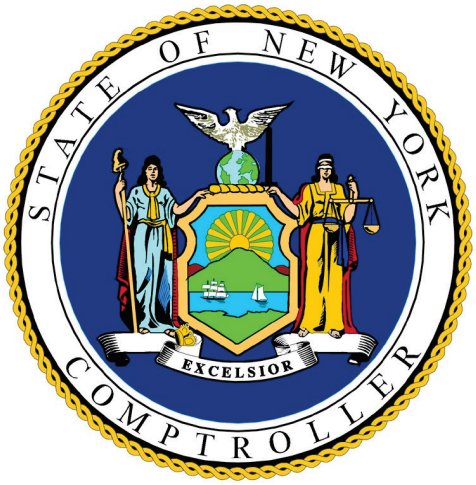

Trends in New York State Lottery Revenues and Gaming Expansions

May 2014

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New York State Comptroller

Prepared by the Office of Budget and Policy Analysis

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May 2014

In 1966, New York State voters approved an amendment to the New York State Constitution to authorize creation of the modern State Lottery. The Lottery now is an important contributor to State revenues, generating more than $3 billion last fiscal year.

Nearly half a century after voter approval of the original Lottery amendment, major changes are underway in New York's system of State-approved gambling. On Election Day 2013, voters said "yes" to a Constitutional amendment that authorizes up to seven commercial casinos in the State. Separately, the State's new Gaming Commission is undertaking a strategic review of the Lottery to determine whether new approaches might further enhance revenues for education.

New York's reliance on Lottery revenues has grown over the past 20 years with the introduction of new games and racetrack-based video lottery terminals (VLTs). The Division of the Budget projects that newly authorized casinos, along with the enactment of legislation last year to expand VLT operations and the settlement of disputes with Native American nations, will generate hundreds of millions of dollars in additional revenues annually in the years ahead. This report notes that the planned casinos will likely result in new jobs in communities where casinos are located – although, from a statewide perspective, economic gains may be offset by losses elsewhere.

While new revenues and jobs are welcome, it is helpful to put these changes in perspective. The projected new revenue from casinos, VLT expansions and payments by Native American tribes would add slightly less than half a percentage point to the State's existing non-federal operating receipts. The permanent jobs projected to be created by new casinos constitute a small addition to the more encompassing broader strategy needed to strengthen the Empire State economy, especially in struggling upstate communities. To address the darker side of gambling, the implementing legislation approved in 2013 requires casinos to develop plans to address problem gambling, a positive step. As the Gaming Commission develops future strategies for the Lottery, however, heightened consideration should be given to this important issue.

This report provides information on the State's historical and current gaming-related revenues, and on key decisions to be made now that voters have authorized the development of commercial casinos in New York. Expansion of legalized gambling will create both winners and losers. Careful consideration and ongoing, close scrutiny of future gaming developments is essential.

Sincerely,

Thomas P. DiNapoli
State Comptroller

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Executive Summary

Since its inception in 1967, following voter approval of a change to the State Constitution a year earlier, the modern New York State Lottery has become an important contributor to the State budget. Total revenues generated in State Fiscal Year (SFY) 2013-14, after prize payments and expenses, reached nearly $3.2 billion.[1] New Yorkers and visitors from other states spend more than ten times that amount each year on the Lottery, on other forms of State-approved gaming and at Native American casinos.

New York is now home to five Native American casinos and nine State-approved facilities with video lottery terminals, or VLTs, which are similar to casino-style slot machines. Proposals to amend the Constitution to allow casinos and other forms of gambling have arisen periodically over the nearly half-century since voters approved the Lottery amendment. Seventeen states allow Las Vegas-style commercial casinos, and Native American-owned casinos now operate in 27 other states as well as New York. New Jersey and Pennsylvania are among those where commercial casinos are already in operation, and Massachusetts is scheduled to join the list within the coming year.

In March 2012, the State Legislature gave first passage to a proposed amendment to the Constitution that would permit casino gambling at up to seven unspecified locations in New York. Enactment of a Constitutional amendment requires that a resolution first be passed by two consecutive separately elected Legislatures, and then be approved by the State's voters in a public referendum. The Legislature approved second passage, along with implementing legislation known as the Upstate New York Gaming Economic Development Act ("Gaming Act"), in June 2013. At the polls on Election Day 2013, 57 percent of voters cast their ballots in favor of the amendment authorizing seven casinos to be located in the Empire State.

The State Gaming Commission, which is statutorily charged with regulating development of commercial casinos, is also examining potential strategic changes to the Lottery. Recognizing "increased competition for discretionary income purchases" with the advent of casinos, the Commission has retained a consulting firm to develop strategies that would allow the Lottery "to remain as a relevant gaming option and important source of funding for State aid to education."[2]

The Legislature has authorized 21 major expansions in Lottery operations since the program began as a single monthly drawing in 1967. Participants in the Lottery can now choose from among numerous options, including: more than 40 instant games using

[1] This represents revenue for education purposes. Expenses include administration, commissions and other operating costs.

[2] New York State Gaming Commission, "Division of Lottery Request for Proposals for Market Research Regarding Alternative Approaches for the Future of Lottery in New York State," September 13, 2013, p. 3.

scratch-off tickets; the well-known Lotto with its twice-weekly televised drawings; multistate jackpot games with prizes that can run to the hundreds of millions of dollars; Quick Draw, available every four minutes for nearly 24 hours every day at almost 8,000 bars, bowling alleys and other locations; and over 17,500 VLTs at nine thoroughbred and harness racetracks. The Lottery spends $85 million to $90 million annually marketing its non-VLT products. In addition, the State's racinos are authorized to devote some gaming proceeds to marketing. In SFY 2013-14, such marketing allowances totaled more than $163 million – bringing the combined marketing resources for State-sanctioned gaming activities to more than $250 million.[3]

Increased revenue driven by Lottery expansions has allowed State policy makers to provide additional funding for public services without imposing additional taxes or fees. Supporters of the now-approved Constitutional amendment argued that adding casinos to New York's mix of State-authorized gambling would generate new revenue during a period of ongoing fiscal challenges – including retaining dollars New Yorkers are already spending in other states. Beyond that, supporters say, casinos will create new jobs for New Yorkers. While acknowledging that both of these goals are important, critics argue that casinos add to the number of New Yorkers who suffer from problem gambling, and that gambling is a regressive revenue source supported disproportionately by those who can least afford the expense.

Casino and other gaming activity in New York takes place within a regional marketplace. Some New Yorkers currently gamble at Native American casinos in the State, such as Turning Stone in Oneida County and the Seneca Niagara Casino in Niagara Falls. Others travel to casinos in Connecticut or along the Atlantic City boardwalk, or to more recently developed locations in Pennsylvania. Still others visit the racetrack gambling facilities – often informally known as "racinos" but in most cases marketed as "casinos"[4] – at Yonkers, Aqueduct, Saratoga and other locations across the State. Off-track betting (OTB) parlors and thoroughbred and harness racetracks add to the mix of legalized gambling options.

All told, legal gambling activity in New York totals well over $36 billion annually, excluding activity at Native American casinos and charitable gaming activities.[5] Some of those gambling dollars come from out-of-State residents who purchase Lottery tickets or visit gaming facilities in the Empire State. (Of course, New Yorkers also visit casinos elsewhere.) While the regional market for this segment of consumers' disposable income may not yet be fully saturated, New York has become a more "mature" market as legal gambling has become more prevalent. The number of individuals who participate, and the amounts that they gamble, likely have less potential for growth in coming years than has been the case over the past decade.

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[3] See statewide video gaming report available at http://nylottery.ny.gov/wps/portal.

[4] As a result of legislation enacted in June 2013, VLT facilities located within certain defined zones of exclusivity for Native American casinos are no longer allowed to use the term "casino" in their names and marketing.

[5] According to the New York State Gaming Commission this figure includes total handle, or overall amount wagered, for VLT facilities, racetracks and off-track betting centers, including winnings that participants use for additional bets, as well as traditional Lottery sales.

This report describes long-term and more recent growth in State Lottery revenues, and examines pending changes to legal gaming in the context of the regional marketplace and New York's existing State-approved gambling operations and revenues. Key findings include:

- The State Budget now depends more heavily on receipts from gaming than was the case 20 years ago. Among other statutory changes that have helped drive increased revenues, the authorization of VLTs and multistate jackpot games in 2001 has added more than $1 billion in annual net receipts as of State Fiscal Year (SFY) 2013-14. Largely because of statutory and administrative changes, Lottery revenue has increased an average of 5.2 percent annually over the past two decades, compared to an average annual increase of 4.2 percent in State tax revenue.

- Lottery proceeds represented approximately 5 percent of public school district revenues in school year (SY) 2012-13. Non-Lottery State aid, primarily funded by the State's taxes, accounted for 34 percent of the total that year, including STAR payments to school districts. In comparison, the State provided 43 percent of total school district revenues in SY 1967-68, the first year of Lottery revenues for education.[6]

- Lottery sales, including all traditional games and net proceeds from VLTs, totaled $8.9 billion in SFY 2012-13.[7] The State's $3.2 billion in revenue received in SFY 2013-14 represented an average of $161 per resident that, absent the Lottery, would have required other revenue or corresponding reductions in State expenditures. New York collects more in net gambling revenues than any other state.[8] In 2013, New York's collections exceeded the total of California and Florida combined.

- The introduction of casinos will likely bring the State a net gain in revenue, partly because of increased gaming activity overall and partly because the share of revenue the State receives from gamblers at casinos is generally higher than the tax revenue generated from alternative forms of expenditure, such as consumer purchases at entertainment events or in retail stores. However, it is difficult to quantify the overall impact on State revenue from new casinos due to uncertainty regarding where such facilities will be sited, their customer bases, potential loss of revenue from existing gaming operations and other factors.

- The Division of the Budget (DOB) has estimated that the Gaming Act will generate $238 million in additional State aid for education and $192 million in local government aid. Those figures are broad estimates based on averages of several potential development scenarios, and include revenue from two new OTB

[6] As per annual data reported by school districts to the Office of the State Comptroller, and excluding debt proceeds.
[7] Lottery sales are as reported by the New York State Gaming Commission. Net proceeds from VLTs represent credits played less free play and credits won. The New York State Gaming Commission was created February 1, 2013 by merging the functions and responsibilities of the former Division of the Lottery and the former Racing & Wagering Board.
[8] These figures are based on preliminary estimates from the Nelson A. Rockefeller Institute of Government.

VLT facilities, four new upstate casinos, and existing tribal casinos, according to DOB. Given the experience in other states, where casino revenues have been lower than expected, the State will need to use caution in projecting new revenues and any expenditures based on such resources.

- Some net employment gain from casinos is likely. Research based on experience in other states indicates that new jobs will be concentrated in communities hosting new casinos. Such gains would be especially important, and least likely to displace existing economic activity, if they bring new dollars into regions of upstate New York that have seen relatively low rates of employment growth or job losses in recent decades. At the same time, upstate regions may have greater difficulty attracting large groups of casino customers because of their distance from population centers in the downstate region and outside the State.

- While new casinos may attract non-New Yorkers, much of the betting and revenue will come from in-State residents. In terms of the State's economy, such activity primarily represents substitution of gambling losses for other consumer purchases (entertainment or retail sales, for example) rather than net new business. In addition to potential impacts on racinos and racetracks, new casinos could affect existing OTB centers and the revenues they generate for local governments in some regions of the State.

- Because of this substitution effect, estimates of employment and revenue gains from new casinos must reflect potential losses and transfers of existing consumer spending. DOB's estimate of 2,900 permanent jobs and 6,700 temporary construction jobs created as a result of the Gaming Act reflects an assumed 30 percent offset from existing jobs.[9]

- Nationally, research concludes that lower-income individuals are more likely than those with average or higher incomes to purchase lottery tickets. Participation is higher among whites than blacks, Hispanics, or Asians. However, black respondents who played the lottery did so more frequently than those in other ethnic groups.

- An estimated 5 percent of New Yorkers over age 18 experience problem gambling according to a 2007 report by the State Office of Alcoholism and Substance Abuse Services (OASAS). While New York State collects more in gaming revenue than any other state, it provides comparatively limited resources for services to address problem gambling according to the 2013 National Survey of Problem Gambling Services. As of 2013, New York spent about 11 cents per capita on treatment and other services related to problem gambling, approximately one-third of the national average.[10]

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[9] See the Executive's report on the Gaming Act at www.gaming.ny.gov/pdf/UpstateNYGamingDevelopmentAct_FINAL.pdf, released on October 4, 2013.

[10] "2013 National Survey of Problem Gambling Services," Problem Gambling Solutions Inc., March 2014.

- Given that the new casinos will be more accessible than existing out-of-State facilities, it is likely that more New Yorkers will participate in casino gaming, and individuals who already visit casinos may do so more often. This suggests that new commercial casinos may increase the frequency of problem gambling among New Yorkers.[11] The Gaming Act requires casinos to establish plans to address problem gambling and dedicates a portion of new State revenues to education and treatment programs, and the Gaming Commission has sought expert advice on addressing problem gambling in an era of expanded gaming.[12]

Current Constitutional authority for operation of the Lottery requires that all "net proceeds . . . be applied exclusively to or in aid or support of education in this State as the legislature may prescribe." The new Constitutional provision authorizing casinos does not include such a requirement. The Gaming Act provides statutorily that: 80 percent of gross gaming revenue will go to education, above the existing annual formula; 10 percent will be divided equally between the host county and host municipality; and 10 percent will go to the remaining counties in the defined region for property tax relief or education assistance.

Lottery expansions over more than four decades have been driven, in part, by the imperative to balance the State Budget, and have typically taken place in years when the State needed additional revenue to close projected gaps. Yet New York, like most states, historically has sought to balance maximization of revenue with some concern for the damage that excessive gambling can inflict on individuals and families. Revision of the State Constitution allowing casino gambling presents an appropriate opportunity for more formal and deliberate consideration of this balance. The implementing legislation requires each casino to develop a plan to address problem gambling, and creates an annual fee of $500 for each slot machine and table game which will be used exclusively for problem gaming education and treatment services through the Office of Alcohol and Substance Abuse Services.

Complete answers to questions about the impact of casino gambling and other gaming expansions cannot be known unless the new facilities' impact on individuals, local communities and the State as a whole is assessed in detail and on a continuing basis. In Massachusetts, legislation authorizing casinos that are expected to begin operations in the coming year also included provisions to study the impact of the gaming expansion in the state. The Gaming Commission should make such assessments as part of its ongoing oversight of various forms of gambling in New York. In particular, as the commission examines the impact of new casinos on problem gambling, similar attention should be directed to the State's Lottery operations – including demographic characteristics of participants – at a time when the future of the Lottery is also under review.

[11] The New York State Gaming Commission, OASAS and the New York Council on Problem Gambling have formed the Responsible Play Partnership to address problem gambling in New York State.
[12] See, for example, www.gaming.ny.gov/pdf/04.07.14.ProblemGamblingForumWitnessList.pdf.

Creation and Expansion of the New York Lottery

Background

New York and other states commonly used lotteries as revenue sources in the nation's first few decades. In 1821, a Constitutional Convention recommended a ban on the practice in the Empire State, and voters agreed. An 1894 amendment extended the prohibition to most other forms of gambling. More than four decades later, the tide began to turn, with parimutuel betting on horse races allowed as a result of a 1939 amendment. In 1957, voters approved another amendment allowing bingo and similar games for support of certain religious, charitable and nonprofit organizations.

New Hampshire created the first modern state lottery in 1963 to raise revenue for education. New York's lottery became the second in the nation, after voters approved a 1966 Constitutional amendment authorizing the creation of the New York State Lottery. The issue was controversial, with voters in 43 of 62 counties rejecting the proposal, although strong support in New York City carried the measure to easy statewide approval.

The lottery provision appears in Article I, Section 9, of New York's Constitution, which is part of the State's Bill of Rights. The text regarding legal gambling provides:

> *. . . except as hereinafter provided, no lottery or sale of lottery tickets, pool-selling, book-making, or any other kind of gambling, except lotteries operated by the state and the sale of lottery tickets in connection therewith as may be authorized and prescribed by the legislature, the net proceeds of which shall be applied exclusively to or in aid or support of education in this state as the legislature may prescribe, and except pari-mutuel betting on horse races as may be prescribed by the legislature and from which the state shall derive a reasonable revenue for the support of government, shall hereafter be authorized or allowed within the state . . . .*

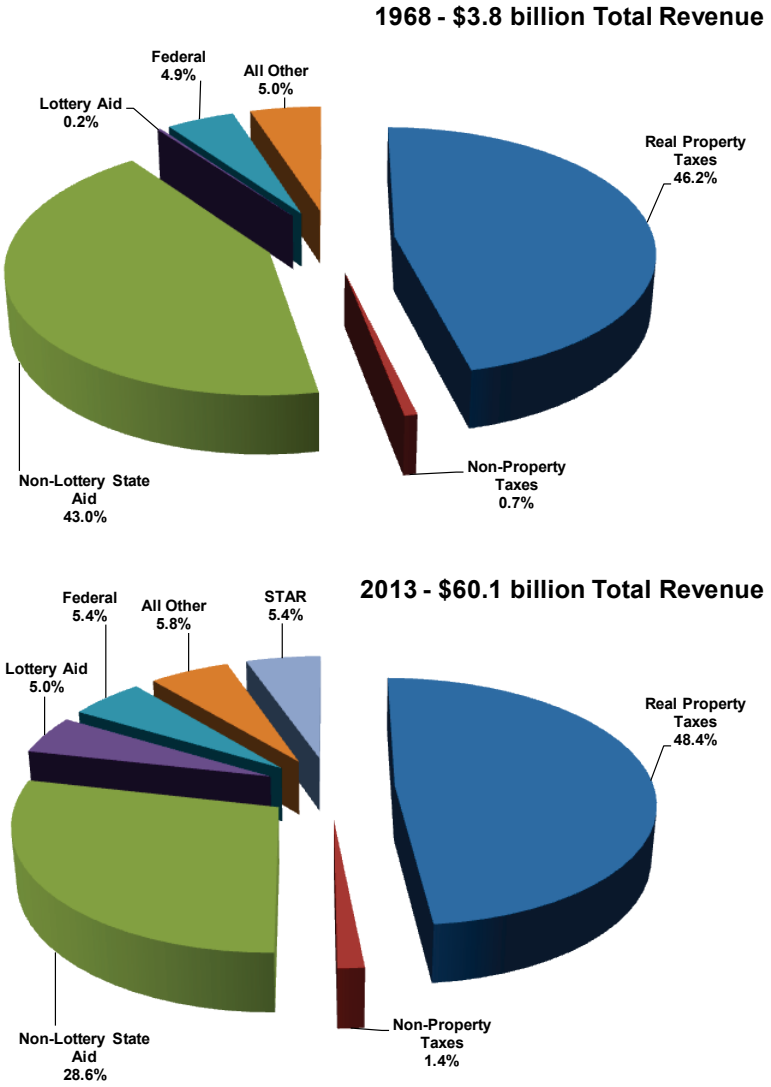
In 1967, the Legislature passed an implementing statute that limited the Lottery to 12 annual draws, restricted prize payouts to 30 percent of gross receipts, and required that at least 55 percent of revenues be provided for education. (Remaining revenues are used for administrative costs, including advertising.) This authorization was later expanded to increase the number of allowed drawings to one per week, with additional special or bonus drawings. Since its creation, the Lottery has been substantially expanded 21 times. These expansions have increased allowable drawings, increased prize payouts, authorized certain electronic table games and changed the minimum revenue required for education, depending on the game.

Lottery Revenue for Education

Figure 1 shows how the overall mix of revenues for K-12 education in New York has changed since the Lottery was created.[13] In the 1967-68 school year, non-Lottery State assistance represented 43 percent of total revenues for school districts. As of school year (SY) 2012-13, non-Lottery State aid – funded by the State's taxes and other non-Lottery revenues – had shrunk to 29 percent of the total (34 percent when including STAR). The Lottery's contributions to education, $3.1 billion in SY 2012-13, provided 5 percent of total school district revenues.

Figure 1

Revenue for K-12 Education – Share of Total by Source



Sources: Office of the State Comptroller, Division of the Budget, State Education Department.

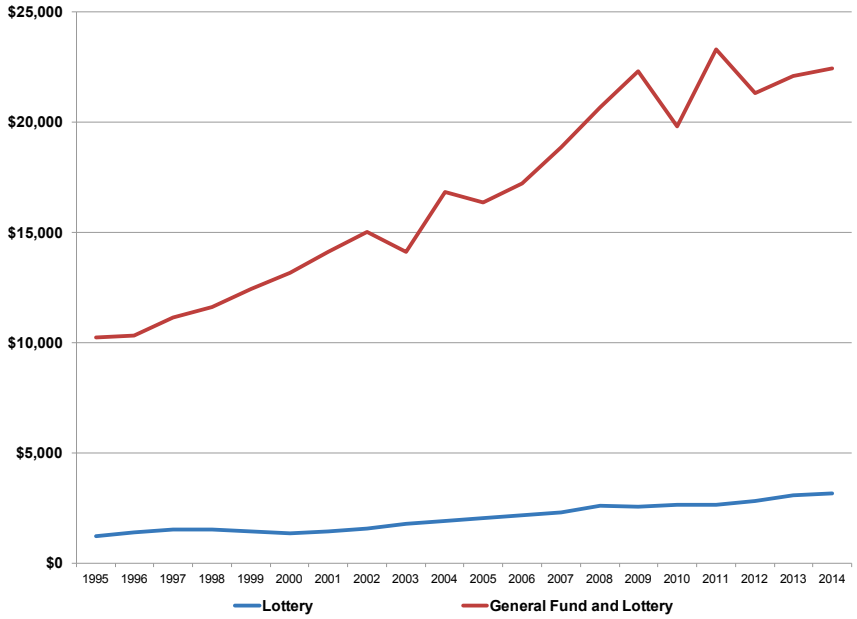
[13] Data compiled by the Office of the State Comptroller; excludes debt proceeds.

Local property taxes represented the largest share of such revenues in both years, reaching nearly half the total in SY 2012-13. (A complicating factor in such comparisons is the role of the State's School Tax Relief program, known as STAR. The program reduces residential property taxes by providing a credit on homeowners' tax bills and reimbursing school districts for the amount credited to taxpayers. Because STAR reimbursement dollars flow to school districts, they are counted as district revenues.) Figure 2 shows the growth in both Lottery revenue and State-funded education aid over the past two decades. (School aid disbursements reflected here include General Fund and Lottery-funded expenditures, omitting federally funded assistance and School Tax Relief payments to school districts.) While Lottery revenues have increased, they have grown more slowly than overall school aid.

Figure 2

Lottery Revenue and State-Funded Education Disbursements

(in millions of dollars)



Sources: Office of the State Comptroller; Division of the Budget.

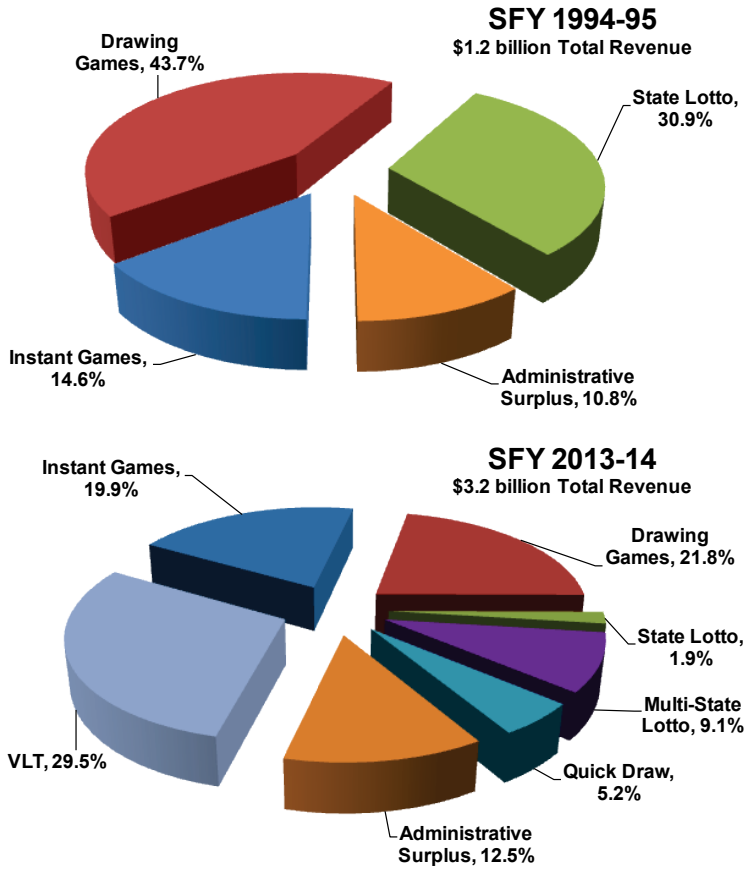
Expansion of Lottery Games

The increased flexibility in Lottery game structures and requirements has allowed for a much broader scope in the variety of gambling opportunities. As a result, New York now participates with a number of other states in two multistate jackpot games, Mega Millions and Powerball, and offers numerous instant scratch-off games. The Lottery also operates two in-State jackpot games, Lotto and Sweet Million, as well as four different draw games: Numbers, Win 4, Take Five and Pick 10. Lottery tickets are sold through more than 17,700 retailer locations, as well as by subscription over the Internet. In 1995, the Legislature authorized a video Keno-style game, Quick Draw. Authorization of video lottery terminals followed in 2001; nine facilities housing VLTs currently operate in the State.

Separate surveys by the Lottery and by the Office of Alcoholism and Substance Abuse Services (OASAS) in recent years have found that more than half of adults in the State purchase Lottery tickets in a typical year.[14] More than half of the $2 billion growth in revenue over the past 20 years came from VLTs, multistate jackpot games and other Lottery expansions. Figure 3 illustrates the significant change over time in the contributions of New York's different Lottery games to the revenue generated for education. This reflects, in part, the proliferation of games in more recent Lottery expansions, including multistate drawings and VLTs. The Appendix provides detailed figures for SFYs 1994-95 through 2013-14.

Figure 3

Share of Total Lottery Revenue for Education by Type of Game
SFY 1994-95 and SFY 2013-14



Sources: Division of the Budget; Office of the State Comptroller.

VLTs are Lottery gaming machines that resemble conventional slot machines found in casinos.[15] VLTs are currently authorized at nine locations around the State. These

[14] For the OASAS survey, see Rainone, G., Marel, R., Gallati, R.J. and Gargon N., "Gambling Behaviors and Problem Gambling Among Adults in New York State: Initial Findings From the 2006 OASAS Household Survey," New York State Office of Alcoholism and Substance Abuse Services. (2007).

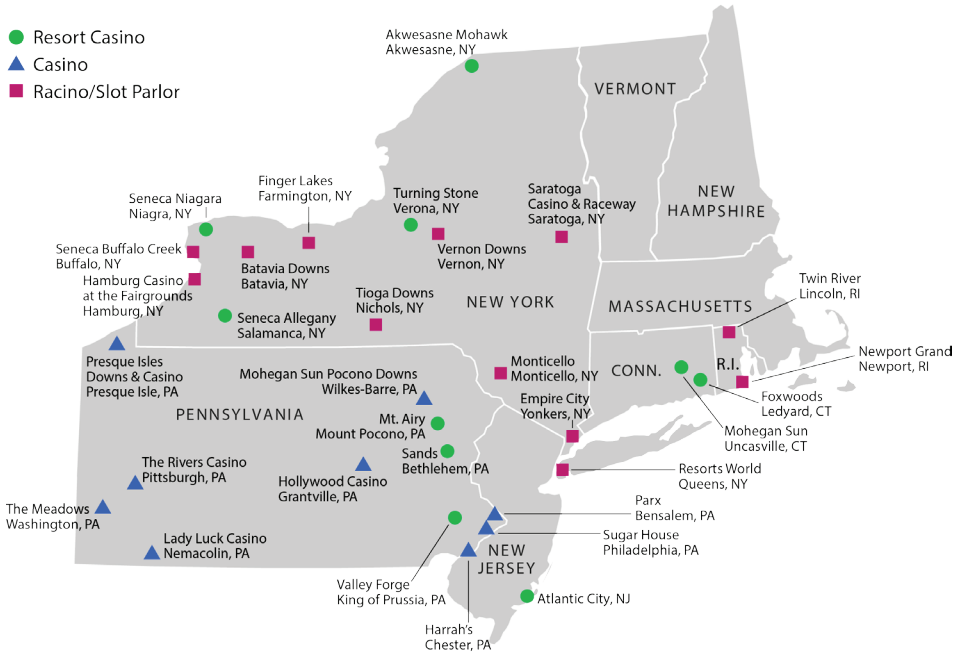
[15] The primary difference is that VLTs operate from a centralized computer system in which players compete for a limited number of electronic tickets. As with scratch-off games, once a ticket is taken out of the pool of available

sites are built at racetracks, and are colloquially known as racinos: Empire City Casino at the Yonkers Raceway; Saratoga Casino and Raceway; Finger Lakes Gaming and Racetrack; Hamburg Gaming at the Fairgrounds; Monticello Casino and Raceway; Tioga Downs Casino; Vernon Downs Casino & Hotel; Batavia Downs Gaming; and the Resorts World Casino New York City. Although the racinos do not have the full range of betting options available in Las Vegas-style gaming centers, the Division of the Lottery, and subsequently the New York State Gaming Commission, have administratively allowed the racetrack facilities to use the name "casino" to enhance marketing efforts in recent years.[16]

As a result of agreements with the Seneca Indian Nation, three racinos – Hamburg Gaming at the Fairgrounds, Batavia Downs Gaming and Finger Lakes Gaming and Racetrack – are no longer allowed to use the word casino in their names, nor are they allowed to house electronic table games. Figure 4 shows locations of existing VLT facilities, Native American and other "resort" casinos, and non-resort casinos in New York and neighboring states that constitute a regional market.

Figure 4

Casinos and Racinos in Northeast States, 2013



Source: Adapted from Barrow, Clyde W., "Are the New England States in a Gambling Arms Race?" presentation to New England Fiscal Leaders Meeting, Federal Reserve Bank of Boston, February 22, 2013.

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tickets, it is not replaced, so players are competing for winning tickets. With VLTs, the ticket is electronic and centrally administered. Conventional slot machines are typically individual and not tied to a central mainframe. Neither requires any level of specific skill. The State's highest court, the Court of Appeals, held in Dalton v. Pataki that the operational design of VLTs means that they are part of the Lottery and thus may be authorized within the Lottery provision of the State Constitution.

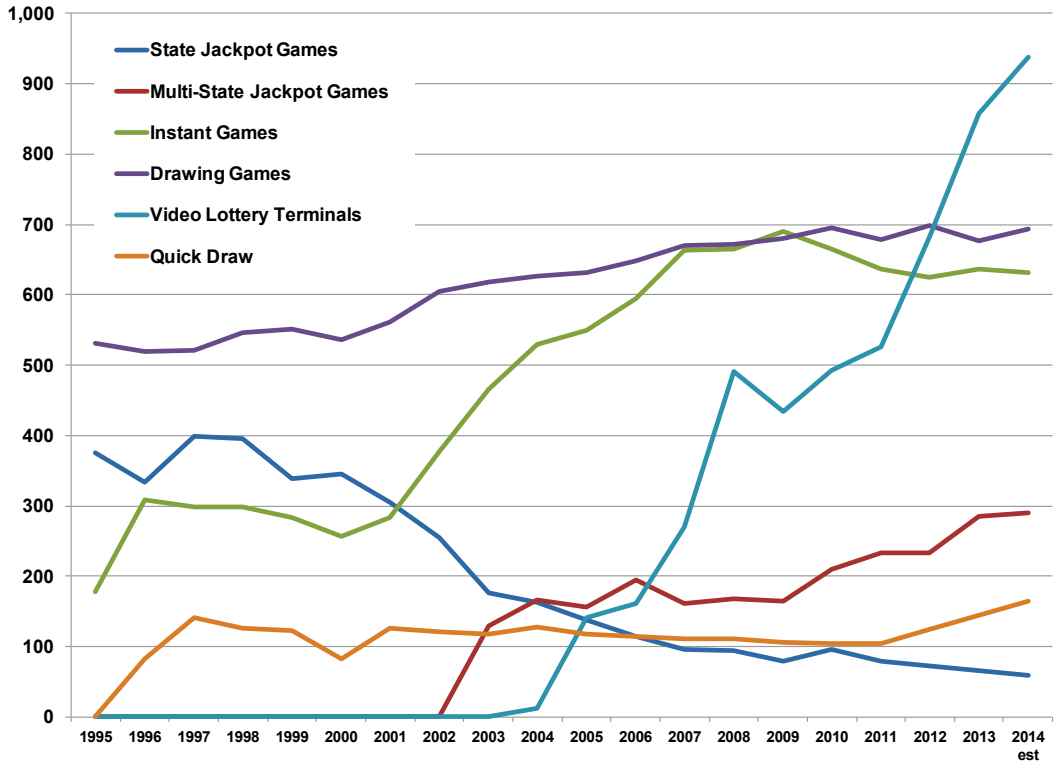
[16] As a result of legislation enacted in June 2013, VLT facilities located within certain defined zones of exclusivity for Native American casinos are no longer allowed to use the term "casino" in their names and marketing.

The State's newest racino, the Resorts World Casino New York City located at Aqueduct Racetrack in Queens, has become the most lucrative VLT location in the State, with more than 5,000 terminals. Six of the nine racinos are also authorized to house hundreds of electronic table games of chance, such as computerized craps and roulette.

Figure 5 illustrates the increase in revenue generated from VLTs in the context of other Lottery revenues. In 2004, when the first facilities opened, the State's share of the revenue generated by VLTs was $12.6 million. In SFY 2013-14, VLT revenue totaled $937 million, representing an average annual increase of 54 percent. In SFY 2013-14, VLT revenue made up 29.5 percent of total Lottery revenue for education. The most recent projections by the Division of the Budget (DOB) show that the growth in Lottery revenue is expected to slow through SFY 2017-18. These projections do not reflect any revenue from new VLT facilities that are authorized in Nassau and Suffolk counties under the Gaming Act, or from any Lottery changes that may be contemplated as a result of the current review of the future of the Lottery.

Figure 5

Change in Lottery Revenue for Education by Type of Game
SFY 1994-95 through SFY 2013-14
(in millions of dollars)

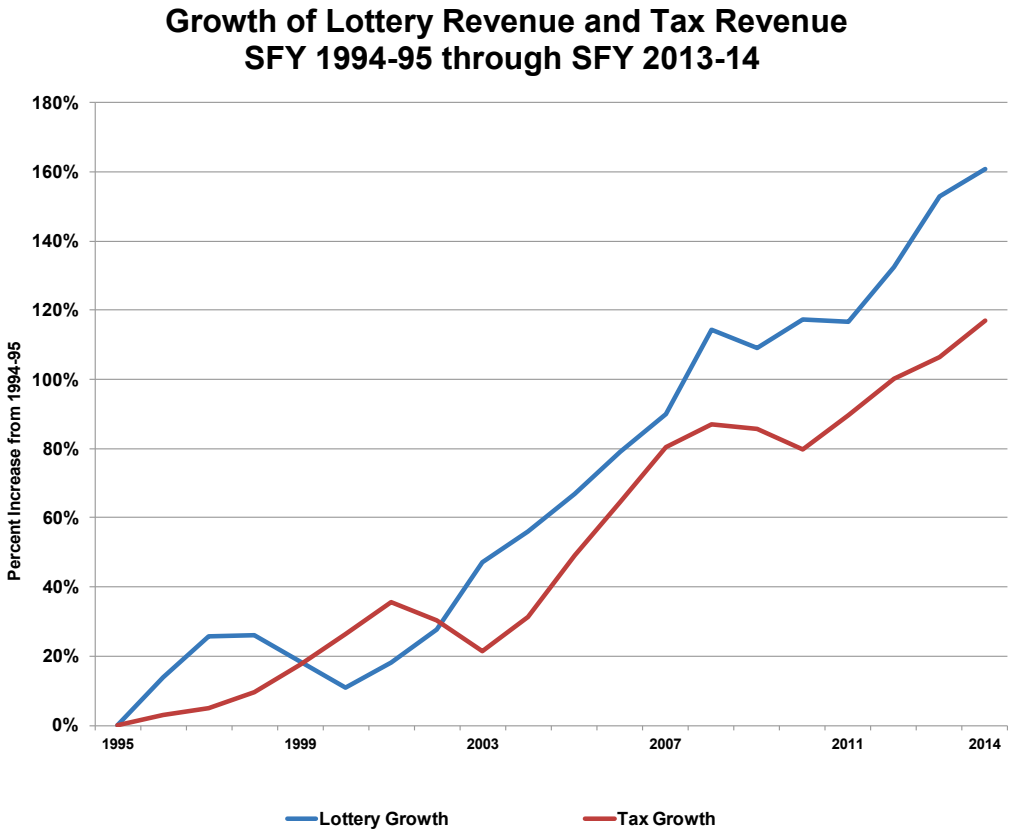


Note: The revenue figures do not include a $380 million franchise fee collected in SFY 2010-11 for the operation of VLTs at Resorts World Casino at Aqueduct Racetrack.
Source: Division of the Budget.

In SFY 2017-18, revenue from traditional games is projected to total $2.2 billion, representing a total decline from SFY 2013-14 of 1.6 percent. Revenue from VLTs is projected to total $886 million, representing a total projected decline of 5.5 percent from SFY 2013-14.[17] DOB's most recent projections do not include any revenue resulting from new casinos or other gaming expansions under the Gaming Act.

Overall gambling revenue to the State more than doubled over the past two decades, proportionally rising more rapidly than State tax revenues due primarily to creation of new gaming opportunities. Between SFY 1994-95 and SFY 2013-14, as illustrated in Figure 6, Lottery and tax revenues have fluctuated significantly with the economy. Both growth trends also reflect statutory changes, such as temporary Personal Income Tax surcharges on high incomes and the advent of VLTs. Over the last 20 years, Lottery revenue has increased 161 percent, or 5.2 percent, annually on average, as compared to tax revenues, which have increased 117.1 percent, or 4.2 percent annually on average. The State's budgetary dependence on Lottery revenues has increased over the period. In SFY 1994-95, Lottery receipts represented the equivalent of 3.8 percent of All Funds tax revenues; in SFY 2013-14, the figure was 4.6 percent.

Figure 6



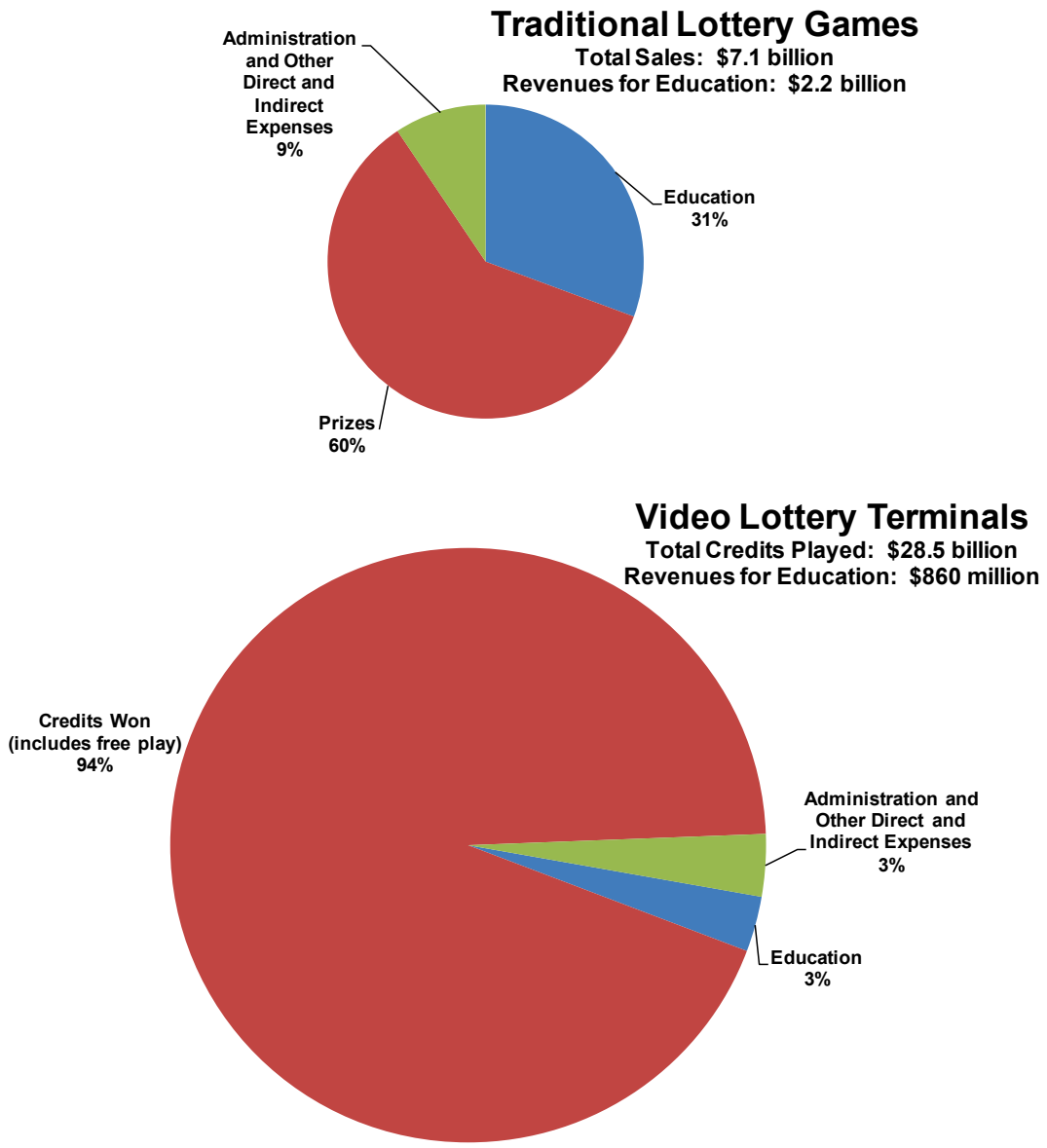
Source: Division of the Budget.

[17] See DOB's FY 2015 Enacted Budget Financial Plan, pg. 85.

Figure 7 illustrates how total lottery revenues are distributed among education, administration and prize winnings. Prize distribution differs among the various traditional Lottery games. For example, 45 percent of Lotto sales go to prizes, whereas 60 percent of Quick Draw sales are for prizes.

Figure 7

Distribution of Lottery Revenues SFY 2012-13



Source: New York State Gaming Commission, 2013 Lottery Year End Review.

By law, at least 90 percent of sales from Video Lottery Terminals must be used for prizes, including some level of "free play" in which participants are given VLT credits at no charge.[18] The amount for "total credits played" in Figure 7 includes free play credits as well as "churn," where the same dollar is used more than once – when a participant wins $5 and uses that money to make another bet, for example. The remaining VLT proceeds (net machine income) are distributed based on statutory formulas.

For example, of the first $62.5 million of net machine income at facilities with more than 1,100 machines, 45 percent goes to education, 10 percent to Lottery administration (with any surplus administrative funding returned to education), 31 percent to facility commissions (which includes mandatory payments for breeding funds and increased purses for horse owners), 10 percent for marketing allowances and 4 percent for capital allowances.[19] In SFY 2013-14, racinos were authorized to spend more than $163 million on advertising and marketing – nearly double the amount of five years earlier – according to Gaming Commission figures.[20]

The distribution of VLT revenue is graduated so the amount going to education increases as sales increase. For instance, sales over $100 million for facilities with over 1,100 machines are divided so that 51 percent goes to education, 10 percent to Lottery administration, and 31 percent for facility commission. The capital allowance is no longer funded and the marketing allowance declines to 8 percent.

Although VLTs add significantly to State revenues, traditional Lottery games continue to generate more than twice as much in net proceeds for education. Just less than one-third of gross revenue from traditional games goes to State education funding.

VLTs generate much higher overall activity – with more than $28 billion "credits played" in SFY 2012-13 compared to traditional Lottery sales of $7.1 billion – but distribute a comparatively smaller proportion of receipts to education. Available data do not allow estimates of the net losses by ("sales" to) VLT players. The figure for credits played reflects a higher level of "churn" than would be typical of Lottery ticket purchasers. VLT players typically engage in numerous transactions during each visit to a racino and use at least some winnings for additional bets – in contrast to purchasers of Lottery tickets, who are more likely to buy only one ticket or a handful of tickets at a time. The State's revenue stream from VLTs also differs from that for traditional Lottery tickets, in that a portion of racino proceeds is statutorily directed to support for the racing industry.

New York Compared to Other States

New York leads all states in total revenue derived from lotteries, casinos, racinos, VLTs, and traditional parimutuel taxes, according to preliminary data for fiscal 2013 collected

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[18] See Tax Law Section 1612 (b)(3)(c)(1).
[19] SFY 2012-13 Executive Budget Economic and Revenue Outlook, page 376.
[20] Financial data for individual racinos and statewide totals are available in "Video Gaming Reports" available at http://nylottery.ny.gov/wps/portal.

by the Nelson A. Rockefeller Institute of Government. Figure 8 shows fiscal year 2013 collections by the five states with the highest total gambling revenues, and growth from 2008 through 2013 in those states.

Figure 8

States with Highest Total Revenues from Lotteries, Casinos, Racinos and Parimutuel Betting, Fiscal Year 2013 and Change from 2008-2013
(dollars in thousands)

State	2008	2013	Dollar Change	Percentage Change
California	1,129,894	1,298,459	168,565	14.9%
Florida	1,423,201	1,571,685	148,484	10.4%
Illinois	1,368,191	1,357,331	(10,860)	-0.8%
New York	2,638,587	3,096,337	457,750	17.3%
Pennsylvania	1,724,192	2,492,104	767,912	44.5%

Source: Nelson A. Rockefeller Institute of Government.

Pennsylvania, with the second-highest total among the 50 states, illustrates how rapidly the competitive marketplace of legalized gambling can change as new facilities open in various states. As of 2007, Pennsylvania had just begun authorizing casinos and racinos; the ensuing five years saw widespread growth in revenue from both types of facility. In New York, which had seen a sharp increase in racino revenues over the preceding five years, the percentage growth over the 2008 to 2013 period was less than half the increase in Pennsylvania.

Other Legal Gambling Options in New York

New York's Lottery tickets, VLTs and other games are only part of the array of legal gambling options in the State. Government-sponsored gaming also includes the off-track betting (OTB) centers that operate on Long Island and in several upstate regions. Bettors may also visit the traditional racetracks – thoroughbred and harness – as well as casinos operated by three Native American nations.

Off-Track Betting

Legislation enacted in 1970 and 1973 authorized local governments in New York to operate systems of off-track parimutuel betting as a method to raise revenue for the local governments, the State's horse racing industry and the State itself. The legislation was also intended to reduce illegal bookmaking and wagering on horse races. Six regional OTB corporations have been created as public benefit corporations: Capital,

Catskill, Nassau, New York City, Suffolk and Western.[21] After making payments to winning bettors, the OTB corporations distribute a portion of the remaining handle (amount wagered) to the State's horse racing industry, participating local governments and the State.

In 2009, the Office of the State Comptroller released an audit of the New York City OTB, which recommended significant management changes to avert insolvency based on current financial trends identified at the time.[22] The audit, which began after the State took over operations, examined the financial condition of the NYC OTB from 2004 through 2008. Auditors reviewed financial statements and actions taken by NYC OTB to reduce operating costs, and identified additional opportunities for possible cost reductions. The report found that the NYC OTB's operating expenses and accumulated losses had increased steadily over the prior four years, resulting in an operating deficit of approximately $38 million. In total, the organization had an outstanding deficit of more than $228 million. By December 2010, the NYC OTB had closed its parlors.

In 2010, the Office of the State Comptroller released an audit that assessed the financial condition of the five regional OTB corporations outside New York City.[23] The audit found that the financial state of these corporations had deteriorated significantly over the five-year period from 2004 through 2008, and continued to decline in the first five months of 2009. The total handle collected by the five corporations fell by almost $103 million or 10 percent over the five-year period ending December 31, 2008. The decline in total handle was largely attributed to several external factors, including changing industry trends, increased competition and a worsening economy. Partly because of such challenges, Suffolk County OTB filed for Chapter 9 bankruptcy protection on May 11, 2012, and remains under such protection today.

The audit report found that a contributing factor in the decline in parimutuel and OTB wagering was increased competition from other forms of gambling, including casinos, VLTs, lotteries, and out-of-State advance deposit wagering companies (ADWs), which allow online horse race wagering. The decrease in the total handle received by the corporations reduced funding for the State horse racing industry, the State and participating local governments. In 2008, the last full year covered in the audit, the total handle for the five OTB corporations was $907 million, and the entities distributed $24.4 million to local governments.

Competition from other forms of legalized gambling has already contributed to the decline in total OTB wagering and revenues. The introduction of commercial casino gambling in New York would increase the competition faced by OTB facilities, and could further reduce the level of revenues that regional OTB corporations generate for the

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[21] The New York City OTB was closed in December 2010.

[22] See the Office of the State Comptroller's report, *New York City Off-Track Betting Corporation: An Assessment of NYC Off-Track Betting Corporation's Financial Condition and Governance,* released in August 2009, at http://osc.state.ny.us/audits/allaudits/093009/08s147.pdf.

[23] See the Office of the State Comptroller's report, *Financial Condition of New York State Regional Off-Track Betting Corporations,* released in May 2010, at www.osc.state.ny.us/localgov/audits/swr/2010/otb/otbglobal.pdf.

horse racing industry and local governments. However, as outlined elsewhere in this report, the Gaming Act authorizes two new VLT facilities operated by OTB corporations on Long Island, and includes provisions for the support of local governments and horse racing from gaming revenues, which could offset this impact.

Native American Casinos in New York State

There are five Class III Native American-run casinos located in New York State, operated by three separate Native American nations.[24] According to the American Gaming Association, as of December 31, 2011, tribal casinos in New York housed 11,934 gaming machines, or roughly two-thirds the number of VLTs at State-regulated racinos.[25]

The first Native American-run casino in the State, Turning Stone, was opened by the Oneida Indian Nation in Central New York in 1993. The St. Regis Mohawk Tribe opened the Akwesasne Mohawk Casino near the Canadian border in 1999. The final three casinos were opened by the Seneca Nation of Indians in Niagara Falls, Salamanca and Buffalo in 2002, 2004 and 2007, respectively.[26]

Each of the Native American nations was required to enter into a compact with New York State authorizing the operation of the casinos. The compact with the Oneida Indian Nation did not give the tribe exclusive gaming rights for the region and did not give the State any share of gaming revenues. In contrast, the later compacts with the Seneca Nation of Indians and the St. Regis Mohawk Tribe did grant the tribal facilities regional exclusivity, provided the State was given a portion of the gaming revenues.

Both the Seneca Nation of Indians and the St. Regis Mohawk Tribe have claimed New York State violated their compacts. The Seneca Nation of Indians claimed the introduction of VLTs to the racinos at Batavia Downs, Hamburg Casino at the Fairgrounds, and Finger Lakes Casino and Race Track, as well as of Moxie Mania games at bars and restaurants, breached the exclusivity agreement of the compact. From SFY 2009-10 until August 2013, the Seneca Nation of Indians made no payments from its gaming revenues to New York State. The St. Regis Mohawk Tribe claimed the State had infringed upon its compact by allowing an unauthorized gambling facility to operate near Plattsburgh, and withheld gaming revenues after late 2010.[27]

Although the Oneida Indian Nation has not claimed any violation of the compact, it has had a longstanding land claims dispute with the State.[28] In mid-2013, the Executive announced agreements resolving these issues with each of the nations. The exclusivity

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[24] Generally speaking, Class III is the federal category for the most expansive type of legal gambling, also known as casino-style gambling.
[25] American Gaming Association, 2013 State of the States, p. 35.
[26] See Part B of Chapter 383 of the Laws of 2001, which authorized the three casinos operated by the Seneca Nation of Indians, as well as three more that are yet to open in the Catskill region.
[27] Hayden, B., "No End in Sight for Gaming Compact Dispute," Watertown Daily Times, March 15, 2012.
[28] Campbell, N. and Hill, M., "Cuomo: Indian Casinos Could Face Competition," Utica Observer Dispatch and Associated Press, May 9, 2013.

zones for the Seneca Nation and the St. Regis Mohawk Tribe have been restored, and an exclusivity zone has been created for the Oneida Nation. As a result, three of the six upstate regions (3 - the North Country, 4 - Central New York, and 5 - Western New York) will not have any commercial casinos other than Native American casinos, barring any change in State law or the status of the agreements with the Native American nations.

Under the terms of the agreement with the Oneida Indian Nation, the State has agreed to drop a 2008 lawsuit arguing that the U.S. Department of the Interior does not have the Constitutional authority to take land in New York State into trust for the Oneida Indian Nation. The State and the counties of Oneida and Madison, which are parties to the lawsuit, have ratified the agreement. The towns of Verona and Vernon have also filed suit against the State and Madison County, claiming the agreement is illegal.

In July 2013, the Cayuga Nation reopened a bingo hall in Union Springs in Cayuga County, which is in the Oneida Nation's exclusivity zone. The agreement between the Oneidas and the State does not prohibit a gaming facility with approval under the federal Indian Gaming Regulatory Act from operating within the Oneida Nation's exclusivity zone. The Cayuga Indian Nation was granted approval to run a Class II gaming facility in 2003. The hall was closed in 2005 after the village imposed local laws against the gaming hall.[29] A Class II gaming facility is allowed to offer bingo and pull tab games.

The Governor announced on May 21, 2013, that a settlement had been reached with the St. Regis Mohawk Tribe. The Tribe will retain exclusive casino gambling rights in a seven-county region (Clinton, Essex, Franklin, Hamilton, Jefferson, St. Lawrence, and Warren counties), provided the Tribe delivers $30 million of outstanding payments owed to the State and resumes paying the State 25 percent of future net gambling revenue. The State received a payment of $30 million from the St. Regis Mohawk Tribe in June 2013.

On August 9, 2013, the Seneca Nation of Indians transferred $418 million to the State, bringing the Nation into conformity with its latest agreement. Of this, the City of Niagara Falls was expected to receive $89 million, the City of Salamanca $34.5 million and the City of Buffalo $15.5 million. Annual payments are expected to resume.

Horse Racing

Once the primary locus of legal gambling in New York, thoroughbred and harness tracks now play a less dominant but still important role.

The thoroughbred tracks operated by the New York Racing Association (NYRA) – Saratoga, Aqueduct and Belmont – generated a total handle of $675 million in 2012, according to NYRA. DOB's most recent projections indicate the State expects $11

[29] Weaver, T., "Cayuga Nation Reopens Union Springs Gaming Facility," Syracuse Post Standard, July 3, 2013.

million in parimutuel taxes from thoroughbred racing in SFY 2014-15. The future of thoroughbred racing in the State is increasingly intertwined with revenues from racinos – most noticeably, with the opening of the Resorts World New York City Casino at Aqueduct in 2011.

Total handle from the State's eight harness tracks reached $175.1 million in calendar year 2012, representing an increase of 7.5 percent from 2008. All of the increase in handle comes from the simulcasting of racing at other tracks around the country, which rose 13.2 percent over the period to $140.1 million. Live handle from harness track attendance declined 10.7 percent.[30] Parimutuel tax collections from harness tracks are relatively small, at an estimated $593,000 in SFY 2012-13.[31]

Proposals for Authorization of New Gambling

Although the debate over authorizing commercial casinos in New York has been decided, consideration is being given to other new forms of gambling.

The Gaming Act authorizes casinos to offer sports pools, with certain restrictions and under regulation by the Gaming Commission, if federal law is changed to allow sports betting "or upon a ruling of a court of competent jurisdiction that such activity is lawful."

A proposed amendment to the State Constitution would provide broader authorization for sports betting by adding, to the list of legal gaming activities in New York, "wagering on professional sporting events and athletic events sponsored by universities or colleges" at racetrack-based betting facilities, OTB simulcast theaters, or in any Constitutionally authorized casino.[32] A 2005 study by the Partnership for New York City concluded that sports betting could generate from $290 million to $1.9 billion annually in State tax revenue.[33]

Meanwhile, online gambling, while still a relatively small player in the overall U.S. market, is likely to grow in coming years. Nevada, New Jersey and Delaware have enacted laws authorizing forms of online gaming within their borders, and a number of other states have considered similar steps.[34] Effective November 26, 2013, New Jersey residents can gamble online through six authorized casino gaming websites.[35]

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[30] 2012 Annual and Simulcast Report, New York State Racing and Wagering Board, page 25.
[31] New York State FY 2015 Economic and Revenue Outlook, New York State Division of the Budget, page 294.
[32] S.331/A.867, a concurrent resolution of the Senate and Assembly introduced in the 2013 legislative session.
[33] Schwabish, J. and Simas, M. "Hidden Revenue: Regulating the Underground Economy of Sports Betting," Partnership for New York City Issue Brief, February 2005.
[34] National Conference of State Legislatures, "2013 Legislation Regarding Internet Gambling and Lotteries," at www.ncsl.org/issues-research/econ/2013onlinegaminglegislation.aspx.
[35] Zernike, K., "New Jersey Now Allows Gambling via Internet," New York Times, November 26, 2013.

Expansion of Casino Gambling in New York

Background

Since voter approval of the Lottery in 1966, the Legislature has considered several versions of Constitutional amendments to allow commercial casinos in the State. In 1972, both houses gave first passage to an amendment that would have given the Legislature broad authority to legalize any form of gambling, at its discretion. Other proposals received first legislative passage in 1978 (three separate proposals), 1980 (six) and 1995 (one). Constitutional amendments require the passage of a concurrent resolution by two separately elected legislatures and subsequent adoption by the voters. None of these proposed amendments received approval from a second consecutive Legislature, so none went to the voters for consideration.

In 1996, Governor Pataki issued an Executive Order establishing the New York State Task Force on Casino Gambling. The Task Force was charged with assessing casinos' potential impacts on the State's economy generally, on tourism in the Catskills and Western New York, and on Native American gaming as well as other forms of legalized gambling. In addition, it investigated the impacts casino gambling could have on crime, the social costs of pathological and problem gambling, and potential regulatory approaches for casinos.

The Task Force looked at both the cumulative and individual economic impact of casinos to be located in several areas of the State.[36] It concluded that resort casinos, where visitors would be expected to stay overnight and take advantage of restaurants and other amenities, would attract more visitors and produce more jobs and larger revenues than stand-alone facilities.

The Task Force found that important factors to consider when determining site locations included distance to large consumer markets, accessibility, proximity to major highways and the presence of infrastructure to support visitors. Among potential negative impacts, the Task Force concluded that introducing casinos would likely have a negative impact on horse racing, OTB facilities, charitable gaming and the State Lottery, while increasing pathological gambling. To offset the potential increase in pathological gambling, the Task Force recommended that a portion of revenues from casinos be used to fund expanded programs for problem gamblers.

With the advent of racinos, the marketplace for casinos in New York has changed considerably over the last decade, but evidence from other states indicates the industry still has room to grow in New York. Gross gambling revenue at New York racinos was $1.8 billion in 2012, compared to $3.2 billion at commercial casinos in Pennsylvania and $3.1 billion at those in New Jersey – states whose populations were 65 and 45 percent that of New York, respectively.[37] (Gross gambling revenue refers to total revenue

[36] New York State Task Force on Casino Gambling – Report to the Governor, August 30, 1996.
[37] American Gaming Association, 2013 State of the States, p. 5.

collected by the facility operator, before distribution to the State and other entities as required by law.)

Still, New York casinos will face a marketplace that has become increasingly competitive over the past two decades. Before the early 1990s, aside from Native American operations, casinos were limited to Las Vegas, where they have operated since the 1930s, and New Jersey, which legalized casino gaming in Atlantic City in 1976. States that added commercial casinos during the 1990s include Colorado, Delaware, Illinois, Indiana, Louisiana, Michigan, Mississippi and Missouri.

Delaware, which opened its first casino in 1995, last year allotted $8.0 million of its capital budget to aid the state's three casinos, which are struggling, in part, due to competition from recently opened casinos in Maryland and Pennsylvania.[38] According to reports, recent recommendations from the Delaware Lottery and Gaming Study Commission included $30 million in concessions to casinos over two fiscal years, including reduced vendor fees and a reduction in the State share of revenue.[39]

Since 2007, half of the twelve casinos in Atlantic City have filed for bankruptcy.[40] The Atlantic Club sought Chapter 11 protection in November 2013, and the casino closed in January 2014.[41] In 2010, New Jersey provided $261 million in tax credits to the Revel Casino, which emerged from bankruptcy in May of 2013. Tax revenues from Atlantic City casinos dropped 8.2 percent in 2012, as more states began competing for a limited pool of gamblers.[42] As a result of a reduced tax base from declining casino revenues and sizable casino tax appeals, Moody's recently downgraded Atlantic City's general obligation bond rating to Baa2 from Baa1.[43] Overall, New Jersey gaming revenue declined 6.2 percent in 2013 to $2.86 billion.[44]

For the year ending December 31, 2013, Pennsylvania experienced declining slot revenues at 9 of the 10 casinos that had been open for the previous year. As reported by the Pennsylvania Gaming Control Board, slot revenues fell by 3.5 percent on average at those facilities over the year.

Of particular interest to New York, two adjacent states – Pennsylvania and Massachusetts – have legalized casinos in recent years. Since opening its first casino in October 2007, Pennsylvania now has 12 facilities (the latest having opened in July 2013). Two months after opening, the newest addition, the Lady Luck Casino, reduced its workforce by 15 percent as business was slower than expected.[45] Total consumer

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[38] DePillis, L., "Delaware is Bailing Out Its Casinos. Wait, What?," Washington Post, June 19, 2013.
[39] Offredo, J., "Panel Backs $30 Million In Casino Aid," The Journal News, March 12, 2014.
[40] Parry, W., "Atlantic Club Seeks Bankruptcy Protection," WPVI-TV Philadelphia, PA., November 7, 2013.
[41] "DGE Announces January 2014 Gaming Revenue Results," New Jersey Office of the Attorney General, February 12, 2014.
[42] Pamela M. Prah, "Does The Country Have Too Many Casinos?", Pew/Stateline, June 26, 2013.
[43] "Atlantic City, N.J., Downgraded to Baa2 by Moody's," The Bond Buyer, November 20, 2013.
[44] "DGE Announces December 2013 Gaming Revenue Results," New Jersey Office of the Attorney General, January 14, 2014.
[45] Layton, M., "Lady Luck Casino Lays off Workers," Herald Standard, September 10, 2013.

spending on commercial casino gambling in Pennsylvania was $3.2 billion in 2012, second only to Nevada, according to the American Gaming Association. In 2013, the largest casino in Pennsylvania, Parx Casino and Racing, located northeast of Philadelphia and less than 100 miles from New York City, ran an advertising campaign including ads on local radio, television, and mass transit aimed at attracting New Yorkers.[46] "This is only a very short drive away," a representative of the casino told *Crain's New York Business*.[47]

Casinos in New York will also face competition from the east. The Massachusetts Legislature has authorized three casinos, including one each in the western region of the state, the Boston area and the southeastern area of the state, with licenses expected to be awarded in 2014 and 2015. The Legislature also authorized one slot parlor that could be located anywhere in the state. The license for the slot parlor was awarded on February 28, 2014 to Penn National Gaming.[48] Springfield is the only municipality in the western region to win voter approval for a casino.[49]

The 2013 Constitutional Amendment

On March 14, 2012, the Legislature passed Governor's Program Bill 30, an amendment to the New York State Constitution, which adds the following language to the existing section of the Constitution that authorizes the Lottery and certain other activities as exceptions to a general prohibition on gambling: "and except casino gambling at no more than seven facilities as authorized and prescribed by the legislature . . . ." The second passage of the bill by the Legislature in June 2013 resulted in the placement of the amendment on the ballot as part of the November 2013 General Election. The amendment was approved, as 57 percent of voters cast their ballots in favor of the authorization of new casinos, and took effect on January 1, 2014. Majorities of voters in 24 counties disapproved the amendment, while those in the remaining 38 counties voted in favor.[50]

The SFY 2013-14 Executive Budget proposed implementing language to provide that the Legislature could authorize up to three new casinos in the State. The SFY 2013-14 Enacted Budget omitted this Executive proposal. However, the Executive's 30-day amendments also included a provision requiring any applicant for a gaming facility license to enter into agreements with labor organizations actively engaged in representing or attempting to represent gaming or hospitality industry workers in the State. This was included in the SFY 2013-14 Enacted Budget.[51]

On June 18, 2013, the Governor's proposed Upstate New York Gaming Economic Development Act (Gaming Act), which would authorize up to four destination resorts

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[46] "Ad Agency For Parx Casino Wins Gaming Voice Awards," Philadelphia Region's Business, September 26, 2013.
[47] Chris Bragg, "Philly Plan Targets NYC," Crain's New York Business, March 25, 2013.
[48] See http://massgaming.com/about/casinoslots-parlor-development/.
[49] Associated Press, "MGM Requests July Casino Referendum in Springfield," May 15, 2013.
[50] See New York State Board of Elections, www.elections.ny.gov.
[51] See Part R, Chapter 57 of the Laws of 2013.

with casino gambling, was introduced in the Legislature. The Gaming Act was passed by the Legislature at the end of the 2013 session. Under the enacted legislation, the facilities are required to have a casino area, at least one hotel, and other amenities. The minimum tax charged on gross gaming revenue by the State depends on the region, and ranges from 37 percent to 45 percent on slot machines. Region 5, the Eastern Southern Tier, has a tax rate of 37 percent; Region 1, the Catskills, has a tax rate of 39 percent; and Region 2, the Capital District area, has a rate of 45 percent. In all regions, a 10 percent tax would apply to the gross gaming revenue of all other games.

The distribution of these tax revenues would be: 10 percent to be split equally between the host municipality and the host county; 10 percent to the counties in the host region to provide tax relief or educational assistance; and 80 percent to the State for elementary and secondary education above the State's existing education formulae. With the passage of the Constitutional amendment, 10 percent of the gaming revenues received by the State from Native American gambling facilities will be allocated to the counties within each tribe's exclusivity zone, provided the counties are not already receiving a share of these revenues.

Recognizing that the introduction of casinos may reduce the gross gambling revenues of VLT facilities (racinos), the Gaming Act includes provisions to offset any diminishment of program funding due to declining racino revenues. Casino operators located in regions with racinos will be required to maintain payments to the horse racing industry for purses, agriculture, the New York State Horse Breeding Development Fund, and the New York State Thoroughbred Breeding and Development Fund at the same dollar levels realized in 2013, to be adjusted annually for inflation.

DOB estimated in October 2013 that the Gaming Act would produce $238 million annually in additional State aid for education, and an additional $192 million in annual aid to local governments. The estimates are averages of projections from several different development scenarios. They include revenue from four new casinos, two new OTB VLT facilities and revenue from tribal casinos, and reflect unspecified adjustments for potential impacts on existing VLT facilities, according to DOB. The estimated $430 million is equivalent to 0.6 percent of total State tax revenues in SFY 2013-14. The announcement from DOB about the financial implications of the Gaming Act did not specify how much of the new revenue would come from expanded VLT operations, commercial casinos or Native American casinos.[52]

Pursuant to the legislation, New York is divided into two zones, and from there, upstate New York is divided into six regions, illustrated in Figure 9, with four casinos to be located upstate and with no more than one region having two new casinos. No casino would be authorized to be located in the three upstate regions where Native American

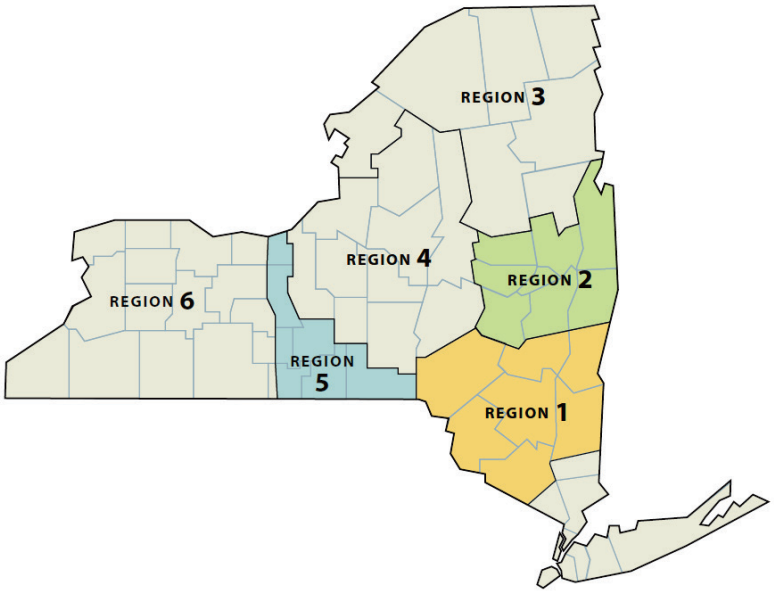
[52] New York State Division of the Budget press release, October 2, 2013, available at www.budget.ny.gov/pubs/press/2013/pressRelease13_gamingAct.html.

nations have exclusivity (regions 3, 4 and 6) or in New York City (Bronx, Kings, New York, Queens, and Richmond counties).

Under the legislation, the downstate counties of Putnam, Rockland, Westchester, Nassau, and Suffolk are not authorized to have any casinos until a minimum of seven years after the first upstate casino license is awarded. (Any development of casinos in New York City would require future legislation.) Casinos are required to be open for business no more than 24 months after the gaming license is awarded. Failure to meet this deadline would result in suspension or revocation of the license and possible fines of up to $50 million. Should the State award additional licenses during this seven-year moratorium period, licensees would have the right to recover their license fees paid to the State. The recovery of the license fee would be prorated based on the amount of time remaining in the moratorium period. The Gaming Act also authorizes the Nassau and Suffolk OTBs to establish one VLT facility each at an OTB site, with a maximum of 1,000 machines at each site.

Figure 9

Upstate Regions for Resort Gaming Destinations



Note: Under the Gaming Act enacted in June 2013, upstate casinos would be located in regions 1, 2, and 5, as shown in different colors above to distinguish the regions. Regions 3, 4, and 6 represent Native American exclusivity zones.
Source: Adapted from the New York State Executive Chamber.

In March 2014, the Gaming Commission appointed members of a New York Gaming Facility Location Board (Siting Board) to select, through a competitive process, up to four applicants for casino licenses. The commission outlined a siting timeline calling for formal bids from applicants in June 2014 and announcement of approved casino sites and operators in “early fall” of 2014. Among other provisions, the request for

applications (RFA) establishes minimum licensing fees of $20 million to $70 million, depending on a casino's region of operation.

The statute provides that evaluation criteria for selecting resort gaming destinations and developers will include the following factors and corresponding weights:

- 70 percent: Economic and business development factors, including capital investment, maximizing revenue to the State and local governments, jobs, amenities, completion time, experience, and ability to fully finance the facility.
- 20 percent: Local impact and siting factors, including local public support, mitigation of local impact of the facility, and operation in partnership with regional establishments.
- 10 percent: Workforce and overall societal enhancement factors, including implementation of a workforce development plan, measures to address problem gambling, and use of sustainable development principles.

The statutory provision regarding local support does not require formal approval by local voters, governing boards or other elected officials. However, in its March 2014 RFA for casino licenses, the Siting Board required that each applicant submit a resolution by the local legislative body of its host municipality supporting the application.[53]

Additional provisions included in the Gaming Act include:

- Powers and duties of the Gaming Commission, or a separate Board for Facility Siting authorized to be established by the Commission, including additional powers and reporting requirements.
- Additional provisions related to facility siting determinations including eligibility, required capital investment, minimum license thresholds, disqualifying criteria, and investigative hearings.
- Facility, employee and vendor licensing and registration provisions, as well as lobbyist and labor organization registration provisions.
- Requirements for the conduct and operation of gaming facilities, including hours of operation, internal controls, gaming equipment, alcohol, labor peace agreements, and prohibition on political contributions from gaming licensees and applicants.
- Taxes and fees, including machine and table fees, regulatory investigatory fees, taxes on gross gaming revenue, determination of tax liability, unclaimed funds, and distributions to the racing industry.
- Authority for casinos to offer sports wagering – currently illegal in New York and most states – if such betting is legalized under federal statutes or court decisions.
- Minority and Women-owned Business Enterprise (MWBE) provisions.
- Problem gambling prevention and outreach efforts (further discussion appears in the next section of this report).
- Creation of a new Office of Gaming Inspector General.

[53] For more information, see www.gaming.ny.gov/pdf/RFA%203.31.14.pdf.

Economic and Revenue Impacts of Gambling

Extensive academic research on casinos and other forms of gambling has produced some consensus regarding impacts on governmental revenue and state and regional economies. A discussion paper written for the Federal Reserve Bank of Philadelphia, published in 2010, summarized economic research on the topic in this way:

> *Casinos can produce significant economic effects in the communities and regions in which they are located, although the effects vary widely. The size of the local or regional effect depends most significantly on how many visitors the casino draws from outside the area, thus reducing displacement of existing economic activity, and the number of jobs it generates within the area, thereby increasing the multiplier effect of the casino. Although casinos generate significant public revenue effects, the net effect is difficult to estimate because the extent to which casinos displace other public revenues, such as lotteries, has to be determined and because there is a paucity of detailed assessments of public costs. Even so, in most states the rate of taxation of casinos is substantially higher than the level at which other sectors are taxed; therefore, the net effects are likely to be positive. The effects of casinos on local public revenues, however, are much more mixed because state tax regimes retain most casino revenues at the state level, often allowing only a small part of the total public revenue stream to go to local governments. The incidence of casino taxes on consumers (OR households) is likely to be highly regressive.*[54]

In New York, DOB cites "competition from other gambling venues" as one of the factors influencing the level of demand for Lottery games.[55] DOB analyzes projected participation at VLT facilities using a number of factors, including the impact of competition, alternative facility locations, varying numbers of facilities and alternative plans for program expansion.

DOB uses a commonly cited industry estimate that customers in the primary market area for a given facility – those who will visit an average of 10 times per year – are likely to live within 50 miles or a 50-minute drive of the casino. The secondary market extends from 50 to 100 miles (or minutes), and the tertiary market to 150 miles or 2.5 hours.

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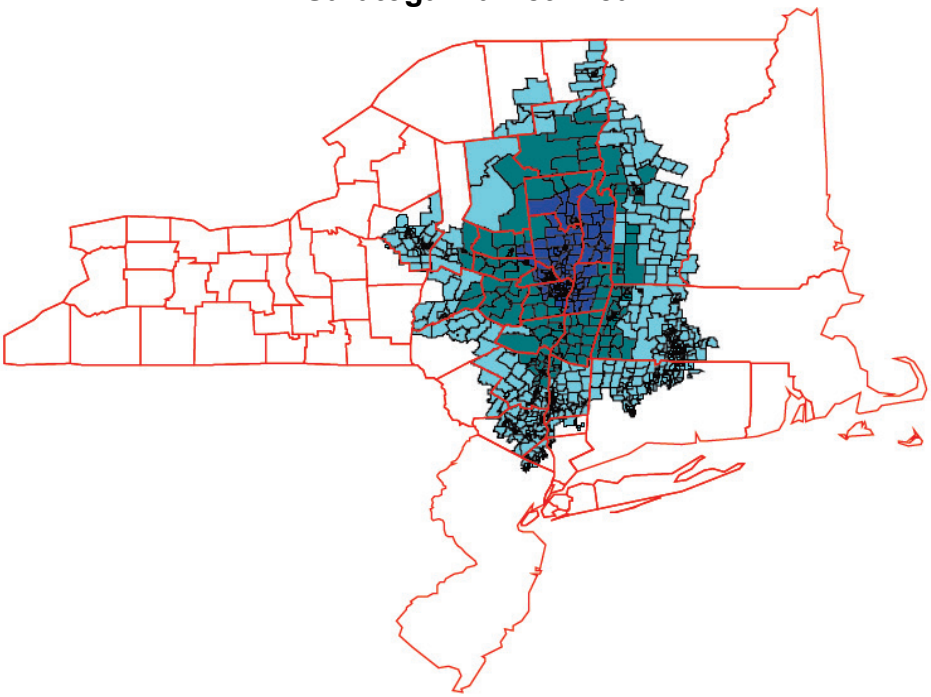
[54] Mallach, A. "Economic and Social Impact of Introducing Casino Gambling: A Review and Assessment of the Literature," Federal Reserve Bank of Philadelphia, March 2010.

[55] New York State Division of the Budget, *2013-14 Executive Budget Economic and Revenue Outlook*, p. 371.

Figure 10

Primary, Secondary and Tertiary Markets: An Illustration
Saratoga Market Area



Note: Dark blue areas represent primary markets, teal areas represent secondary markets, and light blue areas represent tertiary markets. Black patches in the tertiary area are the result of intersecting borders of small census tracts.
Source: Division of the Budget, *New York State Economic, Revenue and Spending Methodologies*, November 2013, page 175.

Figure 10 shows DOB's analysis of census tracts making up the primary, secondary and tertiary markets for the Saratoga Casino and Raceway facility in Saratoga Springs. The map indicates that, given population distributions and highway networks, the majority of the facility's primary market area is within New York State. Considering that New York is home to nine racinos and five casinos, all of which seek to attract visitors from surrounding markets – similar to the zones portrayed in Figure 10 – the vast majority of the State could be considered a primary, secondary and/or tertiary market for existing racinos. In other words, in most areas of the State, New Yorkers have a casino-like experience available within a drive of an hour or two. As new casinos open, or if existing racinos are converted to casinos, it is likely that much of the customer base for such facilities will also be in New York.

In addition to competing with comparable existing facilities, casino gambling can have a significant impact on other revenues from legal gambling, research indicates. The Division of Lottery acknowledges that the new casinos will result in increased competition for gamblers' discretionary income purchases. The Division has awarded a

contract for research and analysis of alternative approaches for the future of the Lottery in the State.[56] In its request for proposals, released before voters gave their approval to the proposed Constitutional amendment, the Division stated: "The Lottery is faced with increased competition for discretionary income purchases as the possibility for casinos in New York State is put before the public in November. The Lottery anticipates the need to review different strategies to remain as a relevant gaming option and important source of funding for State aid to education." In November, the Gaming Commission awarded the contract to Camelot Global Services.

Given the similarity of some of the games offered at both kinds of locations, commercial casinos in New York would likely have especially noticeable impacts on racinos – including their employment levels as well as the revenue they generate for the State. Other factors being equal, such displacement effect may be smaller if out-of-State visitors constitute a relatively greater percentage of total visitors.

Supporters of casinos cite potential benefits, including additional revenue for State and local governments, recapture of gambling dollars that residents may be spending elsewhere, and generation of new jobs in economically struggling areas. It is likely that the introduction of commercial casinos in New York would, in fact, result in some such outcomes. More difficult questions involve the extent of such benefits, especially on a net basis after accounting for potential negative impacts.

A group of entertainment venues in the Capital District and nearby regions, the Upstate Theater Coalition, has expressed concern that entertainment at new casinos would make it more difficult for other facilities to book acts. Casinos' revenues from gambling operations may allow booking of popular acts at ticket prices that are effectively subsidized to below-market rates. Massachusetts's statute governing casinos requires operators to negotiate agreements with certain other entertainment venues.[57] While New York's Gaming Act does not include such a requirement, it provides that consideration of existing entertainment venues is to be among the factors weighed for purposes of the 20 percent of overall consideration that is given to local impacts.

The law provides for consideration of a proposed facility's "establishing a fair and reasonable partnership with live entertainment venues that may be impacted by a gaming facility under which the gaming facility actively supports the mission and the operation of the impacted entertainment venues."[58] The Gaming Commission has stated that it will work with the Coalition to ensure "that no casino operator can successfully bid for a New York casino license unless it has a signed partnership agreement with live entertainment venues in the local market in consultation with the Upstate Theater Coalition."[59]

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[56] "Request for Proposals for Market Research Regarding Alternative Approaches for the Future of Lottery in New York State," NYS Gaming Commission, Division of Lottery, September 13, 2013.
[57] Chapter 194 of The Acts of 2011, "An Act Establishing Expanded Gaming in The Commonwealth," State of Massachusetts.
[58] Gaming Act, Section 1320 2(d).
[59] Statement by Robert Williams, Gaming Commission Acting Executive Director, October 22, 2013.

Research shows that site location, the demographic characteristics of the site community, the economic characteristics of the site community and the features of the casino influence the economic impacts resulting from the introduction of casino gambling. These factors can have a significant influence on the extent to which casino visitors' and newly hired workers' expenditures generate additional economic activity in the local community, as well as on the displacement of consumer spending which will in turn affect the amount of tax revenue collected by the State. For instance, a large pool of unemployed or underemployed labor in the casino locale may maximize the multiplier effect.[60]

Fueled in part by specific local factors, casinos have brought economic benefits to Tunica, located in a poverty-stricken area of Mississippi. In 1985, the area was described by the Reverend Jesse Jackson as "America's Ethiopia."[61] After casinos began opening in the early 1990s, local employment numbers increased and the property tax base expanded sharply. As of 2005, the area ranked as the fifth largest casino market in the nation, with $1.2 billion in gross revenues.[62] By attracting visitors from Memphis, Tennessee and other surrounding population centers, casino gambling brought increases in government revenue, public services, infrastructure investments, business revenue and business starts – although displacement of government tax revenues offset some of those gains.[63] But Tunica also shows that economic gains from casinos may be volatile over time. As of 2012, overall revenues had fallen to $822 million, for a decline of more than 30 percent since 2005, according to industry estimates.[64]

Employment at racinos in New York State totaled 5,233 in 2012, according to the American Gaming Association. In October 2013, the Gaming Commission released an analysis which estimated that the Gaming Act would result in the net creation of approximately 6,700 construction jobs and 2,900 permanent jobs, reflecting 30 percent displacement of existing jobs.[65]

When casino wagering displaces consumer spending, sales tax revenue may be reduced, in some cases more than offsetting the new casino tax revenue.[66] Some researchers conclude that when a casino draws a large percentage of visitors from outside the area, the displacement effect will be minimized, as there is less local consumer spending diverted from non-casino goods and services to casino spending. A casino that is located near state borders could attract more out-of-state visitors than a

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[60] Mallach, A. "Economic and Social Impact of Introducing Casino Gambling: A Review and Assessment of the Literature," Federal Reserve Bank of Philadelphia, March 2010.
[61] Mehta, S., "Legalized Gambling Lifts a Depressed Town," Fortune, March 17, 2007.
[62] American Gaming Association data.
[63] Farrigan, T.L., "The Tunica Miracle, Sin and Savior in America's Ethiopia: A Poverty and Social Impact Analysis of Casino Gaming in Tunica, Mississippi," The Pennsylvania State University (2005).
[64] American Gaming Association data.
[65] See www.gaming.ny.gov/pdf/UpstateNYGamingDevelopmentAct_FINAL.pdf, released on October 4, 2013.
[66] Landers, J. "The Effects of Casino Gambling on Sales Tax Revenue in States Legalizing Casinos in the 1990s," State Tax Notes, December 26, 2005.

casino located in the state's interior. However, the proliferation of gaming facilities in neighboring states in recent years may reduce New York's ability to attract out-of-state gamblers.

Casinos that have hotel and restaurant facilities may be more likely to displace local spending than casinos that do not offer these services.[67] Other research supports the general conclusion that employment gains will likely be greater in rural areas where casino gaming becomes the major industry. The impacts of casinos on employment in more metropolitan locales may be difficult to determine, as the employment market is more variable and casino employment represents a smaller share of total employment.[68]

Problem Gambling

The National Council on Problem Gambling defines problem gambling this way:

> *Problem gambling is gambling behavior which causes disruptions in any major area of life: psychological, physical, social or vocational. The term "Problem Gambling" includes, but is not limited to, the condition known as "Pathological", or "Compulsive" Gambling, a progressive addiction characterized by increasing preoccupation with gambling, a need to bet more money more frequently, restlessness or irritability when attempting to stop, "chasing" losses, and loss of control manifested by continuation of the gambling behavior in spite of mounting, serious, negative consequences.*[69]

A 2007 study by OASAS found that roughly 5 percent of New Yorkers suffered from problem gambling. The survey asked respondents questions including, "Has there ever been a period in your life when, if you lost money gambling on one day, you would return another day to get even?" and "Have you ever tried to stop, cut down, or control your gambling?" The study found several groups were more likely to experience problem gambling than others: adults in their 20s as opposed to adults age 60 and older, males compared to females, blacks and Hispanics compared to whites, and adults who have never married compared to those who have married. About 28 percent of problem gamblers also experienced a substance abuse disorder, according to the OASAS study.[70]

Approximately 10 percent of New York students in grades 7-12 have experienced problem gambling in the past year and may need treatment services, OASAS concluded

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[67] Mallach, A., "Economic and Social Impact of Introducing Casino Gambling: A Review and Assessment of the Literature," Federal Reserve Bank of Philadelphia, March 2010.
[68] Garrett, T.A., "Casino Gaming in America and Its Economic Impacts," Federal Reserve Bank of St. Louis (2003).
[69] National Council on Problem Gambling, www.ncpgambling.org.
[70] Rainone, G., Marel, R., Gallati, R.J. and Gargon N., "Gambling Behaviors and Problem Gambling Among Adults in New York State: Initial Findings From The 2006 OASAS Household Survey," New York State Office of Alcoholism and Substance Abuse Services (2007).

in a separate report in 2007. The report found that more than 40 percent of students in those grades had played the lottery at least once in the past year.[71]

Nationwide surveys conclude that lower-income individuals are more likely than those in the middle- and upper-income levels to buy lottery tickets. One survey found that 61 percent of respondents in the lowest 20 percent of socioeconomic status had played the lottery in the preceding year, compared to 43 and 42 percent among those in the middle and highest socioeconomic categories, respectively. White respondents (51 percent) were more likely to have participated in lotteries than Hispanic (47 percent) or black respondents (41 percent). Black respondents played more frequently, however – an average of 20.6 days in the previous year compared to 14.4 days and 14.1 days for Hispanics and whites, respectively. While lottery participation rates among men and women were similar, men gambled more often on average, at 18.3 days in the preceding year compared to 11.7 for women.[72]

Projections that casinos will generate increased tax revenue and employment in New York are based partly on assumptions that additional gaming opportunities will increase overall participation from current levels. According to DOB, "it is assumed that as more casino facilities become available over time, the participation rates in New York and some surrounding states will increase."[73]

Academic research finds that the introduction of casinos may increase problem gambling. For example, problem gambling increased in five of the seven communities analyzed in one study.[74] Other studies have found that initial increases in problem gambling appear to level off over time.[75] The social impacts associated with problem gambling are varied and have consequences for the gambler, family members and the community. Problem gambling may lead to financial problems including bankruptcy, divorce, depression, suicide, and strains on public services.[76]

The Association of Problem Gambling Service Administrators, an association of state officials, and the National Council on Problem Gambling commissioned a survey of publicly funded problem gambling programs and released its findings in 2013. Thirty-nine states reported having publicly funded services for problem gamblers. New York spent $2.2 million on such services in 2013, almost a 50 percent decrease from three years earlier, according to the survey. The average per capita allocation of public funds for the states providing services was 32 cents. New York State spent less than the

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[71] Rainone, G., and Gallati, R.J., "Gambling Behaviors and Problem Gambling Among Adolescents in New York State: Initial Findings from the 2006 OASAS Survey," New York State Office of Alcoholism and Substance Abuse Services. (2007)

[72] Barnes, G.M., Welte, J.W., Tidewell, M.C.-O., Hoffman, J.H., "Gambling on the Lottery: Sociodemographic Correlates Across the Lifespan," Springer Science+Business Media, LLC, December 2010.

[73] New York State Division of the Budget, "New York State Economic, Revenue, and Spending Methodologies," November 2013, p. 172.

[74] Stitt, G.B., "Effects of Casino Gambling on Crime and Quality of Life in New Casino Jurisdictions," prepared for the U.S. Department of Justice. (2000)

[75] Williams, R.J., "The Social and Economic Impact of Gambling – Final Report," prepared for the Canadian Consortium for Gambling Research, Alberta Gaming Research Institute, University of Lethbridge, Alberta, Canada.

[76] Walker, D.M. *The Economics of Casino Gambling*, Springer 2007.

average, approximately 11 cents per capita in 2013. On average, among the states surveyed, treatment accounted for 37 percent of the funding for state services for problem gambling. Other services included media or public awareness projects, training or workforce development, administrative costs, prevention programs, helpline services and evaluation and research expenses.[77]

The Gaming Act requires every casino to develop a plan to address problem gambling before receipt of a license. Such plans would include employee training, procedures to identify and deal with patrons and employees with suspected or known problem gambling behavior, and advertising outreach to educate the general public on the issue. Casinos would have to submit quarterly and annual reports to the Commission on their adherence to the plan. Any advertising would be required to "clearly and conspicuously" provide a problem gambling hotline number.

In addition to other charges, casinos would pay the State $500 per year for each slot machine and table game, with proceeds going to OASAS for "problem gaming education and treatment purposes." Such fees are expected to generate more than $4.7 million annually for OASAS-funded treatment and education addressing problem gambling.[78]

Unlike its provisions regarding education aid, the legislation does not require that such revenue be added to – rather than displace – existing State appropriations for such services. Based on the State's 2013 population, the $4.7 million estimate of revenues for problem gambling programs represents 24 cents in per capita funding. If this is added to the 11 cents the State currently spends, total spending in New York would be slightly greater than the 32 cent national average cited in the survey mentioned above.

Such steps represent an acknowledgment that new casinos may increase the level of problem gambling in New York, and that operators who profit from gambling should be held responsible for addressing the issue. The requirements for casinos appear to go beyond steps taken by the Lottery, and could help to inform the State's gambling operations as a whole. The Gaming Commission has identified problem gambling and gambling addiction as "a very real challenge" and committed to expanding its efforts to address the issue.

In Massachusetts, legislation enacted in 2011 to authorize three casinos and one slot parlor included a requirement that the Massachusetts Gaming Commission establish an "annual research agenda" regarding the social and economic effects of expanding gambling in the state. As part of such research, the Commission has awarded a $3.64 million research grant to the University of Massachusetts-Amherst's School of Public Health and Health Sciences for a comprehensive study of such impacts. The study "will focus particularly on problem gambling, but also examine a wide array of social and

[77] "2013 National Survey of Problem Gambling Services," Problem Gambling Solutions Inc., March 2014.
[78] See www.gaming.ny.gov/pdf/UpstateNYGamingDevelopmentAct_FINAL.pdf, released on October 4, 2013.

economic effects of expanded gambling in Massachusetts."[79] Such broader analysis by the Gaming Commission could be beneficial in New York as the State moves ahead with full commercial casinos and potential changes to the Lottery.

Conclusion

As the half-century mark of New York's modern Lottery approaches, voters in the State were once again asked to consider a major change in public policy related to legalized gaming. Now that voters have approved the Constitutional amendment authorizing casinos, debate and decisions enter a new phase with respect to dealing with the positive and the negative consequences associated with gaming expansion. As mentioned in this report, sports betting and online gambling are among other options already under discussion in New York and some other states. The possibility of continued evolution in the gambling marketplace makes comprehensive understanding and careful scrutiny of State-approved gaming all the more essential.

New York's current array of legal gambling options has arisen in piecemeal fashion, as the State has sought additional increments of new revenue to balance annual budgets. Major decisions about further expansion of gambling opportunities should reflect broad and open debate over relevant issues, including the balance of economic and fiscal benefits and costs, impacts on local governments and public education, and the risk that State policies may make problem gambling more widespread. This report is intended to inform such discussion in the months and years ahead.

[79] Press release, University of Massachusetts-Amherst School of Public Health and Health Sciences, "SPHHS Researchers Get $3.64 Million from State Gaming Commission to Study Gambling Impacts," May 9, 2013.

Appendix: Lottery Revenue for Education

Lottery Revenue for Education by Type of Game
SFY 1994-95 through SFY 2013-14
(in millions of dollars)

FYE	Instant Games	Drawing Games	State Jackpot Games	Multi-State Jackpot Games	Quick Draw	Other Games (1)	Admin Surplus (2)	Total Traditional Games	Video Lottery Terminals (3)	Total Revenue
1995	177.9	530.8	375.8	-	-	-	131.5	1,216.0	-	1,216.0
1996	308.0	519.8	333.9	-	82.0	-	138.8	1,382.5	-	1,382.5
1997	298.4	521.2	399.0	-	140.7	-	168.8	1,528.1	-	1,528.1
1998	298.5	546.9	395.9	-	125.8	-	166.8	1,533.9	-	1,533.9
1999	283.2	552.1	338.3	-	123.4	-	145.4	1,442.4	-	1,442.4
2000	257.5	536.2	345.5	-	82.5	-	128.0	1,349.7	-	1,349.7
2001	283.0	561.4	304.6	-	126.7	-	159.8	1,435.5	-	1,435.5
2002	377.1	604.6	254.8	-	121.8	-	193.2	1,551.5	-	1,551.5
2003	465.7	618.0	175.7	129.0	118.6	-	281.9	1,788.9	-	1,788.9
2004	529.0	626.0	163.4	166.6	127.1	-	272.3	1,884.4	12.6	1,897.0
2005	550.0	631.6	137.5	156.3	118.0	-	296.0	1,889.4	141.2	2,030.6
2006	594.9	648.6	113.7	194.4	114.7	9.5	341.8	2,017.6	161.7	2,179.3
2007	664.2	669.6	95.9	160.6	110.8	11.9	326.5	2,039.5	269.7	2,309.2
2008	665.4	672.0	94.6	167.3	110.7	8.0	398.9	2,116.9	490.8	2,607.7
2009	690.8	680.4	79.5	164.4	105.7	3.8	384.5	2,109.1	434.9	2,544.0
2010	665.9	694.4	96.9	210.2	105.2	-	379.6	2,152.2	492.5	2,644.7
2011	636.6	678.0	79.6	232.7	105.3	-	376.0	2,108.2	526.6	2,634.8
2012	625.2	699.1	71.9	233.3	124.5	-	393.4	2,147.4	681.7	2,829.1
2013	637.3	676.5	65.2	285.2	143.9	-	408.9	2,217.0	857.0	3,074.0
2014 est	632.0	693.0	59.0	290.0	165.0	0.6	395.4	2,235.0	937.4	3,172.4

Notes: (1) Includes King Kong and Raffle Games.
(2) Includes any unused portion of Lottery's administrative allowance and other miscellaneous income used for education.
(3) Does not include $380 million franchise fee collected in SFY 2010-11 for the operation of VLTs at Resorts World Casino at Aqueduct Racetrack.

Drawing games include Numbers, Win 4, Pick 10 and Take 5. State Jackpot games include Lotto and Sweet Million. Multistate jackpot games include Powerball and Mega-Millions.

Source: NYS Division of the Budget.