

## TASK FORCE ON HEALTH PLANNING REFORM

### PROPOSED BLUEPRINT (10/23/2008)

#### Reform Goals

##### Statewide Comprehensive Health Planning

- I) The State of Illinois will conduct statewide comprehensive health planning with the following goals:
- a) To promote access to quality care for all Illinoisans
  - b) To support safety net services for uninsured and underinsured residents
  - c) To ensure adequate financing for health care services

The planning process will be guided by the following principles:

- Health and mental health services will be assessed comprehensively
- Assessment of need will include a special focus on identifying health disparities
- State-level and regional needs will be identified
- Recommendations will balance the free market with preservation of services for uninsured and underinsured residents

In order to successfully meet these goals, the following objectives will be pursued:

- 1) Conduct a needs assessment of comprehensive health service needs, identifying needs for facilities, clinical services and workforce
- 2) Create recommendations to meet identified health service needs
- 3) Create recommendations for financing of health services

##### Certificate of Need (CON) Process

- II. The State of Illinois will change the CON process to meet the following goals:
- a) To promote a predictable, transparent and efficient process
  - b) To prevent any further corruption of the "Certificate of Need" process that has recently undermined its credibility and effectiveness.
  - c) To respond to relevant recommendations in the statewide comprehensive health plan
  - d) To increase support for safety net services

In order to successfully meet these goals, the following objectives will be pursued:

- 1) Streamline the current CON process
- 2) Revise criteria for approval
- 3) Establish mechanisms to support adequate financing of the health care delivery system in Illinois
- 4) Revise the structure of the Illinois Health Facilities Planning Board

## **Comprehensive Health Planning**

- 1) The State of Illinois should undertake a more active role in comprehensive health planning to guide the development of services, facilities and workforce that will meet the health and mental health care needs of Illinois, including identifying and recommending initiatives that will meet those needs.
- 2) An over-arching **Comprehensive Health Planning Agency** should be created as a separate State entity, which would include a regulatory body established to continue to carry out the duties required for the “Certificate of Need” process – the **“Health Facilities and Services Review Board”** (or **CON Board**). This Comprehensive Health Planning Agency should develop plans and recommendations that are integrated into any relevant CON criteria, standards and procedures. Not all service needs that are identified in the comprehensive health planning process would be subject to CON regulation.
- 3) Health planning for services, facilities and workforce under the Illinois Health Facilities Planning Act shall be integrated with other health planning laws and activities of the State, where appropriate. These include, but are not limited to the State Health Improvement Plan, the *Illinois Rural/Downstate Health Act* and related activities of the Office of Rural Health of the Illinois Department of Public Health, and the recommendations of the (2006) *Joint (House/Senate) Task Force on Rural Health & Medically Underserved Areas*.
- 4) The new Comprehensive Health Planning Agency would be authorized to hire and manage its own professional Comprehensive Health Planning Staff that would be dedicated to the development of the Comprehensive State Health Plan, as well as provide support to the (reformed) Health Facilities and Services Review Board (CON Board).
- 5) The Comprehensive Health Planning Agency will identify unmet health needs for which the State, through various State agencies, should plan and implement resource development projects. The Comprehensive Health Planning Agency may assist in any such planning. Technical and financial incentives may be recommended, or assistance provided in project planning and design.
- 6) Aside from conditions/commitments that may be included under a CON application, a health provider may propose a health resource development project or include information on methods by which it benefits its community, that are consistent with health resource needs identified through the comprehensive health planning process, which will contribute to the development of appropriate and necessary services and facilities. The Comprehensive Health Planning Agency established by this reform may certify that a project relates and contributes to meeting the identified need, and shall implement procedures to ensure compliance. Such projects may be recognized or credited toward any “charity care” responsibility for which the applicant is obligated or may elect to provide.
- 7) This new agency would also be charged with making comprehensive health planning data available to interested parties. This data should be kept current and made available to the public, including publication on an accessible agency website.

### **Comprehensive Health Plan Development**

- 8) The Comprehensive Health Planning Agency shall be charged with developing a long range plan (5-to-10 years) to be updated periodically.
- 9) The plan will incorporate an inventory to map the state for growth, population shifts, and available healthcare resources, using both state-level and regionally defined areas. The plan will also evaluate health service needs, addressing gaps, over-supply and continuity of care. This evaluation will include an assessment of existing safety net services.
- 10) The inventory of state's health facilities infrastructure includes regulated facilities and services, as well as facilities and services that are not currently regulated, as determined by the Agency. In determining the scope of the facilities inventory, the Agency must consider including services that are regulated for those who are under the purview of the Illinois Health Facilities Planning Act, but are also offered by non-regulated providers.
- 11) In developing the plan, the Comprehensive Health Planning Agency shall consider health plans and other related publications that have been developed both in Illinois and nationally. In developing the plan, the need to ensure development and maintenance of access to care, especially for "safety net" services, including rural and medically underserved communities, should be included.
- 12) The Comprehensive Health Planning Agency will establish priorities and create recommendations to meet identified health service, facilities and workforce needs. This may include suggestions for incentives and disincentives for adding or eliminating health services. This may also include noting opportunities for cost controls for consumers and tax payers.
- 13) The Agency may also create recommendations for the financing of health services.
- 14) The components of the plan should be outlined in state statute, with as much detail as possible.
- 15) The Agency will hold public hearings on the plan and its updates. There shall be a mechanism for the public to request that the plan be updated more frequently to address emerging population and demographic trends.

### **Reform of the Illinois Health Facilities Planning Board**

- 16) The (new) Comprehensive Health Planning Agency and Illinois Health Facilities and Services Review Board (i.e., the reformed "CON" Board) shall be separated from the Illinois Department of Public Health. The Comprehensive Health Planning Agency shall prepare and submit its own operating budget for review and approval by the Illinois General Assembly, including funds necessary for the effective operation of the CON process, with authority to hire and manage its own planning staff who will work with the Illinois Department of Public Health in the review of

project applications. Staff of the Illinois Department of Public Health currently dedicated to health planning duties supporting the Illinois Health Facilities Planning Board may be considered for transfer to the Comprehensive Health Planning Agency. All other related resources, property and files of the Illinois Department of Public Health shall be transferred to the Agency, including all policies, rules and legal documents related to the CON process.

- 17) An Executive Director for the Illinois Comprehensive Health Planning Agency shall be appointed by the Governor, but that selection must be from nominees recommended by a **Special Boards & Commissions Nomination Panel** (to be created for the appointment of all substantive regulatory boards and commissions), with the advice and consent of the Illinois Senate and the Illinois House of Representatives. The Executive Director will serve as the chief executive officer responsible for the operations of the Agency and its staff. This appointment is subject to review and approval every 3 years.
- 18) To better monitor resources, the Illinois Comprehensive Health Planning Agency should publish an annual report of all fees, fines and other revenue collected as well as expenses incurred.
- 19) In order to transition to a new focus on health planning and setting new criteria and standards by which CON projects are evaluated, the CON Board membership should be increased from 5 to 9 members appointed by the Governor from a list of 3 nominees per office developed by the Special Boards & Commissions Nomination Panel. Appointments to the Board shall be subject to the advice and consent of the Illinois Senate and Illinois House of Representatives. [The nomination panel would be created and function in the same manner proposed for the Illinois Gaming Board in House Amendment #4 to Senate Bill 2595 of the 95th General Assembly (See attachment).]
- 20) The CON Board shall also be subject to ethics and operating standards (A model for these requirements is contained House Amendment #4 to Senate Bill 2595. See attachment.). This includes but is not limited to provisions that require criminal and other background checks conducted by the Executive Inspector General for all nominees. No person who has been convicted or pled to a felony shall be nominated, appointed to the CON Board or the Comprehensive Health Planning Board or hired as staff. Any member may be removed for neglect of duty, misfeasance, malfeasance, or nonfeasance in office or for engaging in any political activity – i.e., activity in support of or in connection with any political organization. Board members must formally disclose any potential conflicts of interest, which must be filed with the Special Boards & Commission Nomination Panel.
- 21) No more than 5 members of the (reformed) CON Board may be from the same political party at the time of appointment.
- 22) Neither board members, nor their spouses or immediate family members, can be employees, agents, or under contract to any health care facilities or services subject to the Act.
- 23) CON Board members who resign, whose terms end, or who are subject to removal, will be prohibited for 2 years after termination from membership from

accepting employment or receiving compensation or fees for service from a person or entity, or its parent or affiliate, that has been subject to regulation under the Illinois Health Facilities Planning Act.

- 24) The nomination panel shall include 3 nominees to Chair the CON Board on a full-time basis who will receive an annual salary equal to the annual salary of a circuit court judge. The Chair must have expertise in health care delivery system planning, finance or management of health care facilities that are regulated under the Illinois Health Facilities Planning Act. This appointment shall also be subject to the advice and consent of the Illinois Senate and the Illinois House of Representatives.
- 25) All members to be appointed shall have a reasonable knowledge of the practice, procedures and principles of the health care delivery system in Illinois. At least five (5) of the members of the CON Board should have expertise in health care delivery system planning, finance, or the management of health care facilities that are currently regulated under the Illinois Health Facilities Planning Act. At least two (2) of the members shall represent health care consumers. Each member shall be a resident of Illinois. At least 4 members shall reside outside of the Chicago Metropolitan Statistical Area. Appointments should reflect the ethnic, cultural and geographic diversity of the State of Illinois.
- 26) Five members of the CON Board will constitute a quorum. The affirmative vote of 5 appointed members is required for approval of a project application. Terms of new CON Board members will be staggered. Four (4) of the initial appointments will be for two year terms, and 5 will be appointed for 3-year terms. After the initial terms, all members may serve for three year terms. Members cannot serve for more than 3 terms. Members whose terms have expired may only serve up to 6 additional months or until a successor has been appointed and qualified, whichever comes first.
- 27) The CON Board shall have expressed independent authority to contract for expertise related to specific health services or facilities, and create technical advisory panels to assist in the development of criteria, standards and procedures and the evaluation of projects that may require special attention.
- 28) CON Board members (other than the Chair) should be compensated based on a schedule and conditions comparable to other part-time members of compensated regulatory boards.

### **CON Board Responsibilities**

- 29) The CON Board would continue to have responsibility for decision-making on applications. Standards should be clear and detailed to the extent that the staff and CON Board determine compliance on an objective and consistent basis. Decisions must be consistent with appropriate standards. There must be clear and documented criteria and procedures for any variation from standards.
- 30) The CON Board must update the standards and criteria used to identify needs and evaluate applications on a regular basis (at least every 2 years), using the inventory and recommendations of the Comprehensive Health Plan for guidance,

and propose new standards to keep pace with the evolving health care delivery system. The CON Board should also periodically re-evaluate categories of service that are subject to review, including provisions related to structural, functional, and operational differences between long- term care facilities and acute care facilities and that allow routine changes of ownership, facility sales, and closure requests to be processed on a timely basis. There should be flexibility in the standards to allow for facilities to modernize, expand, or convert to alternative uses that are in accord with health planning standards. As necessary, the CON Board may appoint temporary advisory committees to assist in the development of revisions to standards and criteria, including experts with professional competence in the subject matter of the proposed standards or criteria that are to be developed.

### **IHFPB (CON Board) Chairman Responsibilities**

- 31) The chairman of the CON Board is authorized to approve emergency applications, consistent with the current regulations. Emergency projects can be approved orally but must be followed by a written application that summarizes the nature of the problem and the anticipated cost of the project. Emergency projects are defined as those projects that are necessary because of imminent threat to the structural integrity of the building or because of an imminent threat to the safe operation and functioning of the mechanical, electrical, or comparable systems of the building.
- 32) The chairman is also authorized, as provided under the current rules, to approve applications for exemption. These exemptions are not discretionary. If applicants do not meet specific criteria that are set forth in the CON Board's rules, they must go through the full "Certificate of Need" process. The chairman also may refer any application for exemption to the full CON Board for its consideration.
- 33) In addition, the CON Board, after analyzing data on previous applications, should consider adopting rules that would authorize the chairman to approve other applications that meet all of the review criteria and are unopposed. For the limited applications that the chairman is authorized to approve, the chairman also has the authority to refer them to the full CON Board. The chairman would still be authorized to approve certain administrative changes such as extensions and some alterations, as is currently allowed under the rules.
- 34) After the public hearing and review of applications that will be considered at a meeting of the CON Board, the chairman may request that some applications be considered as part of a consent agenda that will be voted on at the beginning of the Board meeting. There will be an opportunity for CON Board members to raise questions about applications on the consent agenda and they may request that the applications be considered on the regular agenda if there are significant issues that warrant full discussion.

### **Staff Responsibilities**

- 35) All staff would be required to meet minimum professional qualifications. Spouses or other members of the immediate family cannot be an employee, agent or under contract with services or facilities subject to the Act. Staff would also be required to

comply with other ethical and conflict-of-interest standards. Violators would be subject to personnel sanctions, for which specific penalties should be enumerated.

- 36) In addition to supporting the activities of the Comprehensive Health Planning Agency and the CON Board, the staff would also provide technical assistance to applicants in the development of their applications. This could include consultation at any time prior to the actual filing of an application. In addition, the staff may communicate with the applicant to clarify or verify information provided in the application as it prepares the Staff Report on the application. A public record of such consultation must be made by the staff. These consultations are not considered *ex parte* since staff are not the decision-makers on applications. Communications occurring during administrative reconsideration will be considered *ex parte* communications for which a formal record must be kept using a prescribed, standardized format that is included in the application file.
- 37) Staff would establish short timeframes for responding to requests about the applicability of rules and would communicate to applicants in a timely manner regarding whether or not their project is to be considered at an upcoming meeting.
- 38) Staff must prepare reports showing the degree to which an application conforms to the CON Board's review standards. Any additional information that Staff wants to communicate would be included in the Staff Report. The public will have an opportunity to comment up until 14 days prior to the CON Board meeting regarding facts set forth in staff reports. These reports would be posted on the Boards' web site and should include summations of relevant public testimony. All information related to any application shall be public information (except those required by law to be confidential). The CON Board shall make such information immediately available for public inspection, which may include access on the agency website.
- 39) The Staff shall report to the CON Board on a monthly basis. Reports should include the status of applications and recommendations regarding updates to the standards, criteria, or the health plan as appropriate.

### **CON Process and Scope of Reforms**

- 40) Reform of the CON Board shall focus "Certificate of Need" project review efforts on applications involving new or replacement facilities, new services (including those for freestanding facilities, such as proton therapy and cardiac catheterization, that are regulated under CON for only some providers, or regulated under different standards), discontinuation of services, major expansions, the addition of 20 or more beds or 10% of a facility's bed capacity (whichever is greater), and major changes in volume-sensitive services, and to expedite review of other projects to the maximum extent possible. The financial review would focus the overall project cost rather than on individual line items. Replacement facilities on the same site that are below the capital expenditure threshold would not be subject to a substantive full scope review. Because applications for discontinuation are not complicated, they should continue to be reviewed under a 60-day timetable. The public would continue to have an opportunity to request a public hearing.

- 41) There will continue to be three classifications of projects – emergency, non-substantive, and substantive. The Staff review period for non-substantive projects is currently 60 days. The Staff review period for substantive projects is 120 days. The timeframes should be reduced by eliminating criteria that do not focus on the need for and the total size of the project.
- 42) In addition, there are projects that could be moved from the substantive to the non-substantive classification. The review criteria could also be streamlined for these projects. The CON Board should adopt rules to address re-classification of projects so that Board review can be expedited. Examples of project types that might be expedited include:
  - Applications to move acute care beds between existing categories of service within the facility;
  - Applications to establish a new acute care service, using existing beds, when there is a calculated need for the beds providing that service in the planning area;
  - Applications for selected other projects that require a permit yet fall below the capital expenditure thresholds.
- 43) For projects that are reviewed solely because of cost and not because they propose to establish a new facility or service, the capital expenditure should be increased to \$\_\_ million, and adjusted for inflation each year thereafter. This will allow applicants to upgrade existing facilities without adding unnecessary costs and delaying access to modernized facilities for the community. In calculating cost components to be included under the threshold, consideration would be given to whether the components are programmatically related and whether a component could be completed independently of the other components. Common financing of components would not automatically result in components being considered interrelated.
- 44) To expedite project approval, particularly for less complex projects, the CON Board, in conjunction with its staff, and industry experts and consumers, should consider promulgating regulations to be applied by the Staff in determining whether a project is in “substantial compliance” with the review standards.
- 45) “Letters of Intent” would no longer be required.
- 46) At least one public hearing is required for any project subject to full CON Board review, at which at least a quorum of the members of the CON Board must participate.
- 47) **Any denied application would be subject to automatic appeal**, unless waived by the applicant. CON Board final decisions on projects will constitute an administrative decision subject to the Administrative Review Law.
- 48) Permit holders would be required to submit annual progress reports and final cost reports as the mechanism to enable the CON Board and Staff to

know that projects are proceeding with due diligence. These reports are public information.

### **Charity Care and “Safety Net” Services**

- 49) In addition to other requirements or conditions that may be applied to the approval of applications, the CON Board may include reasonable conditions or stipulations agreed to by the applicant that are directly related to the application being considered and that address health resource needs identified through the comprehensive health planning process to be established under this reform. These may include the establishment of time frames for compliance with such conditions and the establishment of reporting requirements.
- 50) Policies and procedures of the Illinois Comprehensive Health Planning Agency shall take into consideration the priorities and needs of medically underserved areas and other health care services identified through the comprehensive health planning process, giving special consideration to the impact of the projects it reviews on access to "safety net" services.
- 51) CON review standards may include a requirement for applicants to include a “Safety Net” Impact Statement. This Statement would describe the project’s impact on safety net services in the community. The Staff Report would include a summary of the Statement.
- 52) The CON Board may request information regarding, and give consideration to an applicant’s plans to provide or record of providing “Charity Care”, as defined by law, in determining compliance with comprehensive health planning objectives or requirements.

### **Ethics**

- 53) Along with increasing the size of the CON Board, the current language in the Act on conflict-of-interest should be enhanced such that, “A board member or staff who has a conflict of interest with respect to a matter may not discuss that matter with other board members and staff and shall not vote upon or otherwise participate in any action with respect to that matter. Each recusal occurring during a Board meeting shall be made part of the minutes or recording of the meeting in accordance with the Open Meetings Act.” Penalties for violations should be increased. A conflict also may exist for a member because of a relationship with either a hospital or health system. Applicants should have an opportunity to request that a member recuse him or herself since health care facilities are different than other types of businesses because of complex and varied relationships with medical staff members. [For further guidance, see Attachment related to HA #4 to SB 2595 of the 95<sup>th</sup> General Assembly in relation to the Illinois Gaming Board and its staff.]

### **Predictability and Accountability**

- 54) Policies and procedures of the (reformed) Illinois health facilities planning process shall ensure that it is predictable, transparent, and as efficient as possible. The Staff and the CON shall provide timely and appropriate explanations of its decisions and establish more effective procedures to enable public review and comment on facts set forth in Staff analyses of project applications prior to the issuance of final decisions on each project.
- 55) The enforcement processes and compliance standards must be fair and consistent with the severity of the violation.
- 56) Policies and procedures shall ensure that patient access to new and modernized services will not be delayed during a transition period under any proposed system reform, including the appointment of members. The transition to a reformed system should minimize disruption of the process for current applicants.
- 57) The Auditor General should conduct a performance audit of the (reformed) Comprehensive Health Planning and CON Boards and the "Certificate of Need" process to be completed 18 months after the initial appointment of the 9 members. Section 19.5 of the Act providing for a special audit should be revised accordingly.

### **Long Term Care**

- 58) Require the Comprehensive Health Planning Agency to conduct a special analysis regarding the availability of long term care resources throughout the state, taking into consideration data and plans developed under the Older Adult Services Act, to adjust existing bed-need criteria and standards for changes in utilization of both institutional and non-institutional care, with special consideration of the availability of least-restrictive care options, when appropriate and in accordance with the needs and preferences of the persons requiring long term care.
- 59) Establish a separate set of rules and guidelines for long term care that recognize that nursing homes are a different business line and service model. In the revision of planning criteria and standards consider the fact that nursing homes have a significant number of open beds all around the state. In the few areas of the state that may still need additional nursing home beds, it is less disruptive to the delivery system and more cost effective to modernize and upgrade existing facilities rather than constructing entirely new freestanding entities.

## Attachment

### Senate Bill 2595 – HA#4

(230 ILCS 10/5.3 new)

#### Sec. 5.3. Nomination Panel.

(a) The Nomination Panel is established to provide a list of candidates to the Governor for appointment to the Illinois Gaming Board and the position of Director of Gaming Enforcement. Members of the Nomination Panel shall be appointed by a majority vote of the following appointing authorities: (1) the Executive Ethics Commissioner appointed by the Secretary of State; (2) the Executive Ethics Commissioner appointed by the Treasurer; (3) the Executive Ethics Commissioner appointed by the Comptroller; (4) the Executive Ethics Commissioner appointed by the Attorney General; and (5) the Executive Ethics Commissioner appointed to serve as the first Chairman of the Executive Ethics Commission, or, upon his disqualification, refusal to serve, or resignation, the longest-serving Executive Ethics Commissioner appointed by the Governor. However, the appointing authorities as of the effective date of this amendatory Act of the 95th General Assembly shall remain empowered to fill vacancies on the Nomination Panel until all members of the new Gaming Board and the Director of Gaming Enforcement have been appointed and qualified, regardless of whether such appointing authorities remain members of the Executive Ethics Commission. In the event of such appointing authority's disqualification, resignation, or refusal to serve as an appointing authority, the Constitutional officer that appointed the Executive Ethics Commissioner may name a designee to serve as an appointing authority for the Nomination Panel. The appointing authorities may hold so many public or non-public meetings as is required to fulfill their duties, and may utilize the staff and budget of the Executive Ethics Commission in carrying out their duties; provided, however, that a final vote on appointees to the Nomination Panel shall take place in a meeting governed by the Open Meetings Act. Any ex parte communications regarding the Nomination Panel must be made a part of the record at the next public meeting and part of a written record. The appointing authorities shall file a list of members of the Nomination Panel with the Secretary of State within 60 days after the effective date of this amendatory Act of the 95th General Assembly. A vacancy on the Nomination Panel due to disqualification or resignation must be filled within 60 days of a vacancy and the appointing authorities must file the name of the new appointee with the Secretary of State.

(b) The Nomination Panel shall consist of the following members: (i) 2 members shall be former federal or State judges from Illinois, (ii) 2 members shall be former federal prosecutors from Illinois, (iii) one member shall be a former sworn federal officer with investigatory experience with a federal agency, including but not limited to the Federal Bureau of Investigation, the Internal Revenue Service, the Securities and Exchange Commission, the Drug Enforcement Administration, the Bureau of Alcohol, Tobacco, Firearms and Explosives, or any other federal agency, (iv) 2 members shall be former members of federal agencies with experience in regulatory oversight, and (v) 2 members shall have at least 5 years of experience with nonprofit agencies in Illinois committed to public-interest advocacy for which the appointing authorities shall solicit recommendations from the Campaign for Political Reform, the Better Government Association, the Chicago Crime Commission, the League of Women Voters, the Urban

League, the Mexican American Legal Defense and Educational Fund, and any other source deemed appropriate. Members shall submit statements of economic interest to the Secretary of State. Each member of the Nomination Panel shall receive \$300 for each day the Nomination Panel meets. The Executive Ethics Commission shall provide staff and support to the Nomination Panel pursuant to appropriations available for those purposes.

(c) Candidates for nomination to the Illinois Gaming Board or the position of Director of Gaming Enforcement may apply or be nominated. All candidates must fill out a written application and submit to a background investigation to be eligible for consideration. The written application must include, at a minimum, a sworn statement disclosing any communications that the applicant has engaged in with a constitutional officer, a member of the General Assembly, a special government agent (as that term is defined in Section 4A-101 of the Illinois Governmental Ethics Act), a member of the Illinois Gaming Board or the Nomination Panel, a director, secretary, or other employee of the executive branch of the State, or an employee of the legislative branch of the State related to the regulation of gaming within the last year. A person who knowingly provides false or misleading information on the application or knowingly fails to disclose a communication required to be disclosed in the sworn statement under this Section is guilty of a Class 4 felony.

(d) Once an application is submitted to the Nomination Panel and until (1) the nominee is rejected by the Nomination Panel, (2) the nominee is rejected by the Governor, (3) the candidate is rejected by the Senate, or (4) the candidate is confirmed by the Senate, whichever is applicable, a candidate may not engage in ex parte communications, as that term is defined in Section 5.7 of this Act.

(e) The Nomination Panel shall conduct a background investigation on candidates eligible for nomination to the Illinois Gaming Board or the position of Director of Gaming Enforcement. For the purpose of making the initial nominations after the effective date of this amendatory Act of the 95<sup>th</sup> General Assembly, the Nomination Panel shall request the assistance of the Federal Bureau of Investigation to conduct background investigations. If the Federal Bureau of Investigation does not agree to conduct background investigations, or the Federal Bureau of Investigations cannot conduct the background investigations within 120 days after the request is made, the Nomination Panel may contract with an independent agency that specializes in conducting personal investigations. After the Office of Gaming Enforcement is operational, the Nomination Panel must use the Office of Gaming Enforcement's investigatory staff. The Office of Gaming Enforcement may seek the assistance of the Federal Bureau of Investigation or an independent agency that specializes in conducting background investigations. The Nomination Panel and the Office of Gaming Enforcement may not engage the services or enter into any contract with State or local law enforcement agencies for the conduct of background investigations.

(f) The Nomination Panel must review written applications, determine eligibility for oral interviews, confirm satisfactory background investigations, and hold public hearings on qualifications of candidates. Initial interviews of candidates need not be held in meetings subject to the Open Meetings Act; members or staff may arrange for informal interviews. Prior to recommendation, however, the Nomination Panel must question candidates in a meeting subject to the Open Meetings Act under oath.

(g) The Nomination Panel must recommend candidates for nomination to the Illinois Gaming Board and the position of Director of Gaming Enforcement. The Nomination Panel shall recommend 3 candidates for every open position and prepare a memorandum detailing the candidates' qualifications. The names and the memorandum must be delivered to the Governor and filed with the Secretary of State. The Governor may choose only from the recommendations of the Nomination Panel and must nominate a candidate for every open position within 30 days of receiving the recommendations. The Governor shall file the names of his nominees with the Secretary of the Senate and the Secretary of State. If the Governor does not name a nominee for every open position, then the Nomination Panel may select the remaining nominees for the Illinois Gaming Board or the position of Director of Gaming Enforcement. For the purpose of making the initial recommendations after the effective date of this amendatory Act of the 95th General Assembly, the Nomination Panel shall make recommendations to the Governor no later than 150 days after appointment of all members of the Nomination Panel. For the purpose of filling subsequent vacancies, the Nomination Panel shall make recommendations to the Governor within 90 days of a vacancy in office.

(h) Selections by the Governor must receive the advice and consent of the Senate by record vote of at least two-thirds of the members elected.

(230 ILCS 10/5.5 new)

Sec. 5.5. Ethics provisions.

(a) Conflict of interest. Board members, members of the Nomination Panel, the Director of Gaming Enforcement, and employees may not engage in communications or any activity that may cause or have the appearance of causing a conflict of interest. A conflict of interest exists if a situation influences or creates the appearance that it may influence judgment or performance of regulatory duties and responsibilities. This prohibition shall extend to any act identified by the Director of Gaming Enforcement's or Board's action that, in the judgment of the Director or Board, could represent the potential for or the appearance of a conflict of interest.

(b) Financial interest. Constitutional officers, members of the General Assembly, members of the Executive Ethics Commission, Board members, members of the Nomination Panel, the Director of Gaming Enforcement, and employees may not have a financial interest, directly or indirectly, in his or her own name or in the name of any other person, partnership, association, trust, corporation, or other entity, in any contract or subcontract for the performance of any work for the Board or for any licensee under this Act. This prohibition shall extend to the holding or acquisition of an interest in any entity identified by Board action that, in the judgment of the Board, could represent the potential for or the appearance of a financial interest. The holding or acquisition of an interest in such entities through an indirect means, such as through a mutual fund, shall not be prohibited, except that Board may identify specific investments or funds that, in its judgment, are so influenced by gaming holdings as to represent the potential for or the appearance of a conflict of interest.

(c) Gambling. Except as may be required in the conduct of official duties, Board members and employees and the Director of Gaming Enforcement shall not engage in gambling on any riverboat or engage in legalized gambling in any establishment identified by Board action that, in the judgment of the Board, could represent a potential for a conflict of interest.

(d) Outside employment. A Board member, the Director of Gaming Enforcement, or an employee of the Board or the Office of Gaming Enforcement may not, within a period of 5 years immediately after termination of employment, knowingly accept employment or receive compensation or fees for services from a person or entity, or its parent or affiliate, that has engaged in business with the Board that resulted in contracts with an aggregate value of at least \$25,000 or if that Board member, employee, or the Director has made a decision that directly applied to the person or entity, or its parent or affiliate. A Board member, employee, or the Director shall not hold or pursue employment, office, position, business, or occupation that conflict with his or her official duties. Board members and the Director shall not engage in other employment. Employees may engage in other gainful employment so long as that employment does not interfere or conflict with their duties and such employment is approved by the Board.

(e) Gift ban. Board members, the Director of Gaming Enforcement, members of the Nomination Panel, and employees may not accept any gift, gratuity, service, compensation, travel, lodging, or thing of value, with the exception of unsolicited items of

an incidental nature, from any person, corporation or entity doing business with the Board.

(f) Abuse of Position. A Board member, member of the Nomination Panel, Director of Gaming Enforcement, or employee shall not use or attempt to use his or her official position to secure, or attempt to secure, any privilege, advantage, favor, or influence for himself or herself or others.

(g) Political activity. No member of the Board, employee, or the Director of Gaming Enforcement shall engage in any political activity. For the purposes of this subsection, "political activity" means any activity in support of or in connection with any campaign for State or local elective office or any political organization, but does not include activities (i) relating to the support or opposition of any executive, legislative, or administrative action (as those terms are defined in Section 2 of the Lobbyist Registration Act), (ii) relating to collective bargaining, or (iii) that are otherwise in furtherance of the person's official State duties or governmental and public service functions.

(h) A spouse, child, or parent of a Board member, member of the Nomination Panel, the Director of Gaming Enforcement, or an employee may not:

(1) Have a financial interest, directly or indirectly, in his or her own name or in the name of any other person, partnership, association, trust, corporation, or other entity, in any contract or subcontract for the performance of any work for the Board or any licensee. This prohibition shall extend to the holding or acquisition of an interest in any entity identified by Board action that, in the judgment of the Board, could represent the potential for or the appearance of a conflict of interest. The holding or acquisition of an interest in such entities through an indirect means, such as through a mutual fund, shall not be prohibited, except that the Board may identify specific investments or funds that, in its judgment, are so influenced by gaming holdings as to represent the potential for or the appearance of a conflict of interest.

(2) Accept any gift, gratuity, service, compensation, travel, lodging, or thing of value, with the exception of unsolicited items of an incidental nature, from any person, corporation or entity doing business with the Board.

(3) Within a period of 2 years immediately after termination of employment, knowingly accept employment or receive compensation or fees for services from a person or entity, or its parent or affiliate, that has engaged in business with the Board or the Office of Gaming Enforcement that resulted in contracts with an aggregate value of at least \$25,000 or if the Board or Office has made a decision that directly applies to the person or entity, or its parent or affiliate.

(i) Any Board member, member of the Nomination Panel, Director of Gaming Enforcement, or employee or spouse, child, or parent of a Board member, member of the Nomination Panel, Director of Gaming Enforcement, or employee who knowingly violates any provision of this Section is guilty of a Class 4 felony.

(230 ILCS 10/5.7 new)

Sec. 5.7. Ex parte communications.

(a) For the purpose of this Section:

"Ex parte communication" means any written or oral communication by any person that imparts or requests material information or makes a material argument regarding potential action concerning regulatory, quasi regulatory, investment, or licensing matters pending before or under consideration by the Illinois Gaming Board.

"Ex parte communication" does not include the following: (i) statements by a person publicly made in a public forum; (ii) statements regarding matters of procedure and practice, such as format, the number of copies required, the manner of filing, and the status of a matter; (iii) statements regarding recommendation for pending or approved legislation; (iv) statements made by a State employee of the agency to the agency head or other employees of that agency.

"Interested party" means a person or entity whose rights, privileges, or interests are the subject of or are directly affected by a regulatory, quasi-adjudicatory, investment, or licensing matter of the Board.

(b) A constitutional officer, a member of the General Assembly, a special government agent as that term is defined in Section 4A-101 of the Illinois Governmental Ethics Act, a director, secretary, or other employee of the executive branch of the State, an employee of the legislative branch of the State, or an interested party may not engage in any ex parte communication with a member of the Board or an employee. A member of the Board or an employee must immediately report any ex parte communication to the Inspector General for gaming activities. A knowing violation of this subsection (b) is a Class 4 felony.

(c) A constitutional officer, a member of the General Assembly, a special government agent as that term is defined in Section 4A-101 of the Illinois Governmental Ethics Act, a director, secretary, or other employee of the executive branch of the State, an employee of the legislative branch of the State, or an interested party may not engage in any ex parte communication with a candidate or nominee for the Board or a candidate or nominee for the Director of Gaming Enforcement. A person is deemed a candidate once they have submitted information to the Nomination Panel and a nominee once the Governor nominates the person to fill a position on the Board or as Director. A candidate or nominee must immediately report any ex parte communication to the Inspector General for gaming activities. A knowing violation of this subsection (c) is a Class 4 felony.

(d) Any ex parte communication from a constitutional officer, a member of the General Assembly, a special government agent as that term is defined in Section 4A-101 of the Illinois Governmental Ethics Act, a director, secretary, or other employee of the executive branch of the State, an employee of the legislative branch of the State, or an interested party received by a member of the Nomination Panel or employee assisting

the Nomination Panel must be immediately memorialized and made a part of the record at the next meeting. Report of the communication shall include all written communications along with a statement describing the nature and substance of all oral communications, any action the person requested or recommended, the identity and job title of the person to whom each communication was made, and all responses made by the member. A knowing violation of this subsection (d) is a Class A misdemeanor.