested various extensions, some of which were granted by the

Board. However, the Board in December 2010 revoked Foxwoods' license for not meeting the licensing conditions and not having the facility opened within the timeframe required under the Act. Foxwoods appealed the Board's decision, but the Pennsylvania Commonwealth Court upheld the revocation.

During the 2011 legislative session, a house bill was introduced that would have put the remaining Category 2 license out to bid with a minimum bid of \$66.5 million for the slot license and table game license, removed the location of the license from Philadelphia which would allow for the license to be considered for anywhere in the Commonwealth, and removed the ownership restriction for existing facilities allowing them to bid on the proposal. This legislation was tabled in December 2011, but similar legislation is expected to be proposed during this legislative session.

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There also still remains a Category 1 racino license that is to be awarded to the entity that received the last harness racing license, Valley View Downs, but the entity has had significant financial trouble, and the parent company filed for bankruptcy. There was a bankruptcy auction of the license, and the new owners recently received Harness Racing Commission approval. Valley View Downs still must apply for a license and receive approval from the

Pennsylvania Gaming Control Board. This proposed facility would be located in northwestern Pennsylvania.

The Pennsylvania Legislature is also considering transferring the functions of the Bureau of Investigation and Enforcement (“BIE”) from the Gaming Control Board and establishing a Gaming Unit within the Attorney General's office for investigation and enforcement. The movement of the BIE has been an on-going topic in Pennsylvania and while the Pennsylvania Legislature believes that this would add an additional layer of separation between BIE and the Board, there have been concerns raised as to the costs and efficiency of this move. The proposed structure would be very similar to the old New Jersey structure, which was found not to be the most efficient.

In conclusion, while Pennsylvania gaming continues to expand with the additional opening of facilities and licenses still to be issued, the question remains as to the effect the development in New York, Massachusetts and Maryland and the new facilities in New Jersey will have on the Pennsylvania market. ♣

Nick, Marie and Pat are in the Atlantic City office of Fox Rothschild, a law firm with 500 lawyers in eight states. The firm has one of the largest gaming practices in the world, representing casinos, manufacturers of gaming equipment, and private equity firms and other investors on all aspects of gaming law, both domestically and internationally. Nick is Chair of the Gaming Group and has been named as one of the leading gaming attorneys in the world by Chambers Global and in the U.S. by Best Lawyers in America. He can be reached at ncasiello@foxrothschild.com. Marie has also been named as one of the leading gaming attorneys in the U.S. attorneys in the U.S., Chambers Global, was selected for in Best Lawyers in America for Gaming Law and included in a list of “New Jersey's Best Lawyers” in the area of Gaming Law. Contact Marie at mjones@foxrothschild.com. Pat has practiced in gaming law for almost two decades, and he has served as the general counsel of a publicly traded gaming company. Pat can be reached at pmadamba@foxrothschild.com.