

Gaming Regulatory Oversight Authority
RSA 284-A, as amended by Chapter 144:145, Laws of 2013

MEMORANDUM

To: Honorable Margaret Wood Hassan, Governor
 Honorable Terie Norelli, Speaker of the House
 Honorable Chuck Morse, President of the Senate
 Honorable Karen O. Wadsworth, House Clerk
 Honorable Tammy L. Wright, Senate Clerk

From: Representative Richard Ames, Chair

Subject: Final Report of the Gaming Regulatory Oversight Authority

Date: December 12, 2013

It has been my privilege to serve, by appointment of Governor Hassan, as Chair of the New Hampshire Gaming Regulatory Oversight Authority established by RSA 284-A, as amended by Chapter 144:145 of the Laws of 2013. In that capacity and in accordance with Authority votes taken at the Authority's December 6, 2013 meeting, I hereby submit the Authority's Final Report.

Please note that the Authority's Final Report includes proposed legislation in the form of two bills for consideration in the 2014 legislative session, titled, respectively, *An Act Relative to Expanded Gaming in New Hampshire* and *An Act relative to Existing Gaming in New Hampshire*. I have submitted these two bills to the Office of Legislative Services. I expect that I will sponsor each of these bills and that each will be co-sponsored by Senator James Rausch and Representative Lucy Weber.

The Authority has worked intensively over the past four months to develop the work products that I am now privileged to present. The work on expanded gaming was particularly difficult and challenging. I believe you will find that this hard work has paid off, thanks in no small part to active participation of *all* Authority members coupled with the assistance of an excellent consultant, WhiteSand Gaming LLC. I believe that the resulting *Expanded Gaming Bill* will provide an excellent regulatory system in the event that the Legislature chooses to expand into large-scale casino-based gaming.

Quoted below are two statements contained in the Final Report. They set out the Authority's perspective on key components of its *Expanded Gaming Bill*.

At page 7: "The Authority interprets its statutory mandate as *not* requiring the Authority to make a judgment as to whether or not expansion into large-scale casino gaming would be

good or bad for New Hampshire. Instead, the Authority understands that the statute instructs the Authority to recommend a best practices, expanded-gaming, regulatory system for consideration by the Legislature as it debates and decides the fundamental policy question of whether expansion by New Hampshire into large-scale casino gaming will be good or bad for the state. The Authority's draft *Expanded Gaming Bill* reflects this understanding."

And at page 11: "The Authority believes that each of the fiscal and capacity choices included in its Expanded Gaming Bill are well-founded and reasonable. The Authority also believes that each of these choices should be closely scrutinized by the Legislature, and recognizes that this process of legislative review may lead to adjusted choices that are equally or perhaps even more appropriate as a basis for expansion into casino gaming."

The part of the Authority's Final Report that relates to Expanded Gaming, including the Authority's proposed *Expanded Gaming Bill*, was approved by the Authority on December 6, 2013 by an 8-1 vote. Attorney General Foster, who cast the dissenting vote, praised the Authority's regulatory work product but dissented based on his belief that a favorable vote would be construed as an endorsement of casino-based gaming in New Hampshire when in fact his office remains opposed to such gaming.

The part of the Authority's Final Report that relates to Existing Gaming, including the Authority's proposed *Existing Gaming Bill*, was approved by the Authority on December 6, 2013 by a 9-0 vote.

If you have any questions or comments regarding this report, please do not hesitate to contact me.

cc. Authority members.

Final Report of the Gaming Regulatory Oversight Authority

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Expanded Gaming Bill

Existing Gaming Bill

WhiteSand Report

Gaming Regulatory Oversight Authority
RSA 284-A, as amended by Chapter 144:145, Laws of 2013
Final Report
December 12, 2013

Overview

A.In General

The Gaming Regulatory Oversight Authority (referred to as the “Authority” in this report) began its work on August 15, 2013. It has met in 11 public sessions. Agendas and audio recordings of each meeting are posted on the Authority’s web site, <http://www.nh.gov/groa/index.htm>. The Authority’s membership, statutory mandate, and work product are described immediately below in this Overview.

B.Authority Membership

Richard Ames, Authority Chair, State Representative, Appointee of Governor
John Barthelmes, Commissioner, Department of Safety
Patrick Cheetham, Londonderry Police Sergeant, Appointee of Governor
Timothy Connors, Commissioner, Racing & Charitable Gaming Commission
Joseph Foster, Attorney General
Charles McIntyre, Executive Director, Lottery Commission
James Rausch, Senator, Appointee of Senate President
Kathleen Sullivan, Attorney, Appointee of Governor
Lucy Weber, State Representative, Appointee of House Speaker

C.Authority Statutory Mandate

The Authority derives its authorization and mandate from a June 2013 amendment to RSA 284-A. The amendment to RSA 284-A was enacted as Section 145 of Chapter 144 of the Laws of 2013. Amended RSA 284-A is reprinted in full and attached as Appendix A at the end of this report.

D.Authority Work Product: Two Scenarios: Two Bills: Two Parts to this Report

The Authority’s legislative mandate requires it to consider and make recommendations responsive to two distinct scenarios.

1. Expanded Casino Gaming Scenario. Under this scenario, the Authority is directed to assume that gaming options in New Hampshire will be expanded to include casino gaming and a substantial new casino presence in New Hampshire containing gaming activities at a scale significantly greater than levels currently allowed by state law. Within this scenario, the

Authority is also directed to assess all existing gaming activities in New Hampshire and to make best practices recommendations regarding the continuing regulation of those activities.

a. Expanded Gaming Bill. In response to this scenario, the Authority has developed for legislative consideration a draft *Bill to Enable Expanded Gaming in New Hampshire* (referred to in this report as the “*Expanded Gaming Bill*”). The *Expanded Gaming Bill* is lengthy and complex. It is posted in PDF format on the Authority’s website at <http://www.nh.gov/groa/index.htm>.

b. Expanded Gaming Section of this Report. Key components of the Authority’s draft *Expanded Gaming Bill* are highlighted below in Section 1 of this Report.

2. Existing Gaming Scenario: Under the second scenario, the Authority is directed to assume that New Hampshire would continue with roughly the same types and scale of gaming activities as currently exists without expansion into large-scale casino gaming and to make best practices recommendations for the regulation of those gaming activities.

a. Existing Gaming Bill: The Authority has developed for legislative consideration a draft *Bill Relative to Existing Gaming in New Hampshire* (referred to in this report as the “*Existing Gaming Bill*”). The *Existing Gaming Bill* is also posted in PDF format on the Authority’s website.

b. Existing Gaming Section of this Report. The length of the Authority’s draft *Existing Gaming Bill* is deceptive. The bill is long because RSA 287-D is poorly organized and requires comprehensive reformulation. The substantive changes and recommendations are relatively few. They are highlighted below in Section 2 of this Report.

E. Authority Work Product: WhiteSand Gaming LLC Advice and Report

Throughout its work, the Authority benefitted from the superb assistance and expert advice of its consultant, WhiteSand Gaming LLC (referred to in this report as “WhiteSand”). In particular, the Authority wishes to acknowledge the extraordinary contributions of WhiteSand principal, Attorney Maureen Williamson, whose hard work, drafting expertise and deep understanding of gaming law and the gaming industry have been indispensable. The work of WhiteSand principal, James Nickerson, on defining fiscal and capacity parameters for expanded gaming in New Hampshire has also been of great value. WhiteSand Gaming’s *Report to the New Hampshire Gaming Regulatory Oversight Authority Regarding a Comprehensive Approach to Existing and Expanded Gaming* (the “*WhiteSand Report*”) is posted on the Authority’s web site at <http://www.nh.gov/groa/index.htm>. The *WhiteSand Report* is hereby attached and incorporated by reference into this final Authority Report. The *WhiteSand Report* includes WhiteSand’s examination of legislative proposals for expanded gaming that were considered by the Legislature earlier this year¹, WhiteSand’s assessment of certain fiscal and capacity

¹ 2013 legislative proposals considered by WhiteSand were: House Bill 665 (“HB 665”); House Bill 678 (“HB 678”), and Senate Bill 152 as adjusted by proposed amendments contained in a so-called Omnibus Amendment (“SB 152-O”). WhiteSand’s analysis of provisions contained in each of these proposals is set out at pages 54 to 84 of the *WhiteSand Report*.

parameters related to expanded gaming, WhiteSand's report on relevant gaming provisions from comparator states, and WhiteSand's recommendations for certain best practices regulation of both existing and expanded gaming.

Section 1: Expanded Gaming

On December 6, 2013, this Section 1 of the Authority's Final Report, the accompanying proposed *Expanded Gaming Bill*, and the recommendations contained in these two documents related to expanded gaming were approved and adopted by an 8-1 Authority vote². The Authority's vote authorized the Authority Chair to submit these documents to the Governor and Legislature pursuant to the provisions of the Authority's enabling statute.

A. Overview: Best Practices and Reasonable Policy Choices

The Authority interprets its statutory mandate as *not* requiring the Authority to make a judgment as to whether or not expansion into large-scale casino gaming would be good or bad for New Hampshire. Instead, the Authority understands that the statute instructs the Authority to recommend a best practices, expanded-gaming, regulatory system for consideration by the Legislature as it debates and decides the fundamental policy question of whether expansion by New Hampshire into large-scale casino gaming will be good or bad for the state. The Authority's draft *Expanded Gaming Bill* reflects this understanding.

The line between that which is dictated as a "best practice" and that which is more akin to a "reasonable policy choice," however, is often indistinct and difficult to discern, particularly in the complex, technology driven, value laden world of casino gaming. For example, the Authority is recommending robust provisions related to "problem gambling" mitigation, treatment and research. "Problem gambling" is a poorly defined set of potentially damaging behaviors that today lurks in the shadows, a product of widespread lottery, "charitable" and other gambling by New Hampshire residents within the state, and of more gambling by our residents in casinos and venues beyond our state lines, that is currently unaddressed by any program or regulatory system in New Hampshire. The provisions in the *Expanded Gaming Bill* are, the Authority believes, significantly reflective of *best practices* considerations, deriving from evolving work and understandings from around the world. But there is also a significant *values* component to these problem gambling recommendations: casino-based gaming cannot be *good* for New Hampshire *if* its regulatory system is not designed to bring to the surface and robustly address the problem gambling issue.

Below, particularly in this report's sub-sections on "Public Policy and Expanded Gaming" and "Fiscal and Capacity Decisions," the Authority has tried to make clear its understanding that choices made by the Authority and embedded in its *Expanded Gaming Bill* may be revisited by

² Attorney General Foster dissented, stating that the work done by the Authority on the expanded gaming issue had been extraordinary, that the regulatory scheme contained in the *Expanded Gaming Bill* was probably the best that could have been developed, but that inclusion in the bill of certain purpose, fiscal and capacity provisions would inevitably be interpreted as an endorsement of casino gaming, and that such a perceived endorsement would be contrary to his position and the historical position of the Attorney General's office in opposition to such expanded gaming.

the Legislature to reflect a different but equally valid “reasonable policy choice” that is, nonetheless, consistent with “best practices.”

B. Roadmap: This Report and the Authority’s draft *Expanded Gaming Bill*: Note about Definitions and Terminology

Appendix B at the end of this report is a list of the section headings of the *Expanded Gaming Bill*. It is useful as a guide to locating particular proposed regulatory provisions.

In this Section 2 of this report, a number of prominent issue areas and legislative choices have been brought forward from the draft *Expanded Gaming Bill* for discussion and explanation. Given the length and complexity of the *Bill*, however, it is not possible to fully discuss and explain every component. For example, at the core of the *Bill* are detailed requirements and authorizations that will govern all application, licensing and operating decisions. Comprehensive, technical and highly specialized, these legislative provisions have been written to reflect best practices in expanded gaming regulation, drawing on the work of gaming jurisdictions around the country. Written to apply in a unified way to both slot machine and table gaming, these provisions have been designed to ensure clarity of understanding on the part of all who may be engaged in and affected by expanded gaming. Space and time limitations dictate that these provisions not be brought forward for additional explanation in the text of this report.

Careful definition of terms used is indispensable to an effective, expanded gaming, regulatory system. About 60 such terms are defined in proposed RSA 284-B:2 of the Authority’s draft *Expanded Gaming Bill*. Among these defined terms, the Authority has chosen to use “slot machine” rather than “video lottery terminal” and “gaming vendor” rather than “technology vendor.” These terminology choices relate logically to the Authority’s proposal for regulation of expanded gaming by a new *Gaming Commission* rather than by a re-authorized *Lottery Commission*.

C. Public Policy and Expanded Gaming

Threshold public policy findings and judgments will dictate whether or not the New Hampshire Legislature chooses to expand into large-scale casino gaming in New Hampshire. Public policy determinations will also guide the legislative approach to existing gaming. These are policy choices that constitutionally may only be made by the Legislature. Without a clear public policy vision, and without findings that support that vision, there can be no gaming expansion, nor can there be meaningful reform of existing gaming.

To enable both expansion and reform, therefore, and based on WhiteSand’s report and advice and on the Authority’s hearings and deliberations during these past four months, the Authority recommends in its draft *Expanded Gaming Bill* that the Legislature (referred to in the text of the bill as the “General Court”) consider adopting the following Statement of Purpose:

Proposed RSA 284-B:1. Statement of Purpose. The general court finds and declares to be the public policy of this state that:

284-B:1, I. The integrity of gaming in New Hampshire, the efficient and effective regulation of all forms of gaming in New Hampshire, and public confidence in gaming in New Hampshire is vitally important to the economy of the state and the general welfare of New Hampshire citizens.

284-B:1, II. The integrity of gaming in New Hampshire is impaired by deficiencies in the current regulation of charitable gaming exacerbated by limited agency resources, by the perception that there is wide-spread illegal gambling in New Hampshire, by insufficient information regarding the scope and nature in New Hampshire of problem gambling, and by the absence of any provision in New Hampshire for the identification and mitigation of problem gambling.

284-B:1, III. By virtue of New Hampshire's unique location, natural resources, and development, tourism is a critically important and valuable asset in the continued viability of the state and to the strength of its communities and can be supported and enhanced by an appropriately regulated gaming sector.

284-B:1, IV. New Hampshire has a current and continuing interest in promoting economic recovery, small business development, tax relief and job creation, and construction and operation of a gaming location in southeastern New Hampshire, regulated by the state in accordance with best practices, can assist in the promotion of those interests.

284-B:1, V. New Hampshire has an interest in ensuring the financial stability and operational integrity of gaming operations in the state.

284-B:1, VI. New Hampshire has an interest in limiting the proliferation of commercial gaming by controlling the number of gaming sites in New Hampshire and choosing gaming location sites based on potential for job growth and revenue generation, access to appropriate transportation, suitability for tourism, local resources, and development opportunities.

284-B:1, VII. Restricting the issuance of a gaming license to a major entertainment complex is designed to assure that gaming pursuant to the provisions of this chapter is always offered and maintained as an integral element of a major hospitality facility rather than as an industry unto itself as gaming has become in some jurisdictions.

284-B:1, VIII. An integral and essential element of the success of a large-scale commercial gaming operation is public confidence and trust in the credibility and integrity of the regulatory process applicable to casino operations. To further such public confidence and trust, the regulatory provisions of this chapter are designed to extend strict regulation to all persons, locations, practices and associations related to the operation of a licensed gaming location and all providers of goods and services to a gaming licensee. In addition, comprehensive regulatory and law enforcement supervision attendant thereto is further designed to contribute to the public confidence and trust in the efficacy and integrity of the regulatory process. To the same end, upgraded regulation of existing gaming, appropriate to the scale of such gaming, will be necessary.

284-B:1, IX. Legalized commercial gaming in New Hampshire can attain, maintain and retain integrity, public confidence and trust, and remain compatible with the general public interest, only under a system of control and regulation that, so far as practicable, ensures the exclusion from participation therein of a person with a known criminal record, habits or associations and the exclusion or removal from any positions of authority or responsibility within the gaming operation of a person known to be so deficient in business probity, ability or experience, either generally or with specific reference to gaming, as to create or enhance the dangers of unsound, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of business and financial arrangements incident thereto.

284-B:1, X. Since the public has a vital interest in any commercial gaming operation in New Hampshire sanctioned by passage of this chapter, participation in gaming operations as a gaming licensee, principal licensee, key employee licensee, gaming employee registrant, non-gaming employee permittee, gaming vendor licensee, non-gaming vendor registrant or any other authorization under this chapter shall be deemed a revocable privilege conditioned upon the proper and continued qualification of the licensee, registrant or permittee and on the proper and continuing discharge of the affirmative responsibility of each to provide regulatory and investigatory authorities established by this chapter with any assistance and information necessary to assure that the policies declared by this chapter are achieved. Consistent with this policy, it is the intent of this chapter to preclude the creation of any property or vested right in any license, registration, permit or other authorization issued pursuant to this chapter.

284-B:1, XI. The authorization of expanded gaming in New Hampshire, and the continued authorization of charitable and other gaming in New Hampshire, requires the state to take steps to increase awareness of compulsive and problem gambling and to develop and implement effective strategies for prevention, assessment and treatment of these behaviors.

284-B:1, XII. Research indicates that for some individuals compulsive and problem gambling and drug and alcohol addiction are related. Therefore, the general court intends to establish an approach to compulsive and problem gambling prevention, assessment and treatment that will ensure the provision of adequate resources to identify, assess and treat both compulsive and problem gambling and drug and alcohol addiction.

D. State Operation of Expanded Gaming Facilities vs. Private Management with Government Oversight

HB 678, a 2013 bill “relative to games of chance and establishing a gaming oversight authority and video lottery gaming” that was tabled early in the 2013 legislative session, called for up to six, regionally-based, state-operated gaming facilities with up to 600 slot machines in each of 4 regions and up to 1200 slot machines in each of the other 2 regions. This state-operated proposal is examined in the *WhiteSand Report* at pages 54-57 & 73, and is rejected from a best practice standpoint by WhiteSand as follows at page 136.

It is advisable to let professionals do what they do best. Private operators will be more motivated to generate higher revenues due to various incentives (including shareholders)

and market conditions. Government review and oversight is necessary and expected of the private operators. Even in jurisdictions where gaming facilities are state owned (Canadian provinces), private management is retained.

Rhode Island is a unique situation. The state oversees all aspects of gambling. The State Lottery Division (within the Rhode Island Department of Revenue) manages and controls all aspects of gaming. Entities referred to as "retailers" own and operate the facilities where gaming is conducted. For Twin River, the current owners are 140 investors including banks, insurance companies and investment firms. Our belief is that this is not a model to emulate.

Maryland attempted to operate with a model where the state owned the slot machines and quickly realized the impracticality of this model and backed off in subsequent years.

The Authority agrees with WhiteSand that this is “not a model to emulate” and recommends rejection of legislative proposals for expanded gaming that are dependent on state operation.

E. Fiscal and Capacity Decisions

1. General Considerations – Reasonable Fiscal and Capacity Choices to Enable Casino Gaming Are Included in the Authority’s *Expanded Gaming Bill*. The Authority has been directed by the General Court to develop legislative recommendations that will “enable” casino gaming. To accomplish this, fiscal and capacity choices must be made that derive from expert analysis of the unique circumstances in which New Hampshire currently finds itself at this point in time. Tax rates, license fees, regulatory burdens and fees, number of gaming locations, number of gaming positions, size of any mandatory capital investment, and allocations for regulatory and impact costs must be determined in this context. The fiscal and capacity choices that are made must enable viability for a responsible gaming operator and they must at the same time enable development of a casino operation that will maximize the state’s gain.

Based on the advice and information provided by WhiteSand, and based on other information received and considered by the Authority through its hearings and deliberations, proposed fiscal and capacity choices are included in the Authority’s *Expanded Gaming Bill* for each of the major fiscal and capacity decisions that must be made to enable expansion into large-scale casino gaming. ***The Authority believes that each of the fiscal and capacity choices included in its Expanded Gaming Bill are well-founded and reasonable. The Authority also believes that each of these choices should be closely scrutinized by the Legislature, and recognizes that this process of legislative review may lead to adjusted choices that are equally or perhaps even more appropriate as a basis for expansion into casino gaming.***³

³ For example, the *WhiteSand Report*, at pages 133-134, identifies an option for a second, smaller casino in northern NH, as follows: “Given this information, and to provide economic stimulus to the northern part of the state, the Authority may also want to consider adding a “Resort License”, for a reduced number of VLT/Slot machines (250 – 500) and table games (40 - 50) to be able to offer casino gaming as an additional amenity to an existing resort. Again, market supply and demand will determine the interest of casino developers to determine the value and proper configuration. This may help differentiate New Hampshire resorts from other New England and Canadian ski/golf resorts.” This option is not needed to “enable” expanded casino gaming in New Hampshire, and has therefore not been included in the Authority’s *Expanded Gaming Bill*. But it is an option that the Legislature may choose to

2. General Considerations – Revenue Allocations for Regulatory and Impact Costs Are Included, But All Other Casino Revenue Allocations Are Not Included in the Authority’s Expanded Gaming Bill. Legislative proposals for expanded gaming typically include revenue allocation formulas and directives, providing variously for transportation, education, regional economic development or other high priority needs. Allocation choices of this kind, however, go beyond the Authority’s mandate since they depend on policy choices unrelated to best practice regulation of casino gaming. *A fundamental principle of best practice casino regulation, however, is that casino-generated revenues must cover as a first priority all regulatory costs and gaming impact programming needs that are reasonably consequent to the development and operation of casino gaming. Guided by this principle, the Authority’s Expanded Gaming Bill allocates revenue to cover certain state, municipal, research and problem gaming costs.*

3. General Considerations – WhiteSand Analysis. The following overview from the *WhiteSand Report*, at page 85, regarding WhiteSand’s consideration of the fiscal and capacity parameters contained in SB 152-O, provides essential background for the making of these core fiscal and capacity choices:

By direction of NH RSA 284-A, the New Hampshire Gaming Regulatory Oversight Authority has directed WhiteSand to prepare a report identifying the strengths and weaknesses of the 2013 NH legislative proposals as compared to the best and most relevant components of the regulatory provisions in the other comparator states. This part of the report addresses fiscal and capacity requirements.

WhiteSand has approached this particular task using a formal methodology to determine market demand. We reviewed the specific demographics and other attributes of the gaming jurisdiction to be evaluated. This included, but was not limited to, population, income levels, age distribution, nearby competition and gaming tax rates.

We evaluated these factors within ranges of 30, 60 and 90 miles of the proposed gaming facility general location. In order to provide a consistent measurement of demographics within a specific region we use distance radii from the region. Using distance rather than driving time eliminates fluctuations due to drive times, day of week, unpredictable events (e.g., accidents, weather, etc.) and other factors. Distance radii are translatable to drive times in most scenarios and provide more consistent results due to the reduction of unpredictability.

Using this information, we then identified a “Competitive Set” for the proposed gaming facility - other gaming properties to be compared based on similar demographics and characteristics. While the properties identified in the competitive set usually do not provide an exact match, they present enough similarities to evaluate market demand and estimate key financial statistics.

pursue, just as the Legislature may arrive at an entirely different assessment of the state’s interests and reject casino gaming altogether.

Using this data, we analyzed the gaming environment of the competitor set to understand the financial performance of the casinos as well as nearby competition to understand the impact or potential impact on gaming in New Hampshire. Based on that analysis, we developed our market demand study and financial information for the proposed gaming facility. In this report, we describe the current market analysis of gaming in New Hampshire and key financial information regarding tax rates and potential performance of a gaming facility.

Based on the results of our analysis, although we vary to some degree on specific details and offer suggestions to adjust some areas of the Omnibus Bill, there are no financially related aspects of the bill that are outside of what we have seen in the industry.

4. One Casino in Southeastern NH; 2000 up to 5000 Slot Machines; 75 up to 150 Table Games; \$450,000,000 Minimum Capital Investment; Annual Capital Reinvestment at 3.5% of Revenues; \$80,000,000 Gaming License Fee; \$1,500,000 Gaming License Renewal Fee After 10 Years.

a. The fiscal and capacity legislative choices identified above are specified in the following sections of the Authority's Expanded Gaming Bill:

284-B:14, I. The commission shall award and issue *a single gaming license for one gaming location in southeastern New Hampshire.*

284-B:14, II. The gaming license awarded and issued by the commission shall authorize a gaming licensee to operate *a maximum of 150 table games and a maximum of 5,000 slot machines* at its gaming location, provided that the licensee's application must include plans for operation of *at least 75 table games and 2,000 slot machines.*

284-B:18, III Upon an award of a gaming license, the commission shall collect *an initial license fee in the amount of \$80,000,000* which shall be paid to the state treasurer within 30 days of the award of the license.

284-B:18, IV. A gaming license shall expire 10 years from the date of issuance of the gaming license subject to renewal pursuant to this chapter. ... (b) The commission shall collect a *license renewal fee in the amount of \$1,500,000* which shall be paid to the state treasurer by the gaming licensee within 30 days of the award of the renewal of the license.

284-B:23, I. A gaming licensee shall be required as a condition of licensure to make the *capital investment* in the gaming location proposed in its gaming license application, which amount shall *meet or exceed \$450,000,000 exclusive of land acquisition, off-site improvement costs, and license fees.*

284-B:23, II. The full capital investment required under this section shall be made *within 5 years* of the date of issuance of a gaming license.

284-B:23, III. In addition to the requirements of paragraph I of this section, *beginning with the sixth year after receiving a gaming license, a gaming licensee shall make, or cause*

to be made, on an annual basis, capital expenditures to its gaming location in a minimum aggregate amount equal to 3.5 per cent of the total gross gaming revenues derived from the gaming location, provided, however, that a gaming licensee may make capital expenditures in an amount less than 3.5 per cent per year as part of a multi-year capital expenditure plan approved by the commission.

284-B:23, IV. *A gaming licensee who fails to obtain an operation certificate under 284-B:32 within 1 year after the date specified in the construction timeline submitted with its application and incorporated by the commission as a condition on the gaming license:*

(a) *May, if the commission finds good cause for such action after a hearing in accordance with this chapter, be subject to suspension or revocation of the gaming license.*

(b) *May, if found by the commission after a hearing in accordance with this chapter to have acted in bad faith in its application, be assessed a fine by the commission of up to \$50,000,000.*

284-B:23, V. *Concurrent with the payment of the license fee required pursuant to 284-B:18, III, the gaming licensee shall be required to deposit 10 per cent of the total capital investment proposed in its application into an interest-bearing account under the control of the commission. Monies received from the gaming licensee shall be held in escrow until the final stage of construction, as detailed in the timeline of construction submitted with the licensee's application and incorporated by the commission as a condition on the gaming license, at which time the deposit, together with any accrued interest, shall be returned to the applicant to be applied for the final stage of construction. Should the licensee be unable or unwilling to complete the gaming location in accordance with the timeline, the deposit shall be forfeited to the state in accordance with the conditions on the license related to the construction timeline. The commission may, in lieu of a cash deposit, accept a performance or deposit bond in an amount equivalent to 10 per cent of the total capital investment proposed in the application provided it determines that the bond would be a functional equivalent of the deposit and timely ensure the intended forfeiture to the state.*

b. The fiscal and capacity legislative proposals identified above are based on the Authority's review and acceptance of the following WhiteSand analysis and recommendations as set out in the WhiteSand Report:

(i) Southeastern NH Location (see pages 86-87 of WhiteSand Report)

The realization of casino gaming in Massachusetts is obviously a major factor behind the current casino legislation in New Hampshire (see Appendix A). As gaming has proliferated over the last several years, states have grown tired of seeing their resident's dollars go across borders to be spent in neighboring jurisdictions.

Given the 100 mile drive to Springfield and approximately a forty minute to hour drive to Boston, Southern New Hampshire is a geographic area that could both leverage the local New Hampshire population given the high population density of Manchester and its surrounding communities, as well as generate significant revenues drawing from residents of Northern Massachusetts and other parts of New England. Many Massachusetts consumers

will drive to New Hampshire for gaming, dining and entertainment options rather than face the traffic issues of traveling into Boston. The lack of a sales tax already attracts shoppers from Massachusetts in significant numbers to the malls and shopping outlets in southern New Hampshire. Liquor prices in New Hampshire are also attractive to Massachusetts residents....

The target market for a casino in New Hampshire is, in addition to the population of New Hampshire, the population reaching into Northern Massachusetts toward Boston and Springfield.

Manchester is the largest city in New Hampshire, the tenth largest city in New England, and the largest city in northern New England, an area comprising the states of Maine, New Hampshire, and Vermont. It is in Hillsborough County along the banks of the Merrimack River, which divides the city into eastern and western sections. Manchester is near the northern end of the Northeast megalopolis. As of the 2010 census, the city had a population of 109,565. The Manchester-Nashua metropolitan area, with a population of 402,922, is home to nearly one-third of the population of New Hampshire. The so-called Golden Triangle between Manchester, Nashua and Salem is home to 608,494, nearly half of New Hampshire's total population. ...

Given the proximity to the bulk of the population of New Hampshire and the access to the more populated Northern Massachusetts and access to Route 3 and Interstates 93 and 95, Southeastern New Hampshire would be the preferred location for a casino-resort. Again, applicants would determine the exact locations.

(ii) Minimum Capital Investment, Ramping-Up Over 5 Years (see pages 131-133 of WhiteSand Report)

Based on our projections for the facility and the activity in Massachusetts, a minimum initial investment of \$200M - \$300M for the casino is recommended (or required) with a total investment of at least \$450M within five years of issuance of the license.

The requirement in SB 152-O that “the applicant agree to make a minimum capital investment in the project in an amount determined by the commission; provided that such capital investment shall be not less than \$425,000,000 and exclusive of land acquisition, off-site improvement costs and license fees” follows similar practices by previous state jurisdictions to ensure potential project proposals meet a predefined benchmark in terms of the quality of the facilities they propose to develop in the marketplace.

As we see in Massachusetts, the proposals are exceeding expectations with some proposals committing over \$1 billion for the projects. We also expect proposals that exceed this minimum threshold in New Hampshire, but this is a sufficient starting point and will allow the market to dictate the final configuration of the resort as well as discourage less serious bidders, or bidders who might, lacking this provision, propose minimal facilities beyond merely the casino itself in order to minimize the total capital investment.

As non-gaming amenities continue to make up a greater share of casino-resort revenue, allowing potential developers to add and refine amenities over a five year period provides flexibility to the developer to add or expand the appropriate facilities as the market matures versus requiring a total investment at the outset which may lead to a suboptimal mix in the facilities programming. It is unlikely a developer will open with anywhere close to 5,000 slots or 150 table games (prior facilities in similar markets to that of Southern New Hampshire have typically opened with around 2,500 slot machines and between 75-100 table games). A developer in NH is therefore more likely to open with 2,000 to 2,500 slots and between 75-100 table games with the option depending on market conditions to expand to 5,000 slots and 150 table games. The hotel facilities would most likely also expand at some point in the future as the casino and resort facilities induce additional demand for room nights and meeting and event space, and the economy continues to recover and expand. ...

The goal of this effort is to offer a comprehensive gaming resort, able to attract local market patrons, gaming and non-gaming tourists as well as groups, both leisure and business.

Entertainment options improve the offerings casino facilities include in their programming, and can help attract non-gaming patrons to the property, generating additional revenues from a market not typically served by a pure casino property type.

The state does not have to specify the precise characteristics of the proposed development in the regulations. Given the minimum investment requirement, the operator will configure the mix of amenities most likely to complement and enhance the property based on their brand history and industry expertise. Much time and effort will be devoted to the overall property program including: casino size and game mix, hotel room count and room mix, food and beverage offerings, retail sizing and mix, meeting and event space sizing, entertainment venue feasibility and sizing, spa and fitness sizing and configuration, and many other areas.

Based on the potential bidders, multiple models exist for the operation of the various departments within the resort. Food and beverage space could be operated internally by the resort operator or leased to outside, established restaurant brands, or a mix of both. A similar practice could also hold for the retail space where some retail is managed by the resort operator and some leased to well-known retailers. Ultimately the market will likely dictate which model and mix works best for the proposed facility. Operators, historically will evaluate the community and partner with local business wherever possible and bring in outside brands when appropriate.

Likewise, the size, quality and components of a hotel offering will take some study. The market supply and demand will ultimately determine the number and level of amenities (spa, fitness center, etc.). We expect the selected operator/developer will design and construct a facility which will be easily expanded upon over time as revenues contribute to this expansion.

(iii) Capital Reinvestment (see page 126 of *WhiteSand Report*)

We also believe it should be mandated that 3 - 4% annually is to be allocated to required reinvestment back into the property (not necessarily annually, but put into a fund to be used only for reinvestment to ensure the quality of the property remains consistent) and some percentage of the tax rate (1%) could be earmarked to provide support for local and state compulsive or problem gaming programs. Furthermore, the 3 – 4% required reinvestment while appearing as an additional “condition” from a public perception standpoint is typically the rate at which experienced operators will set aside funds on an annual basis for normal capital improvements and property maintenance.

5. Tax at 35% on Gross Slot Revenue; Tax at 18% on Gross Table Game Revenue; Annual \$600 Fee per Slot Machine; Other Fees; Revenue Distributions to Cover Certain Costs.

a. The tax and fee legislative choices identified above are specified in the following sections of the Authority’s Expanded Gaming Bill:

284-B:48, I. A gaming licensee shall remit to the state treasurer *a tax of 35 percent of gross slot machine revenue and 18% of gross table game revenue* in a manner and time frame as provided for by this chapter.

284-B:48, IV. A gaming licensee shall remit to the commission a fee in the amount of *\$600 per year per slot machine* which fee shall be deposited in a public health trust fund administered by the commission dedicated to addressing problems associated with compulsive gambling, including, but not limited to, gambling prevention and addiction services, substance abuse services, educational campaigns to mitigate the potential addictive nature of gambling, research, and any studies and evaluations consistent with this chapter.

284-B:18, I. The commission shall collect in conjunction with a gaming license application a nonrefundable gaming license application fee in the amount of *\$400,000 to cover the cost of processing and reviewing an application*. If the cost of processing and reviewing the application exceeds the amount of the initial application fee, the commission may impose upon the applicant an additional fee sufficient to cover any documented shortfall which the applicant shall pay to the commission within 15 days of the date of an invoice. The amount deposited shall be available to the state in the fiscal year received.

284-B:18, II. The commission shall collect in conjunction with a gaming license application, and transmit to the attorney general, a nonrefundable gaming license investigation fee in the amount of *\$100,000 to cover the cost of the background investigation*. If the cost of the background investigation exceeds the amount of the initial application fee, the commission may impose upon the applicant an additional fee sufficient to cover any documented shortfall which the applicant shall pay to the commission, for transmission to the attorney general, within 15 days of the date of an invoice. The amount deposited shall be available to the state in the fiscal year received.

284-B:9, III (bb). [The commission shall adopt regulations prescribing] *the adoption of an annual fee schedule specifying application, investigation, renewal and other fees relating to any license, registration, permit or authorization except a gaming license awarded, issued or accepted pursuant to this chapter, which fee schedule shall ensure that all applicants are directly or indirectly responsible for all costs associated with processing an application including the criminal history record check and any background investigation required under this chapter.*

b. The tax and fee legislative proposals identified above are based on the Authority's review and acceptance of the following WhiteSand analysis and recommendations as set out in the *WhiteSand Report*:

(i) Tax Rates (See Pages 126-128 of *WhiteSand Report*)

The tax rate must be competitive with Massachusetts as the New Hampshire facility may be competing with gaming facilities in Boston/Everett and to a lesser extent with Springfield/Palmer and perhaps Leominster.

Given the 25% stated gaming tax rate in Massachusetts, New Hampshire must be competitive in establishing a gaming tax rate in order to attract required investment, higher quality operators, reinvestment in assets and patrons alike and to be able to offer the array of quality amenities to attract out of state visitors as well as to appeal to the local market. However, 25% is not a true indication of their "effective" rate to any operator.

In reality, Massachusetts does include broad assessments as part of SB 152, including a \$600 annual fee per slot machine and "any remaining costs of the commission necessary to maintain regulatory control over gaming establishments that are not covered by ... any other designated sources of funding shall be assessed annually on gaming licensees under this chapter", and in addition assesses a \$5 million fee "for the costs of service and public health programs dedicated to addressing problems associated with compulsive gambling or other addiction services, based on number of gaming commission." Taken together, this adds about another 2.5% "tax" on gaming revenue which needs to be considered in any comparison with New Hampshire gaming tax rates.

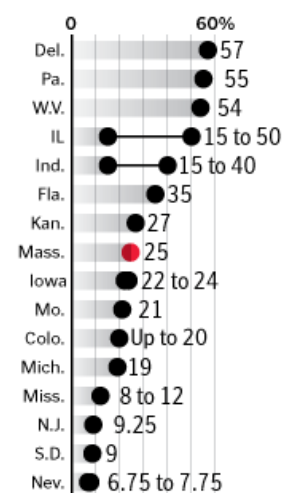
Another aspect to be considered in a tax discussion is the community host agreements which are in the process of or have been negotiated with communities which are to contain casino developments in Massachusetts. As has been noted on the Gaming Commission website, agreements for payments to these "host" communities will far exceed property taxes and other local taxes which may ordinarily be incurred. These results need to be determined, considered and factored into any "effective rate" in Massachusetts.

In New Hampshire, a tax rate higher than 33% – 35%% could directly impact the number of jobs created, total long term investment in the facility and affect the overall

economic impact of the related operations in a negative manner. The [SB 152-O] tax rate on table games (14% of daily gross table game revenue) does acknowledge the additional labor expense due to the more manual operations and related supervision of table games. Also, the casino “hold” percentage is less on most table games. ...

CASINO TAX RATES

The state tax rate that some full-service casinos pay.



SOURCE: American Gaming Association

State	Slot Tax Rate	Table Tax Rate
DE	56.5%	33.9%
CT	25%	
MA	25%	25%
NY	47%	
PA	55%	12%
RI	71%	18%
NV	6.75%	6.75%
<u>NJ</u>	<u>8%</u>	<u>8%</u>
Average	25.0%	18.0%

Considerations

- Lower rates are more relevant to jurisdictions in which the capacity of the market is permitted to float with operator investment.
- Higher rates limit total investment available which, in turn, tends to limit the nature of the facility to more "gambling oriented" than full amenity oriented.
- Number of operators not typically capped at lower levels, allowing market and risk of operators to "maximize" both market development and overall return to the people of the State.
- Higher rates place operators at competitive disadvantage in attracting and retaining customers, especially when geographic factors have to be overcome.

Projections – Based on comparator set data, and the population, income levels and other factors, we have developed the following models:

Assumptions					
2013	Property Name	# Slots	W/U/D	# Tables	W/U/D
	Comp 1 Sands Bethlehem	3,018	\$ 264.00	166	\$ 2,734.00
	Comp 2 Twin Rivers	4,700	\$ 276.00	66	\$ 2,813.00
	Comp 3 The Rivers	2,885	\$ 269.00	115	\$ 1,649.00
NH Main Property	Unknown	2,500	\$ 280.00	85	\$ 2,400.00

(ii) Application and License Fee: In its meetings with the Authority, WhiteSand repeatedly affirmed the principle that the costs of gaming regulation should be assessed back on the subjects of the regulation. With respect to the gaming license application fee, WhiteSand specifically recommended at page 126 as follows: *“To make sure the integrity and viability of [gaming license] applicants, thorough background checks and investigation are required. Given our review and research, a \$400,000 to \$500,000 application fee to fund the due diligence and background investigations would be a fair cost to the bidders and sufficient to cover the associated costs of performing these checks. This amount will also help to identify only serious bidders who can afford this initial cost.”* With respect to the Gaming License Fee, WhiteSand simply notes that in New Hampshire’s primary competitor state, *casino bidders must pay an \$85 million licensing fee. The slots-only casino requires a \$25 million licensing fee.* And with regard to the renewal of the gaming license, WhiteSand observes that *“Massachusetts has elected a generous 15 year license cycle at least in part to justify its high cost of entry. Other states like New Jersey, for example, have moved toward a non-expiring license subject to a full update akin to a license renewal every five years. ... Under all the facts and circumstances a ten year term for a gaming license with a full renewal application and \$1,500,000 renewal fee is firm middle ground on this issue. Likewise, five year term for all other licenses and registrations is within the norm. The Authority is advised to consider following SB 152-O.*

c. Consistent with the principles stated above, the Authority has included the following revenue distributions in the draft *Expanded Gaming Bill*:

284- B:18, III (a) Upon payment of a license fee by a gaming licensee under this chapter, the commission shall fully reimburse funds received:

(1) by the commission from activities authorized by RSA 284, RSA 287-D, RSA 287-E, and RSA 287-F in proportion to the expenses of the commission borne by each such activity in the administration of this chapter as authorized by RSA 284-B:3, VII (a), prior to the payment of the license fee.

(2) by the gaming regulatory oversight authority from activities authorized by RSA 284 and RSA 287-F in proportion to the expenses of the authority borne by each such activity in the administration of RSA 284-A.

284- B:18, III (b) The general court shall determine the distribution of the balance of the initial license fee revenue after the reimbursements required by RSA 284-B:18, III(a) of this chapter, provided that distributions shall include the following:

(1) Distributions to host or near-by municipalities deemed sufficient by the general court to offset costs incurred by such municipalities attributable to a gaming location's placement.

(2) Revenue in an amount determined by the general court shall be paid to the state treasurer and credited to the commissioner of the department of health and human services to support programs established by RSA 172 to fund baseline research into the prevalence of problem gambling in New Hampshire prior to the expansion of gaming as authorized by this chapter, to identify and assess the treatment needs of individuals with

compulsive and problem gambling disorders, and examine the connections between gambling disorders and drug and alcohol addiction disorders.

(3) Distributions to the state treasurer for transfer to the commission, attorney general and department of safety in amounts equal to any costs of regulatory control over a gaming licensee that are not covered by any other designated source of funding in this chapter.

284- B:48, I. (a) Upon payment of taxes on gross slot machine revenue and gross table game revenue by a gaming licensee under this chapter, the commission shall:

(1) reimburse funds received by the commission from activities authorized by RSA 284, RSA 287-D, RSA 287-E, and RSA 287-F in proportion to the expenses of the commission borne by each such activity in the administration of this chapter as authorized by RSA 284-B:3, VII (a), prior to the payment of the license fee.

(2) reimburse funds received by the gaming regulatory oversight authority from activities authorized by RSA 284 and RSA 287-F in proportion to the expenses of the authority borne by each such activity in the administration of RSA 284-A.

(3) charge to and pay out of the tax payments received the compensation of the commissioners, expenses of the commissioners, compensation of assistants and other necessary expenses of the commission, of the office of the commission chair, and of the division of gaming control, including suitable furniture, equipment, supplies and office expenses, provided that the commission shall submit an operating budget based on accounting units or other budgetary units required by the general court and shall submit its budget in the same format and at the same time as other state agencies, provided, however, the commission is authorized to transfer funds between line items within and among any budgetary unit.

284- B:48, II. The general court shall determine the distribution of the balance of tax payments on gross slot machine revenue or gross table game revenue remitted by a gaming licensee that remains after provision for the distributions and charges provided for by paragraph 284-B:48, I, *provided that distributions shall include the following:*

(a) *Distributions to host or near-by municipalities in an amount deemed sufficient by the general court to offset costs incurred by such municipalities attributable to a gaming location's placement.*

(b) *One percent of gross slot machine revenue shall be paid to the state treasurer and credited to the commissioner of the department of health and human services to support programs established by RSA 172 to identify, assess and treat both compulsive and problem gambling and the related disorders of drug and alcohol addiction.*

(c) *Distributions to the state treasurer for transfer to the commission, attorney general and department of safety and local law enforcement in amounts equal to any costs of regulatory control over a gaming licensee that are not covered by any other designated source of funding in this chapter.*

284-B:48, IV. A gaming licensee shall remit to the commission a fee in the amount of \$600 per year per slot machine *which fee shall be deposited in a public health trust fund administered by the commission dedicated to addressing problems associated with compulsive gambling* including, but not limited to, gambling prevention and addiction

services, substance abuse services, educational campaigns to mitigate the potential addictive nature of gambling, research, and any studies and evaluations consistent with this chapter.

F. Unified Agency Structure for Expanded Gaming: A new Gaming Commission

If the legislature chooses to expand into large-scale casino gaming, the Authority recommends that the expansion be accompanied by fundamental agency reform. Specifically, the Authority's *Expanded Gaming Bill* establishes the New Hampshire Gaming Commission with full responsibility for all gaming activities in the state.

With expansion, there will be a significant overlap of lottery commission expertise in information technology, gaming machines and networks and procurement systems with the expertise that will be required for effective casino regulation. Also with expansion, there will be significant overlap of racing and charitable gaming licensing functions and expertise in table game technology, rules and oversight requirements with the responsibilities required for the regulation of large-scale casino-based table games and slot machines. Consistency of regulatory and operational standards and practices, as well as the need to achieve the most effective and efficient use of limited regulatory resources in a relatively small state, dictate movement to a unified agency model.

At the same time, the unique needs of each of the three gaming sectors – the lottery, racing and charitable gaming, and casino-based gaming – require that the unified agency model have within it three separate divisions, one for each sector. And for both the lottery and the racing and charitable gaming sectors, retention of their respective commissions to perform discrete delegated functions will ensure that specialized expertise within each of these commissions will continue to be brought to bear on special issues unique to each sector.

These features, including a provision for a continuing advisory role for the gaming regulatory oversight authority (see separate discussion below in this *Authority Report*), are spelled out in the following provisions of the Authority's proposed *Expanded Gaming Bill*:

284-B:3, I. There shall be and hereby is created a New Hampshire gaming commission. The gaming commission shall be an executive branch agency entitled to defense and indemnity under RSA 99-D. It shall consist of five members who shall be appointed and may be removed for cause by the governor with the advice and consent of the council.

(a) One member of the commission shall be appointed for one year, one for two years, one for three years, and one for four years, and upon the expiration of their terms of office their successors shall be appointed for a term of four years. The fifth member of the commission, who shall be appointed as chair of the commission by the governor with the advice and consent of the council, shall be appointed for four years and may be reappointed thereafter.

(b) At least one member of the commission shall have a background in accounting or finance.

(c) At least one member of the commission shall have a background in law enforcement or criminal or regulatory prosecution.

(d) Any vacancy on the commission shall be filled by appointment for the unexpired term. The chair shall serve in that capacity throughout the term of appointment and until a successor shall be appointed. Prior to appointment to the commission, an individual shall be subject to a background investigation with his or her suitability determined in accordance with the same standards for good character, honesty, integrity and financial stability applied to a key employee of a gaming licensee under this chapter.

284-B:3, II. The commission shall have responsibility for the administration and enforcement of the New Hampshire state lottery in accordance with the provisions of RSA 284:21-a through RSA 284:21-v, for racing and charitable gaming in accordance with the provisions of RSA 284, RSA 287-D and RSA 287-E, for redemption slot machines and redemption poker machines in a family entertainment center under RSA 647:2 and for the administration and enforcement of gaming in New Hampshire in accordance with the provisions of this chapter.

(a) The commission shall assume the powers, rights, duties, and responsibilities granted to the state lottery commission under RSA 284, and any reference to the state lottery commission in RSA 284 or any other statutory cites, including without limitation the reference in RSA 287-F:5, except for the references in the provisions of RSA 284:21-a through RSA 284:21-d regarding the creation and membership of the state lottery commission and except as the context may otherwise require, shall be deemed to refer to the commission, provided that the commission may delegate to the state lottery commission such powers, rights, duties, and responsibilities as it deems in the best interest of the state lottery, provided further that the commission shall not so delegate its power to issue rules, nor its power to appoint the lottery executive director, and provided further that the commission may discontinue or adjust the terms of such delegation at any time.

(b) The commission shall assume the powers, rights, duties, and responsibilities granted to the state racing and charitable gaming commission under RSA 284, RSA 287-D and RSA 287-E, and any reference to the state racing and charitable gaming commission in RSA 284, RSA 287-D and RSA 287-E or any other statutory cites, except for the references in the provisions of RSA 284:6-a, I regarding the creation and membership of the racing and charitable gaming commission and except as the context may otherwise require, shall be deemed to refer to the commission, provided that the commission may delegate to the state racing and charitable gaming commission such powers, rights, duties, and responsibilities as it deems in the best interest of racing and charitable gaming, provided further that the commission shall not so delegate its power to issue rules, nor its power to appoint the racing and charitable gaming executive director, nor its power to license a primary gaming operator or gaming operator employer and provided further that the commission may discontinue or adjust the terms of such delegation at any time.

(c) The commission shall be granted all powers, rights, duties and responsibilities necessary to authorize, limit and regulate the operation of redemption slot machines and redemption poker machines in family entertainment centers under RSA 647:2 provided that the commission may delegate such powers, rights, duties, and responsibilities as it deems in the best interest of the state, provided further that the commission shall not so delegate its power to issue rules, and provided further that the commission may discontinue or adjust the terms of such delegation at any time.

(d) The commission shall be advised in the exercise of its powers and rights and in the performance of its duties and responsibilities by the gaming regulatory oversight authority in accordance with the provisions of RSA 284-A.

284-B:3, III. Three of the members of the commission shall constitute a quorum to do business. It shall be the duty of a secretary to the commission appointed by the chair to keep a record of all proceedings of the commission and to preserve all books, documents, and records addressed to its care. Commission members shall be part-time except that the commission chair shall be full-time and shall be the chief administrative and enforcement officer of the commission. The office of the chair and the commission shall be staffed with such legal, financial and technical experts as are required to fulfill the purposes of this chapter.

Additional best-practice provisions related to agency structure are set out in the *Bill* in proposed RSA 284-B:3 through RSA 284-B:5, defining the ethical and related rules that apply to commissioners, setting out the powers of the new Gaming Commission, and establishing and defining the new Gaming Control, Lottery and Racing & Charitable Gaming Divisions.

G.Option of Central or Local Computer System

The commission considered, but then rejected after deliberation, a provision that would have mandated the Gaming Commission to establish a central monitor and control system. Such a system would not be casino-based but would instead be acquired and operated by the Commission. It would be connected to and communicate with the slot machines at the casino for purposes of information retrieval, retrieval of slot machine win and loss determinations, and programs to activate and disable slot machines.

During its deliberations on this question, WhiteSand advised that alternative casino-based systems were available with the capacity to provide information and control equivalent to that provided by a central system. WhiteSand further advised that such a casino-based system might prove to be more cost effective given the likely limited scope of New Hampshire's expanded gaming system. Based on this information, the Authority decided to leave to the Commission the task of identifying the best and most cost effective system.

H.Gaming Regulatory Oversight Authority: Advisory to Expanded Gaming

To provide a continuing check on the exercise by the Gaming Commission of its powers, rights, duties and responsibilities relative to expanded gaming, the Authority recommends amendment and reenactment of the Authority's enabling statute, RSA 284-B. In its ongoing role, the Authority will function in a strictly advisory capacity. Its membership will be reduced from 9 members to 7, excluding agency representatives from the gaming sector. Here is the proposed new Authority statute, as set out in section 2 of the Authority's proposed *Expanded Gaming Bill*:

284-A:1 There is hereby established a gaming regulatory oversight authority to ensure integrity and public confidence in gaming regulation and to oversee and assess the regulation of gaming activities authorized pursuant to New Hampshire law, to advise the gaming

commission established by RSA 284-B on all matters pertaining to the exercise of the gaming commission's powers and rights and the performance of the gaming commission's duties and responsibilities, and to report at least annually to the general court with its findings and recommendations regarding the appropriate regulation of gambling in New Hampshire. The authority shall consist of the following members:

- I. The attorney general, or designee.
- II. The commissioner of the department of safety, or designee.
- III. One member of the senate, appointed by the president of the senate.
- IV. One member of the house of representatives, appointed by the speaker of the house of representatives.
- V. One member who has relevant experience, appointed by the governor.
- VI. Two public members appointed by the governor one of whom shall be appointed to serve as the chair of the authority.

284-A:2 Functions and Duties of the Authority.

I. The authority shall evaluate whether the current and proposed regulations, policies and practices for legal gaming in the state are adequate to operate in a manner that protects the public interest and allows the regulation of gaming to be conducted in an effective and efficient manner, advise the gaming commission at regular quarterly or special meetings of its findings and recommendations, and report its findings and recommendations annually to the general court.

II. Meetings shall be called by the chair. All meetings of the authority shall be open to the public and subject to RSA 91-A.

III. With regard to meetings, minutes, and records of the authority:

(a) The authority shall notice all proceedings and shall make and keep a record of all proceedings held at public meetings of the authority. A verbatim record of those proceedings shall be prepared by the authority. A copy of the record shall be made available to any person upon request and payment of the costs of preparing the copy.

(b) The authority shall maintain such other files and records as the authority determines is necessary.

(c) All records, information, or data maintained or kept by the authority shall be maintained or kept at the office of the gaming commission.

IV. The balance of unexpended funds remaining in the allocation by the lottery commission in 2013 of \$250,000 to the authority shall continue to be available to the authority until the close of fiscal year 2015. Notwithstanding any provision of law to the contrary, for fiscal years 2014 and 2015, the authority may expend funds remaining in this allocation as needed to support its activities including, but not limited to, the hiring of staff and the retention of experts in the area of the authority's oversight activities. In fiscal years 2014 and 2015, the gaming commission may expend the remaining balance of said \$250,000 in funds not otherwise appropriated to support the authority's activities. The authority may expend such funds without the approval of the governor and executive council.

V. The gaming commission and all agencies and commissions subject to the authority of the gaming commission shall cooperate with the authority and shall provide data and information to the authority upon request. The authority shall be administratively

attached to, but not under the control of, the gaming commission pursuant to RSA 21-G:10.

I. Rule-Making for Expanded Gaming

Authorization and specific requirements for Gaming Commission rules are set out in proposed RSA 284-B:9. The Authority recognizes that rulemaking within the time frame required for the Joint Legislative Committee on Administrative Rules (JLCAR) process would cause considerable delay to the licensing and operational rulemaking process. SB 152-O addressed this concern by proposing the use of interim rules under RSA 541-A:19. However, interim rules may only remain in effect for a maximum of 180 days, which may not prove to be an adequate amount of time for the process.

The Authority considered several options, including a two-tiered system more closely resembling the one used in SB 152-O, but decided for purposes of clarity and simplicity to recommend the two year temporary rulemaking process set out below. The specificity of the substantive rulemaking requirements in proposed RSA 284-B:9, coupled with the specific procedure for adoption of temporary rules with an enhanced public comment period, establishes a robust rulemaking procedure which will promote the needed speed, flexibility and accountability of regulation. In sum, the Authority is proposing a special system enabling adoption within a 2-year window of temporary regulations that would remain in effect for no more than 2 years. The special system is provided for in the Authority's *Expanded Gaming Bill*, as follows:

284-B:9, III. In order to facilitate the prompt implementation of this chapter, the commission may adopt temporary regulations, not subject to RSA 541-A, for a period of two years from the effective date of this chapter. A temporary regulation adopted in accordance with this exception shall expire no later than two years following its effective date.

284-B:9, IV. Adoption by the commission of a temporary regulation pursuant to paragraph III of this section shall require the commission to perform the following:

(a) Publish notice of the proposed temporary regulation in a newspaper of daily statewide circulation and on the commission's website.

(b) Disclose in the notice required pursuant to subparagraph (a):

- (1) The name and address of the commission;
- (2) A citation to the statutory authority for the proposed temporary regulation;
- (3) The rule number, title and text of the proposed regulation;
- (4) A concise summary explaining the effect of the proposed temporary regulation;

(5) The name, address, and telephone number of an individual at the commission able to answer questions about the proposed temporary regulation;

(6) The date, time and place of the public hearing on the proposed temporary regulation, which shall be no less than 14 days from the date of the published notice of the proposed temporary regulation; and

(7) A statement that written public comment shall be accepted by the commission for a period of 14 days after the public hearing.

(c) A public hearing shall be held no less than 14 days after the publication of notice.

(d) The commission shall accept written public comment for a period of 14 days after the close of the public hearing.

(e) The commission may act on the proposed temporary regulation no less than 3 days after the close of the comment period provided for in subparagraph (d).

284-B:9, V. In no event may a request for applications under 284-B:17 occur prior to adoption of temporary licensing regulations.

284-B:9, VI. In no event may a license, registration or permit, including a gaming license, be issued prior to the adoption of, at a minimum, temporary licensing and operating regulations.

J. Checks and Balances

Every effort has been made in the Authority's *Expanded Gaming Bill* to provide for a meaningful system of checks and balances designed to ensure proper exercise by the Gaming Commission of its responsibilities and to protect against improper influence by the gaming industry. As noted above, the Gaming Regulatory Oversight Authority will be reconstituted to function in an independent advisory role. Gaming licensee applicants and gaming licensees will be afforded a direct right of appeal to the New Hampshire Supreme Court. Others who may wish to challenge Gaming Commission actions will be granted a right of appeal to the New Hampshire Superior Court. The Attorney General and the Division of State Police will have central, independent well-defined roles with regard to background investigations and criminal law enforcement. The Legislative Budget Assistant's independent auditing authority under existing state law will be explicitly preserved. New criminal provisions will be added to prevent and punish improper actions by gaming employees. A new code of ethics will apply to the Gaming Commission. New limits on political contributions will be enforced.

K. Problem Gambling

Any proposal to expand gaming in New Hampshire must respond to the issue of problem gambling and the widespread perception that the advent of slot machines will bring with it significant social costs arising from the problem gambling phenomenon.

The Authority has explored this issue as best it could in the limited time available. Reports from the Lottery Commission, the Racing and Charitable Gaming Commission, the Attorney General, and the Division of State Police have made clear that there is at present no programming available in New Hampshire either to treat or prevent problem gambling. Kathy Scanlan, former director of the Massachusetts Council on Compulsive Gambling, told the Authority of the many calls to the Massachusetts hotline from New Hampshire residents seeking treatment for problem gambling habits. She also reported that the largest category of calls in Massachusetts came from scratch ticket and other Lottery users and stated that, in her experience, it was not necessarily the type of gambling, such as slots, that leads to problem gaming. Ed Talbot, Board President of the newly formed New Hampshire Council on Problem Gambling, reported that there are, to his knowledge, four gambler anonymous groups currently meeting in New Hampshire.

Mark Vander Linden, the new Director of Research and Problem Gambling for the Massachusetts Gaming Commission, briefed the Authority on the comprehensive regulatory approach to problem gambling that just now is being implemented in Massachusetts, starting with a research project designed to identify the baseline gambling and problem gambling reality in Massachusetts prior to the opening of new casinos. He used the term “slim pickings” to describe the very limited availability of quality research regarding problem gaming.

In response to Mr. Vander Linden’s invitation, two members of the Authority, Representatives Weber and Ames, attended on October 28 an all-day Forum on Responsible Gaming sponsored by the Massachusetts Gaming Commission.⁴⁴ Evident in this Forum was a general consensus on the paucity of available quality research, on the need for more effective prevention and treatment programs, on the importance of taking a “public health” approach to the prevention of problem gambling, on the high levels of co-morbidity among people with a gambling disorder (it was said that few compulsive gamblers have *just* a gambling disorder), on the need for universal acceptance of a single definition for terms such as “problem gambling,” “disordered gambling” and “compulsive gambling,” and, perhaps ironically, on the opportunity that expanded casino gambling presents to concentrate resources and better address a perceived social problem that has for too long been hidden out of sight.

It is in this context that the Authority has developed the following robust problem gambling provisions in its proposed *Expanded Gaming Bill*:

1. Declaration of Public Policy

284-B:1, II. The integrity of gaming in New Hampshire is impaired by deficiencies in the current regulation of charitable gaming exacerbated by limited agency resources, by the perception that there is wide-spread illegal gambling in New Hampshire, by insufficient information regarding the scope and nature in New Hampshire of problem gambling, and by the absence of any provision in New Hampshire for the identification and mitigation of problem gambling. ...

284-B:1, XI. The authorization of expanded gaming in New Hampshire, and the continued authorization of charitable and other gaming in New Hampshire, requires the state to take steps to increase awareness of compulsive and problem gambling and to develop and implement effective strategies for prevention, assessment and treatment of these behaviors.

284-B:1, XII. Research indicates that for some individuals compulsive and problem gambling and drug and alcohol addiction are related. Therefore, the general court intends to establish an approach to compulsive and problem gambling prevention, assessment and

⁴⁴ Speakers included: Marlene Warner, Executive Director, Massachusetts Council on Compulsive Gambling; Dr. Howard Shaffer, Associate Professor, Harvard Medical School and Director of the Division on Addiction; David Stewart, legal and regulatory advisor to the American Gaming Association, Keith Whyte, Executive Director, National Council on Problem Gambling; Dr. Natasha Dow Schull, author of *Addiction by Design: Machine Gaming in Las Vegas* (2012); Dr. Rachel Volberg, prominent researcher on gambling and problem gambling since 1985; Dr. Debi LaPlante, Director of Research and Academic Affairs at the Cambridge Health Alliance Division on Addiction; and Dr. Robert Ladouceur, prominent Canadian researcher and clinician in the field of problem gambling.

treatment that will ensure the provision of adequate resources to identify, assess and treat both compulsive and problem gambling and drug and alcohol addiction.

2. Director of Problem Gambling and Research

284-B:5, III. The [gaming] commission shall employ a director of problem gambling and research, who shall have, in the commission's judgment, relevant experience in the field of problem gambling and research or in related fields, who shall report to the chair and shall advise the chair on all matters relating to problem gambling and research, provided that the commission may authorize customary marketing research required by the lottery to be conducted independently of the director of problem gambling and research.

3. Rules on Problem Gambling, Public Health and Related Research

284-B:9, I [The gaming commission shall adopt]

(ee) Rules applicable to advertising by or on behalf of a gaming applicant or gaming licensee and the commission's role in the approval thereto designed to: (1) Ensure that advertising is in no way deceptive, that it contains messages identifying sources for help and assistance with problem gambling, and that it promotes the purposes of this chapter;

(nn) Rules providing for the monitoring and enforcement of representations and commitments made by a gaming licensee in its license application, including, but not limited to, representations and commitments made pursuant to 284-B:17, IV(f) regarding potential negative consequences associated with gambling and the operation of its gambling location.

(oo) Rules providing for the implementation of problem gambling, public health and related research strategies consistent with applicable provisions of this chapter.

4. Gaming Applicant's Commitment Regarding Problem Gambling and Related Issues

284-B:17, IV(f) [The gaming license applicant shall submit for consideration by the gaming commission] documentation supporting the applicant's recognition of its obligation to identify, address and minimize any potential negative consequences associated with gambling and the operation of its gaming location including, but not limited to, the following:

(1) Demonstration of an adequately funded commitment to combat problem gambling to include efforts directed at prevention, intervention, treatment and research;

(2) Provision of rent free on-site space for an independent substance abuse and mental health counseling service to be selected by the commission;

(3) Commitment to the prominent display throughout the gaming location of information on the signs of problem gambling and how to access assistance;

(4) Commitment to the full and compliant implementation of the exclusion and self-exclusion rules promulgated by the commission;

(5) Maintenance of a smoke-free environment within enclosed places within the gaming location consistent with RSA 155:66;

(6) Commitment to the full and compliant implementation of other problem gambling and public health strategies deemed appropriate by the commission;

(7) Commitment to the full and compliant implementation of procedures and controls precluding the offer of alcoholic beverages free of charge for consumption on its gaming floor⁵; and

(8) Commitment to the operation of a gaming location that provides or facilitates the availability of childcare services to employees but does not provide for or facilitate such services for the convenience of players.

5. Funds from License Fee for Baseline Research

284-B:18, III Upon an award of a gaming license, the commission shall collect an initial license fee in the amount of \$80,000,000 which shall be paid to the state treasurer within 30 days of the award of the license. (a) The general court shall determine the distribution of the initial license fee revenue, provided that distributions shall include the following:...

(2) Revenue in an amount determined by the general court shall be paid to the state treasurer and credited to the commissioner of the department of health and human services to support programs established by RSA 172 to fund baseline research into the prevalence of problem gambling in New Hampshire prior to the expansion of gaming as authorized by this chapter, to identify and assess the treatment needs of individuals with compulsive and problem gambling disorders, and examine the connections between gambling disorders and drug and alcohol addiction disorders.

6. Funds from Annual Tax and Fee Payments for Problem Gaming and Related Programs

284-B:48, II:...(b) One percent of gross slot machine revenue shall be paid to the state treasurer and credited to the commissioner of the department of health and human services to support programs established by RSA 172 to identify, assess and treat both compulsive and problem gambling and the related disorders of drug and alcohol addiction....

284-B:48, IV. A gaming licensee shall remit to the commission a fee in the amount of \$600 per year per slot machine which fee shall be deposited in a public health trust fund administered by the commission dedicated to addressing problems associated with compulsive gambling including, but not limited to, gambling prevention and addiction services, substance abuse services, educational campaigns to mitigate the potential addictive nature of gambling, research, and any studies and evaluations consistent with this chapter.

⁵ Section 284-B:36 of the proposed *Expanded Gaming Bill* explicitly permits the serving and consumption of complimentary (free) drinks in areas of a casino that are off the gaming floor. Free drinks would be allowed in these other locations notwithstanding the provisions of current law, RSA 179:44, I, that would otherwise prohibit the serving of such free drinks. On a 6-3 vote, the Authority rejected a proposal to remove this free drink authorization. A principal argument on the majority side was that a blanket prohibition would place a New Hampshire casino at a competitive disadvantage. The minority deemed it important to comply with long-standing state policy on this issue and expressed concern that the casino's ability to offer free drinks would give it an unfair advantage over other places serving drinks in the area.

7. Self-Exclusion Program

284-B:42, I. The commission shall establish and administer a list of individuals voluntarily electing to self-exclude themselves from a gaming location operated pursuant to this chapter. The commission may further adopt provisions expanding the availability of self-exclusion to games of chance conducted pursuant to RSA 287-D.

284-B:42, II. The commission shall adopt regulations consistent with this chapter relating to the self-exclusion of an individual from a gaming location including, but not limited to, multiple time periods for self-exclusion, administration of, and removal from, the self-exclusion list, notice to gaming licensees of placement of an individual on the self-exclusion list and forfeiture of winnings, and recovery of losses.

284-B:42, III. An individual may place his or her name on the self-exclusion list by filing a request with the commission acknowledging that they are a problem gambler and by agreeing that, during any period of voluntary exclusion, that they shall not collect any winnings or recover any losses resulting from any gaming activity at a gaming location operated pursuant to this chapter.

284-B:42, IV. No gaming license shall:

(a) Authorize and conduct marketing and promotional communications or otherwise target or incite to gamble an individual electing to place their name on the commission's self-exclusion list.

(b) Provide complimentary services, check cashing privileges, incentive program membership or other benefits to a person electing to place their name on the commission's self-exclusion list.

284-B:42, V. The commission may revoke, limit, condition, suspend or fine a gaming licensee if the licensee knowingly or recklessly fails to exclude or eject from its gaming location an individual electing to place their name on the commission's self-exclusion list.

284-B:42, VI. Notwithstanding any other general or special law to the contrary, the Commission's list of individuals electing to place their name on the commission's self-exclusion list shall not be open to public inspection.

284-B:42, VII. A gaming licensee receiving notice from the commission that an individual has elected to place their name on the commission's self-exclusion list shall not be precluded from disclosing the identity of the self-excluding individual to affiliated gaming operations in other jurisdictions for the limited purpose of assisting in the proper administration of responsible gaming programs operated by affiliated gaming operations.

284-B:42, VIII. An individual who is prohibited from gaming in a gaming location under this section shall not collect any winnings or recover losses arising as a result of prohibited gaming winnings and any winnings shall be forfeited to the commission and deposited into the general fund.

8. Posting at Gaming Location

284-B:44, II. A gaming licensee shall prominently post on its gaming floor information regarding the minimum theoretical payout percentage required by paragraph I of this section and such other disclosures to slot machine players as the commission shall deem in the best interest of slot machine players.

284-B:44, III. The commission shall require that each slot machine prominently display to slot machine players an award schedule disclosing the value of each winning combination.

284-B:45, IV. A gaming licensee shall prominently post on its gaming floor such information regarding the conduct of table game play, the pay-off of a winning wager, an approximation of the odds of winning for each wager, and such other disclosures to the player as the commission shall require.

9. Data and Research

284B:51, I. Notwithstanding any law to the contrary, a gaming licensee shall supply the commission with customer tracking data collected or generated by loyalty programs, player tracking software, player card systems, cashless wagering systems or any other player incentive related information system. The commission shall contract with an experienced nonprofit research entity to develop an anonymizing system that automatically removes from the data:

- (a) Personal identifying information, including player name, street address, bank or credit information and the last 4 digits of a player's zip code, in compliance with section 2 of chapter 93H of the General Laws.

- (b) Slot machine identifying information, including game name and manufacturer, in protection of corporate intellectual property.

- (c) The data shall retain information on player characteristics including, but not limited to, gender, age and region of residence, player behavior including, where available on the systems referenced in this paragraph, frequency of play, length of play, speed of play, denomination of play, amounts wagered and, if applicable, number of lines or hands played and characteristics of games played including, but not limited to, reel configuration, return-to-player and volatility index.

284-B:51, II. The commission shall convey the anonymized data to a research facility which shall make the data available to qualified researchers for the purposes of:

- (a) Conducting analyses that improve understanding of how gambling addiction develops and progresses.

- (b) Developing evidence-based harm minimization strategies.

- (c) Developing evidence-based systems to monitor, detect and intervene in high-risk gambling.

284-B:51, III. The commission shall request reports on researcher analyses of the behavioral data, which could provide informed recommendations to the general court relative to more effective regulation of gambling operations. The commission may directly initiate

studies assessing the effectiveness of any specific measures, programs or interventions which the state has imposed on its gaming licensees and which might be illuminated through the behavioral data in question.

284-B:51, IV. The commission, with the advice of the gaming regulatory oversight authority, shall develop an annual research agenda in order to understand the social and economic effects of expanding gaming in New Hampshire and to obtain scientific information relative to the neuroscience, psychology, sociology, epidemiology and etiology of gambling. The commissioner of health and human services, with the advice and consent of the commission, may expend funds received pursuant to RSA 284-B:48 of this chapter to implement the objectives of the research agenda. The commission shall annually make scientifically-based recommendations which reflect the results of this research to the general court. The commission shall consider any such recommendations, research and findings in all decisions related to enhancing responsible gaming and mitigating problem gambling.

10. Health and Human Services

Amendments to RSA 172 are proposed in outside sections of the Authority's *Expanded Gaming Bill*, providing the Commissioner of Health and Human Services new authority and responsibilities relating to problem gambling.

L. Local Control

Under the proposed *Expanded Gaming Bill*, a casino may not be developed without local acceptance and compliance with local building and zoning law:

284-B:15, I. Any municipality desiring to permit a gaming location may adopt the provisions of RSA 284-B to allow the operation of slot machines and table games at a specific location in the following manner ...:

(d) If a majority of those voting on the question vote "Yes," RSA 284-B shall apply in such town or city and the operation of slot machines and table games shall be permitted at a specific location within such town, city, or unincorporated place in accordance with RSA 284-B. If a majority of those voting on the question vote "No" the question may be voted on at a subsequent time in accordance with this section provided, however, the town may consider the question at no more than one special meeting and the annual town meeting in the same calendar year after a "No" vote. A city or town subject to paragraph I,(b) of this section may consider the question at no more than one special election and a regular municipal or biennial election in the same calendar year after a "No" vote.

(e) The wording of the question shall be substantially as follows: "Shall we adopt the provisions of RSA 284-B allowing the operation of slot machines and table games at [insert the name of the proposed gaming location] located within the [insert name of town, city, or unincorporated place]"?

284-B:15, II. When a gaming applicant requests a town, city, or unincorporated place to act under paragraph I, the gaming applicant shall pay all costs associated with carrying out the actions under this section.

284-B:9, I(kk) [The commission shall adopt] “rules requiring a gaming applicant, gaming licensee and principal licensee to comply with state and local building codes, local zoning ordinances and bylaws, and any other applicable land use regulations.”

M. Charitable Gaming – Not in Same Location as Casino

With respect to the SB 152-O proposal that charitable gaming be co-located within an expanded gaming casino, the Authority has adopted the following recommendations from the WhiteSand Gaming Report:

*Given the deficiencies cited herein in New Hampshire's existing regulatory approach to charitable gaming, especially as it relates to the suitability assessment applied to game operators in games of chance, to physically and operationally integrate games of chance into a commercial gaming sector was and remains ill advised. The cornerstone of a successful commercial gaming sector is public confidence. By its terms SB 152-O would have forced a gaming licensee's well regulated table game operation to co-exist in a single gaming location with, and to in fact compete with, a table game operation that appears physically consistent but which was, in reality, radically different operationally and subjected to materially less robust licensing and operating regulations. As any distinctions would be largely lost on the gaming public, the licensee's reputation, and the public's overall confidence in its gaming product, would have been exposed to the vagaries of an operation within its boundaries largely outside its control. Given the realities of gaming regulation nationwide, a gaming licensee's relationships with the charitable organizations and game operators in New Hampshire would have been subjected to scrutiny by regulating authorities in other jurisdictions with all of the costs and complications related thereto. **While there may be opportunities for a well regulated commercial gaming sector to support or supplement the efforts of the charitable gaming sector, in its report to the Legislature the Authority is strenuously advised to recommend against any physical linkage between table games and charitable gaming.***

Section 3: Existing Gaming

On December 6, 2013, this Section 2 of the Authority's Final Report, the accompanying proposed *Existing Gaming Bill*, and the recommendations contained in these documents regarding existing gaming were approved and adopted by a 9-0 Authority vote. The Authority's vote authorized the Authority Chair to submit these documents to the Governor and Legislature pursuant to the provisions of the Authority's enabling statute.

A. No Change in Agency Structure if Gaming is Not Expanded

Responsibility for gaming activities in New Hampshire is currently divided between the Lottery Commission and the Racing and Charitable Gaming Commission. The Authority believes that this division of responsibility makes sense for currently authorized gaming activities as long as there is no expansion into large-scale casino-based gaming. The Lottery Commission is currently focused on Lottery operations and is doing, by all accounts, an excellent job of maximizing

revenues for the benefit of the state education trust fund. And serious deficiencies in charitable gaming that have been identified by the Authority can be addressed by the Racing and Charitable Gaming Commission with the help of some reform legislation and more appropriate funding levels, but without further agency reform or restructuring. Gains in efficiency and policy consistency that might theoretically derive from a single agency system are uncertain. More likely, such a consolidation would simply add an unneeded bureaucratic level of regulation with potentially negative effects on both gaming sectors.

B.Reforms to Charitable Gaming: New Study Commission

The *WhiteSand Report* identifies significant deficiencies in the existing charitable gaming regulatory system. These deficiencies, which are reported at pages 9 through 19 of the *WhiteSand Report*, derive both from insufficient resourcing of the primary regulating agency, the Racing and Charitable Gaming Commission, and from gaps and ambiguities in the existing regulatory requirements. Addressing the under-resourcing will require budgetary action by the Legislature. To address the regulatory gaps and ambiguities, the Authority recommends adoption of its draft *Bill Relative to Existing Gaming in New Hampshire*. (The draft bill is posted on the Authority's web site at <http://www.nh.gov/groa/index.htm>.)

Illustrative of the under-resourcing of the state's charitable gaming regulatory system are the following examples:

At its September 26, 2013 meeting, the New Hampshire Gaming Regulatory Oversight Commission received testimony from the director of the Rhode Island Lottery who stated that they employed 32 people for the sole purpose of monitoring and supervising card games. Rhode Island has only 66 table games in one facility. In contrast, in New Hampshire, Racing & Charitable Gaming Commission Director Paul Kelley reports that his agency "employs 3 inspectors to oversee 259 table games in 12 facilities. In addition to games of chance, these same 3 inspectors are responsible for overseeing about 300 Bingo and Lucky 7 licensees that conduct thousands of games annually. These three positions also assist in pari-mutuel issues at the licensed pari-mutuel facilities."

Director Kelley also reports that the Racing and Charitable Gaming Commission "has three auditor positions authorized and filled. Due to the modest salary (labor grade 23) the turnover rate has been tremendous. In the last 36 months we have had 4 auditors leave for better salary. It takes RCGC about a year to train a new auditor on how to audit this very technical and specialized field with all its nuances and terms. Of our current three auditors, two of the three have been here less than a year, one has been here four years. The 'senior' auditor spends much of her time training the other two to get them up to speed. This of course means we spend much less time auditing and much more time training. With Massachusetts coming online soon with gambling, I think NH will be the training ground for Massachusetts auditors."

Director Kelley further reports that "our data-bases are all PC based on a slow server, and need more robust software and hardware upgrades to handle our agency more efficiently. We need the resources to build the software to allow all our licensees to submit data

electronically via the web. We spend an inordinate amount of time keying in financial statements. This manual system is labor intensive, and error prone due to the voluminous data that needs to be keyed in.”

With regard to the *WhiteSand Report*’s identified regulatory gaps and deficiencies, the Authority’s *Existing Gaming Bill* incorporates the following recommendations:

1. Racing and Charitable Gaming Commission should be authorized to approve Games of Chance House Rules

WhiteSand Recommendation #1: *In practice, a substantial amount of money is wagered at these tables, notwithstanding a \$4.00 single maximum wager and other per game limits, and the gaming public at these tables is entitled to the same level of integrity and consumer protection required of a commercial casino operator. These games should be conducted in accordance with procedures and controls that emulate, or are directly derived from, best practices in commercial gaming. Although Part Pari 1209 and 1210 generally address the bulk of the operational considerations they are not sufficiently detailed to require licensees to implement and adhere to best practices. As a result, any standardization of practices or regulatory enforcement is frustrated. The Authority should consider incorporating into its report to the Legislature a recommendation that the Commission undertake expedited rulemaking to amplify the following sections of its regulations.*

a. Require house rules to be subject to Commission approval in order to ensure that the games are conducted in a manner that complies with standard practice for that game, for example, the handling of an insurance side bet in blackjack;

Authority Response: Although WhiteSand recommended that House Rules be addressed as part of a more extensive regulatory reform, the Authority believes that this is a requirement that should be enacted as part of the governing statute. Accordingly, in its proposed *Existing Gaming Bill*, the Authority provides for Racing and Charitable Gaming Commission approval of House Rules at Page 15, Line 18.

b. Impose minimum internal control standards over all money handling functions including counting and cashiering, specific storage and inventory controls over all forms of gaming equipment;

c. Impose minimum staffing and supervision requirements that correlate to the number of tables in operation; and

d. Add a requirement that a game operator employer staff a security function. This function is essential to overall public safety.

Authority Response: Consideration of these more complex rules changes requires more time and input from the regulated community and the Legislature. These questions should also be considered as part of the charitable gaming study discussed below.

2. Background Investigations for Certain Licensees

WhiteSand Recommendation #2: *For a multiplicity of reasons including the size of this sector, the revenue generated by it and its current level of operational oversight, in its report to the Legislature the Authority should consider recommending that RSA 287-D be revised to mirror racing and require the Attorney General to conduct a background investigation on, at*

a minimum, a gaming operation employer or primary gaming operator and to expressly provide that the Commission may not issue a license to a person or entity the Attorney General concludes is not fit to be associated with games of chance in New Hampshire.

WhiteSand Recommendation #10: *The Authority should consider recommending, at a minimum, that RSA 287-D be revised to impose a registration requirement that includes a criminal history check for a dealer in gaming equipment. In a commercial casino context sale of many of these products triggers the need for a gaming related casino service industry license.*

Authority Response: The Authority agrees and proposes background investigations for certain licensees at Page 5, Line 7; Page 9, Line 24; Page 10, Line 6 and 11.

3. Require Racing and Charitable Gaming Commission Review and Approval of Agreements with Charities

WhiteSand Recommendation #3: *A firm understanding of the duties, responsibilities and liabilities between charitable organizations and game operators is integral to meaningful oversight of games of chance and a comprehensive review of the agreement, and audits and compliance testing related thereto, are essential to ascertaining compliance with the 35% requirement in RSA 287-D:3, VIII (discussed with specificity below). In its report to the Legislature the Authority should consider recommending that RSA 287-D and its regulations be amended to eliminate any inference that the Commission may not review the agreement. It should further consider recommending that the Commission be granted explicit authority to approve the agreement or, in the alternative, that the legislature propose statutory amendments providing significantly more guidance as to the content of these agreements.*

WhiteSand Recommendation #5: *In its report to the Legislature the Authority should consider recommending that the Commission explore the efficacy of a disclosure requirement aimed at ascertaining the level of independence between a gaming operation employer and a selected charitable organization. Given that there are more charities that want to participate in this form of fundraising than there is capacity to participate these relationships are relevant.*

WhiteSand Recommendation #7: *Where gaming operations take place in facilities that are not owned by the licensed operator it is a regulatory best practice to review and approve lease terms to establish that the relationship between the parties does not create an ownership interest triggering a qualification requirement. It is recommended that the Authority consider including in its report to the Legislature a recommendation that the statute be amended to require Commission review and approval of a facility agreement.*

Authority Response: The Authority has provided for Commission approval of agreements between charities and licensees at Page 12, Line 21 – 23 of its proposed Existing Gaming Bill.

4. Ensure Racing and Charitable Gaming Commission Access to All Records Relevant to Games of Chance

WhiteSand Recommendation #4: *While it is uncontroverted that especially for a large organization there are many records that are not relevant to the regulatory process, the*

absence of a definition in RSA 287-D:5, VI that specifies what documents do pertain to games of chance will likely continue to materially frustrate the ability of the Commission to meaningfully perform the compliance testing it is tasked with. In its report to the Legislature the Authority should consider recommending that this provision be revisited with an eye toward better scoping and defining regulatory expectations.

Authority Response: An extensive definition of records that “pertain” to games of chance is included in the Authority’s proposed *Existing Gaming Bill* at Page 21, Line 1 through Page 23, Line 3.

5. Ensure that Charities Receive No Less Than a 35% Share of Revenues

WhiteSand Recommendation #6: *Charitable organizations have little negotiating clout with game operator employers, left unchecked RSA 287-D:3's fee provision completely undercuts the 35 percent requirement. It is consistent with the regulatory approach to prohibit additional fees or to set reasonable limitations on fees (well beyond what is specified in the current regulation) where a game operator is involved in order to protect the spirit and intent of the 35% minimum. The Authority should consider including in its report to the Legislature a recommendation that the fee issue be re-examined.*

WhiteSand Recommendation #11: *RSA 287-D:3, VI is ambiguous at best. It fails to define independent and infers that the rental of equipment is outside of the 35% minimum discussed above. The Authority should consider recommending rulemaking to clarify regulatory expectations with regard to both fees and equipment rentals.*

Authority Response: The Authority’s draft *Existing Gaming Bill* provides new provision to ensure that “under no circumstance shall the charity receive less than 35 percent of the gross revenues from any games of chance minus any prizes paid.” See *Existing Gaming Bill* at Page 18, Line 30 through Page 19, Line 13.

6. Provide for Effective Surveillance

WhiteSand Recommendation #8: *The Authority should recommend reexamination of all three cited provisions along with other aspects of the chapter dealing with frames per second, recording retention, authentication of recordings and related provisions. The need for surveillance coverage, and surveillance minimum staffing, should be scaled to the size of the operation, specifically the number of tables potentially at play and should not be tied to who operates the licensed event or how often that person performs the service. Operators should be required by regulation to employ a scaled minimum staffing plan based on activity levels at its tables. The surveillance function should be independent of all other functions. A person can not simultaneously man a surveillance function and sell gaming chips as was observed on a site visit.*

WhiteSand Recommendation #9: *Stakeholders should be cognizant of the fact that for a table game operation there is likely no substitute control for surveillance other than extra security personnel trained to the satisfaction of the Commission in its rules and procedures as well as the house rules. The Authority should consider recommending rulemaking that provides guidance as to an acceptable substitute for the surveillance requirement.*

Authority Response: Although the Authority agrees with the importance of ensuring effective surveillance, there are questions of scale, effectiveness and regulatory

burden that will need to be explored more fully through Commission rule-making and as part of the charitable gaming study discussed below. At page 15, lines 22 – 28, however the Authority’s draft *Existing Gaming Bill* does remove the provision in current law that would improperly authorize unspecified alternative surveillance methods.

7. Establish a Games for Charity Study Commission

Consistent with recommendations in the *WhiteSand Report*, the Authority recommends establishment of a Games for Charity Study Commission. This is called for at Page 29, Lines 6 through Page 30, Line 11 of the Authority’s proposed *Existing Gaming Bill*. The mandate of this new Study Commission is stated at Page 28, Line 22 as follows:

The games for charity study commission shall undertake a comprehensive analysis of all gaming activities for the benefit of charity in New Hampshire that are currently authorized by RSA 287-D and RSA 287-E to determine the most appropriate system for sustaining ongoing resources to charities from gaming in New Hampshire, including a determination as to whether the continued existence of such currently authorized games of chance for charity is in the best interest of the citizens of New Hampshire, and, if the games for charity study commission finds that such continued existence is not in the best interest of the citizens, identification of an alternative system for providing comparable resources to charities, and, if the games for charity study commission finds that such continued existence if modified is in the best interest of the citizens, identification of legislative changes that would accomplish the necessary modification in the games of chance for charity system.

C. Better Definition of Illegal Gaming with Redemption Slot Machines and Redemption Poker Machines

Consistent with recommendations in the *WhiteSand Report*, the Authority’s proposed *Existing Gaming Bill* removes existing ambiguity in the definition of Redemption Slot Machines and Redemption Poker Machines and assigns new investigation and enforcement responsibilities to the Racing and Charitable Gaming Commission. These provisions are at Page 25, Line 9 through Page 28, Line 2 of the draft *Existing Gaming Bill*.

Appendix A: Text of RSA 284-A, as amended

The N.H. Gaming Regulatory Oversight Authority – Its Statutory Mandate as per

Section 145 of Chapter 144, 2013 Chaptered Laws, Adopted June 28, 2013, effective July 1, 2013
(Changes from prior version of RSA 284-A are highlighted in bold italics).

284-A:1 Gaming Regulatory Oversight Authority Established.

There is hereby established a gaming regulatory oversight authority to insure integrity and public confidence in gaming regulation and to oversee and assess the **current** regulation of gaming activities authorized pursuant to New Hampshire law **and recommend the appropriate regulation of casino gambling in New Hampshire**. The authority shall consist of the following members:

- I. The attorney general.
- II. The commissioner of the department of safety, or designee.
- III. The executive director of the lottery commission, or designee.
- IV. The director of the racing and charitable gaming commission, or designee.
- V. **One member of the senate, appointed by the president of the senate.**
- VI. **One member of the house of representatives, appointed by the speaker of the house of representatives.**
- VII. One member who has relevant experience, appointed by the governor.
- VIII. **Two public members** appointed by the governor **one of whom** shall **be appointed to** serve as the chair of the authority.

284-A:2 Functions and Duties of the Authority.

I. The functions and duties of the authority shall include the following:

- (a) Evaluate whether the current regulations and regulatory bodies for legal gaming in the state are adequate to operate in a manner that protects the public interest and allows the regulation of gaming to be conducted in an effective and efficient manner.
- (b) Design the structure of the oversight agency necessary to regulate all lawful gaming and betting activity in the state, considering whether the state should continue the current divided structure or whether the state should adopt a unified and centralized gaming control authority.
- (c) **Review legislative proposals and recommend comprehensive statutory and regulatory provisions to enable and oversee casino gaming.**
- (d) Identify and draft appropriate laws and regulations for ensuring ongoing and stringent review and enforcement of **current and proposed** gaming operations, including:
 - (1) Appropriate provisions for investigating the qualifications of gaming license applicants;
 - (2) Procedures and criteria for issuing gaming licenses or gaming permits, including appropriate fees;
 - (3) Procedures and criteria for selection of **licensees**;
 - (4) Control of gaming technology and gaming devices; and
 - (5) Procedures for investigating and enforcing violations of any gaming laws or regulations.
 - (6) **Process for sustaining ongoing charitable gaming resources to charities in New Hampshire.**

(e) Identify, review, and propose necessary changes in the policies and practices of the lottery commission and the racing and charitable gaming commission to ensure the independence, integrity, and public accountability of the regulation of gaming in New Hampshire, including insulating the regulators from conflicts of interest.

II. In making its recommendations, the authority shall conduct a thorough review of gaming regulatory structure and regulation in other states, including but not limited to Maine, Connecticut, Delaware, New Jersey, and Nevada.

III. The *first meeting and all meetings thereafter shall be called by the* chair. All meetings of the authority shall be open to the public and subject to RSA 91-A.

IV. With regard to meetings, minutes, and records of the authority:

(a) The authority shall notice all proceedings and shall make and keep a record of all proceedings held at public meetings of the authority. A verbatim record of those proceedings shall be prepared by the authority. A copy of the record shall be made available to any person upon request and payment of the costs of preparing the copy.

(b) The authority shall maintain such other files and records as the authority determines is necessary.

(c) All records, information, or data maintained or kept by the authority shall be maintained or kept at the office of the lottery commission.

V. The lottery commission shall allocate \$250,000 as initial start up funds to the authority in funds not otherwise appropriated. Notwithstanding any provision of law to the contrary, for fiscal year **2014**, the authority may expend the initial allocation as needed to support its activities including, but not limited to, the hiring of staff and the retention of experts in the area of the authority's oversight activities. In fiscal year **2014**, the lottery commission *may expend up to* \$250,000 in funds not otherwise appropriated to support the authority's activities. *The authority may expend such funds without the approval of the governor and executive council.*

VI. The lottery commission, the racing and charitable gaming commission, the liquor commission and other state agencies shall cooperate with the authority and shall provide data and information to the authority upon request. The authority shall be administratively attached to the department of safety pursuant to RSA 21-G:10.

VII. The authority shall submit *draft legislation with supporting regulations and* a report to the general court by December 15, **2013** containing recommendations regarding gaming policy, oversight, and regulation in accordance with the authority's functions and duties as set forth in RSA 284-A:2. Such report shall contain recommendations to the general court for **2014** legislation that would establish *one or more entities* sufficient to regulate *existing or* expanded gaming so that, in the event that the legislature acts to enable the issuance of one or more licenses for expanded gaming facilities, the state will be prepared to regulate these activities in an effective and efficient manner.

Appendix B: *Expanded Gaming Bill* Section Headings

AN ACT relative to *expanded gaming in New Hampshire*.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Chapter: Gaming Regulation. Amend RSA by inserting after chapter 284-A the following new chapter

- 284-B:1 Statement of Purpose
- 284-B:2 Definitions
- 284-B:3 Gaming Commission
- 284-B:4 Divisions of State Lottery, Racing and Charitable Gaming, and Gaming Control
- 284-B:5 General and Specific Powers of the Commission
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- 284-B:16 Gaming License Authorization; Hours of Operation
- 284-B:17 Gaming License Application Requirements
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2 Gaming Regulatory Oversight Authority. RSA 284-A is repealed and reenacted to read as follows:

3 New Sections; Department of Safety; Gaming Enforcement Unit Established.

4 Restriction on Gambling. RSA 284:17-c is repealed and reenacted to read as follows:

5 New Paragraph; Facility License; Cocktail Lounge License. Amend RSA 178:22, by inserting after paragraph V the following new paragraph:

6 New Subparagraph; Authorized Slot Machines and Table Games. Amend RSA 647:2, V by inserting after subparagraph (c) the following new subparagraph:

(d) slot machines and table games authorized pursuant to RSA 284-B.

7 Rehabilitation of Problem Gambling. Amend RSA 172:2-a to read as follows:

8 Rehabilitation of Problem Gambling. Amend RSA 172:8 to read as follows:

9 Problem Gambling Added. Amend RSA 172:8-a to read as follows:

10 Problem Gambling Added. Amend RSA 172:8-b to read as follows:

11 Acceptance of Funds; Treatment of Problem Gamblers. Amend RSA 172:9 to read as follows:

12 New Paragraphs; Gaming Offenses. Amend RSA 674:2 by inserting after paragraph I-b the following new paragraphs:

13 New Subparagraph; Gaming Offenses. Amend RSA 647:2, V by inserting after subparagraph (c) the following new subparagraph:

14 New Paragraph; Gaming Offenses. Amend RSA 647:2 by inserting after paragraph VI the following new paragraph:

15. Issuance of Reports. Amend RSA 20:7 by inserting a reference to the New Hampshire Gaming Commission.

16 Effective Date