

LAW AND PUBLIC SAFETY

DIVISION OF GAMING ENFORCEMENT

General Provisions; Casino Licensees; Gaming Operation Accounting Controls and Standards

Proposed Amendments: N.J.A.C. 13:69-7.4; 13:69C-2.5, 2.6, 2.7, 2.9, 4.1, 4.3, 4.4, 5A.1, 5B.1, 8.4, 8.5, and 11.1; and 13:69D-1.6

Authorized By: David Rebeck, Director, Division of Gaming Enforcement.

Authority: N.J.S.A. 5:12-69.a, 70.a, 76.g, 82, 84, 85, 85.1, 87, 87.1, and 89.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2017-163.

Submit written comments by October 6, 2017, to:

Mary A. Carboni, Deputy Attorney General

Division of Gaming Enforcement

140 E. Front Street

PO Box 047

Trenton, NJ 08625-0047

or electronically at: rulecomments@njdge.org

The agency proposal follows:

Summary

The Division of Gaming Enforcement (Division) proposes the following amendments:

Proposed amendments to N.J.A.C. 13:69-7.4 lessen the casino licensee submission requirement for reports about solicitations by prohibited persons from semi-annual to annual.

Proposed amendments to N.J.A.C. 13:69C-2.5 delete language, to clarify that the notification requirements concerning certain new qualifiers of holding companies and new qualifying entities specifically relate to the casino licensee. A proposed amendment to N.J.A.C. 13:69C-2.6 clarifies that while a qualifier is temporarily qualified, that person can perform any duties or exercise any powers relating to his or her position. A proposed amendment to N.J.A.C. 13:69C-2.7(c)3 deletes a cross-reference to clarify that the submission of certain forms applies only to qualifiers and not to key qualifiers. A proposed amendment to N.J.A.C. 13:69C-2.9 clarifies that the notification requirement concerning the formation, dissolution, or transfer of a publicly traded interest applies to entities that bear a “financial” relationship to the casino project. Proposed amendments to N.J.A.C. 13:69C-4.1 include a new definition of “debt service requirements” and an amendment to “operating expenses” to be consistent with the Division Statement of Income (deleting “cost of goods and services; selling” and “provision of doubtful accounts” and adding “casino expenses; rooms, food, and beverage expenses”). Proposed amendments to N.J.A.C. 13:69C-4.3 add a circumstance in which the casino licensee is not required to seek prior approval for a material debt transaction and clarifies that: (1) approval for borrowing for material capital and maintenance expenditures is required only when such expenditures are made in Atlantic City; and (2) amendments to prior debt transactions must be filed and submitted ten days prior to consummation. Proposed amendments to N.J.A.C. 13:69C-4.4 extend the deadline to file financial forecasts to 90 days after the start of the fiscal year to address situations where the forecast approval process does not occur by the end of the prior year.

Proposed amendments to N.J.A.C. 13:69C-5A.1(f) clarify that a formal petition is not required to be filed in order for the Director to waive persons from qualification. Proposed amendments to N.J.A.C. 13:69C-5B.1(a) clarify that evidence of authority to conduct business in New Jersey must be provided only if necessary. Proposed deletions at N.J.A.C. 13:69C-8.4(a) eliminate redundancy in the rules regarding the filing of financial forecasts. Proposed amendments to N.J.A.C. 13:69C-8.5 add language to specify that the filing of state income tax returns as a matter of course are limited to New Jersey returns. Proposed new N.J.A.C. 13:69C-11.1(a)3 provides for evidence of the continued license status of a casino licensee following its resubmission investigation.

Proposed amendments to N.J.A.C. 13:69D-1.6(i) clarify the notification requirement related to certain financial transactions, by adding a cross-reference to N.J.A.C. 13:69C-4.3.

As the Division has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments are not anticipated to have a significant social impact on the casino industry. To the extent the amendments grant regulatory relief, they may influence casino companies not presently in the New Jersey casino industry to consider the climate of regulatory reform when evaluating opportunities in New Jersey.

Economic Impact

The proposed amendments are not anticipated to have a significant economic impact on the casino industry or the cost of regulation. To the extent that the amendments clarify requirements and, thus, save time and reduce confusion, some savings may be experienced.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments are authorized by the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to Federal law.

Jobs Impact

The proposed amendments are not anticipated to have any impact on the number of jobs in the State.

Agriculture Industry Impact

The proposed amendments will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Statement

The proposed amendments will only affect the operations of New Jersey casino licensees, none of which qualify as a "small business" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., because they employ more than 100 persons full-time in the State of New Jersey. Accordingly, a regulatory flexibility analysis is not required.

Housing Affordability Impact Analysis

The proposed amendments will have no impact on the affordability of housing in the State of New Jersey or evoke a change in the average cost of housing in the State because they only affect the regulation of casinos in Atlantic City.

Smart Growth Development Impact Analysis

The proposed amendments will not have an impact on smart growth and will not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because they concern the regulation of casinos in Atlantic City.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 69

GENERAL PROVISIONS

SUBCHAPTER 7. PROHIBITED POLITICAL CONTRIBUTIONS

13:69-7.4 Solicitations by prohibited persons; records[; reports]

(a) - (c) (No change.)

(d) Each casino licensee and applicant for a casino license shall file a report with the Division on [May 1 and October] **December** 15 of each year containing[, in a format approved by the Division,] a copy of each of the records prepared pursuant to (a) above since the filing of the last report.

(e) - (f) (No change.)

CHAPTER 69C
CASINO LICENSEES

SUBCHAPTER 2. PERSONS REQUIRED TO BE LICENSED OR QUALIFIED

13:69C-2.5 Notification concerning certain new qualifiers of holding companies and new qualifying entities

(a) - (b) (No change.)

(c) If any new entity is formed in the organizational structure of any casino licensee or applicant which would be a holding company, an intermediary company, [a subsidiary thereof,] an entity qualifier, or a subsidiary of the casino licensee or applicant, the casino licensee or applicant or such affiliate shall immediately notify the Division.

(d) (No change.)

13:69C-2.6 Qualification of new directors, officers, or other qualifiers of a casino licensee

(a) The Director of the Division shall designate persons that must qualify in connection with a casino license in accordance with N.J.S.A. 5:12-85.1, and any natural person so required to qualify pursuant to N.J.S.A. 5:12-85.1 by virtue of his or her position with a casino licensee shall not perform any duties or exercise any powers relating to such position until qualified **temporarily or plenarily** by the Commission or, where appropriate, until he or she is temporarily licensed by the Commission as a casino key employee pursuant to N.J.S.A. 5:12-[89e]**89.e** in accordance with the rules of the Commission.

(b) (No change.)

13:69C-2.7 Qualification of new directors, officers, or other qualifiers of a holding company

(a) - (b) (No change.)

(c) The Commission may, upon the written petition of a casino licensee filed with the Division, permit a person otherwise subject to (a) above to perform any duties or exercise any powers relating to his or her position pending qualification, provided that:

1.-2. (No change.)

3. Such person files a PHD-MJ or PHD-1 in accordance with (b) above, within 15 days of the date on which the Commission's permission is granted [as provided in N.J.S.A. 5:12-89e].

(d) (No change.)

13:69C-2.9 Holding companies, intermediary companies, entity qualifiers, and subsidiaries

(a) Each casino licensee or applicant or holding company thereof shall report immediately, in writing, to the Division, at its address set forth in N.J.A.C. 13:69-3.5(a), the formation or dissolution of, or any transfer of a nonpublicly traded interest in, any holding company, intermediary company, an entity qualifier, or a subsidiary of the casino licensee or applicant or any subsidiary of any holding company of the casino licensee or applicant which bears any **financing** relationship to the casino project and, in the instance of a casino license applicant, with a copy to the Commission at its address set forth in N.J.A.C. 13:69-3.5(a).

(b) (No change.)

SUBCHAPTER 4. FINANCIAL STABILITY OF CASINO LICENSEES AND APPLICANTS

13:69C-4.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings:

...

“Debt service requirements” means the sum of cash interest payments and scheduled principal repayments.

...

“Operating expenses” means the total of [cost of goods and services; selling,] casino expenses; rooms, food, and beverage expenses; and general, [and] administrative, and other expenses[, and the provision for doubtful accounts] as indicated on the casino licensee's or applicant's Division Statement of Income.

13:69C-4.3 Material debt transactions and continuing assessment of financial condition

(a) No casino licensee shall consummate a material debt transaction without the prior approval of the Division. Any transaction not specified in this subsection shall require prior Division review and approval with regard to the financial stability standards set forth in N.J.S.A. 5:12-[84(a)]**84.a.** The following types of transactions shall not require prior Division review and approval with regard to the financial stability standards:

1. An agreement [which] **that** provides for any borrowing for capital and maintenance expenditures **in Atlantic City**;
2. An agreement [which] **that** is for a refinancing of existing debt that includes a borrowing for capital and maintenance expenditures **in Atlantic**

City of at least \$50 million;

3. An agreement [which] **that** provides for any borrowing that does not result in an increase in annual debt service requirements; [or]
4. An agreement that reflects a licensee's pro rata share of debt maintained at an affiliate, intermediary, or holding company[.]; **or**
5. **An agreement entered with a bank, licensed lending institution, or institutional investor as defined by N.J.S.A. 5:12-85.1 with regard to debtor-in-possession financing approved pursuant to a bankruptcy court proceeding.**

(b) In the event that a casino licensee contemplates consummation of a [material] debt transaction [which] **or amendment thereto that** does not require prior Division review and approval under [this] subsection [and] (a) above, the casino licensee nevertheless shall notify the Division in writing, not less than 10 days prior to entering an arrangement, of a transaction subject to one of the above exceptions. The notice shall, at a minimum, include the reasons the debt transaction is an allowable exception and all relevant calculations relating to the debt transaction.

(c) - (f) (No change.)

13:69C-4.4 Continuing financial stability reporting requirements

(a) (No change.)

(b) [Prior to the end of each fiscal year] **No later than 90 days after the commencement of each fiscal year**, each casino licensee and holding company thereof shall file its financial projections for [its upcoming] **that** fiscal year in a format acceptable to the Division. The Division's Office of Financial Investigations will advise each casino licensee or holding

company of the contents of the financial package, which, at a minimum, shall include a statement of income, balance sheet, and statement of cash flows.

(c) - (g) (No change.)

SUBCHAPTER 5A. DESIGNATION OF QUALIFIERS AND WAIVER FROM QUALIFICATION

13:69C-5A.1 Exceptions to qualification

(a) – (e) (No change.)

(f) [As to a request for a ruling on the exercise of the Director’s discretion under N.J.S.A. 5:12-85.1e, the Director] **In issuing a ruling, the Director, in the exercise of his or her discretion under N.J.S.A. 5:12-85.1.e**, may decide not to require a person to qualify if:

1. – 3. (No change.)

SUBCHAPTER 5B. QUALIFICATION OF FINANCIAL BACKERS

13:69C-5B.1 Qualification of financial backers and others delineated in N.J.S.A. 5:12-[85.1e]**85.1.e**

(a) Notwithstanding any other rule to the contrary, financial backers and others delineated in N.J.S.A. 5:12--[85.1e]**85.1.e** that are required to be qualified shall submit the following documentation and information to the Division:

1. - 5. (No change.)

6. Evidence of authority to conduct business in the State of New Jersey, **if required;**

7. -12. (No change.)

SUBCHAPTER 8. CONTINUING OBLIGATIONS OF CASINO LICENSEES AND QUALIFIERS

13:69C-8.4 Financial statements and projections

(a) Each applicant or casino licensee or holding company thereof shall file, with the Division's Office of Financial Investigations, its financial projections for its upcoming fiscal year [in a format acceptable to the Division] in accordance with N.J.A.C. 13:69C-4.4. [The Division's Office of Financial Investigations will advise each applicant or casino licensee or holding company of the contents of the financial package, as well as the deadline for its annual submission.]

(b) - (d) (No change.)

13:69C-8.5 Tax return filings

Each applicant or casino licensee or holding company, intermediary company, qualifying subsidiary and entity qualifier thereof shall file, with the Division at its address set forth in N.J.A.C. 13:69-3.5(a), copies of its Federal and [state] **New Jersey** tax returns and related forms, at the time such returns are submitted to the taxing authority.

SUBCHAPTER 11. CASINO LICENSE RETENTION

13:69C-11.1 Continuing casino licensure

(a) Subject to the provisions of this subchapter, casino licenses issued pursuant to N.J.S.A. 5:12-87 shall remain in full force and effect if:

1. No later than five years after the date of the issuance of a casino license and every five years thereafter, or within such lesser periods as the Division may direct, a casino

licensee and its qualifying entities and individuals submit to the Division the documentation and information set forth in (c) below to demonstrate to the satisfaction of the Director that they continue to meet the requirements of N.J.S.A. 5:12-84, 85, and 85.1; [and]

2. The Director issues a summary report to the Commission that no information exists sufficient to warrant revocation, suspension, limitation, or conditioning of such license[.]; **and**

3. Upon completion of a favorable report by the Division to the Commission, the Division simultaneously shall issue to the casino licensee a document setting forth the license resubmission period.

(b) - (e) (No change.)

CHAPTER 69D

GAMING OPERATIONS ACCOUNTING CONTROLS AND STANDARDS

SUBCHAPTER 1. GENERAL PROVISIONS

13:69D-1.6 Standard financial and statistical reports

(a) - (h) (No change.)

(i) [Licensees] **In addition to the requirements in N.J.A.C. 13:69C-4.3, licensees** shall report to the Division essential details of any loans, borrowings, installment contracts, guarantees, leases, or capital contributions no later than 10 days after the end of the month in which the transaction or event occurs.