

**BEFORE THE
PENNSYLVANIA GAMING CONTROL BOARD**

Establishment of Repayment Schedule :
For Loans From Property Tax :
Relief Reserve Fund Under Section :
1799-E(G) of the 2010 Fiscal Code :

**POSITION STATEMENT OF
PENNSYLVANIA TREASURER ROBERT M. MCCORD**

Pennsylvania Treasurer Robert M. McCord, as a statutorily identified *ex officio*, non-voting member of the Pennsylvania Gaming Control Board and as legal custodian of the Pennsylvania Property Tax Relief Fund, hereby submits this statement as a formal expression of his opinion as to the appropriate resolution of the above captioned matter currently before this Board.

Introduction.

Last year, the Pennsylvania General Assembly amended the Fiscal Code to direct this Board to establish, by the end of the current fiscal year, a schedule for the purpose of restoring funds loaned to the Gaming Board from the Property Tax Relief Reserve Fund for start-up and operating expenses of the Board. *See*, Act 46 of 2010. Significantly, the legislature directed the repayment of the loans to commence when at least eleven slot machine facilities have been issued a license by the Board and have commenced gaming operations. *Id.*

It is the position of Treasurer McCord that no repayment schedule is valid unless it assesses each and every operating gaming facility an annual repayment amount that is in

proportion to each facility's gross terminal revenue as compared to the total statewide gross slot machine terminal revenue for the same period. It would be inconsistent with the legislative directive within the Fiscal Code for any operating gaming facility not to make an annual payment during each year of the loan repayment period – in particular the beginning years. Furthermore, any repayment schedule that provides for smaller payments in the beginning years and larger payments in the final years of the repayment period would adversely impact the income investment opportunity of the Property Tax Relief Fund and thereby deprive Pennsylvania property owners, as beneficiaries of the Fund, of future investment income.

Lastly, it is the strong recommendation of Treasury that the Fiscal Code be amended to begin the repayment period immediately, July 1, 2011 (with ten operating gaming facilities). Waiting until the eleventh facility begins gaming operations risks delaying the repayment of the loan for another fiscal year – representing another year of lost investment opportunity and jeopardizing the viability of the Fund to support future disbursements.

Interest of Treasurer McCord.

As a member of the Gaming Control Board and as the custodian of the Property Tax Relief Reserve Fund, Treasurer McCord's interest in the loan repayment schedule is both unique and substantial. The Treasurer is charged with the custodial care of all Commonwealth funds. 72 P.S. § 301. In particular, the Property Tax Relief Fund is established as a separate account in the State Treasury. Into the Property Tax Relief Reserve Fund the Secretary of the Budget is directed to transfer money from the Property Tax Relief Fund. 53 P.S. § 6926.504. The purpose of the Reserve Fund is to ensure that adequate funds are available to provide property tax relief to property owners each year, without interruption. Only when the Secretary of the Budget

certifies the sufficiency of deposits in the Property Tax Relief Reserve Fund are funds transferred for property tax relief.

All Commonwealth money, including money for property tax relief, is kept under the custody of the Treasurer – a statutorily designated fiduciary of the Commonwealth. 72 P.S. § 302.¹ The Treasurer has the important function of ensuring that Commonwealth funds are placed in safe and sound depositories. 72 P.S. §§ 303 and 505. Furthermore, the Treasurer is obligated to ensure that all Commonwealth money is secured by adequate collateral. *Id.* Thus, under the legislative scheme of this Commonwealth, it is the Treasurer, who is required to keep and protect the moneys of the Commonwealth in general, and funds for Property Tax Relief in particular. As custodian, the Treasurer is responsible for the immediate charge and control of ownership, protection and preservation of the funds. *See*, Black’s Law Dictionary, at 347 (5th Ed. 1971); *Bloomberg v. Board of Governors of the Federal Reserve System*, 649 F.Supp. 262, 273 (U.S. Dist. Ct. SDNY 2009) (custodian is one that “guards and protects or maintains.”).

In addition to his role as custodian, the Treasurer also possesses the exclusive authority to invest money accumulated beyond the ordinary needs of the various funds of the Commonwealth in short-term and long-term obligation, subject to the “Prudent Investor” standard. 72 P.S. § 301.1. Though directed to protect the principal, the Treasurer is also charged with maximizing investment returns on behalf of the beneficiaries of the various funds – including the Property Tax Relief Reserve Fund. Since 2009, the Reserve Fund has experienced an annual rate-of-return average of 2.11%. Accordingly, the Treasurer has a substantial interest in ensuring the timely repayment of funds to the Property Tax Relief Reserve Fund in order to provide

¹ The Treasurer is statutorily charged with the custodianship, management and investment of 20 separate portfolios that are comprised of hundreds of different public funds. The total amount of these funds exceeded \$90 billion as of June 30, 2010, allocated between short term cash investments and longer term securities based investments. The Treasurer’s investment responsibilities comprise over 245,000 transactions per year.

maximum investment opportunity for the benefit of Pennsylvania Property owners and future viability of the Fund.

While the Gaming Control Board is directed by the Fiscal Code to establish a schedule for repayment of the loan to the Reserve Fund, the Board does not statutorily represent the interests of the Reserve Fund or its beneficiaries. For example, the materials prepared by the Board reflect the “pros” and “cons” from the perspective of the industry and its impact on business operations. No mention is made as to the investment opportunity impact on the Reserve Fund or its impact on the ability of the Budget Secretary to certify availability of sufficient funds for future property tax relief disbursements. While industry considerations are appropriate from the Board’s perspective, these considerations are not reflective of the financial stability and growth of the Reserve Fund and its support for continued property tax relief payments from the Property Tax Relief Fund.²

Legislative History of Loan Repayment.

Any repayment schedule that fails to include assessments to each operating facility each year during the loan repayment period, falls short of the clear legislative mandate in Section 1799-E of the Fiscal Code (Act 46 of 2010). *See*, Letter of Pennsylvania Senator Jane Earl, Chairwoman of the Senate Committee on Community, Economic and Recreational Development (April 27, 2011) (“This provision anticipates that each operating licensed gaming entity commence repayment at the same time.”)

² It is worth noting that the loans authorized by the General Assembly for the Board’s operations are not subject to interest payments. As such, the Reserve Fund’s lost investment opportunity is compounded by the fact that repayment of the fund will not compensate the Fund for lost dollar time-value.

Since the passage of the Pennsylvania Race Horse Development and Gaming Act, the General Assembly had ample opportunity to impose a funding mechanism that relied exclusively upon those licensed gaming companies that had begun slot machine operations – Category 1 facilities.³ In addition, once the loans from the General Fund, Gaming Fund or the Property Tax Relief Reserve Fund were incurred, the legislature could have required their immediate repayment by these same facilities. Significantly, neither of these options was chosen by the General Assembly. Recognizing the disparate impact that would result by exclusively placing the financial burden of paying for the administrative oversight of gaming on those venues that began operations first, the legislature has consistently adopted a policy that calls for the repayment of the loans for the operation of the Board to occur when a critical mass of gaming facilities begun slot machine operations – thereby ensuring the financial burden was shared by as many facilities as practically possible, thus lessening each facility’s loan costs.

The original version of the Gaming Act (Act 71 of 2004) which established the Gaming Control Board appropriated initial funds for the Department of Revenue, Pennsylvania State Police and the Gaming Board. The appropriations totaled \$36.1 million for start-up and operating costs. Of that amount, only \$7.5 million was allocated to the Gaming Board for fiscal years July 1, 2004 to June 30, 2006 in order to implement and administer the Act. 4 Pa.C.S.A. § 1901. This appropriation was characterized as a loan from the General Fund, its repayment was to be made quarterly “commencing on the date the slot machines began operation.” *Id.*

³ It should be noted that all Category 1 licenses were issued and gaming operations begun at these facilities before any other category of licenses. This was not the result of a common business strategy of the applicants, but a reflection of the fact that the Gaming Act was drafted in a manner that provided the opportunity to apply for a gaming license to each person that held a horse racing license (equal number of available licenses to those who could qualify to apply for the license), thereby eliminating a competitive application process and thus dramatically minimizing the likelihood that appeals from disappointed applicants could delay financing and the start of gaming operations for the Category 1 facilities, as compared to Category 2 and 3 licensees.

Unfortunately, the amount appropriated to the Board was found to be grossly inadequate to cover start-up expenses associated with the housing, equipping, training, and staffing of a new public agency. In addition, two years following the passage of Act 71, it became apparent to policy makers that slot machine licenses would not begin gaming operations in a predictable frame – thereby creating the likelihood that the repayment of the loan from the General Fund would be assessed to only a limited few slot machine operations, in this case Category 1 licensed facilities.⁴

Faced with this possibility, the General Assembly amended the Gaming Act in 2006 to, among other things, direct the Board to “defer assessing slot machine licenses for payments to the State Gaming Fund” until “all licensed gaming entities have commenced the operation of slot machines.” (Emphasis added) 4 Pa.C.S.A. § 1901. Act 135 of 2006 explicitly stated the intention of the legislature to ensure that the cost of the loan repayment was shared by as many slot machine operations as practically possible, in this case all fourteen venues. It has been the consistent objective of the legislature to avoid any loan repayment scenario that fails to spread the cost of the loan among as many operating gaming venues as possible, not simply those Category 1 venues that were able to begin gaming operations quickly.⁵ A repayment schedule that places a disproportionate burden on those Category 1 facilities that began operations first is

⁴ The legislature would eventually authorize three additional loans to the Gaming Board, each credited against the Property Tax Relief Reserve Fund. *See*, Act of 2007, 72 P.S. § 1720-G; Act 53 of 2008, 72 P.S. § 1720-I; and, Act 50 of 2009, 72 P.S. § 172-K.

⁵ It is important to note that as a matter of public policy, both the General Assembly and the Gaming Board, adopted rules and regulations that favored, encouraged and facilitated the timely start of gaming operations in an effort to begin raising revenue for local property tax relief without undue delay. *See, e.g.*, 4 Pa.C.S.A. § 1203 (granting the Board the authority to adopt “temporary” regulations in order to “facilitate the prompt implementation” of gaming.); 4 Pa.C.S.A. § 1204 (grant to the Pennsylvania Supreme Court exclusive jurisdiction to consider licensing appeals from the Board, bypassing the intermediate appellate court, Commonwealth Court.); 4 Pa.C.S.A. § 1322 (grant the Department of Revenue the authority to bypass the Procurement Code requirements for the initial acquisition of the central control computer in order to “facilitate the prompt implementation” of gaming.) In other words, the timely commencement of gaming operations was viewed as benefiting the objectives of the Commonwealth to provide a “significant new source of revenue” for local property tax relief. 4 Pa.C.S.A. §1102(3).

contrary to the consistent goal of the General Assembly to encourage the timely allocation of property tax relief to Pennsylvanians.

As a result of delays, financial challenges and changing development plans, by 2007 it became apparent to most policy makers that all fourteen gaming licenses would not be operational in the near future. As a consequence, the legislature again amended the Fiscal Code to reduce the number of operating facilities that would trigger the loan repayment from fourteen to eleven. *See*, Act of July 17, 2007 (P.L. 141, No. 42) (Section 1720-G provides that the Gaming Board shall assess slot machine licenses for loan repayment “at such time as at least 11 slot machine licenses have been issued” and have “commenced operations.”). As before, when faced with the option of requiring the immediate repayment of the loan or deferring the repayment until such time as a critical mass of venues were operational, the General Assembly favored the policy of spreading the loan repayment burden on as many gaming venues as possible.

Since 2007, the legislature has revisited the Fiscal Code each year and each year the legislature has purposefully delayed triggering the repayment of the loan until such time there would be a substantial number of operating gaming facilities, (in this case eleven facilities), thereby ensuring as many facilities as possible shared in the cost of repaying the loan as well as lowering each operator’s repayment cost. *See*, Act of July 4, 2008 (P.L. 629, No.53); Act of October 9, 2009 (P.L. 537, No. 50); Act of July 6, 2010 (P.L. 279, No. 46). The primary difference, among the various amendments to the Fiscal Code related to the directives to the Board to begin the loan assessment schedule, was last year’s mandate that the repayment schedule be adopted (but not implemented) by June 30, 2011. *See*, Act of July 6, 2010 (P.L. 279, No. 46).

Act 46 of 2010, which amended the Fiscal Code, explicitly directed the Gaming Board to establish a loan repayment schedule that “assesses to each slot machine licensee costs for repayment of the loans . . .”. (Emphasis added) Act 46 of 2010, §1799(G)(2)(ii). The Fiscal Code directs that the costs of the loan repayment are to be assessed by the Board to “each” slot machine “licensee” – not just Category 1 facilities or those facilities that have been operational for a year.⁶ Rather, the direct and intentional use of the term “each” to include all venues that have been licensed by the Board, underscores the objective of the General Assembly to assess all operating venues for the start-up and operating costs of the Board. Accordingly, any proposed repayment schedule that fails to assess an annual repayment cost to each operating licensee that is in proportion its gross terminal revenue is contrary to the clear legislative directives of the Fiscal Code.

Treasury Repayment Proposal.

The outstanding balance of the three loans associated with the start-up and operational costs of the Board is approximately \$63.9 million. While Section 1799 of the Fiscal code leaves to the discretion of the Board the decision to spread the repayment costs of the loans over a five - ten year period, the common element of all the current proposals before the Board is the adoption of a 10 repayment period. Treasury does not object to this longer repayment period as an equitable means of reducing the yearly cost shared by the assessed gaming operations.

Rather, Treasury proposes a repayment schedule that assesses each and every operating gaming facility, for each and every year during the repayment period, an amount that is

⁶ The legislature is capable of including statutory language that would trigger the immediate repayment of the loan and thereby assessing a much smaller number of operators for the cost of the loan when deemed appropriate. *See, e.g.,* Act 46 of 2010, § 1799-E(E) (requiring the Gaming Board to “immediately” assess the slot machine licensees if the Budget Secretary determines there are insufficient funds in the Property Tax Relief Reserve Fund to transfer for property tax relief).

proportional to each facility's gross slot machine terminal revenue to the total repayment amount of the loan at the time the assessment is made. This approach would apportion the repayment costs among the ten facilities currently operating in the Commonwealth and remain consistent with the directives of the legislation. *See*, Legislative Recommendation (Treasury recommends immediately implementing the loan repayment schedule). This apportionment would be based on each facility's share of statewide Gross Slot Machine Terminal Revenue (GTR) in the previous fiscal year. For illustrative purposes, data from fiscal year 2010-11 was used in order to capture information on all currently operating facilities. However, since fiscal year 2010-11 data is incomplete, the totals for GTR were extrapolated by calculating the average monthly GTR for each facility for the months that had available data. This average was then multiplied by twelve in order to project total FY 2010-11 GTR. Statewide GTR is the sum of the extrapolations of the GTRs for all facilities. Additionally, for proposals that apportioned repayments based on a rolling period of GTRs and that only calculated repayments based on historical GTR data, repayments for the last period calculated were assumed to stay constant for the remainder of the ten year repayment period.

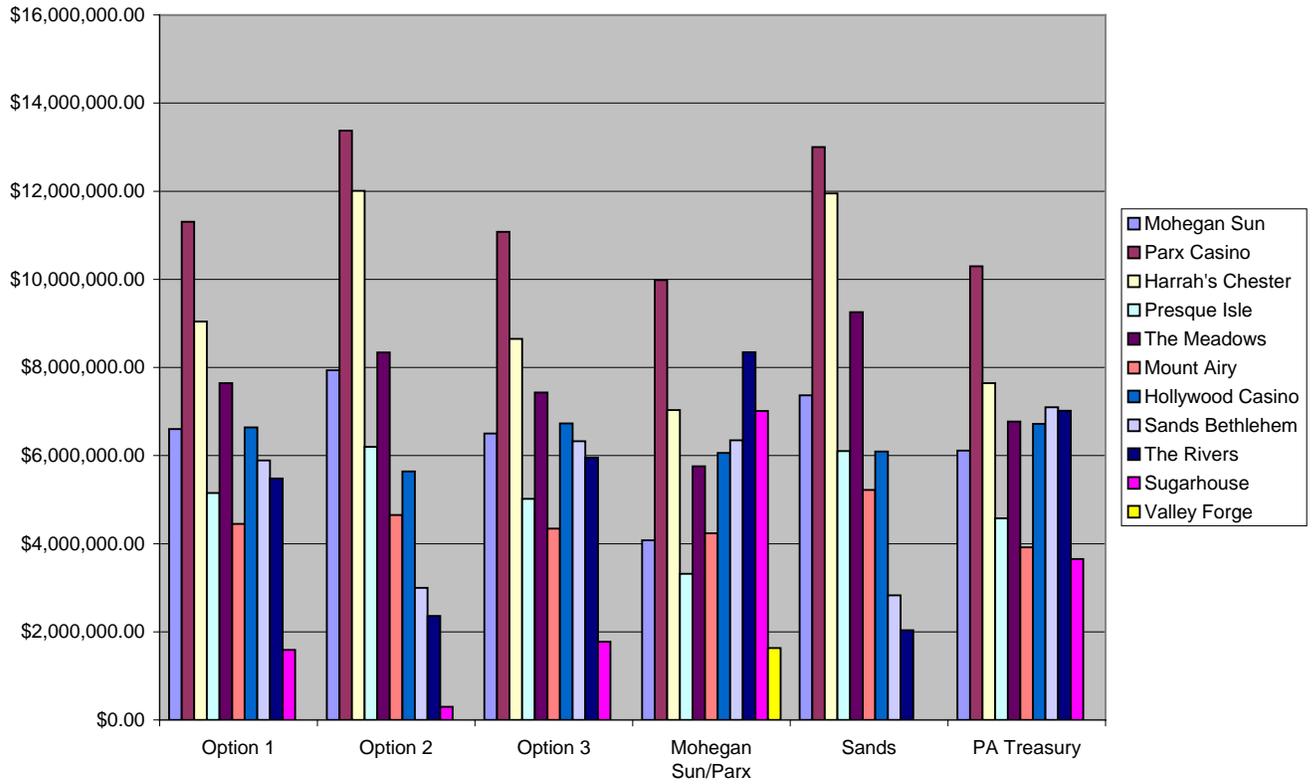
Treasury's repayment proposal may be expressed as a formula as follows:

Each facility would pay an amount equal to X. Whereby X is equal to A multiplied by B.

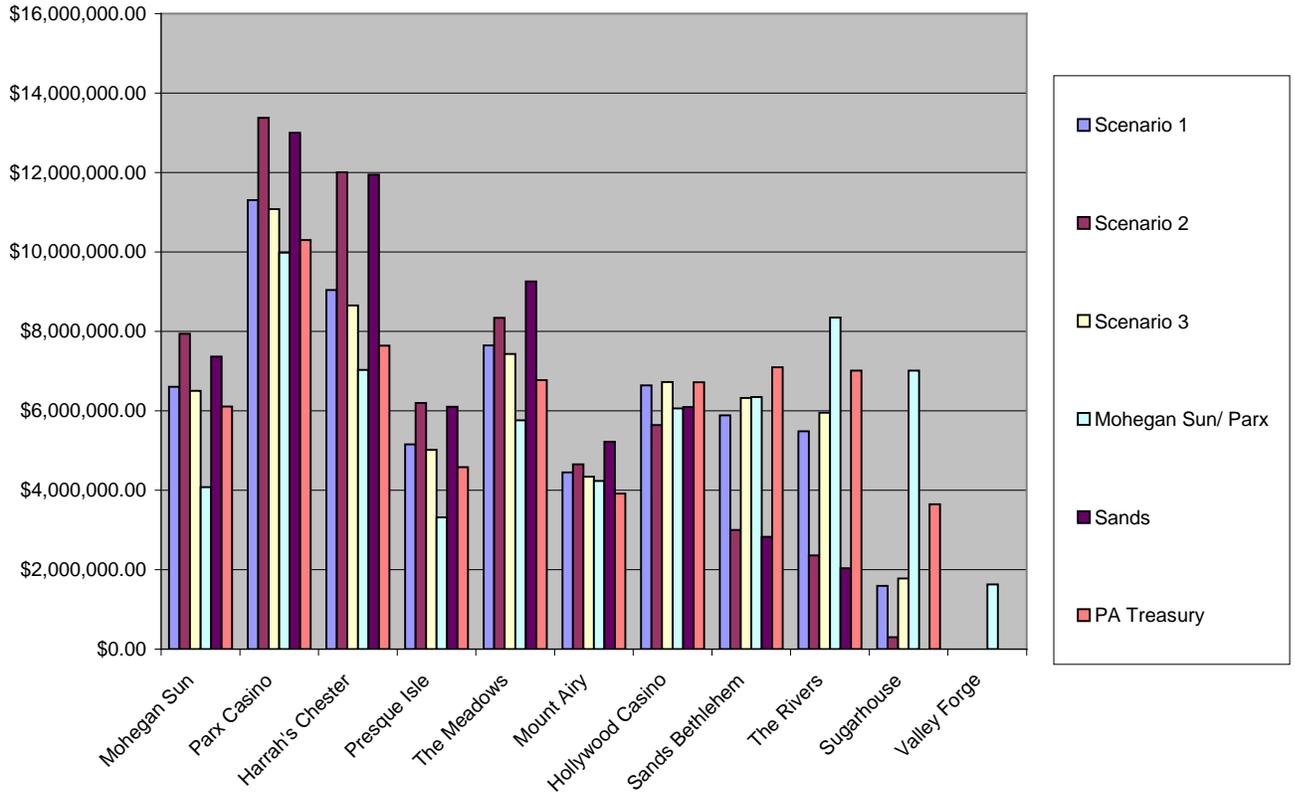
- A is equal to each individual facility's annual gross slot machine terminal revenue, divided by the annual statewide total gross terminal revenue for all operating slot machine facilities; and,
- B is equal to the total outstanding loan amount due to the Property Tax Relief Reserve Fund.

The following two charts illustrate the projected total repayments for each facility under six different proposals: Options 1, 2, and 3 as presented by the Gaming Board; The Mohegan Sun/Parx Proposal; the Sands Proposal; and a proposal by the Treasury.

Total Repayments Over Ten Year Period In Each Scenario (by facility)

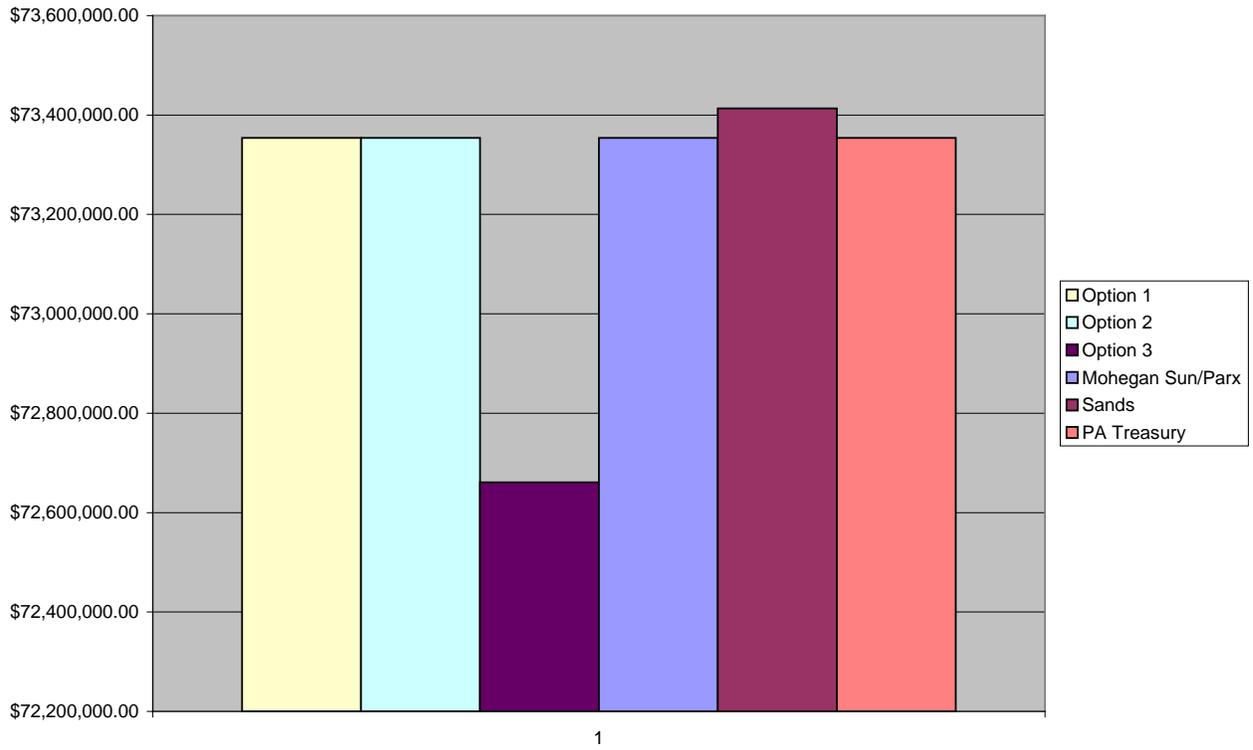


Total Repayments Over Ten Year Period for Each Facility (by scenario)

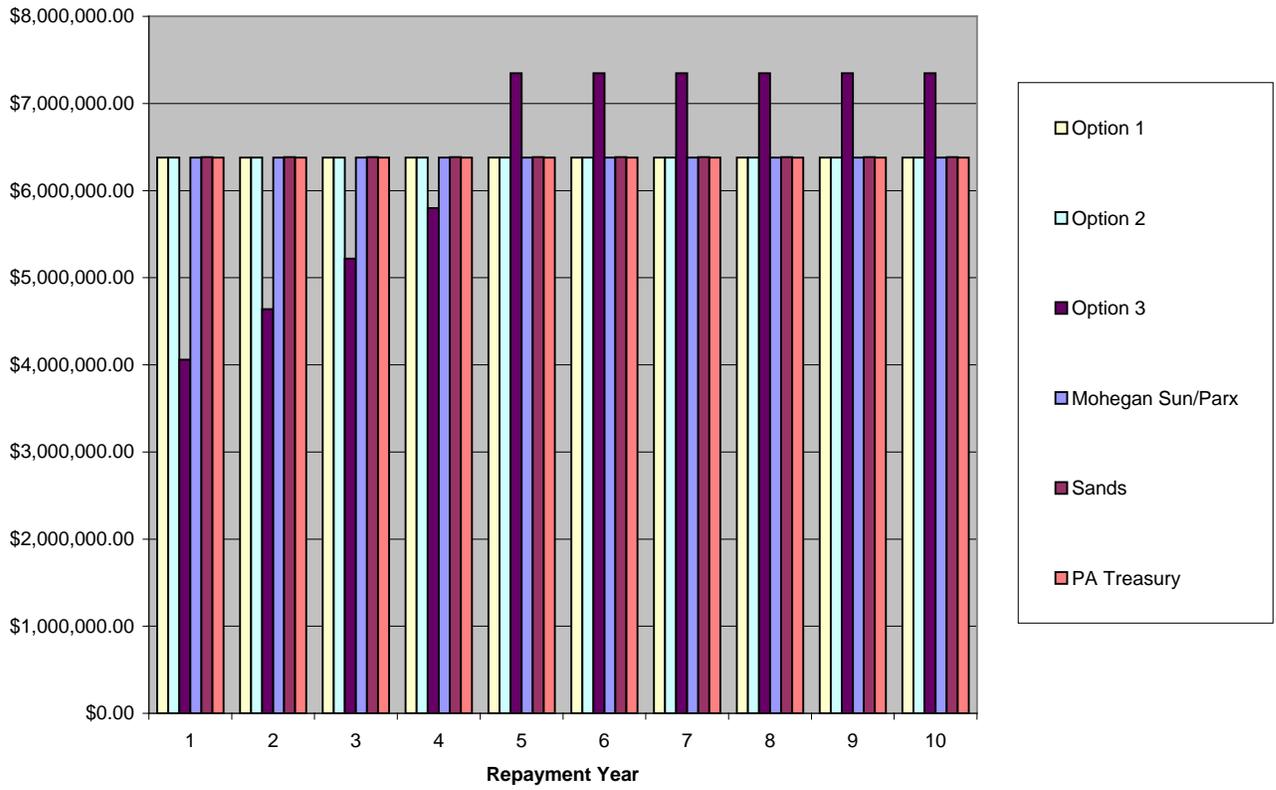


The structure and timing of payments will have an impact on the total amount of deposits, plus investment returns, which will accrue to the Reserve Fund. This is illustrated in the charts below. The first chart shows the total of repayments and investment returns that would accrue to the Fund under each proposal. The differences are negligible with the exception of Option 3 from the Gaming Board, which skewed the repayments to later years. As a result of having fewer funds deposited earlier in the ten year repayment period, any option with back loaded repayments would forego future investment opportunity. For demonstrative purposes, annual investment returns to the Fund for the ten year repayment period were forecasted by the PA Treasury Investment Office. The average return for this period was projected to be 2.11%, with potentially higher yields in later years. Option 3 presented by the Gaming Board would have foregone approximately \$6 million in investment returns after the first four repayment years during which it would collect less each year than the other plans. Some of these foregone gains could be made up in later years if investment yields increase as projected. However, the aggregate returns would remain lower as compared to a repayment schedule that did not have lower repayments in the earlier years. The second chart shows the total repayments to the Fund from all facilities combined for each repayment year.

Total Repayments & Investment Returns Accruing to Fund (by proposal)



Total Annual Repayments for All Facilities Combined (by proposal)



The following chart shows the average annual repayment amount for each facility under each of the six proposals.

Average Annual Repayment Amount for Each Facility (by proposal)						
	Option 1	Option 2	Option 3	Mohegan Sun/Parx	Sands	PA Treasury
Mohegan Sun	\$660,383.40	\$793,795.20	\$650,123.95	\$407,886.00	\$736,815.00	\$611,037.31
Parx Casino	\$1,130,487.40	\$1,337,500.70	\$1,107,584.50	\$998,299.00	\$1,300,054.00	\$1,029,804.03
Harrah's Chester	\$904,292.50	\$1,200,591.40	\$865,072.46	\$703,092.00	\$1,194,761.00	\$764,218.98
Presque Isle	\$515,279.70	\$619,649.00	\$501,942.45	\$331,468.00	\$610,304.00	\$457,839.74
The Meadows	\$764,577.10	\$833,846.20	\$743,027.79	\$575,811.00	\$925,714.00	\$677,433.95
Mount Airy	\$444,928.10	\$465,151.90	\$434,389.02	\$423,462.00	\$522,072.00	\$391,734.56
Hollywood Casino	\$663,814.90	\$564,017.30	\$672,725.59	\$606,232.00	\$609,332.00	\$671,947.23
Sands Bethlehem	\$588,894.30	\$299,841.80	\$632,292.79	\$634,949.00	\$282,657.00	\$709,585.49
The Rivers	\$548,214.50	\$235,942.60	\$595,091.80	\$834,755.00	\$203,431.00	\$701,478.41
Sugarhouse	\$159,138.70	\$29,663.20	\$177,741.84	\$700,902.00	\$0.00	\$364,920.31
Valley Forge	\$0.00	\$0.00	\$0.00	\$163,145.00	\$0.00	\$0.00

The chart below shows the estimated total GTR for FY 2010-11 and the proposed annual repayments as a share of that year's GTR. As this chart illustrates, the Treasury proposal would ensure that each facility pays approximately the same proportion of its GTR.

Average Annual Repayment as Share of FY2009-10 GTR (by proposal)							
Facility	FY09-10 GTR	Option 1	Option 2	Option 3	Mohegan Sun/Parx	Sands	PA Treasury
Mohegan Sun	\$227,353,274.28	0.29%	0.35%	0.29%	0.18%	0.32%	0.27%
Parx Casino	\$383,166,974.12	0.30%	0.35%	0.29%	0.26%	0.34%	0.27%
Harrah's Chester	\$284,348,733.78	0.32%	0.42%	0.30%	0.25%	0.42%	0.27%
Presque Isle	\$170,351,893.21	0.30%	0.36%	0.29%	0.19%	0.36%	0.27%
The Meadows	\$252,057,974.09	0.30%	0.33%	0.29%	0.23%	0.37%	0.27%
Mount Airy	\$145,755,640.48	0.31%	0.32%	0.30%	0.29%	0.36%	0.27%
Penn National	\$250,016,485.67	0.27%	0.23%	0.27%	0.24%	0.24%	0.27%
Sands Bethlehem	\$264,020,839.21	0.22%	0.11%	0.24%	0.24%	0.11%	0.27%
Rivers	\$261,004,375.96	0.21%	0.09%	0.23%	0.32%	0.08%	0.27%
Sugar House	\$135,778,658.19	0.12%	0.02%	0.13%	0.52%	0.00%	0.27%

Treasury's Legislative Recommendation.

In its present form, the Fiscal Code does not permit the Board to begin assessing the cost of the loan repayment to occur until eleven facilities have begun slot machine operations. Act 46 of 2010, 72 P.S. § 1799-E(G)(1). Though the board has approved twelve slot machine licenses, it has not been able to issue either the eleventh or the twelfth license as of this date. In fact, there is substantial risk that neither the eleventh nor the twelfth licenses will be able to begin slot

machine operations within the next fiscal year (2011-2012). As a consequence, there exists risk to the Property Tax Relief Reserve Fund that loan repayments may be further delayed.

The eleventh and twelfth licenses have been approved by the Board for Valley Forge Convention Center Partners and Woodlands Fayette, both Category 3 “resort” licensees. Though the approval of the twelfth license is still within the statutory appeal period, the Board’s decision to approve the Valley Forge license is final and no longer appealable. However, there remains another administrative proceeding to which Valley Forge must submit prior to its commencement of gaming operations.

Prior to the Board’s final issuance of a gaming license to Valley Forge and its commencement of slot machine operations, the Board is required to approve the applicant’s “Amenities Plan” in order to ensure its compliance with the Gaming Act’s requirement that only “overnight guests” or “patrons of the amenities” may access the gaming floor of a Category 3 License. 4 Pa.C.S.A. § 1305(a); *Greenwood Gaming and Entertainment, Inc. v. Pennsylvania Gaming Control Board*, 15 A.3d 884, 891 (Pa. 2011) (“ . . . the Board still has ultimate authority to issue or deny a gaming license upon final review of the amenities plan.”). As of this date, Valley Forge has not filed an application for approval of its amenities plan.

The administrative proceeding to approve Valley Forge’s gaming floor access plan will have significant precedential effect as it will define the parameters of future Category 3 licensees’ gaming floor access. The amenities proceeding, which will determine the manner and cost by which customers will be able to access the gaming floor, will also inherently define the size and access to potential customer base for both licensees and thus influence the future business models and gaming operations. As a consequence, until such time as the amenities

proceeding is completed and the Board's decision is final and non-appealable, it will be challenging for either facility to complete financing and begin slot machine operations. These risks, while beyond the control of either the Board or policy makers, could foreseeably delay the eleventh gaming facility's slot machine operations until late fiscal year 2011-2012 or the next year, thus further delaying repayment to the Property Tax Relief Reserve Fund.

For these reasons, it is the recommendation of Treasury that the Fiscal Code be amended to provide for the immediate repayment of the outstanding loans to the Reserve Fund. Further delay risks leaving the Reserve Fund without a sufficient balance to support future withdrawals for local property tax relief and continues to deprive the Fund of future investment income opportunity.

Respectfully submitted,



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