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**OFFICE OF THE  
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE SERVICES**

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**NEW YORK STATE  
RACING AND WAGERING  
BOARD**

**OVERSIGHT OF INDIAN  
CASINO GAMING  
ACTIVITIES**

**Report 2005-S-45**

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## AUDIT OBJECTIVE

Our objective was to determine whether the New York State Racing and Wagering Board's (RWB) oversight of gaming activities at Indian casinos provides reasonable assurance the casinos comply with the requirements governing the gaming activities.

## AUDIT RESULTS - SUMMARY

RWB oversees gaming activities at four Indian casinos. Pursuant to federal requirements, the casinos' operations are governed by detailed written compacts between the State and the Indian Nations operating the casinos. RWB Inspectors at each casino are responsible for determining whether the casinos are complying with the numerous requirements contained in their compacts. Due to the sovereignty of the Indian Nations, RWB cannot levy fines, impose penalties or take other action to enforce compliance with Indian Casino compact requirements. If matters of non-compliance cannot be resolved between RWB and the Indian Nation, they are negotiated or litigated by the State (e.g., Governor's Office, Attorney General).

- RWB Inspectors (Inspectors) perform several different kinds of activities at the casinos. We found that some of these activities are adequately performed, but improvements are needed in others. For example, the Inspectors are supposed to assess the casinos' compliance with the requirements contained in their compacts. However, current administrative practices provide no assurance all compact requirements are addressed in the reviews and due emphasis is given to the most critical requirements. Moreover, when we examined compliance reviews that had

been performed at one of the casinos, we found several important compact requirements had not been addressed by the reviews. [Pages 4 - 9]

- The compacts require that all casino employees be licensed by the Indian Nations and no license be issued until the applicant is certified or found suitable by RWB, which arranges for the Division of State Police to perform a background check on the applicant. However, we found that uncertified applicants are routinely issued "temporary" licenses and are allowed to begin working at the casinos. Furthermore, because of delays in the completion of RWB's background check, many of these employees may not be certified for more than a year. [Pages 9 - 13]
- RWB has not established a process for verifying the accuracy of the State and local share of revenue generated by certain electronic gaming devices at two of the casinos. In the 2004-05 fiscal year, the casinos transmitted \$57.1 million in such revenue to the State and certain counties for the Seneca Compact. [Pages 13 - 14]

Our report contains nine recommendations for improving RWB's oversight of gaming activities at Indian casinos.

This report, dated November 30, 2006, is available on our website at: <http://www.osc.state.ny.us>. Add or update your mailing list address by contacting us at: (518) 474-3271 or Office of the State Comptroller  
Division of State Services  
State Audit Bureau  
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## BACKGROUND

RWB has regulatory authority over all legalized gambling activities in New York State, except those regulated by the New York State Division of the Lottery. In particular, RWB oversees pari-mutuel wagering at racetracks and off-track betting facilities, charitable gambling activities, and gaming activities at casinos operated by Indian Nations. RWB is governed by a three-member Board, one of whom is designated by the Governor to serve as Chairman. At the time of our audit, one of the three seats on the Board has been vacant since 2001.

There are four Indian casinos in New York State: Turning Stone Casino in central New York, operated by the Oneida Indian Nation of New York; Akwesasne Mohawk Casino in northern New York, operated by the Saint Regis Mohawk Tribe; Seneca Niagara Casino in western New York, operated by the Seneca Nation of Indians; and Seneca Allegany Casino in western New York, also operated by the Seneca Nation of Indians. Turning Stone Casino opened in July 1993, Akwesasne Mohawk Casino opened in April 1999, Seneca Niagara Casino opened in December 2002, and Seneca Allegany Casino opened in June 2004.

The gaming activities at each casino are governed by a written compact between the State and the Indian Nation operating the casino. The compact and its appendices contain the standards and specifications for each game permitted at the casino, the rules and internal controls governing the operation of the casino, and procedures for certifying and registering gaming employees and companies doing business with the casino. The compact also specifies the nature and extent of RWB's regulatory authority over the casino and its activities. For example, the Oneida Compact gives RWB joint regulatory

responsibility, while the Mohawk and Seneca Compacts give RWB oversight responsibility.

Such compacts are required by the Indian Gaming Regulatory Act of 1988, federal legislation that describes how Indian gaming activities are to be regulated by the states. According to this legislation, ceremonial games (considered Class I activities) and certain bingo-like games (Class II activities) cannot be regulated by the states. However, roulette, blackjack, slot machines and most other forms of gambling (Class III activities) are to be regulated and may only be conducted pursuant to a compact between the state and the Indian Nation. Moreover, the compact must be approved by the U.S. Department of the Interior.

In overseeing Class III gaming activities at the four casinos, RWB shares joint regulatory responsibility with the Oneida Gaming Commission, and shares oversight responsibility with the Mohawk Gaming Commission and the Seneca gaming Authority. For example, if RWB determines that a casino is not in compliance with a compact requirement and cannot resolve the matter with the casino, it must notify the Indian Nation's Gaming Commission/Authority. The Commission/Authority is then responsible for taking corrective action. If corrective action is not taken, RWB can refer the matter to the Governor's Office. However, in no instance can RWB levy a fine, impose a penalty or take other action to enforce compliance.

RWB is explicitly authorized by the compacts to review the casinos' gaming operations to determine whether they are in compliance with the requirements contained in the compacts. To exercise this authority, RWB has deployed 48 on-site Gaming Inspectors (Inspectors) at the four casinos: 13 at Turning Stone Casino, 12 at Akwesasne Mohawk

Casino, 12 at Seneca Niagara Casino, and 11 at Seneca Allegany Casino. The Gaming Inspectors are overseen by Bureau of Gaming Operations officials in RWB's Central Office, which is located in Albany.

The Gaming Inspectors engage in a number of activities that are intended to determine whether the casinos are in compliance with compact requirements. For example, the Inspectors perform written and visual reviews (termed compliance checks) in which they assess a casino's compliance with a particular section of its compact (e.g., the section relating to roulette). Compliance checks are performed on an ongoing basis throughout the year and written compliance reviews result in formal reports with specific recommendations for improvement. According to the RWB casino annual reports for 2003 and 2004, a total of 3,161 compliance checks were performed during those two years.

The Inspectors' activities also include investigating patron complaints, reviewing casino surveillance tapes, investigating significant incidents (such as under-age gamblers), and inspecting cards and dice. For example, surveillance tapes are reviewed at random to confirm that proper procedures are being followed on the gaming floor and are also reviewed when complaints are made about activities on the gaming floor. A written report is prepared for these activities. The Inspectors also observe gaming operations (visual compliance reviews) informally during their patrols of the gaming floor.

All casino employees must be licensed, and RWB works with the Gaming Commission/Authority of each Indian Nation in the licensing process. Prospective employees apply to the Indian Nation, and if the Nation wants to hire the applicant, the application is sent to RWB's Licensing Unit

in Albany for review and approval. As part of the review process, a criminal history check and background investigations are performed by the Division of State Police. If the application is approved by the Licensing Unit, a license is issued by the Indian Nation.

Federal law permits, and each compact dictates, that all of the State's regulatory expenses for both personnel and equipment be either paid for directly, or be reimbursed, by the regulated Indian Nation or Tribe. These costs are reimbursed when casinos pay fees assessed by RWB. In the 2004-05 fiscal year, such fees were expected to total about \$7.4 million. In addition, both the State and the county in which the casino is located receive a portion of the net revenue generated by certain electronic gaming devices at two of the casinos (Seneca Niagara Casino and Seneca Allegany Casino).

RWB employs about 135 full-time employees and 165 per diem employees, most of whom work at the racetracks and casinos. For the 2003 fiscal year, RWB received \$19.5 million in State appropriations. For the 2004-05 fiscal year, RWB was authorized to spend \$21.7 million for its operations. Of this amount, \$7.4 million was for staff and related activities dealing with wagering regulatory enforcement activities such as processing casino employee certifications and gaming inspectors who are present at each of the four casinos.

## **AUDIT FINDINGS AND RECOMMENDATIONS**

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### *Compliance with Compact Requirements*

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RWB's on-site Inspectors perform various reviews, investigations and inspections to determine whether the casinos are in compliance with the requirements contained in their compacts. We examined the

procedures followed by the Inspectors in performing these activities and reviewed selected reports documenting these activities. The purpose of our review was to determine whether these activities provide reasonable assurance the casinos comply with the requirements contained in their compacts.

We found that the Inspectors do an adequate job of performing and documenting complaint investigations, surveillance tape reviews, incident investigations and card/dice inspections. However, improvements are needed in the planning and monitoring of the Inspectors' formal compliance checks, as the current processes provide no assurance all compact requirements are addressed in the reviews and due emphasis is given to the most critical requirements.

Three compacts govern operations at the four casinos (the compact with the Seneca Nation of Indians governs operations at two casinos). Each compact is divided into various sections (e.g., generally a separate section for each of the gaming activities permitted at the casino), and each of these sections is further divided into various subsections (e.g., the section addressing roulette would be further divided into subsections addressing such topics as the types of bets allowed and minimum/maximum wagers.)

Each compact is lengthy and contains a great many requirements. For example, the Seneca Compact has over 1,000 pages addressing operations at the Seneca Niagara Casino and Seneca Allegany Casino, and these pages contain thousands of policy, procedural and internal control requirements. Similarly, the Oneida and Mohawk Compacts both contain hundreds of policy, procedural and internal control requirements.

If RWB is to have reasonable assurance its Inspectors have assessed the casinos'

compliance with all these requirements, a summarized listing of the requirements must be developed for each compact and indicate how compliance will be achieved. For example, at Turning Stone, the independent auditor is responsible for assessing compliance with Appendix C "Chart of Accounts." The requirements on the listing could then be "checked off" as they were addressed in compliance checks. When all the requirements on a listing were checked off, RWB officials would know that all applicable requirements had been addressed at that casino. In addition, to provide assurance that emphasis is being given to the most critical requirements, the requirements on the listing should be prioritized so that the most critical requirements can be addressed more frequently or more intensively.

However, we found that the requirements in the compacts have not been summarized and listed, either at the Central Office or at the casinos. Although RWB officials state that compact requirements were prioritized, we found no evidence indicating that risk assessments have been performed to determine which requirements are more critical. We further found that, while there are overall compliance check summary records for the year, these records do not identify the compact sections and subsections that have been addressed by completed compliance checks. As a result, RWB officials have no assurance all compact requirements are addressed in the reviews and due emphasis is being given to the most critical requirements.

RWB officials disagreed with our conclusions. They stated that, each year, the compliance checks performed at each casino cover appropriate gaming sections in the compact for that casino. However, the officials were unable to explain how they determined that all requirements in a compact

were reviewed. In fact, the officials could not show that the compliance checks were scheduled in a systematic manner.

(In response to our draft report, RWB officials concede that, given the number of compact requirements, it is not possible to check every point at least once a year. RWB officials also explained that some compliance checks are done randomly, and others are scheduled if they are new activities, if there were previously non-compliant issues, or if the activity was not reviewed for a long period of time.)

We noted that, RWB's casino annual report for 2003, indicates that a total of 1,475 compliance checks were performed at the three casinos in operation that year (Seneca Allegany Casino did not open until June 2004): 333 of these compliance checks were performed at Turning Stone Casino, 457 were performed at Akwesasne Mohawk Casino, and 685 were performed at Seneca Niagara Casino. According to RWB officials, each of these compliance checks addressed one of the subsections in the casino's governing compact. However, RWB officials do not know if all the relevant subsections were addressed, because they do not have a listing of all the relevant subsections in the three compacts and do not have a listing of the subsections that were addressed by the 1,475 compliance checks.

According to the officials, each Inspector is generally scheduled to perform two compliance checks a week (the officials noted that the reviews cannot always be completed within a week because there may be other demands on the Inspector's time and some types of reviews are more time-consuming than others). The compliance checks are scheduled by the Supervising Inspectors at the casinos but there are no written plans to guide the scheduling process and ensure all of them

are done during the year or longer time period as needed. There are also no records, either at the Central Office or at the casinos, showing the compact requirements completed to date and the compact requirements remaining to be completed. We therefore question how RWB officials can be assured all compact requirements were reviewed.

To determine whether the compliance checks addressed all relevant compact requirements on an annual basis, we performed a detailed three-year review of certain compliance checks at Turning Stone Casino. Specifically, we reviewed the compliance checks performed in 2002, 2003 and 2004 for sections within Appendix A (Approved Games for Class III Gaming) and Appendix B (Standards of Operation and Management for Class III Games of Chance) of the Oneida Compact. In 2002, 18 of the 33 sections in Appendix A were relevant to casino operations because the gaming activities covered by those 18 sections were being played at the casino (the gaming activities covered by the other 15 sections were not played at the casino when the review was done). In 2003 and 2004, 19 of the 33 sections were relevant. In all three years, all 30 sections in Appendix B were relevant.

As shown in the following table, in 2002, there was no indication compliance checks were done for the relevant sections, and in 2003 and 2004, there was no information regarding compliance checks for several relevant sections:

Year	Relevant Sections Covered by Compliance Checks	
	Appendix A	Appendix B
2002	0 of 18	0 of 30
2003	15 of 19	11 of 30
2004	10 of 19	20 of 30
<b>Total</b>	25 of 56	31 of 90

Some of the sections covered by compliance checks in 2003 and 2004 were only part of a section because certain subsections within those sections were not addressed by the compliance checks.

If compact requirements are not addressed by compliance checks, RWB officials have less assurance gaming activities are being properly conducted at the casinos. We note that many compliance checks have identified significant problems that needed to be corrected, particularly at the Akwesasne Mohawk Casino and Seneca Niagara Casino. For example, Inspectors found that credit was improperly issued to patrons, wire transfers were not processed in accordance with requirements, access to secure areas was not properly controlled, playing cards were dealt in the wrong direction, and monetary change was made in an inappropriate manner.

(RWB officials attempted to invalidate these issues in their response to our draft report, and suggest these examples are misleading.)

Auditor's Comments: These items were cited by RWB Gaming Inspectors, we just presented the examples to illustrate the type of findings that the Inspectors have reported during their compliance checks.

RWB's casino annual reports for 2003 and 2004 show that 245 of the 3,161 compliance checks performed in those two years identified noncompliant practices (at all four casinos). We reviewed documentation from RWB and determined that corrective action had generally been taken, and the casinos were now in compliance in all but 16 of these 245 areas. All 16 areas of continuing noncompliance were at the Seneca Niagara Casino, and the practices could not be brought into compliance until the Seneca Compact was amended (issues of noncompliance are sometimes resolved by modifying the

requirements in the compact). Since modifying a compact is a lengthy process requiring federal approval, and none of the 16 areas of continuing noncompliance are considered critical, the necessary amendments will not be made until other changes requiring modification of the compacts are identified.

We were also advised that litigation is sometimes needed to resolve areas of noncompliance, and such litigation can be lengthy (e.g., litigation relating to certain electronic gaming devices at Turning Stone Casino has been ongoing for more than ten years). Despite such delays, compliance checks are an important regulatory tool for RWB, providing critical protection to patrons who visit the casinos. RWB thus needs to ensure that compliance checks are performed for all relevant compact requirements.

In response to our preliminary audit findings, RWB officials stated that the Inspectors at each casino maintain records of past compliance checks and can manually compare these records against the casino's compact to determine whether any portions of the compact have not been addressed by compliance checks. However, RWB officials did not provide information to the auditors indicating that this was done nor were the results for the years we reviewed provided. The officials also indicated that, in an effort to formalize and improve this process, they performed a comprehensive assessment and decided to develop a computerized compliance review tracking system. The new system will divide the three compacts into their component sections and subsections, and thus enable RWB to ensure that all relevant compact requirements are addressed in compliance checks. We believe such a system would be a significant improvement and, if properly designed and utilized, will enable RWB to address many of the weaknesses cited in our report. (In response

to our draft audit report, RWB officials advised us that the new computerized database is now in place at all four casinos.)

RWB officials stated at the closing conference that the new computerized compliance review tracking system was successfully tested at the Akwesasne Mohawk Casino and is being formatted to correspond to the requirements in the Oneida and Seneca Compacts. We requested documentation of the tests performed and the results, but none was provided. RWB officials also stated that they performed a risk assessment of the casinos' gaming operations, but did not document the assessment. (In response to our draft audit report, RWB officials added that the database spreadsheets were visually reviewed and compared to the compacts; formal testing procedures would have been redundant.)

### **Recommendations**

1. Perform risk assessments to determine which compact requirements are more critical, and ensure that compliance checks are regularly and thoroughly performed for these requirements. Ensure that the risk assessments are documented and periodically updated.

(Replying to our draft audit report, RWB officials indicate that a simple review of the contents of the Master Compliance Binders illustrates that certain sections have been reviewed more frequently than others.)

Auditor's Comments: We disagree that a review of the Master Compliance Binders is an acceptable substitute for a formal risk assessment which is a process where RWB's management identifies, evaluates and determines these events that could impact their ability to accomplish its

mission. As part of the process, RWB officials have to determine how to manage certain types of events. Thus, even the automation of the tracking of the status for the compliance reviews is not a risk assessment.

2. Develop a comprehensive tracking/scheduling system for compliance checks. The system should list all the requirements that need to be addressed by compliance checks and show when they were last addressed. Use the system to schedule compliance checks and monitor the extent to which high priority compliance checks are completed on schedule and unaddressed compact requirements are addressed.

(RWB officials replied that the Master Compliance Binders provide sufficient information regarding how the compliance checks are assigned and the number of checks completed with the results. They also indicate that the compliance checks are assigned in a random order so that casino personnel cannot predict which sections and subsections will be checked.)

Auditor's Comments: We question whether a simple review of the Binders provides a clear picture of the level of work done by the Inspectors and reflects how the site supervisor or his designee made the assignment. We reviewed the Binders at Turning Stone with the assistance of two RWB officials. It was not always clear to them from the information in the Binders. For example, they could not tell when certain games started at the casino or when it was removed. Thus, using a system to internally track/schedule compliance reviews would not preclude them from selecting sections/areas at random or

focusing on an issue selected and done as unannounced visit.

3. To facilitate the monitoring of compliance checks, develop a periodic (e.g., monthly) management report showing the compact requirements that have been addressed in the past year at each casino and the requirements that have not been addressed. Distribute this management report to Central Office officials and Supervising Inspectors.

(RWB officials referred to their response to recommendations 1 and 2.)

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*Central Office Oversight of Casino Inspectors*

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RWB Inspectors are deployed on site at the four casinos. If Bureau of Gaming Operations officials in the Albany Central Office are to have reasonable assurance the Inspectors are fulfilling their duties in accordance with RWB's expectations and in a consistent manner at the different casinos, they must take steps to ensure adequacy, uniformity and consistency in the Inspectors' work. We found that Central Office officials have taken such steps. For example, they issued inspection guidelines to the Inspectors and provided standard training.

However, we also found that certain other useful steps have not been taken by Central Office officials. In particular, the officials have not instituted a uniform quality assurance process to ensure that compliance checks at each casino are thorough, consistent, adequately documented, and performed as scheduled. As a result, the work of the Inspectors is less likely to be performed in a consistent manner at the different casinos. Central Office officials rely on the oversight provided by the Supervising Inspectors who are stationed at the casinos.

To determine whether the Inspectors' work was performed in accordance with RWB's expectations and in a consistent manner at the different casinos, we examined the practices at each casino for performing and documenting compliance checks. We identified the following inconsistencies:

- The Inspectors at the Seneca Niagara Casino and Akwesasne Mohawk Casino prepare a monthly summary report for compliance checks. The report provides useful information about each compliance check performed that month, showing the name of the Inspector performing the review, the compact section or subsection reviewed, the identification numbers of the gaming tables observed, the total number of tables observed, the recommendations made when violations were observed, and actions taken to correct or resolve the violations. However, the Inspectors at the other two casinos do not prepare such a report.
- The Inspectors are to be guided by the contents of certain loose-leaf binders when they perform compliance checks, and are to record in the binders certain information about completed compliance checks. However, we found that the binders are organized and maintained in different manners at the casinos. For example, the compliance binder is kept in chronological order by date, making it difficult to determine when and if a subsection had been reviewed while another casino maintained the compliance checks in compact subsection order.
- At Akwesasne Mohawk Casino, Seneca Niagara Casino and Seneca Allegany Casino, the Supervising Inspectors assign compact subsections for compliance checks. However, in 2004, the

Supervising Inspectors at Turning Stone Casino began to assign Compact sections for compliance checks. Prior to 2004, compact subsections were assigned at that casino. As a result, the output of the Inspectors at Turning Stone Casino in 2004 (46 completed compliance checks) could not readily be compared to the output in prior years or the output at other casinos, as is shown by the following data from RWB's annual reports for 2003 and 2004:

Casino	Year	Number of Compliance Checks
Turning Stone	2003	333
	2004	46
Akwesasne	2003	457
	2004	463
Niagara	2003	685
	2004	735
Allegany	2004	442

We also identified two other problems at Turning Stone Casino. First, the number of completed compliance checks reported to the Central Office in 2003 and 2004 did not agree with the number recorded in the Inspectors' binders. Second, we found several written compliance check reports missing for both 2003 and 2004.

Specifically, in 2003, compliance checks were reportedly performed for 120 subsections in Appendix A and 213 subsections in Appendix B. However, written reports were available for only 90 of the 120 Appendix A compliance checks, and for only 60 of the 213 Appendix B compliance checks. In 2004, compliance checks were reportedly performed for 12 sections in Appendix A and 34 sections in Appendix B (the compliance checks at Turning Stone Casino were identified by sections, rather than subsections, in 2004). Written reports were available for all 12 of

the compliance checks in Appendix A, but were available for only 28 of the 34 Appendix B compliance checks. Moreover, the Inspectors could provide no other alternative documentation to confirm that the undocumented compliance checks were in fact performed.

To provide better assurance compliance checks at each casino are consistent, adequately documented and performed as scheduled, we recommend RWB institute a quality assurance process at the Central Office. RWB officials stated that they have initiated efforts to better standardize the activities of the Inspectors at the individual Indian casinos, but noted that complete standardization may not be practicable due to substantive differences in the three compacts. Notwithstanding, Central Office review of the compliance checks performed at each casino would provide assurance that they meet management's expectations.

#### Recommendation

- Institute a quality assurance process at the Central Office to ensure that compliance checks at each casino are thorough, consistent, adequately documented, and performed as scheduled.

(RWB officials responded that Central Office has commenced prescribing unified compliance review protocols to be applicable to all gaming facilities.)

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#### *Certification of Casino Employees*

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According to the three compacts governing operations at the four casinos, all employees working at the casinos must be licensed. A license to work at a particular casino is to be issued by the Indian Nation operating that casino, but no license is to be issued until the applicant has been certified by RWB. The

licenses are to be effective for specified periods only (between one and two years, unless a longer period is specified when the license is issued), and may be renewed at the end of this period.

To certify an applicant, RWB sends the applicant's fingerprints to the Division of State Police for a criminal history check and a background investigation. If no problems are identified in the criminal history check and background investigation, the applicant is certified (i.e., found suitable) by RWB. If any arrests, credit problems or questionable incidents are identified, the applicant is interviewed by an RWB Inspector to obtain more information about the potentially disqualifying incidents. The interview is documented, and this documentation, along with other documentation about the applicant, is sent to RWB's Licensing Unit, which makes the final determination about the applicant's certification.

According to the compacts, an applicant should not be licensed to work in a casino until RWB's certification process has been completed. The compacts also authorize RWB to issue "temporary" certifications of suitability for casino applicants, as long as preliminary reviews do not disclose grounds for denial of certification. Temporary licenses remain in effect until completion of the background investigation and a determination is made on the license. We found that applicants at all four casinos are routinely issued temporary licenses and allowed to begin working at the casinos before RWB's certification process has been completed. We further determined that the temporary licenses, which have no expiration date, can last as long or longer than some of the regular licenses.

Per RWB records, as of October 31, 2005, there has been a total of 18,916 casino

employees Statewide who were issued a temporary license and only 7,168 have been annually certified or found suitable to work at a casino (these employees were issued regular licenses).

RWB officials told us they allow such temporary licenses because full background investigations, done by the New York State Police, often take a long time to complete. They noted that criminal history checks do not take long, and no applicant is issued a temporary license until a criminal history check has been performed. However, this process accepts applicants for potentially sensitive positions before fully determining whether they are suitable for the positions, particularly since it can take a year or more to make the final determination. In such circumstances, there is an increased risk that a casino's gaming operations could be compromised by an employee who would not have been hired if the information disclosed by a full background investigation had been available at the time of hiring.

We recommend RWB expedite the completion of full background investigations for all casino employees with temporary licenses. We further recommend RWB work with the New York State Police and re-design its certification process so that the process is more timely. To facilitate this re-design, RWB officials should contact other organizations that perform similar types of background investigations and adopt appropriate best practices.

Casino employees may renew their licenses when they expire. If RWB is to maintain full regulatory oversight of the casinos' workforce, employees seeking to renew their licenses should have to be recertified by RWB. RWB officials told us that a voluntary recertification process has been instituted at Turning Stone Casino, where employees are

recertified every five years. They also told us that the Governor's Office is negotiating a recertification process for Akwesasne Mohawk Casino, which opened in 1999. They further stated that they expected a voluntary recertification process to be initiated at the two Seneca Nation casinos.

(RWB officials replied to our draft audit report that each casino now has a recertification process.)

We believe a formal recertification process should have been included in the compact of each casino before the casino opened. In the absence of such a process, employees who might compromise the integrity of gaming operations are less likely to be identified. We recommend formal recertification processes be established at each casino as soon as possible, and such a process be included in the compact. We acknowledge that RWB has no direct authority to modify the compacts, but they are able to provide input to applicable State representatives as to what compact amendments would be helpful. Formal recertification is one issue that RWB can seek.

According to the three compacts, all casino employees are required to wear an identification badge when they are on duty. The badge should display the employee's license number, first name and photograph, and contain a color-coded letter denoting the areas of the casino the employee is authorized to access. The badges are normally affixed to the upper portion of the employee's outer garment. RWB Inspectors are expected to confirm the presence of the badges during their routine observations of the gaming floor and periodically compare the license numbers and first names to an authorized listing of casino employees.

To determine whether the employee identification badges contained accurate information and were properly displayed by the employees while on duty, we randomly selected ten employees at each of the four casinos, observed the employees while they were on duty, and compared the information on their badges to the information contained in RWB's Licensing System.

We found that 39 of the 40 employees were properly displaying their badges while on duty and the information on their badges agreed with the information contained in RWB's Licensing System. One of the employees at Seneca Niagara Casino (a waitress) was not wearing her badge while on duty. While it is important that identification badges be worn at all times by all on-duty employees, we conclude from our test that RWB and the casinos have a generally adequate process for ensuring compliance with this requirement.

### **Recommendations**

5. Expedite the completion of full background investigations for all casino employees with temporary licenses.
6. Re-design the casino employee certification process so that the process is more timely. To facilitate this re-design, contact other organizations that perform similar types of background investigations and adopt appropriate best practices.

(In response to recommendations 5 and 6, RWB officials maintain that the audit fails to understand that the use of temporary licenses is implicit in the certification process. Officials question what we mean by "timeliness." In addition, officials point out that the RWB has no authority to amend compacts.)

Auditor's Comments: Contrary to the assertions of RWB officials, we do understand the need for temporary licenses while the full certification process takes place. We do not define timeliness in the audit report, but do point out that the certification process can take up to a year or more to complete. Meanwhile, applicants are working in sensitive positions. We acknowledge that the RWB may have no authority to amend the compact, but we do not see how this precludes the RWB from working to determine if the certification process itself can be accomplished more timely.

7. Establish formal recertification processes at Seneca Niagara, Seneca Allegany, and Akwesasne Mohawk Casinos, and request that all three compacts be amended to include such processes as soon as it is practicable to do so.

WB replied to our draft audit report that each casino has a recertification process.)

Auditor's Comments: During the audit, we met with the Director of Casinos who advised us that three casinos (Akwesasne Mohawk, Seneca Niagara and Seneca Allegany) did not have a recertification process. At the closing conference this position had not changed. We are pleased that in its response to our draft audit report there is now a recertification process at these three casinos.

8. Ensure that a formal recertification process is included in any new compacts. (RWB officials replied to our draft report that each casino now has a recertification process.)

### Verification of State and Local Share of Revenue from Electronic Gaming Devices

In accordance with the compacts governing operations at three of the casinos (Akwesasne Mohawk Casino, Seneca Niagara Casino, and Seneca Allegany Casino), the State and the counties in which the casinos are located are to receive a certain percentage of the net revenue generated by certain electronic gaming devices at those casinos (the devices resemble slot machines). During the fiscal year ended March 31, 2005, the State received a total of \$44.1 million in such revenue from Seneca Niagara and Seneca Allegany Casinos, and the two counties (Niagara and Cattaraugus) received a total of \$13.0 million. The approved devices were not installed at Akwesasne Mohawk Casino until May 2005, and in accordance with the approved current compact, the State and the county receive no such revenue from Turning Stone Casino (the installation of the electronic gaming devices at Turning Stone Casino is the subject of ongoing litigation between the State and the Oneida Indian Nation of New York).

A commercial vendor provides the electronic gaming devices at the three casinos sharing revenue with the State and the counties. The performance of the devices is controlled by computer programs that generate random numbers. At each casino, the net revenue generated by the devices is calculated and reported by computer programs provided by the vendor. If RWB officials are to have reasonable assurance the computer programs are generating random numbers as intended and accurately calculating and reporting net revenue, RWB must establish a process for verifying the programs' performance of these activities.

We found that RWB has not established such a process. We note that there are controls for ensuring the integrity of the computer

programs when the electronic gaming devices are installed, operating problems are reported, and jackpots are paid out. We also note that the casinos' annual financial statements are audited by the Indian Nations' outside independent accountants. However, RWB does not perform independent systemwide reviews to determine whether the computer programs are performing as intended and the net revenue from the gaming devices is accurately calculated and accurately reported.

RWB officials told us they intend to review the audit workpapers of the Indian Nations' independent accountants to determine whether the audit steps performed during the annual financial audits provide reasonable assurance net revenue from the gaming devices is accurately calculated and reported. The officials further told us they intend to require that the accuracy of the reported revenue, and the performance of the computer programs calculating the revenue, be verified annually by auditing firms with the expertise to perform such reviews. Given the large amount of patron money at stake, we recommend RWB act without delay to initiate an annual verification process for this revenue.

### **Recommendation**

9. Promptly initiate an annual verification process for the State and local share of the revenue from the casinos' electronic gaming devices. Ensure that the process includes a review of the computer programs calculating the revenue, and all such reviews are performed by appropriately qualified firms.

(RWB officials responded that they have been engaging in the review process for some time. They have not yet determined if present processes are appropriate.)

### **AUDIT SCOPE AND METHODOLOGY**

We conducted our performance audit in accordance with generally accepted government auditing standards. We audited certain Indian casino gaming regulatory activities of RWB for the period January 1, 2002 through October 7, 2005. To accomplish our audit objective, we interviewed RWB officials and staff, observed RWB Gaming Inspectors and casino staff at the casinos, and reviewed RWB documents and reports. We did not audit RWB's regulatory activities relating to the certification and registration of companies doing business with the Indian casinos. This audit report also does not address RWB's oversight of charitable gaming and horse-racing. We address RWB's oversight of horse-racing in audit report 2004-S-62.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State, several of which are performed by the Division of State Services. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these management functions do not affect our ability to conduct independent audits of program performance.

### **AUTHORITY**

The audit was performed pursuant to the State Comptroller's authority as set forth in Article

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V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

### **REPORTING REQUIREMENTS**

A draft copy of this report was provided to RWB officials for their review and comment. Their comments were considered in preparing this report and are included as Appendix A.

Within 90 days after the final release of this report, as required by Section 170 of the Executive Law, the Chairman of the New York State Racing and Wagering Board shall

report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

### **CONTRIBUTORS TO THE REPORT**

Major contributors to this report include Carmen Maldonado, Gerald Tysiak, Roger C. Mazula, Marianne Boyer, Kenneth Ring, Bruce Brimmer, Christopher Morris, Amanda Strait and Dana Newhouse.

**APPENDIX A - AUDITEE RESPONSE**



*Chairwoman*  
Cheryl Ritchko-Buley

*Members*  
Michael J. Hoblock, Jr.

**STATE OF NEW YORK  
RACING AND WAGERING BOARD**

*Executive Director*  
John G. Cansdale

*Secretary to the Board*  
Gail Pronti

May 5, 2006

Ms. Carmen Maldonado  
Audit Director  
Office of the State Comptroller  
Division of State Services  
State Audit Bureau  
123 William Street – 21<sup>st</sup> Floor  
New York, New York 10038

Dear Ms. Maldonado,

In accordance with Section 170 of the Executive Law, I am transmitting our response to the State Comptroller's audit of the New York State Racing and Wagering Board's Oversight of Indian Casino Gaming Activities.

If you or your staff have questions regarding the report or our response, please contact me.

Very Truly Yours,

A handwritten signature in cursive script that reads "Cheryl A. Buley".

Cheryl Buley  
Chairwoman

1 Broadway Center, Suite 600, Schenectady, NY 12305-2553  
Telephone (518) 395-5400 FAX: (518) 347-1250  
<http://www.racing.state.ny.us>

## Response To Comptroller's Report 2005-S-45 Concerning Compliance with Compact Requirements and Central Office Oversight of Casino Inspectors

The Racing and Wagering Board has prepared general observations initially, followed by specific address of the audit recommendations.

### OBSERVATIONS

General observation 1. The audit starts with a premise that the efficacy and thoroughness of the Board's regulatory and oversight functions can be measured solely on the basis of written compliance review reports. This premise ignores the thousands of compliance checks routinely visually performed by gaming inspectors during their day-to-day operations. Gaming inspectors continuously measure compliance in a host of manners such as walking by a casino employee and noting they are wearing proper identification badges, by regularly monitoring table game operations, fills, credits, and countless other casino procedures during the normal course of their shifts. Requiring gaming inspectors to reduce to writing each function reviewed would burden gaming inspectors with writing unnecessary reports requiring their absence from the gaming floor and thus preventing them from fulfilling their primary objectives.

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**Comment  
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General observation 2. The audit report contains a premise that Board gaming inspectors "are supposed to assess the casinos' compliance with the requirements contained in their compacts". While Board inspectors do undertake a compliance role among other duties, the role of gaming inspectors is not defined by the compacts. The development and implementation of the compliance review program is established through Board policy. While the benefit of conducting written compliance reviews is readily apparent, the performance of assigned compliance reviews is a function secondary to the duty of providing a visible presence within the Indian gaming facilities to afford patrons an outlet unaffiliated with the Indian tribe or nation where questions, concerns and complaints may be addressed and ultimately resolved.

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**Comment  
2**

General observation 3. The audit recommends that the requirements appearing in each section and subsection of the various compact be specifically listed and summarized and that instructions indicating how compliance is achieved be included. Execution of such would be burdensome since, by the auditors' own admission, "the Seneca compact has over 1,000 pages addressing operations ..., and these pages contain thousands of policy, procedural and internal control requirements. The Oneida and Mohawk compacts both contain hundreds of policy, procedural and internal control requirements." Compliance with each compacts' requirements is achieved through following the plain meaning of each section.

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**Comment  
3**

General observation 4. In discussion of compliance review scheduling, the audit report criticizes the Board process stating "there are no written plans to guide the scheduling process and ensure all of them are done during the year." We agree. As mentioned within the audit report itself, the Mohawk and Oneida compacts are lengthy, consisting of approximately 300 pages each. The Seneca compact can be measured at well over 1,000 pages. A review of an entire compact simply cannot be completed within a year. The compliance review program is a continuous process that does not lend itself to "completion" on an annual basis. Regardless, to ensure that each and every provision is reviewed annually would limit, if not eliminate, the Board's ability to assign sections on a priority basis.

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**Comment  
4**

General observation 5. With respect to the Board's implementation of the computerized compliance review database system, the audit report alleges that documentation of the tests performed and the results were requested but not provided. At the closing meeting for the audit, the Manager of Gaming Operations stated that thorough review of the database spreadsheets had been produced and compared with provisions of the

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**Comment  
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\* See State Comptroller's Comments, pages 24 and 25

compacts and found to be consistent. It was stated explicitly at the closing meeting that formal testing procedures would be redundant as visual review was sufficient to establish that the database accomplished the goal.

General observation 6. The audit report cites among concerns that “patrons’ wire transfers were not processed in accordance with requirements, access to secure areas was not properly controlled, playing cards were dealt in the wrong direction, and monetary change was made in an inappropriate manner.” The audit reports concerns are illusory.

Patrons’ wire transfers have never been offered at the gaming facility in question. The casino would be in violation of the compact if they offered wire transfers without amending their internal control procedures governing the procedure. As the activity has not taken place, any violation is simply theoretical.

The Board agrees that there was a violation regarding access to secure areas. While a technical violation, the present process increased security of the secure area. The Board believes that rigid compliance with the compact is inappropriate when a benign alteration of procedure exceeds the intent of the provision. The Board will support the Seneca Nation’s proposed amendment to this section to bring the present practice into compliance. This was fully and completely explained to audit staff.

The concern regarding dealing procedures lacks the detail necessary to respond, however we believe the audit staff noted the violation after reading written reports of a Board inspector. To indicate that there is a systemic problem with dealing procedures that were undetected or ignored is irresponsible.

Finally, with respect to the monetary change, the audit report fails to provide the detail necessary to afford the Board an ability to respond.

General observation 7. The Board takes issue with the inclusion of discussion regarding proper badging at the Seneca Niagara Casino. Specifically, the report indicates that “We found that 39 of the 40 employees were properly displaying their badges while on duty and the information on their badges agreed with the information contained in the RWB’s Licensing System. One of the employees at the Seneca Niagara Casino (a waitress), was not wearing her badge while on duty. While it is important that identification badges be worn at all times by all on-duty employees, we conclude that the casinos have a generally adequate process for ensuring compliance with this requirement.”

According to the memorandum generated by the Board gaming inspector accompanying the auditors on their site visit at the Seneca Niagara Casino, the employee in question was wearing the required badge, but was not in possession of her Seneca Gaming Authority-issued license card when asked by the auditors to produce it. The license card is an instrument issued by the Seneca Gaming Authority and issuance and possession of such a card is not required by the Compact. Possession of the card - or lack of possession - is therefore not a compact issue or concern.

General observation 8. The audit report finds that, the “Central Office officials rely on the oversight provided by the Supervising Inspectors ... As a result, the work of the Inspectors is less likely to be performed in full accordance with RWB’s expectations and in a consistent manner.” This statement is an affront to the professionalism, ethic and capabilities of each Board’s Supervising Gaming Operations Inspector.

The concern regarding central office oversight is misplaced; each gaming facility is visited monthly, at minimum, by the Assistant Manager of Gaming Operations, and each receives periodic, on-site review and regular off-site monitoring by the Manager of Gaming Operations and an Assistant Counsel of computerized reports, faxed special documents and memoranda and e-mails.

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**Comment  
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**Comment  
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**Comment  
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**Comment  
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**Comment  
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**Comment  
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\* See State Comptroller’s Comments, pages 24 and 25

General observation 9. The audit report states that “... summary records for the year are not maintained, either at the Central Office or at the Casinos.” This assertion is incorrect. Each site supervisor prepares an annual report, illustrating a cumulative review of all activities undertaken at their respective gaming facility. The annual reports are maintained at each facility. Copies of the annual reports are also forwarded to central office staff each year. Audit staff knowledge of these reports is evidenced through their specific reference to the “casino annual report” in the draft audit report.

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**Comment**  
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## RECOMMENDATIONS

Recommendation 1. The audit recommends that the Board perform risk assessments to determine which compact requirements are more critical, and ensure that compliance checks are regularly and thoroughly performed for these requirements, suggesting that the risk assessments be documented and periodically updated.

### Response.

From the commencement of gaming operations, Board central staff identified key compact sections and directed site supervisors to ensure they were reviewed on a more frequent basis than other sections. Simple review of the Board’s Master Compliance Binders illustrates that certain sections have been reviewed with greater frequency than other sections.

Board policy further permits each casino detail site supervisor or their designee to review their relevant gaming compact and assign compliance reviews, balancing the importance of each section with the frequency of that section’s review. The site supervisor or their designee then carefully reviews reports illustrating completed assignments prior to inserting a physical copy of the report into the Master Compliance Binders. The Master Compliance Binders are functionally a replication of each gaming compact, divided by section. Perusal through these Binders illustrates each compliance check formally undertaken by staff and contains supplemental information such as time and date of check, findings and, if required, remedial actions taken.

The Board concedes a manual monitoring method to be labor intensive and susceptible to human error, thus we have implemented a computerized compliance review database system. The audit recognized that the Board was in the process of implementing the computerized database for better assignment, tracking and accounting of written compliance reviews prior to the commencement of the audit. It should be noted that the system is presently being utilized at all four casinos.

Recommendation 2. The audit recommends that the Board develop a comprehensive tracking/scheduling system for compliance checks. It is further recommended that the system be used to schedule compliance checks and monitor to the extent to which high priority compliance checks are completed on schedule and unaddressed compact requirements are addressed.

Response. Again, each site supervisor or their designee makes the assignment of compliance checks based on their knowledge of the compact requirements and history of activity. This affords flexibility in assignment, leading to compliance reviews that are topical and timely. As mentioned *supra*, when completed the reviews are inserted into the Master Compliance Binders. The Master Compliance Binders are functionally a replication of each gaming compact, divided by section. Simple perusal through these Binders illustrates each compliance check formally undertaken by staff and contains supplemental information such as time and date of check, findings and, if required, remedial actions taken. Additionally, prior to a report’s insertion in the Binder, site supervisors or their designees verify completeness of each

\* See State Comptroller’s Comments, page 25

compliance review before inclusion into the Master Compliance Binder. This affords the ability to understand which subsections of complex, lengthy sections require initial or supplemental review.

The audit report indicates that Board officials could not show that compliance checks were scheduled in a systematic manner. As was explained to the audit staff, compliance reviews are predominantly assigned on a random basis to prevent casino personnel from predicting which sections and subsections of a compact will be examined. This process reduces the risk of casino employees artificially altering their performance and operation to comply with the compact's standards for the sake of Board examination. It was also explained to audit staff that in addition to random assignments, compliance reviews are scheduled for all new games and activities and reviews are scheduled based upon the date a particular element was last examined. Board inspectors are also assigned to recheck matters previously determined to be non-compliant, following an assessment by the site supervisor regarding the potential risk of non-compliance in the future.

Recommendation 3. The audit recommends, to facilitate the monitoring of compliance checks, the Board develop of a periodic management report showing the compact requirements that have been addressed in the past year at each casino and the requirements that have not been addressed. It is further recommended that the management report be distributed to the Board's central office and supervising inspectors.

Response. See previous two responses.

Recommendation 4. The audit recommends the institution of a quality assurance process at the Board's main office to ensure that compliance checks at each casino are thorough, consistent, adequately documented, and performed as scheduled.

Response. As the audit report acknowledges, Board central staff recognized, prior to the start of the audit, the need to standardize the procedures governing the conduct, writing and review of compliance reports. Auditors were informed that the compliance review program was initially created on an ad hoc basis as facilities opened. Since, Board central staff has commenced proscribing unified compliance review protocols to be applicable at all gaming facilities.

Implicit in the recommendation is an undertone that the review undertaken by central staff was either non-existent or deficient. In the past, all reports were reviewed by the Board's Manager and Assistant Manager of Gaming Operations and an Assistant Counsel, all central staff employees. With the implemented computerized compliance review database system, database spreadsheets are forwarded to the Board's main office on a monthly basis for review and comment. Additionally, Board central staff retain a physical report review process for memoranda, reports and like items deemed significant or important by site supervisors.

Recommendation 5. The audit recommends full background investigations for all casino employees with temporary licenses be expedited.

Response. The audit staff have failed to understand the licensing process. Implicit in the audit is concern that casino employees are permitted to be employed prior to the conduct of a background investigation. [See, "According to the compacts, an applicant should not be licensed to work in a casino until RWB's certification process has been completed. However, we found that applicants at four casinos are routinely issued 'temporary' licenses and allowed to begin working at the casinos before RWB's certification process has been completed. We further determined that the 'temporary' licenses, which have no expiration date, can last as long or longer than regular licenses, which are generally good for one or two years."] While the audit staff have concern with "temporary" licenses, such are explicitly provided for in each compact.

Nation-State Gaming Compact between the Seneca Nation of Indians and the State of New York Appendix C Section 12 is entitled Temporary Licenses. Subdivision (b) of this section is entitled “Temporary Licensing and Findings of Suitability.” This section permits the Nation Gaming Operation to request the Seneca Gaming Authority to issue a temporary license for any applicant. In that event, the Racing and Wagering Board has specific responsibilities. For the temporary process to be effectuated, the Seneca Gaming Authority must request the Racing and Wagering Board to issue a temporary finding of suitability at the time of the submission of the application and applicant’s fingerprint card(s) to the Racing and Wagering Board. The Racing and Wagering Board is required to issue a temporary finding of suitability for any applicant whose application discloses no grounds reasonably sufficient to disqualify him or her in the judgment of the Racing and Wagering Board and the State fingerprint check does not disclose grounds for denial of a finding of suitability. The Seneca Gaming Authority is permitted to issue a temporary license only if the Racing and Wagering Board has first issued a temporary finding of suitability to the applicant. The temporary finding of suitability and temporary license remain in effect until suspended, revoked or upon the issuance or denial of a finding of suitability.

The Nation-State Compact between the Oneida Indian Nation of New York and the State of New York contains similar language. Compact Section 6 (g) is entitled Temporary Licensing and Certification. Here, the Nation gaming operation may request the Oneida Indian Nation Gaming Commission to issue a temporary license for any applicant. In that event, the Commission must make a request to the Racing and Wagering Board to issue a temporary certification for that applicant, submitting the applicant’s filing and fingerprint cards. Under such circumstances the Board is required to issue a temporary certification for any applicant whose application discloses no grounds reasonably sufficient to disqualify him or her in the judgment of the Board and the Board’s fingerprint check with the New York State Division of Criminal Justice Services does not disclose grounds for the denial of certification. Like with Seneca, the Commission may only issue a temporary license provided that the Board has issued a temporary certification. The temporary certification and license remain in effect until either is suspended, revoked or until such time that an annual certification and license are issued.

The Tribal-State Compact between the Saint Regis Mohawk Tribe and the State of New York contains similar language. Compact Section 5 (f) is entitled Duration of Certification and License: Provision for Temporary Certification and Licensing. Here, the Tribal Gaming Operation may request the Saint Regis Mohawk Tribal Gaming Commission issue a temporary license for any applicant. In that event, the Tribal Gaming Commission shall request the Racing and Wagering Board to issue a temporary certification and must submit the relevant application, including the applicant’s fingerprints, to the Board. The Board shall issue a temporary certification for any applicant whose application discloses no grounds reasonably sufficient to disqualify him or her in the judgment of the Board and the Board’s fingerprint check with the New York State Division of Criminal Justice Services does not disclose grounds for denial of certification. The Gaming Commission may issue a temporary license provided that the Board has issued a temporary certification to the applicant. As with the other compacts, the temporary gaming certification and temporary gaming license shall remain in effect, until suspended or revoked or upon the issuance or denial of annual certification.

Finally, regular licenses are not “generally good for one or two years”. Rather, regular licenses are applicable for a five-year term with Mohawk and Oneida gaming facilities and for two or three year terms, depending upon license level, under the Seneca Compact.

Recommendation 6. The audit recommends that the casino employees certification process be re-designed so that the process is timely. It is suggested that contact be made with other organizations that perform similar types of background investigations and adopt appropriate best practices.

Response. The Board questions what is meant by “timely.” As detailed *supra*, no compact provision requires the completion of a background investigation within a time certain. The background investigations themselves are undertaken by the New York State Police for the Board. The New York State Police, an agency different than and not under the control and direction of the Board, controls the backgrounding itself. As such, concern with timeliness of the certification process is misdirected. Each background is approached individually; complexities drive the length of the backgrounding process. Regardless, as temporary licenses are authorized until completion of the background investigation and a determination is made on the license, there is no issue regarding timeliness.

The recommendation that the certification process should be “re-designed” illustrates a lack of understanding of law governing the tribal-state compact in general and the State’s gaming compacts specifically. The compacting process, governed by federal law, is between a federally recognized Indian tribe or nation and a State of the Union. While a state agency could be specifically delegated authority by a State to act for purposes of compacting, the Board has not been so delegated. In fact, the issue of Board authority and compact amendment procedure was included in litigation brought by the State. See, New York v. Oneida Indian Nation of New York, 90 F.3d 58 (2nd. Cir. 1996). While that case has not reached final determination having been remanded, the State’s theory is that the Board has no authority to amend the Oneida gaming compact.

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Comment  
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The Nation-State Compact between the Oneida Indian Nation of New York and the State of New York Section 15. AMENDMENT AND MODIFICATION, provides that the “terms and conditions of this Compact may be modified or amended by written agreement of both parties.” Similarly, Nation-State Gaming Compact between the Seneca Nation of Indians and the State of New York Part 16. AMENDMENT AND MODIFICATION, provides that the “Compact and its Appendices may be amended or modified by written agreement of the Nation and the State.”

Finally, Tribal-State Compact between the Saint Regis Mohawk Tribe and the State of New York SECTION 13. AMENDMENT AND MODIFICATION provides that “No provision of this Compact or of any of its Appendices shall be amended or modified except by written agreement of the Tribe and the State.”

As evidenced, the discussion of compact amendment in a recommendation to the Board is misguided as the Board has no control or formal input in the amendment process.

Recommendation 7. The audit recommends that a formal recertification process at Seneca Niagara, Seneca Allegany, and the Akwesasne Mohawk Casinos, and request that all three compacts be amended to include such processes as soon as it is practicable to do so.

Response. Each compact already contains a formal recertification process.

Directly below the section regarding temporary licensing, the Tribal-State Compact between the Saint Regis Mohawk Tribe and the State of New York contains language regarding renewals. This provision, Compact Section 5 (g) is entitled Renewal of Certification and License. Pursuant to this section, an applicant for certification and license renewal is required to submit a renewal application to the Mohawk Gaming Commission. The renewal forms are forwarded to the Board, who then forwards same to the New York State Police for review. The Board is required to issue a renewal certification unless new information is sufficient to disqualify the applicant. A copy of the renewal certification shall be sent to the Tribal Gaming Agency. The Tribal Gaming Agency may, in its discretion, renew the license of any employee who meets the qualifications of this Section and is recertified by the State Gaming Agency. The Tribal Gaming Agency shall notify the State Gaming Agency of its grant or denial of any renewal license.

\* See State Comptroller’s Comments, page 25

The Nation-State Compact between the Oneida Indian Nation of New York and the State of New York contains similar language. Compact Section 6 (i) is entitled Renewal of License. Here, an applicant submits a renewal application to the Nation gaming operation, which ultimately causes a copy of the application to be filed with the Board. The Board, as above, forwards a copy to the New York State Police for review and background, if warranted. The Board is required to issue a renewal certification unless new information is sufficient to disqualify the applicant. A copy of the renewal certification shall be sent to the Nation gaming commission. The Nation gaming commission may, in its discretion, renew the license of any employee who meets the qualifications of this Section and is recertified by the Board. The Nation gaming commission is required to notify the Board of its grant or denial of any renewal license.

Nation-State Gaming Compact between the Seneca Nation of Indians and the State of New York Appendix C, Section 11, entitled Duration of License and Renewal addresses the renewal processes. Functionally, the section provides that any employee license is effective for two years from the date of issuance. The licensee has continuing rights and may continue to be employed under the expired license until final action is taken on the renewal application by the SGA and the SGO provided they applied for renewal. Each applicant for a renewal must file a renewal application, which is ultimately turned over to the New York State Police for an updated background investigation if warranted.

Finally, as detailed within the response to Recommendation 6, the discussion of compact amendment is misdirected as the Board has no control or formal input in the process.

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**Comment**  
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Recommendation 8. The audit recommends that a formal recertification process is included in any new compacts.

Response. The Board agrees, however as detailed *supra*, the Board has no control or formal input in the compacting process and thus the inclusion of this in an Audit Recommendation to the Board is misdirected.

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**Comment**  
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Recommendation 9. The audit recommends the establishment of an annual verification process for the State and local revenue share of the revenue from the casinos' electronic gaming devices. The audit also adds that the Board should ensure that the process included a review of the computer programs calculating the revenue and that the reviews are performed by adequately qualified firms.

Response. The Board's Audit staff have been engaging in the review process for some time. Given that the Board has not yet seen the expiration of the first audit period, we cannot determine whether the present processes are appropriate.

The audit indicates that the calculation of revenue may simply be determined through electronic means, however the calculation of the revenue share requires, *inter alia*, the review of slot machine drops, reconcile fills, consideration of progressive jackpot seeding and the factoring of unclaimed vouchers.

In conclusion, if you or your staff have questions regarding the report or our response, please contact me.

\* See State Comptroller's Comments, page 25

## APPENDIX B - STATE COMPTROLLER'S COMMENTS

1. The audit does not recommend that every activity be documented. In addition, we recognize that the inspectors' work involves observing various activities in the casinos. However, on more than one occasion, RWB officials emphasized the importance of the compliance reviews to carry out their role in providing oversight at the casinos. In addition, during the field work, we reviewed the monthly activity reports prepared by the inspectors for a couple of months. These reports were just a count of activities. We were advised inspectors do not use a uniform system to classify activities and, as such, these reports would not provide a good picture of the inspectors' work.

During our audit, RWB officials emphasized the significance of the compliance reviews. We were assured that the gaming sections of the compacts were reviewed for compliance and that the reviews were fully documented. However, records at Turning Stone disclosed that compliance reviews were not done. At the closing conference, we were advised that the process of recording and maintaining the information about compliance reviews has been automated and the new system was tested and implemented.

2. RWB Operational Policies and Procedures Section 15 "General Compliance Checks" states "One of the Board's primary responsibilities is to monitor casino operations to ensure that the Nation/Tribal gaming operation is conforming to the standards set forth in the Nation/Tribal-State Compact and its Appendices, the gaming operation's

dealing procedures and internal controls and, where applicable, the National Indian Gaming Commission's Minimal Internal Control Standards." It also states that compliance checks are conducted in two ways, visually and through written compliance checks without any indication that one carries more weight than the other. Thus, RWB's own policy requires them to ensure the casinos' operations match up with the compact. This policy also describes the written compliance check as an assignment wherein an inspector reviews a particular section of the Nation/Tribal Compact or its Appendices and determines whether the casino is in compliance, or not.

3. As the audit points out, the current recordkeeping does not make it clear whether an entire compact compliance section has been reviewed or whether only some component of the section has been reviewed.

4. In the absence of written procedures that reflect management's expectations regarding the time frame for completing compliance reviews with compact sections, we relied on information obtained at various points during our fieldwork and is reflected in our report. However, RWB officials' respond to our draft audit report that there is no expectation that compliance reviews be completed on an annual basis, and that such an expectation would limit their ability to assign sections on a priority basis. We believe that establishing a time frame for completing a cycle of compliance reviews would provide for greater assurance that all compact sections are reviewed, and, if not would

- require a note indicating the reasons a particular compliance review was not done.
5. Professional standards (IT Governance Institute and the New York State Office of Cyber Security & Critical Infrastructure Coordination) regarding testing results indicate that final acceptance test covers all components of the information system and ensure that the information security requirements are met by all components. In addition, the test data should be documented and saved for audit trail purposes and for future testing. Thus, our request for documentation of the test conducted is appropriate and “visual review” is not sufficient according to industry and State standards.
  6. We have revised the report to reflect information provided in RWB’s response.
  7. We do not criticize RWB for the non-compliance items in the report. We merely disclosed the nature of some of the non-compliance items in the reports.
  8. We did not question the integrity or professionalism of the Supervising Gaming Operations Inspectors. The intent was to state the practice followed and we have revised the report to make it clearer.
  9. There was no evidence of monthly visits by the Assistant Manager of Gaming Operations, and we were not advised of this procedure.
  10. Our audit is referencing summary records about compliance reviews. The annual report mentioned RWB officials does not summarize compliance reviews.
  11. Our recommendation that RWB re-design the certification process does not violate the compact because the **process** (emphasis added) is not described in the Compact. RWB officials’ response indicates that the background investigation is approached individually and different factors can affect the length of time for completion. Therefore, if using a different approach to complete background investigations does not violate the compact, RWB officials should not be opposed to seeking out information about practices used in other States that could result in an improved process.
  12. We encourage RWB officials to contact other states to obtain information about their licensing processes to determine if there is any way to expedite the completion of the process. Based on these results, work with the Governor’s Office to revise the compacts accordingly.