

COMMONWEALTH OF PENNSYLVANIA  
HOUSE OF REPRESENTATIVES

GAMING OVERSIGHT COMMITTEE  
PUBLIC HEARING

STATE CAPITOL  
HARRISBURG, PA

IRVIS OFFICE BUILDING  
ROOM G-50

TUESDAY, MARCH 15, 2016  
9:10 A.M.

PRESENTATION ON  
PROPOSED TAVERN GAMING FIX

BEFORE:

HONORABLE JOHN PAYNE, MAJORITY CHAIRMAN  
HONORABLE ROSEMARY BROWN  
HONORABLE RUSS DIAMOND  
HONORABLE GEORGE DUNBAR  
HONORABLE SUE HELM  
HONORABLE AARON KAUFER  
HONORABLE KATE ANNE KLUNK  
HONORABLE RYAN MACKENZIE  
HONORABLE TEDD NESBIT  
HONORABLE JASON ORTITAY  
HONORABLE DAVID PARKER  
HONORABLE JAMES SANTORA  
HONORABLE PAUL SCHEMEL  
HONORABLE RYAN WARNER

\* \* \* \* \*

*Pennsylvania House of Representatives  
Commonwealth of Pennsylvania*

BEFORE (continued):

HONORABLE NICK KOTIK, DEMOCRATIC CHAIRMAN  
HONORABLE DOM COSTA  
HONORABLE DANIEL DEASY  
HONORABLE MARTY FLYNN  
HONORABLE SID MICHAELS KAVULICH  
HONORABLE WILLIAM KORTZ II  
HONORABLE ED NEILSON

COMMITTEE STAFF PRESENT:

JOSIAH SHELLY  
MAJORITY EXECUTIVE DIRECTOR  
SHAWNE LEMASTER  
MAJORITY LEGISLATIVE ADMINISTRATIVE ASSISTANT  
  
CHARLES MILLER  
DEMOCRATIC EXECUTIVE DIRECTOR

I N D E X

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\* \* \*

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SUBMITTED WRITTEN TESTIMONY

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(See submitted written testimony and handouts online.)

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P R O C E E D I N G S

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(A voting meeting was held prior to the public hearing.)

MAJORITY CHAIRMAN PAYNE: With that, we will adjourn the voting meeting and immediately move to the public hearing on tavern gaming legislation.

Roll-call attendance has to be taken for the second hearing. Shawne?

(Roll was taken.)

MAJORITY CHAIRMAN PAYNE: Do we have a quorum?

MS. LEMASTER: Yes.

MAJORITY CHAIRMAN PAYNE: Okay.

Before I begin, I want to advise the Members and the audience that the Pennsylvania State Police was invited to provide testimony today. However, due to their recent staff changes in their Legislative Affairs Office, they're unable to join us.

They will in fact provide written testimony to our office at a later time. When it is received, I will forward it to every Member of the Committee.

Also, Representative Masser had an emergency with one of his staffers. He will not be here this morning, and he has provided written testimony which should be in your packets.

1 Any other business before we start the hearing?

2 Okay.

3 We will start with the owner of Jack's Tavern,  
4 Jerry McArdle. If you would please come up.

5 Again I reiterate, Representative Masser's  
6 testimony is in the packets, and he apologizes, but there  
7 was a staff emergency.

8 All yours.

9 MR. McARDLE: Thank you, Chairman Payne, Chairman  
10 Kotik, and Members of the House Gaming Oversight Committee  
11 for hearing my testimony today.

12 My name is Jerry McArdle, a lifelong resident of  
13 Pennsylvania; owner of three PLCB-licensed establishments;  
14 an employer to Commonwealth residents for the past  
15 32 years; a longtime member of the Pennsylvania Licensed  
16 Beverage and Tavern Association and the Delaware County  
17 Tavern Association.

18 Our association lobbied for the tavern game bill.  
19 We were supportive of your House Bill 1098, Chairman Payne,  
20 creating tavern games, and it was passed in 2013.

21 We are very appreciative of your support,  
22 Mr. Chairman. Upon passage, applications were able to  
23 begin being accepted by the PLCB on January 27, 2014. We  
24 lobbied for tavern games to enable our small businesses to  
25 be able to offer some kind of gaming entertainment to our

1 patrons as private clubs and casinos are permitted.

2 While the final product became a lot different  
3 than originally written, it did allow retail licensees to  
4 "get a foot in the door" for some type of legal gaming in  
5 our businesses.

6 As you know, we have advocated for legalizing  
7 video gaming terminals for 40 years in our establishments,  
8 understood that it was not possible in 2013, so tavern  
9 games becoming law was a positive move in the right  
10 direction.

11 As I mentioned earlier, I own three licensed  
12 establishments in the Commonwealth. Two are in Delaware  
13 County and one is in Lancaster County. I am a tavern game  
14 permit holder at one of my locations in Delaware County,  
15 Jack's Tavern.

16 Attached to your copy of this testimony is  
17 Exhibit 1, outlining the steps I was made to take in order  
18 to be approved for this permit after decades of being a  
19 PLCB-approved retail licensee serving alcohol to the adult  
20 general public. As daunting as the application process was  
21 and the \$11,000 upfront capital it cost me, I took the leap  
22 with 50 other licensees to implement tavern games and was  
23 approved in March of 2015.

24 I have recently been able to mark the occasion of  
25 making back my initial investment of \$11,000. I have paid

1 \$30,000 to the Commonwealth in projected profit taxes. I  
2 believe the State has collected several hundred thousand  
3 dollars from tavern game permit holders in 2015, as was in  
4 2014, but we were unable to gain confirmation of the dollar  
5 amount before this hearing.

6           Representative Masser's proposed language will go  
7 a long way to cut a lot of red tape in the application  
8 process, which took 11 hours to complete and weighed  
9 2 pounds in just paper. The removal of the \$1,000 fee for  
10 an FBI background check to be reviewed by the Pennsylvania  
11 Gaming Control Bureau, the lowering from \$2,000 to a  
12 thousand dollars for the initial application fee to the  
13 PLCB, and the removal of the \$500 fee to the State after  
14 approval speaks for itself. The thousands of dollars it  
15 has taken to get this permit are very expensive for small  
16 business owners, and I consider myself fortunate to have  
17 been able to afford it.

18           Representative Masser also gives the hard-working  
19 small business owners the same privilege of private clubs  
20 that protect our liquor licenses from suspension or  
21 revocation unless there are four citations issued for  
22 tavern games infractions. Considering we pay a high tax up  
23 front on potential profits per game, our licenses are our  
24 only key to maintaining our livelihood and should not be  
25 held over our heads for a clerical error.

1           Representative Masser's proposed language also  
2 includes the addition of a weekly drawing to be included in  
3 tavern games. Currently, we are able to offer a monthly  
4 raffle, a daily drawing, and pull-tab tickets.

5           The weekly drawing is designed in the same manner  
6 as the daily drawing but will be a better game for my  
7 customers to enter. These particular drawings raise no  
8 money for my business or the State but do increase traffic  
9 in my business.

10           I use the monthly raffle to generate revenue for  
11 local charitable organizations I support: as you can see  
12 in Exhibit 2, the football team, Little League team,  
13 Rose Tree Fire Company, and our Upper Providence Township  
14 Police. Since I do not make any profit from the drawings  
15 or the raffle, I do not pay taxes on these games since all  
16 money raised is given to our charitable organizations.

17           I am appreciative of the proposed changes, and I  
18 plan on renewing my tavern games permit in March of 2016.  
19 Tavern games has resulted in some of my patrons who play to  
20 stay longer, and in return, I have seen a small increase in  
21 food and beverage sales.

22           Although I have now made my initial \$11,000  
23 investment back, I have also had to add more hours to my  
24 already demanding schedule. I believe that more of our  
25 members will be interested in attaining the permit with the



1 changes, but many shy away from adding more work for  
2 themselves, as small business owners are already working  
3 70-plus hours a week to stay operating.

4           Video gaming terminals are most attractive to  
5 retail licensees because it produces much more revenue to  
6 the State and the licensee without countless hours of labor  
7 involved on the licensee's part. I would incorporate VGTs  
8 into all three of my establishments.

9           Currently, there are licensees not incorporating  
10 tavern games because of the process and the labor involved,  
11 so they are looking for options to increase revenue to  
12 match the increased cost of goods needed for their  
13 businesses. Right now, licensees are incorporating "skill  
14 games," designed a lot like a slot machine, because they  
15 don't have to spend more time working to see profits.

16           Our association has conversed with PLCE on these  
17 machines per members' requests and were informed on Friday,  
18 March 11<sup>th</sup>, that the Keystone Hold Em' and the Red, White  
19 and Blue machines are legal. The Pennsylvania Superior  
20 Court defined these particular games as being "games of  
21 skill" in their recent ruling.

22           Please see Exhibit 3. Included in Exhibit 3 is a  
23 standard FAQ list for licensees to stay within the laws of  
24 the Liquor Code. Besides these now legal skill games that  
25 are showing up everywhere, there are also the 40,000

1 illegal poker machines that the casinos say are in  
2 Pennsylvania licensed establishments.

3 Unlike prepaid taxes on profits for tavern games  
4 or State computer-regulated video gaming terminals, the  
5 State doesn't collect or monitor any revenue on the types  
6 of games that have proven very popular in our industry.

7 Our small businesses need a new source of revenue  
8 to remain an employer of over 100,000 Pennsylvania citizens  
9 annually, and the State needs to increase revenue for the  
10 budget to avoid broad-based tax increases. In my  
11 experienced opinion, video gaming terminals seem to be the  
12 best option in terms of profit, accountability, and labor  
13 costs for already struggling Pennsylvania small businesses,  
14 our taxpayers, and our State budget.

15 We would like to thank Representative Masser for  
16 putting forward a proposal to improve the tavern game  
17 experience and entice others to get in the game. I would  
18 like to take this opportunity to thank the Chairman and  
19 Committee Members for hearing our testimony.

20 MAJORITY CHAIRMAN PAYNE: Thank you.

21 And I want to recognize that Representative  
22 Neilson has joined us.

23 Yeah; that was ironic that I had a three-page  
24 bill that was pretty simple and passed the House with no  
25 problem and went to the Senate, and they kind of piled all

1 the other stuff onto the bill for where we're at today.

2 I am certainly supportive of Representative  
3 Masser's efforts to eliminate, remove the fees, change the  
4 penalties from the liquor license to the gaming license,  
5 where it should have been in the first place, and I'm very  
6 supportive of the legislation that he's introducing.

7 The first question is Representative Santora.  
8 No, he joined us. Representative Santora also joined us.

9 Any questions? Representative Kortz.

10 REPRESENTATIVE KORTZ: Thank you, Mr. Chairman.

11 Thank you, Mr. McArdle, for your testimony today.

12 Two brief questions, sir.

13 You mentioned in your testimony 50 other people  
14 have implemented the tavern games. If we pass  
15 Representative Masser's bill, will that increase throughout  
16 the State? Your opinion on it. It would make it easier,  
17 right?

18 MR. McARDLE: I would say that if the process is  
19 made easier and the fees are lowered, then I would say yes,  
20 that it would increase participation in the game.

21 REPRESENTATIVE KORTZ: Exponentially? Do you  
22 think a lot of people would jump in this?

23 MR. McARDLE: Well, I couldn't answer that.

24 REPRESENTATIVE KORTZ: Okay. And one last  
25 question, sir.

1           Regarding the VGTs, the terminals? In your  
2 opinion, do you think if we would legalize those for the  
3 State, do you think that they would rob some of the  
4 clientele from the casinos?

5           MR. McARDLE: Definitely not. It's a totally  
6 different clientele.

7           A lot of people that frequent my places are  
8 neighborhood people who don't want to walk -- who don't  
9 want to drive, for obvious reasons, who want to walk to the  
10 establishment. All three of my places are what you would  
11 call neighborhood taverns, and it's a totally different  
12 clientele that frequents my tavern and frequents a casino.

13           REPRESENTATIVE KORTZ: Okay. Thank you.

14           Thank you, Mr. Chairman.

15           MAJORITY CHAIRMAN PAYNE: Sure. Thank you.

16           Representative Kaufer.

17           REPRESENTATIVE KAUFER: Thank you, Mr. Chairman.

18           And thank you for your testimony as well, and  
19 thank you for your commitment to small business and  
20 working. I know the many long hours and long nights that  
21 you work to do this, so thank you for that.

22           I have heard a lot from my local bar and tavern  
23 owners who are looking for sort of this reprieve, that I  
24 guess in previous years and previous decades, there wasn't  
25 really enforcement on this issue but really something that

1 had been around for a long time with these video gaming  
2 terminals. Could you comment on just sort of the history  
3 of this?

4           Because from what people have told me, they were  
5 around for a long time; they were in business. Then all of  
6 a sudden there started to be a crackdown on them, and now  
7 these people just want to get back in the business and  
8 start bringing this revenue back to their small businesses  
9 so they can stay afloat.

10           MR. McARDLE: Well, video poker machines and  
11 other different kinds of machines have been around -- I've  
12 been in this business 36 years -- have been around for all  
13 those years. And was it enforced? Some places it was,  
14 some places it wasn't. And from what I've seen, it depends  
15 where you are, who you are, what part of the State you're  
16 in. I've been in places that have them right today; I've  
17 been in places that don't have them anymore.

18           There is no continuity or regulation outside of  
19 the tavern games to this end of our business. And this is  
20 what the Tavern Association and the tavern owner wants to  
21 do: He wants to bring continuity; he wants to pay his  
22 taxes; he wants to increase his business; he wants everyone  
23 to be happy, and this is the aim of the Tavern Association  
24 to do this and has been for years.

25           REPRESENTATIVE KAUFER: Thank you. I think you

1 hit the nail on the head, because I think that's what I'm  
2 hearing in my areas.

3 We want to be law-abiding citizens. We want to  
4 just have these regulated and done all aboveboard, and  
5 these people who are trying to follow the law and not have  
6 them are losing out on potential revenue, where places that  
7 are breaking the law and do have these places right now,  
8 these VGTs, are getting ahead of them.

9 And so I think it's the people who are trying to  
10 be the law-abiding citizens and follow the law are the  
11 people that are being hurt right now by not living -- but  
12 not playing by the same playing field. So I've been  
13 hearing a lot about this, that people just want to see the  
14 VGTs passed and regulated. So thank you very much.

15 MAJORITY CHAIRMAN PAYNE: Any other Members?

16 Representative Diamond.

17 REPRESENTATIVE DIAMOND: Thank you, Mr. Chairman.

18 And thank you, sir, for your testimony.

19 I want to focus on your Exhibit 3, which detailed  
20 the games of skill, and I'm looking at the photos here.  
21 This Keystone Hold Em' game and the Red, White and Blue  
22 game, they look like slot machines to me. And I get it  
23 that the Superior Court has ruled that they are games of  
24 skill, and we could probably find an attorney to explain to  
25 us why that decision is.

1                   Do you know -- and I know you can't speak on  
2 behalf of the association, but you are a member and I'm  
3 sure you talk to other members. Now again, let's clarify,  
4 nobody needs a license to get one of these, right?

5                   MR. McARDLE: That's correct.

6                   REPRESENTATIVE DIAMOND: And you don't need to  
7 pass any kind of background check. This is just like a  
8 value add-on thing that you can just throw in your bar so  
9 you can make some more money, right?

10                  MR. McARDLE: That's correct.

11                  REPRESENTATIVE DIAMOND: Okay. And there's no,  
12 there's no qualifications of where you have to -- what you  
13 have to do with the profits off these machines, correct?  
14 Like we have with the small games of chance.

15                  MR. McARDLE: That's correct.

16                  REPRESENTATIVE DIAMOND: Okay. So if I'm owning  
17 a bar, I know I'm running to these things because it seems  
18 like a lot less redtape. So is it your concern that these  
19 things will block out anything we do on small games of  
20 chance, simply because it's easier to install them; there  
21 are no limitations on what you can do with the profits when  
22 it comes off. Do you think that the State is going to lose  
23 out to these machines simply because we can't regulate them  
24 as a game of skill right now, as a gaming machine, but the  
25 hassle for putting one of these in and what you have to do

1 with the profits is far less.

2           So are we -- is it your opinion that the State,  
3 the Commonwealth, is falling behind the curve here because  
4 we don't have our small games of chance easy enough and,  
5 I'm not going to say consumer friendly enough, but tavern  
6 owner friendly enough to make happen?

7           MR. McARDLE: In my -- again, I'm only giving my  
8 opinion.

9           REPRESENTATIVE DIAMOND: Okay.

10          MR. McARDLE: In my opinion, your regular tavern  
11 owner would put those games in sooner than he would do the  
12 small games of chance.

13          REPRESENTATIVE DIAMOND: Because of the  
14 difficulties of getting the license and the regulations and  
15 all that sort of thing?

16          MR. McARDLE: A tavern owner could have however  
17 many of those machines that his township allowed in his  
18 place, probably in 24 hours from a vendor, and not have to  
19 pay one dime to run those machines.

20          REPRESENTATIVE DIAMOND: Okay. So there is some  
21 regulation -- I take it from your just past answer -- there  
22 is some regulation on a township level for these games of  
23 skill?

24          MR. McARDLE: Certain townships across the  
25 Commonwealth, as per my knowledge, have different



1 regulations about, some of them charge fees per machine;  
2 some of them charge a yearly fee. You have to put a  
3 sticker on the machine.

4 REPRESENTATIVE DIAMOND: Okay.

5 MR. McARDLE: And that varies. Some don't charge  
6 anything. That varies in every borough and township and  
7 city in the State of Pennsylvania as far as I know.

8 REPRESENTATIVE DIAMOND: All right. Well, thank  
9 you for your answers.

10 Mr. Chairman, I just want to comment here that it  
11 looks like we need to move something similar to  
12 Representative Masser's bill to streamline this process as  
13 soon as possible so that the Commonwealth is not missing  
14 out.

15 Thank you.

16 MAJORITY CHAIRMAN PAYNE: Thank you.

17 And before we go to Representative Santora --  
18 just give him the mic there, Representative Diamond. But  
19 before he asks that question, I was waiting for you to ask  
20 the one final question, and you're normally in the same  
21 vein as I am: How many of these machines do you own in  
22 your tavern?

23 MR. McARDLE: Of these machines here?

24 MAJORITY CHAIRMAN PAYNE: Yeah.

25 MR. McARDLE: I don't have any in there as of

1 now.

2 MAJORITY CHAIRMAN PAYNE: And I guess I'm  
3 confused, because these are easy to get. They produce  
4 revenue. You don't have to pay the State anything.  
5 Wouldn't it be a quick fix to throw two, three, four of  
6 those in?

7 MR. McARDLE: This ruling just came out on Friday  
8 that these are legal machines, so it's only---

9 REPRESENTATIVE DIAMOND: By next Friday.

10 MAJORITY CHAIRMAN PAYNE: By next Friday, how  
11 many will you have? Thanks. Don't answer that.

12 Well, I knew there was a lower court ruling that  
13 had, it must be 6 months ago that it ruled that these were  
14 games of skill, because we started looking at it as a  
15 committee on regulating skill or chance, because the  
16 concern, being honest with you, was if the casinos went and  
17 put all these kinds of machines in, we would not get our  
18 54-percent take either as a State. There's a little bit of  
19 concern about that.

20 There is difference of opinions. If you put  
21 three attorneys in a room, one would say, yeah, we will get  
22 our take; one will say, no, we won't. We want to make that  
23 clarified that whether it's a skill game or a chance game,  
24 we don't care; the same percentage would be paid if it's in  
25 a casino.

1           And I would think that many of the taverns and  
2 restaurants, now that this ruling has come down, will in  
3 fact install these machines and will in fact, we now have  
4 automatically VGTs going in the taverns without needing  
5 legislation to let them go in the taverns.

6           Representative Santora.

7           REPRESENTATIVE SANTORA: Mr. McArdle, thanks for  
8 being here today.

9           In full disclosure, I have been to Jack's many a  
10 time, so I know it well.

11          MAJORITY CHAIRMAN PAYNE: We appreciate you  
12 mentioning that.

13          REPRESENTATIVE SANTORA: Yes; yes.

14          On the VGT side of things, do you think the  
15 tavern owners would be opposed to an additional 2 percent  
16 of everything that we are proposing to go to a local county  
17 share versus going to just necessarily DCED?

18          MR. McARDLE: I can't speak on that. That's an  
19 issue for the State Tavern Association.

20          REPRESENTATIVE SANTORA: How do you feel about  
21 it?

22          MR. McARDLE: I wouldn't have a problem with it.

23          REPRESENTATIVE SANTORA: Okay.

24          MR. McARDLE: You know, as I stated in the  
25 letter, I've been in this business as an owner for

1 32 years, a bartender 36 years. For every year that I've  
2 been around, we have tried to get these machines legalized.

3 And as one of the Representatives said, the  
4 tavern owner, he wants to pay his taxes, you know? I don't  
5 know what we have to do to get these machines legalized,  
6 but it has been years and years and years and years, and in  
7 my opinion, the time has come.

8 The State needs money, our small businesses are  
9 in trouble, and the time is right for this to be done. It  
10 should have been done a long time ago, and the State  
11 wouldn't be in the position it was in with these gray  
12 machines that are out there. You know, this should have  
13 been taken care of years ago.

14 REPRESENTATIVE SANTORA: Thank you.

15 MAJORITY CHAIRMAN PAYNE: Yeah; and I'm to blame  
16 for this, too. The hearing is on the small games of chance  
17 bill, not on the VGT bill. But since the court ruling just  
18 happened that makes at least these two machines legal, I  
19 thought it was pertinent to bring that up.

20 But I do want to focus on the small games,  
21 because one of the questions that has come up is, if you  
22 had these two VGTs or four VGTs, would you not have small  
23 games? And most of the feedback I got is, yes, I want  
24 small games, but I'll also take those.

25 So with that, Representative Klunk.

1                   REPRESENTATIVE KLUNK: Thank you, Mr. Chairman.

2                   And that actually is a good segue into my  
3 question of, as we're having this discussion, with the  
4 recent news that these games of skill are now legal, if we  
5 couple these new games of skill that are legal with the  
6 changes to the small games of chance legislation that  
7 Representative Masser has introduced, would those two  
8 together be enough to ensure your livelihood as a tavern  
9 owner?

10                   I'm just struggling with why, at this point,  
11 would we need to move forward with VGT language if games of  
12 skill, a game of skill VGT essentially, and the small games  
13 coupled together would be available to you. Would there be  
14 -- if that were the scenario, what would any benefit of us  
15 passing VGT language to allow those games of chance video  
16 gaming terminals be to you as a tavern owner?

17                   MR. McARDLE: So you're asking what -- why would  
18 we want the VGT bill if we could have these machines?

19                   REPRESENTATIVE KLUNK: Right. Why would you want  
20 a VGT bill for a game of chance if you can have games of  
21 skill without any government take right now, unless maybe  
22 at the local level, coupled with small games of chance  
23 reforms?

24                   MR. McARDLE: Again, this is my opinion. I'm not  
25 speaking for the State Tavern Association or anything like

1 that. In my professional opinion, the reason for that  
2 would be, right now as it stands, the games that are legal  
3 are those two games that you see the pictures of -- and  
4 only those two games. So you would be pigeonholed to only  
5 have those two games. Where if there was a VGT bill, you  
6 would be able to put new games in, different games. You  
7 know, it would open up what you could offer to the  
8 customer.

9 REPRESENTATIVE KLUNK: So as a follow-up to that  
10 then, I guess what you're saying here is that with the  
11 small games, we only have, what, is it two or three that  
12 are allowed? I can't remember.

13 MR. McARDLE: Three types of small games.

14 REPRESENTATIVE KLUNK: Three types right now  
15 under the Superior Court ruling. So what you're saying is,  
16 under the small -- or under the games of skill, we only  
17 have three. Under small games, under games of chance, a  
18 VGT like that, there would be more options to you?

19 So what you're saying is that if we would have  
20 VGTs under the small games of chance option versus small  
21 games of skill, that you would have more customers come in  
22 because of the changeover and possibility of different  
23 types of machines and different types of games and  
24 different types of play?

25 MR. McARDLE: I would say so.

1 REPRESENTATIVE KLUNK: Okay. Thank you.

2 MAJORITY CHAIRMAN PAYNE: Okay?

3 Thank you very much for your testimony.

4 We'll move on to Matt---

5 REPRESENTATIVE NEILSON: I'm sorry, Mr. Chairman.

6 MAJORITY CHAIRMAN PAYNE: That's all right. Go  
7 ahead. Representative Neilson.

8 REPRESENTATIVE NEILSON: Thank you for your  
9 testimony. Good to see you.

10 Something -- I might have been in a couple of  
11 watering holes myself, and there was a question before when  
12 we talked about this about the number of machines put in  
13 each establishment. Most of the establishments that I tend  
14 to walk through have two, maybe three machines at maximum.  
15 Would this entice you to put more? Because I think the  
16 current stuff that we're talking about asked for five  
17 machines, and some people even wanted it higher. How many  
18 machines do you think---

19 MAJORITY CHAIRMAN PAYNE: Representative, I'm  
20 going to interrupt you, because I don't know whether you  
21 were here when I apologized for going down that road, but  
22 we are on Masser's small games of chance bill. We'll be  
23 glad to have another VGT hearing based on the court  
24 decision, but I'm trying to get an answer on whether  
25 Masser's bill on the small games he's doing will help the

1 tavern owners.

2 REPRESENTATIVE NEILSON: Understood. So when we  
3 have an expert witness here, I---

4 MAJORITY CHAIRMAN PAYNE: Go ahead.

5 REPRESENTATIVE NEILSON: I just want to -- I  
6 don't want to drag him up from Delaware County too many  
7 times. I'm sure he spends a lot of time in Harrisburg  
8 already.

9 But it's something that as we go through this  
10 process, Mr. Chairman, I think it's interesting to note  
11 like the number, because here we are, here you can put  
12 10 of these in your establishment by Friday.

13 MR. McARDLE: You could put 50 in if you want.

14 MAJORITY CHAIRMAN PAYNE: You could put 50 in,  
15 100.

16 MR. McARDLE: As long as your local township---

17 REPRESENTATIVE NEILSON: Would allow it.

18 MR. McARDLE: ---would let you have that many  
19 machines.

20 REPRESENTATIVE NEILSON: Now, years ago when we  
21 found a loophole like this in the courts -- I remember I  
22 was just a young stud -- we were playing Blackjack in some  
23 of the taverns, too.

24 MR. McARDLE: That's correct.

25 REPRESENTATIVE NEILSON: Right. So do you see an



1 onslaught of something like this that we have to jump on  
2 right away to make certain that we get the regulation in  
3 place?

4 MR. McARDLE: It's not going to take long.

5 REPRESENTATIVE NEILSON: And how about the amount  
6 of machines? Do you---

7 MR. McARDLE: The current bill, to my knowledge,  
8 calls for a maximum of five machines.

9 REPRESENTATIVE NEILSON: Five? Okay. And you  
10 think that's a good number?

11 MR. McARDLE: That's a fair number.

12 REPRESENTATIVE NEILSON: Thank you.

13 Thank you, Mr. Chairman. I won't go too far off  
14 track. I'm sure we'll get to that.

15 MAJORITY CHAIRMAN PAYNE: Well, I appreciate it.  
16 I appreciate it. I'm just trying to stick to a schedule.

17 REPRESENTATIVE NEILSON: You pulled me in.

18 MAJORITY CHAIRMAN PAYNE: We're in session at  
19 11.

20 REPRESENTATIVE NEILSON: You pulled me in. I'm  
21 good.

22 MAJORITY CHAIRMAN PAYNE: I appreciate it. Thank  
23 you, Brother. We do appreciate that.

24 Next -- thank you very much.

25 MR. McARDLE: Thank you for your time.

1 MAJORITY CHAIRMAN PAYNE: Matt DeFrank and  
2 John Brenner, the Department of Revenue, and I thank the  
3 Committee for their indulgence.

4 MR. DeFRANK: Chairman Payne, Chairman Kotik, and  
5 Members of the Committee, thank you for the opportunity to  
6 submit remarks regarding the Department of Revenue's role  
7 in the proposed legislation for the administration of  
8 tavern games under the Local Small Games of Chance Act.

9 The Department of Revenue currently has limited  
10 administrative authority and responsibility under the Local  
11 Option Small Games of Chance Act. The proposed legislation  
12 would significantly expand our authority by transferring  
13 licensing and background investigation responsibilities to  
14 the department. After careful consideration, the  
15 Department of Revenue is opposed to this bill.

16 By way of background, the act establishes regular  
17 reporting requirements for licensed distributors of small  
18 games of chance and taverns that conduct small games of  
19 chance. Licensed distributors that sell pull-tab games to  
20 a licensed tavern are required to file a monthly tavern  
21 games tax return and schedule with the Department of  
22 Revenue.

23 Along with certain demographic information, the  
24 return must include the 60 percent State tax and 5 percent  
25 host municipality tax of the net revenue from tavern games

1 sold to a tavern licensee. The accompanying schedule  
2 provided by the distributor must also include information  
3 regarding the municipality where the tavern games were  
4 sold, the total amount of net revenue, and the total tax  
5 due.

6           However, not all tavern games must be purchased  
7 through those distributors. In those instances, taverns  
8 licensed by the Pennsylvania Liquor Control Board are  
9 required to collect the 60 percent State tax and a  
10 5 percent host municipality tax on the net revenue of those  
11 games.

12           The tavern's quarterly return must include the  
13 net revenue from daily drawings and monthly raffles, the  
14 60 percent State tax, and a 5 percent host municipality  
15 tax. In addition to those quarterly returns, the act  
16 requires taverns to file an annual report detailing the  
17 type of games sold, the net proceeds, and the total amount  
18 of tax remitted to the department.

19           The legislation proposed would amend the Local  
20 Small Games of Chance Act. The proposed tavern game  
21 changes include the following:

- 22           • Transfer licensing and background  
23           investigation responsibilities from the PLCB and the  
24           Pennsylvania Gaming Control Board's Bureau of  
25           Investigations and Enforcement to the Department of

1 Revenue.

2 • It would reduce the annual renewal fee from  
3 \$1,000 to \$500.

4 • It eliminates the \$1,000 investigative fee.

5 • It codified previous Fiscal Code changes,  
6 which reduced the \$2,000 license fee due upon approval  
7 to \$500, and maintains the application fee and makes  
8 it payable to the Department of Revenue.

9 • It adds tavern weekly drawings to approved  
10 games.

11 • It adds an "eating place licensee" as a  
12 category of "liquor license holder" eligible to apply  
13 for a license to conduct tavern games.

14 • It allows a deduction for the cost of the game  
15 from the face value of the game to calculate net  
16 revenue.

17 • It reduces the tavern game tax rate from  
18 60 percent to 55 percent.

19 • It revises the distribution of net revenue  
20 from tavern raffles and tavern games. The  
21 Commonwealth's share would be reduced from 60 percent  
22 to 50 percent, while the licensee's share would  
23 increase from 35 percent to 45 percent. The 5 percent  
24 host municipality's share is unchanged.

25 • It will reduce detailed requirements in the

1 annual report, reduce the amount of civil penalties  
2 and criminal penalties, and adds detail on conditions  
3 that would result in the revocation of a license.

4 As previously stated, the Department of Revenue  
5 is opposed to this proposed legislation. Our primary  
6 concern is with the transfer of licensure responsibilities  
7 to the department. In order to qualify as a tavern, an  
8 entity must be licensed by the PLCB. It's the department's  
9 position that the PLCB would be much more qualified to  
10 determine if a tavern is eligible for licensing than the  
11 department. PGCB agents similarly have the experience and  
12 expertise to investigate applicants, and this function  
13 should remain with the PGCB.

14 All of the changes made in this bill also have a  
15 fiscal impact. The department estimates a combined impact  
16 of more than \$300,700 to the General Fund and to host  
17 municipalities starting in fiscal year 2016-17 and  
18 projecting forward. Administrative costs are estimated to  
19 be more than \$500,000.

20 It's the department's and the Administration's  
21 position that all legislation with a fiscal impact should  
22 be discussed within the context of the budget.

23 Finally, we would like to point out language in  
24 the bill that should be clarified.

25 It is unclear if the 55 percent tax rate is

1 inclusive of the 5 percent host municipality tavern games  
2 tax or if the 5 percent is in addition to the 55 percent.

3 For licensing fees, greater clarity is needed in  
4 the act to properly reflect previous changes made in the  
5 Fiscal Code, which reduces licensing fees to \$500. To  
6 eliminate confusion, the \$500 licensing fee should be  
7 explicitly delineated in this language.

8 A great amount of time and effort and resources  
9 were expended in establishing the licensing procedure for  
10 tavern games, and the Commonwealth will have to incur costs  
11 that were expended when tavern games was first introduced.

12 I thank the Committee for the opportunity to  
13 offer this testimony, and we look forward to addressing  
14 your questions.

15 MAJORITY CHAIRMAN PAYNE: Thank you.

16 Questions? Representative Neilson.

17 REPRESENTATIVE NEILSON: I'll try and stay on  
18 point here, Mr. Chairman.

19 MAJORITY CHAIRMAN PAYNE: That's all right.

20 REPRESENTATIVE NEILSON: After reviewing the  
21 legislation, you mentioned in your testimony that it's  
22 going to have budget impacts. On numbers of current  
23 licensees, what is the impact on your budget?

24 MR. DeFRANK: We currently have 50 tavern  
25 licensees, so the impact for licensure as of that current

1 number is not too great. Future growth, we're looking at  
2 two enforcement agents for licensure and an examiner in our  
3 trust fund tax area for the licensing of taverns. So  
4 personnel costs is 224,000.

5 REPRESENTATIVE NEILSON: We heard on the previous  
6 testimony that this would probably entice more people to  
7 get involved. I mean, do you have any kind of fiscal  
8 impact? I mean, because it looks like if we change this as  
9 written, it seems many more taverns and owners would come  
10 into it. Did you calculate any of that on the expansion  
11 of?

12 MR. BRENNER: Do you mean as far as the tax  
13 revenue that would be generated from additional licenses?

14 REPRESENTATIVE NEILSON: Tax revenue. I mean,  
15 you said it's going to make a big fiscal impact on it and  
16 we have to look at the budget, so here we are at budget  
17 season, and I'd like to know what impact on the budget it's  
18 going to have and what projected budget, if we go up  
19 20 percent, 30 percent. I'm just going by the testimony  
20 and trying -- if you looked at this stuff, I'd like to know  
21 the numbers.

22 MR. BRENNER: I think the testimony was that the  
23 department estimated that the combined impact would be  
24 300,700 to the General Fund starting for the 2016-17 year.  
25 That was Revenue's estimate right now.

1           REPRESENTATIVE NEILSON: And that's going to be  
2 cut in half, or what kind of impact? I mean, you're coming  
3 here today against the bill.

4           MR. BRENNER: I believe our main objection is  
5 moving licensing to the department, not objecting to---

6           REPRESENTATIVE NEILSON: Okay. I misunderstood  
7 the testimony. Okay; I understand, because I sort of---

8           MR. BRENNER: No; I don't think the department  
9 has any real position on making it easier, you know, or  
10 changing the licensing as far as what the fees are. It's  
11 really moving the administration of the granting of the  
12 licensing over to the Department of Revenue. We believe---

13           REPRESENTATIVE NEILSON: In the long run, this  
14 could actually help with more licensees, more revenue to  
15 the Commonwealth. I mean, it would have a positive budget  
16 impact, right?

17           MR. BRENNER: Presumably, it would bring in more  
18 revenue if more people would get the licenses.

19           REPRESENTATIVE NEILSON: Thank you, Mr. Chairman.  
20 Thank you, gentlemen.

21           MAJORITY CHAIRMAN PAYNE: Thank you.

22           And just for clarification, I have just  
23 introduced House Bill 1891, which not only leaves the  
24 administration over in the Gaming Control Board but  
25 actually transfers all the small games out of the



1 Department of Revenue over to the Gaming Control Board.

2 Call me old-fashioned, but gambling is gambling.  
3 We have a board established in Pennsylvania that regulates  
4 gaming. We right now have some gambling in Pennsylvania  
5 under Finance; some gambling is under Revenue; some  
6 gambling is under the Gaming Control Board.

7 I agree, in talking with management and the  
8 department, the staffing is an issue if we expand this and  
9 add all these other, potentially, games.

10 I also have a question about taking the  
11 enforcement from the Pennsylvania State Police and  
12 transferring that over to you, to your department. You  
13 know, I'm envisioning then that no Pennsylvania State  
14 Trooper or LCE agent would go into a tavern for any reason  
15 because it would be transferred to Revenue. So Revenue  
16 would have to find somebody to go into the taverns, whether  
17 that's for a liquor violation or a gaming violation. That  
18 means the clubs LCE would still go into but the taverns  
19 they wouldn't.

20 I'm trying not to make this more difficult or  
21 more confusing. I'm trying to make this under one  
22 umbrella. Everybody would have one-stop shopping and  
23 one-stop enforcement and, at the same time, try to assist  
24 the taverns and the clubs in making more money for  
25 themselves and for the nonprofits, at least on the club

1 side.

2 I thank you for your testimony.

3 Any other questions? If not, thank you very  
4 much, gentlemen.

5 We'll move along to Kevin O'Toole, Executive  
6 Director of the Pennsylvania Gaming Control Board, and  
7 Paul Mauro, the Director of the Bureau of Investigations  
8 and Enforcement.

9 Thank you, Kevin and Paul.

10 MR. O'TOOLE: Good morning, Chairman Payne,  
11 Chairman Kotik, and Members of the House Gaming Oversight  
12 Committee.

13 I'm Kevin O'Toole, and I serve as the Executive  
14 Director of the Gaming Control Board. Joining me today is  
15 Paul Mauro, who serves as the Board's Director of the  
16 Bureau of Investigations and Enforcement.

17 Tavern gaming has not performed as expected since  
18 it was approved in November of 2013. This committee is now  
19 tasked with developing an amendatory agenda to change this.  
20 The act vests the responsibility of background  
21 investigations for applicants with the Bureau of  
22 Investigations and Enforcement and the approval or denial  
23 of those applications with the Liquor Control Board.

24 As the Director of BIE, Paul has been integral in  
25 making sure that we fulfilled our responsibilities and

1 currently fulfill those responsibilities under the Tavern  
2 Gaming Act.

3           Before Paul explains the background investigation  
4 process required by the act, I would offer the following  
5 observations.

6           Prior to accepting applications, the Liquor  
7 Control Board coordinated a series of informational  
8 sessions to educate potential applicants to the application  
9 process and the regulatory oversight which would be  
10 involved in offering tavern gaming. At the conclusion of  
11 each session, a question-and-answer period was held, and  
12 from those questions being asked and the reaction of the  
13 attendees, it appeared evident that tavern gaming faced a  
14 number of obstacles to success.

15           So from a financial standpoint, you want to be  
16 profitable in the tavern gaming options, the pull-tabs, the  
17 daily raffles -- I mean, the monthly raffle and the daily  
18 numbers. So from a dollars-and-cents perspective, the  
19 challenge to the taverns appears to be a relatively high  
20 tax rate of 65 percent, which includes the host  
21 municipality tax, and the cost upfront of obtaining a  
22 license from the Liquor Control Board. Part of that cost  
23 defrays the expenses of the background investigation.

24           And also, there was a significant concern raised  
25 about whether violations of the Tavern Gaming Act could

1 potentially have a negative impact on your liquor license,  
2 which would be disastrous to tavern owners. So that was a  
3 significant concern.

4 Backgrounds. Without a question, there is a  
5 degree of inconvenience. There's a degree of time  
6 commitment. But from a financial standpoint, other than  
7 the upfront, one-time fee to defray the costs of the  
8 background investigation, there's not a long-term  
9 continuing expense that the Pennsylvania Gaming Control  
10 Board imposes on the taverns that do go through this  
11 process.

12 But success from our perspective is just a  
13 measurement of one thing: how many taverns have applied  
14 and how many backgrounds have we done, and it's 51, and  
15 we're over 2 years into the process. So from that  
16 perspective, it hasn't met, by any stretch of the  
17 imagination, the expectations.

18 But I would like Paul to review how we currently  
19 comply with the Tavern Gaming Act in our background  
20 investigations. Paul.

21 MR. MAURO: Good morning. Thank you for the  
22 opportunity to testify regarding the Tavern Gaming Act.

23 Before beginning, I want to share a little bit  
24 about my background. I've been employed by the board for  
25 just over 10 years. Prior to that, I was a law enforcement

1 officer with both local and Federal experience. I hold an  
2 undergraduate degree from Elizabethtown College and a  
3 graduate degree from Kutztown University.

4 It is no secret that the gaming industry is a  
5 highly regulated industry in Pennsylvania as it is in other  
6 jurisdictions throughout the United States. With that  
7 being said, BIE recognizes that while the gaming industry  
8 understands the scope of gaming regulation, applicants for  
9 a tavern gaming license may not.

10 To that end, BIE established an email address  
11 specifically to assist tavern owners with the application  
12 process and subsequent investigation. At this point in  
13 time, we have received only 15 emails. From my point of  
14 view, this seems to be indicative of bar and tavern owners  
15 being averse to even starting the application process and  
16 not necessarily the background investigatory process, which  
17 I will now address.

18 As I said before, my background is in law  
19 enforcement. Being thorough and discovering all relevant  
20 facts is the backbone of any investigation. Having said  
21 that, casino gaming is not tavern gaming and casino gaming  
22 application is not a fit for tavern gaming.

23 As such, we entered into discussions with staff  
24 from the Liquor Control Board to assist in developing the  
25 tavern gaming applications. The applications, from BIE's

1 perspective, were developed pursuant to the provisions  
2 under the act.

3 The act states that each applicant shall provide:

4 • A certified consent by the applicant,  
5 including each owner and officer of the restaurant  
6 licensee, to a background investigation.

7 • A criminal history record information,  
8 including:

9 • A description of the circumstances  
10 surrounding the arrest or issuance of a  
11 citation;

12 • The specific offense charged; and

13 • The ultimate disposition of the charge,  
14 including any dismissal, plea bargain,  
15 conviction, sentence, pardon, expungement, or  
16 order of accelerated rehabilitative  
17 disposition.

18 • Financial background information.

19 • Regulatory history before the board or other  
20 Commonwealth agencies, which specifically includes a  
21 current tax lien certification issued by the  
22 Department of Revenue and a certificate from the  
23 Department of Labor and Industry of payment of all  
24 workmen's compensation and unemployment compensation  
25 owed.

1           • And lastly, other information as required by  
2           BIE.

3           In addition, the act specifically prohibits the  
4           Liquor Control Board from awarding a license to any person  
5           convicted of a felony offense or misdemeanor gambling  
6           offense in any jurisdiction unless 15 years have elapsed  
7           from the date of conviction. The act applies this  
8           prohibition to owners, officers, and employees of a  
9           licensee.

10           The act uses language such as "all arrests and  
11           citations" and "in any jurisdiction" to mean exactly that,  
12           arrests and citations not just in Pennsylvania but  
13           nationally. The only effective manner to accomplish this  
14           is through the FBI database. This requires an applicant to  
15           be fingerprinted and to have those fingerprints forwarded  
16           to the FBI. The FBI then produces a national report  
17           relative to criminal arrests and convictions.

18           Initially there was some confusion and difficulty  
19           with this process. BIE recognized this and worked to  
20           alleviate it. We understood that applicants for a tavern  
21           gaming license were not necessarily accustomed to the level  
22           of scrutiny required by the act, which is why we  
23           established a dedicated email address. We worked quickly  
24           to respond to questions and to assist applicants through  
25           the process.

1           Despite the initial unfamiliarity with the new  
2 application process, we were still able to keep the  
3 background investigations to under 15 days on average.  
4 This included the production of an investigative report,  
5 which was then forwarded to the Liquor Control Board.

6           In closing, BIE has always attempted to  
7 accomplish any task assigned in an effective and efficient  
8 manner. However, should the General Assembly remove the  
9 responsibilities of BIE under the Tavern Gaming Act, we  
10 would not object, as that is a matter of policy.

11           Thank you. Kevin and I are now available to  
12 answer any questions you may have.

13           MAJORITY CHAIRMAN PAYNE: Questions?

14           I just appreciate your testimony this morning,  
15 and the intent of the hearing is to try to see how we can  
16 help the tavern owners on what I would call small games and  
17 how we can give them more drawings, more games, number one.

18           Number two, now that at least two games are  
19 legalized -- and I can't wait to see all the lawyers  
20 running around to figure out what other games are actually  
21 considered skill versus chance -- to at least talk about  
22 the ability to how we regulate that.

23           And then the third one was the fact that I have  
24 just introduced legislation to take small games and put  
25 them underneath the Gaming Control Board.



1           I make no secret about it that I believe  
2 Pennsylvania should have all the gaming under one umbrella.  
3 We should have one education program. We should have one  
4 compulsive gamer program. We should have funds dedicated  
5 to that to prohibit minors, to help the compulsive gamer.  
6 And one toll-free number rather than the current, I think  
7 we have five, depending where you're at in the State.

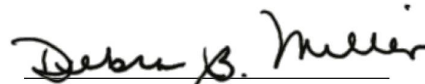
8           So I do appreciate your testimony this morning.  
9 With that, I'll ask, any other comments from the Committee?  
10 Any announcements?

11           Thank you for attending the public hearing. This  
12 hearing is now adjourned.

13

14           (AT 10:00 a.m., the public hearing adjourned.)

1 I hereby certify that the foregoing proceedings  
2 are a true and accurate transcription produced from audio  
3 on the said proceedings and that this is a correct  
4 transcript of the same.

5  
6  
7 

8 *Debra B. Miller*

9 *Transcriptionist*

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