



# The Commonwealth of Massachusetts

## Massachusetts Gaming Commission

### NOTICE OF MEETING and AGENDA

November 6, 2012 Meeting

Pursuant to the Massachusetts Open Meeting Law, G.L. c. 30A, §§ 18-25, notice is hereby given of a meeting of the Massachusetts Gaming Commission. The meeting will take place:

Tuesday, November 6, 2012

1:00 p.m.

Division of Insurance

1000 Washington Street

1<sup>st</sup> Floor, Meeting Room 1-E

Boston, Massachusetts

#### **PUBLIC MEETING - #34**

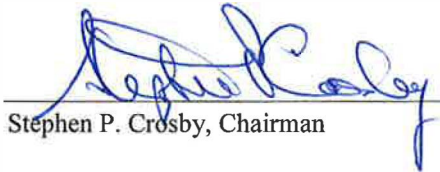
1. Call to order
2. Approval of minutes
  - a. October 30, 2012 Meeting
3. Project Work Plan
  - a. Consultant status report
    - i. Scope of Licensing meetings; ethics advisory
    - ii. RFA-2 Process
    - iii. Discussion of key policy questions; community feedback
    - iv. Project management chart
  - b. Status of new ethics standards
4. Administration
  - a. Report from Director of Communications and Outreach
    - i. Jack Rabbit presentation
  - b. Personnel searches
    - i. Background check sequence
  - c. Employee Manual – Chapter 2
5. Racing Division
  - a. Report from Director of Racing Division
6. Public Education and Information
  - a. Community and/or Developer outreach/responses to requests for information
    - i. Report from Ombudsman
    - ii. Requests from regional groups
7. Research Agenda
  - a. Status report – Advisory Group

8. Internet Gaming

9. Other business – reserved for matters the Chair did not reasonably anticipate at the time of posting

I certify that on this date, this Notice was posted as “Gaming Commission Meeting” at [www.mass.gov/gaming/meetings](http://www.mass.gov/gaming/meetings), and emailed to: [regs@sec.state.ma.us](mailto:regs@sec.state.ma.us), [melissa.andrade@state.ma.us](mailto:melissa.andrade@state.ma.us), [brian.gosselin@state.ma.us](mailto:brian.gosselin@state.ma.us).

11/2/12  
(date)

  
Stephen P. Crosby, Chairman

**Date Posted to Website:** November 2, 2012 at 1:00 p.m.

The Commonwealth of Massachusetts  
Massachusetts Gaming Commission

Meeting Minutes

- Date:** October 30, 2012
- Time:** 1:00 p.m.
- Place:** Division of Insurance  
1000 Washington Street  
1<sup>st</sup> Floor, Meeting Room 1-E  
Boston, Massachusetts
- Present:** Commissioner Stephen P. Crosby, Chairman  
Commissioner Gayle Cameron  
Commissioner James F. McHugh  
Commissioner Bruce Stebbins  
Commissioner Enrique Zuniga

**Absent:** None

**Call to Order:**

Chairman Crosby opened the 33<sup>rd</sup> public meeting.

**Approval of Minutes:**

See transcript pages 2-6.

Chairman Crosby stated that the first set of minutes for review is from the October 16 meeting. Commissioner Zuniga recommended a modification to page 8, paragraph 2 which would clarify that the Commission does not have authority to approve the compact.

*Motion made by Commissioner McHugh to approve the October 16, 2012, minutes as amended. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 5-0-0 vote.*

Chairman Crosby then stated that the next set of minutes for review is from the October 23 meeting.

*Motion made by Commissioner McHugh to approve the October 23, 2012, minutes as submitted. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.*

**Project Work Plan:**

See transcript pages 6-28.

Consultant Status Report – Chairman Crosby stated that the Commission had to cancel its planned meeting with potential applicants which was scheduled for Monday, October 29, due to Hurricane Sandy. Commissioner Stebbins suggested rather than rescheduling this meeting that the consultants attend a future Commission meeting and provide an overview of the material they had intended to cover at that meeting. The consultants could proceed with the individual applicant meetings as their schedules allow.

Commissioner McHugh stated that the State Ethics Commission has prepared a memorandum of frequently asked questions that are applicable to the RFA process and he proposed distributing the memorandum at the individual applicant meetings, as well as posting it on the Commission website.

Discussion of Policy Questions/RFA-2 Process - Commissioner McHugh stated that a chart listing policy decisions the Commission will have to make before it is able to write the next set of regulations is included in the meeting packet. The list of policy decisions began with the list contained in the draft strategic plan prepared by the consultants and was augmented by suggestions from himself and Commissioner Zuniga. During last week's meeting, the Commission decided to group the various decisions into categories, with the intention of specifying a priority level and determining which Commissioner or staff member will take the lead in gathering the information necessary for each category. The Commission reviewed the chart and each category was assigned to a Commissioner or staff member. The Commission also agreed that the contents of the chart would be posted on the Commission's website so that members of the public could review it and make suggestions for additions or deletions.

**Administration:**

See transcript pages 28-50.

Personnel Searches – Chairman Crosby stated that an executive assistant will be starting on November 12 and a search for another executive assistant is in process. Other ongoing searches include the Executive Director, Director of IEB, General Counsel, and fellowship attorney.

Report from Director of Administration – Director Glovsky stated that Janice Reilly will be handling the rescheduling of the individual applicant meetings. She stated that two Commission procurements have closed. One was for stenographic services, for which nine responses were received. The goal is to select an apparent successful bidder next week. The other procurement was for investigative services. Thus far two responses been received and the goal is to select the successful bidders by November 20. She stated that three potential projects were submitted for MIT externships and responses were received for two of the three. Interviews will be conducted and a decision should be made within a few weeks.

Director Glovsky stated that she had received many responses to the recent posting for the business analyst position and she will begin interviewing for this position later this week or early next week. She posted a position for assistance with research on a document management system. There has been a positive response to that posting, which closes today. She stated that the Commission should develop a weather related policy, but, until it does, it will follow the Governor's decisions applicable to Commonwealth employees generally. She stated that she has discussed with Commissioner Zuniga the desirability of establishing a compensation committee, though it is unlikely that creation of such a committee will be possible for the end of the year. She stated that she would be reaching out to other agencies that are creating compensation committees in an effort to determine best practices that the Commission can incorporate. In the interim, she recommended that the Commission follow the spirit of the Crosby report, document the factors to consider in setting salaries, be clear about why a particular salary was set, and not provide any unreasonable extra benefits.

Employee Manual – Commissioner Zuniga stated that the employee manual has not yet been adopted in full and since the Commission is contemplating additional hires it is important to look at Chapter 2, which includes workplace policies. He has distributed all the chapters and would like to review one chapter at a time. Chairman Crosby stated that he has not had an opportunity to review this document in detail.

Commissioner McHugh stated that in reviewing Chapter 2, he has some concern about including too much detail regarding public records and sensitive information. He stated that this level of detail may invite individuals to make decisions on their own, thinking they understand all of the ramifications of what is laid out in the manual. He stated that he has other thoughts that he will forward to Commissioner Zuniga.

Commissioner Cameron asked whether the commissioners determined that all Commission employees are employed at-will. Commissioner Zuniga stated that the Commission is currently an employee-at-will organization but that does not prohibit employees from organizing and bargaining over that issue in the future. Chairman Crosby stated that Commissioner Zuniga and Director Glovsky are currently working on the labor issue and the best practices of other commissions. Commissioner Cameron stated that there are decisions to make regarding racing employees and there is a time limit to determine if the Commission will be accepting the bargaining units.

Chairman Crosby stated that he would like an opportunity to review the issue closely and revisit it at the next Commission meeting.

**Racing Division:**

See transcript pages 50-56.

Report from Director of Racing Division – Director Durenberger addressed the Commission. She stated that she toured the Suffolk Downs, Raynham, and Plainridge facilities last week. At

each, she met with the staff, explored the infrastructure, and got a feel for the facilities themselves. She stated that an informal meeting is scheduled at Suffolk Downs tomorrow for horsemen and other stakeholder groups, and a similar meeting is scheduled for Plainridge on Monday, November 5. David Murray and Daniele Holmes have joined the Commission and are working on the mandate contained in §104 of the expanded gaming legislation, which requires the Commission to undertake a review of existing pari-mutuel and simulcast laws, thereafter making recommendations regarding appropriate changes.. She stated that live racing was canceled in the Commonwealth on Monday due to the Hurricane Sandy. An RFP for laboratory services for drug testing at the racetracks is being finalized and should be issued within the next two weeks.

Chairman Crosby asked for an update on the working group. Director Durenberger stated that she is in the process of deciding on the representatives from various stakeholder groups and will soon set a meeting date.

### **Public Education and Information:**

See transcript pages 56-127.

Community and/or Developer Outreach/Responses to Requests for Information – Commissioner McHugh stated that the Chelsea questions were resolved at last week's meeting. Chairman Crosby stated that the Commissioners can pass on any information or unresolved issues to John Ziamba, the new Ombudsman. He stated that the Governor's office is open to suggestions for a Chair and members of the gaming policy advisory committee.

Discussion of Massachusetts Community Colleges' Casino Training Institute Proposal – Robert LePage from Springfield Technical Community College was present to discuss the Institute's proposal.

Chairman Crosby stated that he would like to stress the importance of including diversity in the proposal and reaching out to community action programs that could supply wraparound services. Mr. LePage stated that this process has already begun and representatives of these programs have been included. He stated that they are working on creating an inventory of all the gaming and hospitality occupations within the casino framework so they will be able to determine the approximate number of needed employees as applicants provide information during the RFA-2 process. Commissioner Cameron stated that the training program the Commissioners observed while in Las Vegas was impressive because, among other things, it was designed to provide current casino employees with the training necessary for them to move to increasingly higher levels within the organization for which they were working.

Commissioner McHugh asked who would be responsible for the screening process to determine who is suitable for casino jobs. Mr. LePage stated that the Commission will set the licensing process, policies, and procedures and would set the standards for the testing utilizing industry tools that are currently available. Commissioner McHugh asked whether the Institute contemplated that the Commission would require prospective casino employees to go through

the Institute's program as part of their licensing process and would require casino operators to supply trainers for at least parts of the training program. Mr. LePage stated that, unless an employee was qualified for a license by virtue of prior experience, the Institute did intend to be the exclusive provider of the requisite training for positions on the gaming floor and did intend to use casino employees as trainers. Commissioner McHugh asked if a funding source has been determined. Mr. LePage stated that Institute is currently investigating a variety of possible funding sources. Commissioner McHugh stated that questions regarding how training will be handled, and whether the Institute should be the exclusive trainer for gaming floor employees are among the policy decisions the Commission needs to make an early stage.

Chairman Crosby asked if the community colleges will focus only on gaming positions, or will include hospitality positions. Mr. LePage stated that hospitality would not be an exclusive part of their process, but would be included in the training. Indeed, he said, some of that training is being provided now.

Commissioner Stebbins asked whether the Institute sought an MOA with the Commission as a representative of all of the Commonwealth agencies involved in workforce development. Mr. LePage stated that at this stage the MOA the Institute contemplated would simply focus on planning. As planning evolves, there may be complementary MOA's with other Commonwealth agencies, commissions, boards and departments. Commissioner Stebbins asked if it is anticipated that each casino would accept graduates of this program and then put them through their own particular training program. Mr. LePage stated that each organization would fine tune the employees for their environment. Commissioner Stebbins asked if there is a need to provide the community colleges with exclusivity in order for them to have a competitive advantage over a private entity. Mr. LePage stated that the exclusivity would be to provide security for the Commission and ensure that people are trained properly.

After a detailed discussion, Chairman Crosby stated that there are many issues to consider with respect to the Institute's contemplated program and those issues will have to be discussed at a future meeting. Accordingly, he recommended allocating a large block of time to this topic the next time it is on the agenda.

Discussion of Commission's Role in Certification of Training Schools – Commissioner Stebbins stated that it is expected that other agencies in the state will be getting license applications for proprietary schools that seek to provide some form of training related to casino jobs. He has researched other states to determine their procedures for certifying training schools and will be able to provide more information on that subject a future Commission meeting.

Update on International Association of Gaming Regulators Meeting – Chairman Crosby and Commissioner Cameron attended the International Association of Gaming Regulators meeting which was held in Singapore. Commissioner Cameron stated that attendance allowed them to meet with other regulators from around the world. She stated that Singapore has had two casinos up and running since 2010 and they take regulation of the facilities very seriously. She provided a summary of each panel that was held during the meeting. She stated that discussion was held regarding Macau, their lack of regulation and very serious issues surrounding money laundering

that had arisen in the Macau environment. She stated that she and Chairman Crosby had an opportunity to visit Macau and view operations there. She stated that nations around the world are regulating internet gaming and do not find it difficult to do so. She stated that it was a very worthwhile trip in which she and Chairman Crosby gathered a great deal of information and made contact with regulators from across the globe who expressed willingness to help the Commission in its activities.

Amplifying on Commissioner Cameron's remarks, Chairman Crosby stated that Singapore regulators do not talk about having "casinos." Instead, they use the term "integrated resorts." One of their facilities has a convention center and the other has a Universal Studios theme park and an aquarium. He stated that he came away thinking about what else could be done to advance the strategic objectives of the Massachusetts legislation and the economic development priorities it contains. He stated that 85% of Singapore's casino revenue comes from "high rollers." He stated that regulators are wrestling with use of social gaming, where people use their Facebook pages as gambling gateways. He stated that those concerns reinforce the importance of the Treasurer's taskforce on Internet gaming and thinking about how the Internet will impact those who are contemplating an application for a Massachusetts casino license.

Commissioner Cameron stated that Singapore takes responsible gaming very seriously. Among other things, above every gaming table there is a computer screen with messages stating, for example, "It's now 9:30 at night. Should you be home with your kids?" Singapore regulators are primarily focused on protecting their own citizens and require advanced training in recognizing problem gambling for casino employees. In addition, they are wrestling with the problem of a legally enforceable duty of care.

### **Research Agenda:**

See transcript pages 127-131.

Status Report – Chairman Crosby stated that an informal advisory group met to discuss the research agenda and there was a consensus that the Commission should do an ISA, as U. Mass. Amherst has some of the leading researchers in problem gambling. He and Commissioner Zuniga have discussed working quickly on an RFP. Commissioner Zuniga stated that there has been no final decision with respect to the direction in which the research project will go and an important next step will be to determine what to request if the Commission issues an RFP.

Chairman Crosby stated that the Commission would be better served with having an RFP that asks for a team that has the capacity to oversee all of the research work and coordinate efforts among disparate researchers. Someone employed by the Commission may need to oversee the work of the team, but detailed management of the project and integration of cross-team research efforts would be more than the Commission would want to undertake. He stated that he has reached out to Mary Stephenson, a retired economist, who is willing to assist in drafting the substantive portion of an RFP, with the goal of having it issued within the next two weeks.



**Internet Gaming:**

See transcript pages 131-145.

Commissioner Zuniga stated that the Treasurer's office has reached out to the Commission to try to create a joint message to federal legislators relative to the Reid-Kyl bill that is pending in the Senate and that would give Nevada an exclusive position relative to regulating online poker. Commissioner Cameron stated that she is very hesitant to do a joint letter, as the two Commissions are different and may not always have the same goals. She stated that there is language in the bill pertaining to racing wagering and the Commission has not had enough time to research whether this language is advantageous or not. She stated that she would prefer that the Commission take the time to research the relevant issues on its own its own and respond independently.

Chairman Crosby stated that the Commission has been trying to make a point of saying to the Treasurer and the Lottery that there is a collective mandate to act in the Commonwealth's best interests. He suggested that territorial concerns regarding who is going to regulate such things as Internet gambling risk losing focus on the overall best interests of the Commonwealth. He stated that he would be comfortable doing a joint letter after ensuring the Commission is in agreement with its content. Commissioner Cameron stated that if the Chair sees fit to send a joint letter she understands the reasons but she is personally hesitant to do so.

Commissioner McHugh stated that the legislative summary contains a two-year provision for gaming regulators that have experience in online gaming regulation but he does not see any provision that would limit gaming operations to Nevada casinos. He stated that there is also a complete ban on online Keno and scratch tickets, so no competitive advantage with respect to those two forms of gambling will go to anyone as a result of the legislation. He stated that at this point he has substantive questions with regard to the content of the proposed letter and is not prepared to support it until he obtains further information about the content of the legislation. Chairman Crosby stated that there is not enough information available to take a vote at this time and he will gather additional information for discussion at a future meeting.

*Motion made to adjourn, motion seconded and carried unanimously.*

**List of Documents and Other Items Used at the Meeting**

1. Massachusetts Gaming Commission October 30, 2012 Notice of Meeting & Agenda
2. Meeting Minutes 10/16/12
3. Meeting Minutes 10/23/12
4. MGC Framework for Addressing Policy Questions
5. MGC Employee Handbook
6. A Statewide Initiative Addressing the Workforce Needs of the Gaming Industry in Massachusetts
7. Memorandum Re: Reid-Kyl Bill for Regulation of On-Line Poker

/s/ James F. McHugh  
James F. McHugh  
Secretary

**Massachusetts Gaming Commission**  
**Framework for Addressing Policy Questions**

Update Date: November 5, 2012

Priority Level Code:

1 (Red) immediate action    2 (Yellow) needs attention    3 (Green) may be addressed later    No color: Issue has been resolved / adressed

Family (Group) of Questions and/or Policies	Responsible for Follow Up	Advice / Input of others Needed	Document/ Info Needed	Reg Needed (Yes/No)	Priority Level *	Proposed Answer / Determination
<b>Questions / Policies Necessary for Planning Purposes (for Communities and/or Applicants)</b>	Crosby / Ziemba					
1 How will we define "surrounding communities" and should we publish that definition early in the process?	Crosby / Ziemba	Regional Planning Agencies; A&K			2	
2 Should the Commission issue guidelines for municipalities which may be a surrounding community to more than one host community?	Ziemba				2	
3 What criteria will we use to decide which "not-for-profit or municipally-owned performance venues" are "impacted live entertainment venues" within the statute's meaning.	Crosby	Mass Performing Arts Center Coalition; Mass Cultural Council; Joe Spaulding			2	
16 Should the Commission confirm through a formal policy that no host community agreements should be executed or referendums held before the relevant applicant has qualified through RFA-1?	Crosby	Public Hearing			1	Yes; Immediately
17 Should the Commission specify the minimum required content for a host community agreement?	Ziemba	RPA; Sample Host Community			2	
18 Should the Commission approve the wording of the summary required by G.L. c. 23K, § 15(13) before it is submitted to the public?	Crosby / Ziemba				3	
31 Will the Commission promulgate additional ethics or reporting standards for applicants and/or related municipalities?	Ziemba	McHugh; A&K; Gaming Consultants			1	
37 Should the Commission set election criteria for a local referendum if there are more than one project on the ballot?	Ziemba	???			2	
45 Similar question as 16. See 16 above						
46 Should the commission prohibit gambling by local officials in casinos located within their jurisdiction?	Crosby	Gaming Consultants			3	

## Massachusetts Gaming Commission

### Framework for Addressing Policy Questions

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<b>II Strategic Considerations for the Commission (in anticipation of bidding out licenses)</b>	Crosby					
8 Should the Commission make casino licensing decisions region-by-region or simultaneously for all regions?	Crosby	Gaming Consultants	Public Hearing		2	
14 Should the Commission require that a developer use a specified percentage of in-state or regional employees in the construction and operation of its facility?	Crosby / Ziemba	Consultants	Public Hearing		3	
19 How will the Commission consider the strategic implications of when, how and where to issue licenses, including the slots license, in the context of other license-issuing decision so as to maximize the benefits to the Commonwealth as a whole?	Crosby	Gaming Consultants; Experts on economics / gaming (i.e., Clyde Barrow)			3	
21 Should the commission issue a regulation or policy statement dealing with the portion of G.L. c. 23K, §§ 19(a), 20(a) providing that the Commission may not award a gaming license if it is not convinced that the applicant has "provided convincing evidence that [it] will provide value" to the region, in the case of a category 1 license, and to the Commonwealth, in the case of a category 2 license.	Crosby	McHugh; Gaming Consultants	Public Hearing		3	
32 Should the Commission set a time limit or other rules addressing the Tribal compact/land-in-trust issue in Region C?	Crosby	Gaming Consultants; Legislature; Others?	Meet with BIA?		1 - 2	

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<b>III Policy Questions Relevant to the Contents of an Application</b>	Zuniga / Stebbins					
4 What, if any, information in addition to that specified in G.L. c. 23K, § 9 should the Commission require Phase 2 applicants to provide as part of the Phase 2 application.	Zuniga / Stebbins	Gaming Consultants; Other Jurisdictions and its applications; Public Comment and Input	Specific Information will (may) be required for each of the criteria	Yes	2	
6 What criteria should the commission use to determine whether a gaming license applicant should receive a gaming beverage license for the sale and distribution of alcoholic beverages and what application fee should the commission charge?	Stebbins	ABCC; Gaming Consultants	Examples of regs from other jurisdictions (i.e., MO, KS, etc.)	Yes	2	
9 Should the Commission increase the minimum license fee and/or capital investment requirements? Should the Commission encourage bidding on the license fee? If the amounts are modified, should they vary by region?	Zuniga	Gaming Consultants		Depends on answer	2	
10 How should the Commission determine a suitable debt-to-equity ratio for applicants for a gaming license?	Zuniga	Gaming Consultants; Financial Advisor	Proposed financing structure; RFA-1 responses		2	
11 Should the Commission allow a facility to open in stages, with the casino opening prior to the hotel and/or other facilities? If so, under what constraints?	Zuniga	Gaming Consultants; Other Consultants?	Examples from other jurisdictions		2	
12 To what degree will an applicant be required to have progressed in federal, state and local permitting and other regulatory process before submitting its RFA-2 application?	Ziemba	State agencies with jurisdiction over permitting; RPA's BSA; AIA; Other Consultants?	Completed or pending applications or permits from applicants		2	
15 What degree of building design completion will be required before the licensing selection?	Zuniga		Casino Design Forum		2	

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23 What, if any, information and in addition to that described in G.L. c. 23K, §31(b) should the Commission require from an applicant before issuing a gaming vendor license?	Zuniga / Stebbins	Gaming Consultants; Other Commissions? Assoc of Gaming Equipment Manufacturers? AG? State Police?	Examples from other jurisdictions (PA, NJ, OH, KS, IN regulations)		2	
36 If MOU's and other agreements may be part of an applicant's proposal to the commission to demonstrate their commitment to key evaluation criteria, how should the commission weigh these agreements and enforce them in the coming years after the license is awarded?	Stebbins	Gaming Consultants; Active Regional Organizations working on MOU's	Draft MOU's; Documentation from other jurisdictions		2	
38 As part of an applicant's goal to impact small businesses, what information should the commission require?	Stebbins	Small Business Administration; Mass Small Business Development Center; NFIB; MOBD; Chambers of Commerce	Summary of spending categories by potential applicant; other applications that may include definition of small business and local		2	
44 What should the studies and reports required by G.L. c. 23K, §§ 9 (a) (13), 18 (18) contain?	Zuniga / Stebbins	RPA's; Regional business organizations and chambers of commerce	Existing regional economic studies		2	

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IV Policy Questions Pertaining to the Evaluation of the Gaming Licensee and their Proposals	McHugh					
5 What, if any, criteria in addition to those listed in G.L. c. 23K, §§ 15, 18 should the Commission use in the RFA-2 licensing determinations in order to ensure that the license awarded will provide the highest and best value to the Commonwealth in the region in which a gaming establishment is to be located and how should all of those criteria be weighted, ranked or scored?	McHugh/Ziemba	Selected forum participants Regional planning associations	Evaluations used in other jurisdictions	Yes	1 or 2	
20 What kind of a team with what kinds of skills and competencies does the Commission need to help it assess the Phase 2 proposals?	McHugh		Answer to Q. 5	No	3	
22 What, if any, conditions in addition to those prescribed in G.L. c. 23K, § 21, should the Commission prescribe for each gaming license?	McHugh/Ziemba	Selected forum participants Regional planning associations	Answer to Q. 5	Yes	2	
35 To expand on the point in question 5, should the Commission formulate and communicate a scoring system prior to the receipt of proposals with the relative weight of different criteria? Should the Commission establish a minimum scoring for applicants?	McHugh	Other states/countries	Documents describing the processes that were used elsewhere	Unknown	3	
39 How much weight or consideration should the Commission give to the facility itself in meeting the goals of c. 23K, § 5(a)(3) related to building appeal and other factors?	McHugh/Ziemba	Architect group Planning Boards RPA's	Evaluations from other jurisdictions	Depends on the answer to Q. 35	2	



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<p><b>V Policy Questions Pertaining to Operations / Regulations of Casinos (may still need to be answered prior to awarding license)</b></p>	Cameron					
<p>7 What regulations should the commission issue with respect to distribution of alcohol and the forms of identification that may be presented to a gaming licensee to demonstrate proof that a person has attained the age of 21</p>						
<p>13 What criteria should the Commission use to prescribe the manner in which gaming licensees and gaming vendors must keep their books and financial or other records and statements?</p>						
<p>25 When should the regulations pertaining to operations on the gaming floor be issued and what should those regulations contain?</p>						
<p>26 When should regulations regarding issuance of credit be issued and what should those regulations contain?</p>						
<p>27 When should regulations regarding check-cashing be issued and what should those regulations contain?</p>						
<p>28 When should regulations regarding approval of promotional gaming credits be issued and what should those regulations contain?</p>						
<p>29 When should regulations regarding excluded persons be issued and what should those regulations contain?</p> <p>30 When should regulations regarding provision of complementary services, gifts, cash or other items of value be issued and what should those regulations contain?</p> <p>40 Should the commission prescribe the games, rules and controls a licensee may have or should it solicit proposals from the applicants/licensees?</p> <p>41 What process should the commission use/require for testing gaming equipment? See § 66.</p>						



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47 Should the commission adopt the self-exclusion lists in effect in other jurisdictions? (See §46(k))						
48 What criteria should be used to exclude individuals involuntarily from casinos?						
49 What regulations and standards should the commission prescribe for the audits it is required to conduct?						
50 What regulations, criteria, and other requirements should the Commission consider to ensure that a preventative approach is taken to work-related injuries and that casino workplace safety is maximized?						Submitted by UAW
51 When should the regulations regarding dealer tips, as specified in c23K s 25g, be issued and what should those regulations contain?						Submitted by UAW

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Family (Group) of Questions and/or Policies	Responsible for Follow Up	Advice / Input of others Needed	Document/ Info Needed	Reg Needed (Yes/No)	Priority Level *	Proposed Answer / Determination
<p><b>VI Other Issues and Questions. Policies relevant to collateral regulatory issues and obligations</b></p> <p>24 What information should the commission require in respect to an applicant's "description of its minimum system of internal procedures and administrative and accounting controls for gaming and any simulcast wagering operations" required by G.L. c. 23K, § 25 (d).</p> <p>33 Should the community college process that we are endorsing and supporting be the exclusive mechanism for qualifying applicants for key gaming licenses?</p> <p>34 If the answer to question 33 is no, should the Commission regulate private training schools?</p> <p>42 What should be the length of the licenses issued to employees whom the statute requires to be licensed?</p> <p>43 What non-gaming vendors should be excused from the licensing process?</p>	Cameron					



BOB KING, President



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INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA-UAW

DENNIS WILLIAMS, Secretary-Treasurer

October 26, 2012

Stephen Crosby, Chair  
Massachusetts Gaming Commission  
84 State Street, Suite 720  
Boston, MA 02109

Dear Chairman Crosby:

As you may know, the United Auto Workers represents thousands of gaming workers in Detroit, Indiana, Ohio, Atlantic City, and Foxwoods in Connecticut. We have a keen interest in matters that will affect the Massachusetts casino workforce which is why we have established the UAW Mass Gaming Project to monitor casino developments in the state.

I am writing to respectfully request that two issues – workplace safety and dealer tip distribution – be added to the list of “Potential Policy Issues for the Commission’s Resolution” which was discussed at the Commission’s October 23 meeting.

Future Massachusetts casino workers will be healthier than they would have been because the state’s casinos will be smoke-free. However, another extremely hazardous condition for gaming dealers gets much less attention: repetitive stress injury, such as carpal tunnel and neck injuries. We will be making a presentation on these issues to the Commission in the next few weeks.

Since the Commission is charged with researching the effects of gaming, minimizing harm to the community, instituting public health strategies, and ensuring quality jobs, training and workforce development, we believe that protecting the health and safety of casino workers and avoiding the extraordinary health care and related costs of job-related injuries falls within your authority. We request that the Commission consider this separate topic:

“What regulations, criteria, and other requirements should the Commission consider to ensure that a preventative approach is taken to work-related injuries and that casino workplace safety is maximized?”

Workplace safety can be grouped with several of the questions in the Commission's preliminary draft, including these:

"4. What, if any, information in addition to that specified in G.L. c. 23K, § 9 should the Commission require Phase 2 applicants to provide as part of the Phase 2 application."

"5. What, if any, criteria in addition to those listed in G.L. c. 23K, §§ 15, 18 should the Commission use in the RFA-2 licensing determinations in order to ensure that the license awarded will provide the highest and best value to the Commonwealth in the region in which a gaming establishment is to be located and how should all of those criteria be weighted?"

"22. What, if any, conditions in addition to those prescribed in G.L. c. 23K, § 21, should the Commission prescribe for each gaming license?"

"25. When should the regulations pertaining to operations on the gaming floor be issued and what should those regulations contain?"

The second policy issue we would like to add to your list at this time is:

"When should the regulations regarding dealer tips, as specified in G.L. c.23K, s.25(g), be issued and what should those regulations contain?"

Thank you for your consideration of these issues. We look forward to working with you on them.

Sincerely,



Julie Kushner, Regional Director  
UAW Region 9A

JK/jl  
opeiu494

cc: Ellen N. Wallace, Sub-regional Director, UAW Region 9A  
Barry Hock, Director, UAW Mass Gaming Project

# THE MASSACHUSETTS GAMING COMMISSION

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### SECTION 2. WORKPLACE POLICIES

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#### 2.1. Dress Code

The Commission has established an image of professionalism and wishes each of you to reinforce this image. Your attire has a direct impact on the image of MGC. One of the key aspects of our image is personal appearance. Good grooming and appropriate attire are essential in establishing a good impression. Impressions are important in our relationships with our constituents, clients, visitors, and fellow employees. Because of this, MGC has instituted a dress code to provide a general guideline to establish what it considers appropriate and professional attire. MGC currently has a “business” standard of dress for employees. We ask that everyone cooperate and wear appropriate business attire.

The guidelines are that you look neat and professional. Aside from complying with any safety regulations that may apply, we ask that you dress in a manner that is appropriate for your job and not distracting to other employees or visitors. Employees are expected to dress appropriately when notified that visitors to the premises are expected. Please remember that you are a representative of MGC and we expect that you will present yourself accordingly.

General definition of business attire for women: A reasonable length skirt or trousers of a non-jeans material combined with a top (such as a dress shirt, or sweater set) is considered acceptable. An informal dress with appropriate skirt length is also acceptable.

General definition of business attire for men: A combination of collared shirt (such as a dress shirt or polo shirt), cotton trousers (such as khakis or blue, green, brown, or black trousers) with a belt. Jeans are not acceptable business casual attire. A blazer or business jacket can optionally be added. Jacket and tie and/or suits are recommended if and when on an official meeting or in an official capacity.

The following is a partial list of examples that do not constitute business attire: jeans, shorts, tank tops, tee-shirts, cargo pants, mini-skirts, rumpled or ripped clothing, underwear as outerwear, inappropriately revealing attire such as bare midriffs, and flip-flops.

#### 2.2. Workplace Behavior and Employee Conduct

In order to maintain a productive working environment, MGC expects a level of employee conduct that is consistent with the practices mature people expect from each other. Our behavior

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in the workplace should be based on the consideration of rights, privileges and responsibilities of all individuals and designed to protect you and MGC from careless or abusive conduct. As a responsible employee you are expected to abide by all rules, regulations, policies, procedures, and instructions of MGC and managerial personnel. In the event of violations, MGC will impose such corrective action as is necessary, including disciplinary action where appropriate.

### **Code of Conduct**

Conduct of employees shall at all times adhere to the highest standards of professional conduct and accountability and reflect favorably upon the Commission. Employees are expected to conduct themselves in their official relations with the public and with their fellow employees in a manner which will enhance public respect for, and confidence in, the employee, the Commission, and the Commonwealth as a whole. Employees are prohibited from engaging in any conduct in their official capacity that is intended to secure private gain, give preferential treatment to any person, or prevent any person from securing benefits to which he or she is entitled. Employees are expected to perform their duties in a fair and impartial manner and to avoid any conduct which gives the reasonable basis for an impression that he/she is acting otherwise. In no case should they abuse the integrity of the Commission or improperly use their official title.

This manual in general and this section in particular are intended to educate Commission employees about what types of behavior are considered unacceptable and may subject them to discipline. The employee manual is not to be considered all-inclusive. The absence of a specifically enumerated rule of conduct does not mean or imply that any other acts of misconduct are condoned. The Commission reserves the right to discipline employees, up to and including termination, for unethical or unacceptable conduct which may or may not be enumerated specifically in this handbook.

Employees must review and comply with M.G.L. c. 268A (the Conflict of Interest Law) as well as other applicable state and federal laws governing the conduct of public employees. All attorneys shall strictly adhere to all ethics standards established by the State Ethics Commission. In addition, within thirty days of being hired and then every two years thereafter, all employees must complete the State Ethics Commission's online training, which is available at the Ethics Commission's web site [www.mass.gov/ethics](http://www.mass.gov/ethics). Upon completing the program, employees should print out the completion certificate and keep a copy for themselves. Employees will be required to provide a copy of the completion certificate to the Commission upon request.

### **Criminal Activity**

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All MGC employees shall at all times adhere to the highest standards of conduct. If an employee engages in criminal activity relating to his or her employment at the Commission, he or she may be subject to discipline, up to and including discharge. Examples of criminal activity that relates to MGC employment include: theft, misappropriation or unauthorized use of MGC funds, falsification of time or other MGC records, possession or sale of drugs or possession of unauthorized firearms or other dangerous weapons on MGC property, acceptance or solicitation of gifts, money, or other things of value intended as inducement to perform or refrain from performing an official act, and other violations of laws of the United States or the Commonwealth of Massachusetts.

**All employees of the MGC must accept personal responsibility for obeying the laws of the Commonwealth of Massachusetts, of other state jurisdictions, and of the United States. Any employee who is arrested, charged, or convicted of a crime must immediately notify the General Counsel. Depending upon the nature of the charge, an employee may be subject to suspension without pay and/or loss of other employee benefits, pending resolution of a criminal matter. Any employee who is convicted of a crime relating to his/her employment may be subject to discipline, up to and including discharge.**

### **2.3. Drug and Alcohol Policy**

The Massachusetts Gaming Commission seeks to ensure a safe, healthy, and productive work environment for all employees. Evidence clearly indicates that employee substance abuse results in low productivity, high absenteeism, excessive use of medical benefits, and a risk to their own safety as well as that of their co-workers. In a good faith effort to comply with the Federal Drug-Free Workplace Act of 1988, MGC, through this statement to employees, hereby re-emphasizes its policy against the use of illegal drugs and alcohol on MGC's premises.

MGC has taken steps to combat the dangers posed by substance abuse. Some resources available to you to help find out about treatment options and resources include the Governor's Alliance Against Drugs, which provides drug and alcohol education materials and is active in local schools and communities and the Massachusetts Substance Abuse Information and Education helpline located on the web at <http://www.helpline-online.com> or by telephone at 1-800-327-5050 (TTY 617-536-5872).

MGC's Drug and Alcohol Policy Statement is as follows:

*No MGC employee shall illegally manufacture, distribute, dispense, possess, consume or otherwise use any controlled substances during the employee's employment hours. The possession or consumption of a controlled substance is permissible only if it is under the direction of a physician or other person authorized to issue prescriptions for controlled*

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*substances. "Controlled substances" shall mean a drug, substance, or immediate precursor in any schedule or class referred to in M.G.L. Chapter 94C.*

The illegal manufacture, distribution, dispensing, possession, consumption, or other use of alcohol or a controlled substance while on the job or while on MGC premises is an offense for which MGC will take such corrective action as is necessary, including disciplinary action where appropriate. Any illegal controlled substances may be turned over to the appropriate law enforcement agency and may result in criminal prosecution. Employees who are under the influence of alcohol or unlawfully under the influence of a controlled substance shall be subject to sanctions, up to and including discharge.

MGC expects employees to report for work at all times in condition to perform their duties. Accordingly, off-the-job illegal use of a controlled substance which adversely affects an employee's job performance, or which could jeopardize the safety of other employees or guests of MGC, or MGC property or equipment, may be proper cause for the imposition of disciplinary action, up to and including discharge, where appropriate.

Managerial employees are to be alert for any infraction of this policy and are responsible for notifying the Human Resources Manager of any apparent violations. This Statement is intended to clarify MGC's drug-free workplace policy. If you have any further questions, please contact the Human Resources Department.

### **2.4. Smoking Policy**

Pursuant to the Massachusetts Clean Indoor Air Act (Massachusetts General Laws Chapter 270, Section 22) no smoking is permitted in any space of the Commission. Smoking is permitted outside only, and in accordance with the guidelines of the building manager and/or property manager. Urns or other appropriate receptacles may be available in various outdoor locations for disposal purposes.

### **2.5. Freedom from Unlawful Harassment and Discrimination Policy**

The Gaming Commission has a fundamental commitment to treating its employees with dignity and respect. The support of equal employment opportunity includes the recognition that all employees have the right to work in an environment free of unlawful harassment on account of race, color, religion, sex, national origin, ancestry, age, mental or physical disability, pregnancy, sexual orientation, any veteran status, any military status or application for military service, or membership in any category protected under applicable local, state or federal law. Harassment and discrimination based on protected status, whether by managerial personnel, co-workers or



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third parties with whom the Commission does business is unlawful and will not be tolerated by the Commission.

The Commission takes complaints of harassment and discrimination based on protected status seriously. The Commission will respond promptly to all reported complaints. Where it is demonstrated to its satisfaction that unlawful harassment and/or discrimination based on protected status did in fact occur, MGC will respond promptly and impose such corrective action as is necessary, including disciplinary action where appropriate.

Please note that while this policy sets forth MGC's goals of promoting a workplace that is free of harassment and discrimination based on protected status, the policy is not designed or intended to limit MGC's authority to discipline or take remedial action for unacceptable or inappropriate workplace conduct regardless of whether the conduct satisfies the legal definition of harassment. Derogatory and otherwise inappropriate remarks, slurs, or jokes based on any category protected by law will not be tolerated. The initial responsibility to investigate complaints of harassment and discrimination in the workplace has been assigned to the Human Resources Manager and General Counsel. Any employee who believes that he or she has been subject to unlawful harassment or discrimination based on protected status should report the alleged act to the General Counsel and/or Human Resources Manager as soon as possible. If the employee would prefer to report the alleged act to the employee's direct manager, or to any other manager, the employee should feel free to do so. These individuals are available to discuss any concerns employees may have and to provide information about MGC's policy and the complaint process. Employees should not allow an inappropriate situation to continue by not reporting it, regardless of who is creating the situation.

An investigation of any such complaint will be undertaken promptly. The investigation may include a private interview with the employee making the complaint, with witnesses, and with the person accused of harassment.

The investigation will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances. When MGC has completed its investigation, it will, to the extent appropriate, inform the person filing the complaint and the person alleged to have committed the conduct of the results of the investigation. If the investigation reveals that harassment did occur, MGC will act promptly to eliminate the offending conduct and impose disciplinary action where warranted.

It is unlawful to retaliate against an employee for filing a complaint of unlawful harassment or discrimination based on protected status or for cooperating in an investigation of such a complaint. Any individual who has been found to have engaged in retaliation against an MGC employee for filing a complaint or participating in the investigation of a complaint may be subject to appropriate sanctions, up to and including discharge. If any employee believes that he or she has been subjected to retaliation for having brought or cooperating in the investigation of a complaint of unlawful harassment or discrimination based on a protected class, that employee is

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encouraged to report the situation as soon as possible to the Human Resources Manager or General Counsel, the employee's direct manager, or any other MGC manager. We trust that all employees will continue to act responsibly to establish and maintain a pleasant working environment.

### **2.6. Sexual Harassment Prevention Policy**

All employees have the right to be free from unwelcome sexual advances or any other verbal or physical conduct which constitutes sexual harassment. Sexual harassment is unlawful and will not be permitted by either managerial personnel or non-managerial personnel. MGC takes allegations of sexual harassment seriously. MGC will respond promptly to complaints of sexual harassment. Where it is demonstrated to its satisfaction that such harassment occurred, MGC will act promptly to eliminate the harassment and impose such corrective action as is necessary, including disciplinary action where appropriate.

Please note that while this policy sets forth MGC's goals of promoting a workplace that is free of sexual harassment, the policy is not designed or intended to limit MGC's authority to discipline or to take remedial action for workplace conduct we deem unacceptable or inappropriate, regardless of whether that conduct satisfies the definition of sexual harassment.

In Massachusetts, sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and verbal or physical conduct of a sexual nature where: (a) submission to or rejection of such advances, requests, or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions; or (b) such advances, requests, or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating, or sexually offensive work environment. These definitions include any direct or implied requests by a manager for sexual favors in exchange for actual or promised job benefits, such as favorable reviews, salary increases, promotions, increased benefits, or continued employment, as well as any sexually-oriented conduct that is unwelcome and has the effect of creating a workplace environment that is hostile, offensive, intimidating, or humiliating to male or female workers.

Examples of conduct, which, if unwelcome, may constitute sexual harassment depending upon the totality of the circumstances, including the severity of the conduct and its pervasiveness, include the following: Either explicitly or implicitly conditioning any term of employment (e.g., continued employment, wages, evaluation, advancement, assigned duties, or shifts) on the provision of sexual favors; Touching a sexual part of an employee's body; Touching any part of an employee's body after that person has indicated, or it is known, that such physical contact was unwelcome; Continuing to ask an employee to socialize on or off-duty when that person has indicated she or he is not interested; Displaying or transmitting sexually suggestive pictures, objects, cartoons, or posters if it is known or should be known that the behavior is unwelcome;

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Regularly using sexually vulgar or explicit language in the presence of a person if it is known or should be known that the person does not welcome such behavior; Derogatory or provoking remarks about or relating to an employee's gender, sexual activity or sexual orientation; Coerced sexual acts.

The responsibility to investigate complaints of sexual harassment has been assigned to the Human Resources Manager and the General Counsel. Any employee who believes that he or she has been the subject of sexual harassment should report the alleged act to the Human Resources Manager and/or General Counsel as soon as possible. If the employee would prefer to report the alleged act to the employee's direct manager, or to any other manager, or to any one of the commissioners, the employee should feel free to do so. These individuals are available to discuss any concerns employees may have and to provide information about MGC's policy on sexual harassment and the complaint process. Employees should not allow an inappropriate situation to continue by not reporting it, regardless of who is creating the situation.

An investigation of any such complaint will be undertaken promptly. The investigation may include a private interview with the employee making the complaint, with witnesses, and with the person accused of sexual harassment. The investigation will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances. When MGC has completed its investigation, it will, to the extent appropriate, inform the person filing the complaint and the person alleged to have committed the conduct of the results of the investigation. If the investigation reveals that sexual harassment did occur, MGC will act promptly to eliminate the offending conduct and impose any appropriate disciplinary action, up to and including discharge.

It is unlawful to retaliate against an employee for filing a complaint of sexual harassment or for cooperating in an investigation of a complaint for sexual harassment. Any individual who has been found to have engaged in such retaliation against another employee may be subject to appropriate sanctions, including counseling, verbal or written warnings, transfer, suspension and/or discharge. If any employee believes that she or he has been subjected to retaliation for having brought or supported a complaint of harassment, that employee is encouraged to report the situation as soon as possible to the Human Resources Manager or General Counsel, the employee's direct manager, or any other manager of MGC.

The state agency responsible for complaints of sexual harassment is the Massachusetts Commission Against Discrimination ("MCAD"). The MCAD can be reached in Boston at One Ashburton Place, Room 601, Boston, MA 021 08, telephone number: (61 7) 994-6000 or in Western Massachusetts at 436 Dwight Street, Suite 22 0, Springfield, MA 01103, telephone number: (413 ) 739-2145.

The Equal Employment Opportunity Commission ("EEOC") is the federal agency which investigates sexual harassment claims. The EEOC can be reached at JFK Federal Building, Room 475, Boston, Massachusetts 02203, telephone number (617) 565 -3200.

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If you believe you have been the victim of sexual harassment or retaliation, you may contact the MCAD or the EEOC. You must file a charge at the MCAD or the EEOC within 300 days of the alleged discriminatory action.

We trust that all employees will continue to act responsibly to establish and maintain a pleasant working environment free of sexual harassment and unlawful discrimination of any type.

### **2.7. Conflict of Interest and Financial Disclosure**

Employees of MGC are state employees and are thus subject to the Massachusetts Conflict of Interest Statute, Massachusetts General Laws Chapter 268A. You are encouraged to confer with our General Counsel if you have any questions about the application of this statute. In addition, all Commissioners and certain employees of the Commission are required to file annual disclosure documents with the Massachusetts State Ethics Commission. Employees to whom this requirement applies will be notified annually of their obligation by MGC and the State Ethics Commission. An employee who fails to fulfill this obligation will be subject to such corrective action as is necessary, including disciplinary action where appropriate.

The following is a summary of the Chapter 268A provisions that apply to Commission's employees. Please note this is not intended to be a definitive or complete summary of these provisions, but only to give you an idea of the issues covered. If you have any questions with regard to the application of Chapter 268A to you or your activities, please contact the General Counsel.

As stated in section 2.2 of this manual, all employees of the Commission must complete the State Ethics Commission's online training, within thirty days of being hired and then every two years thereafter, which is available at the Ethics Commission's web site [www.mass.gov/ethics](http://www.mass.gov/ethics). As part of such training, the State Ethics Commission provides a lot of important information for state employees including definitions and examples of many instances relevant to the provisions of the law.

The State Ethics Commission also provides confidential one-on-one consultations and advice. For further information please visit [www.mass.gov/ethics](http://www.mass.gov/ethics).

As per chapter 23K (the Gaming Act), Commission employees are subject to an enhanced code of ethics. All employees of the Commission are advised to understand and abide by the enhanced code of ethics.

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### Definition of State Employee

For purposes of Chapter 268A, a “state employee” is a person performing services for or holding a position in a state agency. A person is a state employee regardless of whether s/he is: elected or appointed, paid or unpaid, part-time or full-time, a regular employee or an independent contractor.

The key personnel who provide services to a state agency under a contract between the agency and a corporate or other entity may be deemed to be state employees.

The law applies less restrictively in some circumstances to a subset of state employees referred to as “special state employees.” A special state employee is a state employee who: is not paid for the services rendered to the state agency; is permitted by the terms of his contract or conditions of employment to engage in personal or private employment during normal working hours (written disclosure of such permission must be filed with the State Ethics Commission prior to the personal or private employment); or earns compensation as a state employee for an aggregate of less than eight hundred hours during the preceding three hundred and sixty five days.

### Summary of Chapter 268A (Conflict of Interest Law)

The conflict of interest law precludes certain actions and behavior by state employees given their official capacity. While certain actions may be more obvious than others, the law is broad and applies to certain instances and activities that may or may not occur during normal business hours, but could still create a conflict of interest or even an appearance of a conflict. Furthermore, the law imposes certain limitations to some state employees, even as they leave state service.

The law precludes certain actions (i.e., bribes), limits certain actions (i.e., gifts, supplemental employment), and imposes certain requirements on state employees sometimes commensurate with the level of a position and its policy-making nature (i.e., filing a Statement of Financial Interest).

As stated elsewhere in this manual, all Commission employees are required to read and understand the conflict of interest law and the enhanced code of ethics of the Commission. Any questions on this topic may be referred to the General Counsel of the Commission or may be made directly to the State Ethics Commission.

## **2.8. Confidential Information and Sensitive Information**

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### **2.8.1. Confidential Information**

The Commission has issued detailed regulations pertaining to the nature and handling of Confidential Information.

All records made or received by the Commission or the Investigations and Enforcement Bureau (IEB) are public records and are available for disclosure on request, with certain exceptions. Please refer to the Commission's regulations (205 CMR 103), for a full description of Confidential Information and the exceptions to the public records.

### **Official Custodians; Individual Responsible for Personal Data System**

The commission secretary is the official custodian of all books, documents and papers filed by the commission and of its minute book; the chief financial and accounting officer is the official custodian of its books of account and accounting records; the deputy director of the IEB is the official custodian of all records of the bureau; and the executive director is the official custodian of all other records of the commission. In the case of an absence or vacancy in the office of an official custodian, or in the case of disability as determined by the commission, the chair may designate an acting custodian to serve until the vacancy is filled or the absence or disability ceases. Each official custodian may, with the permission of the chair, from time to time delegate to another commissioner, employee or employees of the commission or the bureau responsibility for the custody of some or all public records under his or her jurisdiction.

The custodians of the records will establish procedures for the safe keep of the records, and in the case of confidential information such procedures will include procedures to maintain restricted access to such records. Confidential information may be identified with tags "Exempt/Redact" within the content of a form or file.

Employees are precluded from distributing or gaining willful access to confidential information without the prior express consent of the custodian of the records. Employees are advised to place particular attention to the nature of confidential information, and thus refer any questions they may have (i.e., whether or not certain information may be confidential) to any one of the custodians of the records, any one of the commissioners or the General Counsel.

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### 2.8.2. Sensitive Information

Definition of Sensitive Information: As used in this handbook, the term “Sensitive Information” refers to any non-public information the Commission has acquired in the course of its operations about (1) Commission employees, applicants for employment, licensees or applicants for licenses or other individuals whose activities the Commission regulates or supervises and (2) the structure, organization, officers, directors, employees, financing or operations of any business entity.

For internal purposes, MGC’s policy regarding Sensitive Information has four key elements:

- Employees, contractors, consultants, and licensees should not request or accept any more Sensitive Information—whether of a business or “personal” nature—than is reasonably necessary for the performance of the Commission’s mission;
- In the absence of a specific legal requirement compelling disclosure of Sensitive Information in a particular instance, all MGC employees, consultants, contractors, and licensees are expected to take appropriate measures to safeguard such information from improper use and disclosure;
- Regardless of whether certain Sensitive Information appears to fit within a statutory exemption from disclosure, it is MGC’s policy to retain all materials submitted by third parties and treat them in the same way as “public records” for purposes of the retention and archiving requirements of the Public Records Act; and
- To evidence their awareness of MGC’s limited contractual undertakings with respect to Sensitive Information, applicants and recipients under MGC programs are to be provided with (and be required to acknowledge in writing, the application of) MGC’s Policies and Procedures Regarding Submission of “Sensitive Information.”

Because the relevant legal requirements and the nature and scope of the information in question can create uncertainty, you are urged to confer with MGC’s General Counsel if you have any questions about confidentiality, the scope or proper treatment of Sensitive Information, or MGC’s policies or procedures with respect to those topics. You are strongly cautioned against substituting your own judgment for that of our General Counsel when it comes to deciding whether particular information is innocuous data or Sensitive Information that should be handled with care, or the advisability or sufficiency of safeguards with respect to particular types of information. You are also cautioned against deciding that safeguards are not warranted in a particular instance because, for example, you may suspect that the information in question “would probably end up having to be disclosed under the Public Records Act anyway.”

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### Safeguarding Sensitive Information from Improper Use and Disclosure

MGC employees, consultants and contractors are expected to protect Sensitive Information from improper use and disclosure at all times. The following are examples of the kinds of protective procedures that should be followed:

*Limited Communication to MGC Personnel:* Sensitive Information should not be communicated to other MGC employees, except to the extent that they need to know the information to fulfill their MGC mission-related responsibilities and their knowledge of the information is not likely to result in misuse or a conflict of interest.

*Limited Communication to Non-MGC Personnel:* Sensitive Information should not be communicated to anyone outside MGC, including family members, except to the extent outside parties need to know the information in order to provide necessary services to the Commission, its applicants or recipients, or as otherwise directed by the General Counsel to comply with legal requirements necessitating disclosure, such as proper requests under the Public Records Act.

*Notification of Confidentiality:* When Sensitive Information is communicated to any person, either inside or outside MGC, the individual receiving such information should be informed of its sensitive nature and the need to safeguard such information from improper use and disclosure. MGC will generally require that its contractors and consultants execute a confidentiality agreement that has either been provided or approved by the General Counsel before Sensitive Information is disclosed to them.

*MGC Use Only:* Sensitive Information should only be used for MGC purposes. Under no circumstances may a present or former MGC employee, consultant, contractor or licensee “trade on” such information or otherwise use it, directly or indirectly, for personal gain or for the benefit of any party other than the owner of such information. Exception: From time to time, the Commission’s Enforcement Division, may conduct or cause to conduct a criminal investigation. *See separate section on procedures relative to criminal investigations.*

*Prevention of Eavesdropping, Unauthorized Viewing, etc.:* Sensitive matters should not be discussed in restaurants, on public transportation or in other public places or in locations, such as hallways, elevators and building lobbies, where unauthorized individuals could overhear the discussion. Similarly, Sensitive Information should not be exchanged or discussed via cordless or cellular phones or similar “non-secure” communication lines. Speaker phones can amplify conversations and should be used with care when discussing Sensitive Information. Common sense precautions should also be taken with respect to Sensitive Information in written form, such as stamping or marking such documents “CONFIDENTIAL” to flag them for special handling, limiting access to files to those with



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an MGC-related “need to know,” locking documents that contain Sensitive Information in desk drawers or file cabinets when you are away from your desk, carefully limiting the circumstances in which (and exercising appropriate care when) such materials leave MGC’s office, delivering sensitive materials to others in sealed envelopes, and limiting the addressees and “cc’s” of letters, memoranda, emails, and other communications containing Sensitive Information to those individuals who reasonably need to see such communications. Data stored on desktop computers, laptops, tablets, flash drives, CD-ROMs, and other electronic media containing Sensitive Information, should be properly secured to keep them from being accessed by unauthorized individuals. Documents containing Sensitive Information that are sent to printers should be picked up promptly, computer passwords should be protected, and MGC employees should log off when leaving the office.

*Communications with the Public; Compulsory Legal Process:* All contacts with the media and all speeches or other oral or written public statements made on behalf of MGC, or concerning its activities, applicants or recipients, must be cleared in advance by MGC’s Communications Director. In speeches and statements not made on behalf of MGC, proper care should be taken to avoid any implication that the Commission endorses the views expressed. All disclosure requests under the Public Records Act or in the form of requests for discovery, subpoenas, court or administrative orders, or the like must also be referred to the General Counsel for appropriate handling.

*Special Procedures Relating to the Fair Information Practices Act:* If you feel that some aspect of your job function requires you to collect, use, or maintain information about the personal finances, health or other personal circumstances or attributes of individuals, please contact the General Counsel for guidance.

*Special Procedures Relative to the Public Records Act:* MGC is subject to the provisions of Massachusetts Public Records Act, M.G.L. Chapter 66, which can require the Commission to make certain Sensitive Information available to the public. Accordingly, documents and other data made or received by MGC and its consultants and contractors are subject to public disclosure unless such materials are specifically exempted under the statute and certain specific procedures are followed.

No MGC employee other than the General Counsel is authorized to make determination as to whether particular information is a “Public Record” or is exempt from disclosure under the Public Records Act, or how MGC would respond to any given request or demand for disclosure of Confidential Information.

*Additional Procedures:* MGC divisions, departments, and working groups should establish appropriate supplemental procedures that are consistent with the above objectives and guidelines to help protect Confidential Information. Such procedures may include limiting the staffing of matters that entail Confidential Information and instituting appropriate file management techniques. All such supplemental procedures should be reviewed by the

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General Counsel and should be used only to protect Confidential Information from improper use and disclosure, and not to circumvent compliance with legal requirements necessitating disclosure of certain types of Confidential Information.

### **2.9. Supplemental Employment and Business Activities**

#### **General Statement**

As stipulated in the Commission's enabling statute G.L. chapter 23K section 3 (o) "No employee of the commission shall pursue any other business or occupation or other gainful employment outside of the commission without the prior written approval of the commission that such employment will not interfere or be in conflict with the employee's duties to the commission."

MGC recognizes that many of its employees have specialized skills or areas of expertise, and that the utilization of these skills in "supplemental employment" or business activities can be beneficial to both the individual and to MGC. As a general policy, MGC respects the right of an employee to engage in supplemental employment or business activities of the employee's choice, as long as: (i) the employee has obtained prior written approval from MGC; (ii) it does not bring discredit to MGC; and (iii) it does not diminish the fulfillment of the requirements of the employee's position with MGC. MGC may disapprove of any such supplemental employment or business activities.

#### **General Guidelines**

While the Commission does not, as a condition of employment, impose any absolute restrictions on an employee's right to engage in supplemental employment or business activities of the employee's choice certain general policies and procedural guidelines apply to supplemental employment or business activities of Commission employees:

1. The employee's commitment during normal working hours is to the employee's full-time position at the Commission. Supplemental employment or business activities may not reduce the time spent or the quality of your work at MGC;
2. The supplemental employment or business activity may not influence the employee or create the appearance of influencing the employee in the performance of the employee's Commission employment;
3. The employee may not use Commission sensitive information to secure or to support such supplemental employment or business activity;

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4. The employee may not use Commission equipment, supplies or materials (including telephones, fax machines, Department supplies, copy machines) in the course or in support of such supplemental employment or business activity;
5. The employee may not be paid by a non-State or private party if the Commonwealth or MGC has a direct and substantial interest in the supplemental employment or business activity;
6. In any supplemental employment or business activity, the employee must take care to avoid any perception that such supplemental employment or business activity is representative of or in any way connected with MGC or that employee's relationship therewith; and
7. The supplemental employment or business activity must be in conformance with the Massachusetts Conflict of Interest statute.

### **Prohibited Supplemental Employment or Business Activity**

1. The following outside supplemental employment or business activity is prohibited, even if it meets the above guidelines: any supplemental employment or business activity *during your scheduled working hours* (including, but not limited to, real estate, retail sales, insurance, law and accounting);
2. Any supplemental employment or business activity that involves particular matters in which you have participated as a Commission employee or which are the subject of your official responsibility; and
3. You may not appear in court as an attorney or otherwise practice law on behalf of a private client whether or not the litigation or other practice involves the Commonwealth or MGC.
4. Any advocacy activity (paid or un-paid) for or against the presence of a casino in a local jurisdiction (within or outside of the Commonwealth)
5. As part of the enhanced code of ethics, commissioners have precluded themselves from involvement in state and/or local political activities.

### **Activities that Are Not "Supplemental Employment or Business Activity"**

The following are examples of activities that are not generally considered to be "Supplemental Employment or Business Activity" and for which no advance approval will generally be required:

1. Unpaid work for civic, scout, religious, educational, fraternal, social, community, veterans, or charitable organizations (However, you may not engage in fundraising activities for those organizations by soliciting funds from any person or organization that does business with MGC. Be aware that the State's Conflict of Interest Law has strict guidelines on what you may participate in if any matter involves MGC or another state agency.);

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2. Serving as a notary public or justice of the peace;
3. Serving as a trustee, guardian, conservator, executor, administrator, or act as resident agent for your immediate family;
4. Renting property (However, you may not rent property to MGC. Further, rental of any property to the Commonwealth, a municipality or any entity connected therewith may have ethical implications and should be reviewed by the State Ethics Commission);
5. Personal and/or professional involvement in the community, with professional organizations (if those events or organizations do not include advocacy for or against casinos or gaming);
6. Personal involvement in state or local politics, as long as:
  - a. Such involvement does not interfere with your work at the Commission
  - b. Such involvement is not done within the premises of the Commission
  - c. Such involvement does not involve the employee's use of his or her affiliation with the MGC. and
7. Performing minor services and odd jobs for friends, relatives, or neighbors. Examples include: repairs or maintenance work such as painting, yard work, carpentry, or babysitting and carools involving payment for transportation.

Notwithstanding the above, however, if any of these activities involves MGC, Commission's consultants, any person or organization that does business with MGC, or another state agency, you must get prior written approval from the Executive Director. These activities may not be undertaken during work hours.

### **Disclosure Requirements**

A general policy cannot cover all situations. Employees planning to participate in supplemental employment or business activities are expected to disclose and review their plans with the Executive Director or his designee prior to making any commitment. Employees participating in supplemental employment and business activities are required to disclose the activities and make a report to the General Counsel on a semi-annual basis or whenever circumstances dictate. The report shall include the following:

1. The company or organization involved
2. Number of days (including dates)
3. Type of activity
4. Compensation (if requested)
5. Other information deemed necessary or appropriate by the employee of MGC

You are encouraged to confer with our General Counsel if you have any questions about supplemental employment and outside activities.

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### 2.10. Corrective Action Process

Our hope is always that employees will correct problems with performance and conduct when they occur. However, MGC may impose such corrective action as is necessary, including disciplinary action where appropriate.

Violation of policies contained in this handbook may result in disciplinary actions including termination of employment. The Commission may terminate employment upon violation of policies and/or impose a progressive disciplinary action on the employee.

Progressive disciplinary action may include the following:

1. The manager may issue a verbal warning to an employee for unsatisfactory conduct or performance;
2. The manager may issue a written warning for continued or repeated unsatisfactory conduct or performance, or failure to satisfactorily improve following a verbal warning; and
3. Discharge.

Each incident requiring discipline is reviewed and handled on an individual basis. Although progressive discipline often is used to address performance issues, the decision whether to use progressive discipline and the appropriate type of discipline to apply in any particular case remains in MGC's sole discretion.

### 2.11. Open Meeting Law

As a public instrumentality, the Commission is subject to State law governing the posting of meeting times and locations, and accessibility of meetings to the public, with regard to the meetings of the Commission. It is the responsibility of the MGC staff person convening the meeting to secure compliance with the Open Meeting Law. Commissioners generally schedule a public meeting once a week. Directors should confer with the Commissioner Secretary or the chair of the Commission to include items for discussion in the agenda.

Among other considerations, certain confidential information obtained from applicants and licensees can be protected from unnecessary disclosure provided the procedures described in Employee Handbook Section 2.12 "Public Records Act and Other Legal Disclosure Requirements" are followed in connection with MGC meetings that would otherwise be subject to the Open Meeting Law.

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### 2.12. Public Records Act and Other Legal Disclosure Requirements

As a public instrumentality, MGC is subject to the Massachusetts Public Records Act, M.G.L. Chapter 66, which governs the retention, disposition, and archiving of public records. Commissioners, Directors and Staff are advised to confer with MGC's General Counsel about which records are "public records," how long you may be required to retain those records, the method by which they should be disposed of, and archiving requirements. The Public Records Act also contains provisions which could require the Commission to disclose to the public certain Sensitive Information made, received, or maintained by MGC, its contractors and consultants from time to time. In addition, MGC may be compelled by legal process to disclose information in its possession, including Sensitive Information about MGC itself or about its applicants, or recipients, or other third parties. Care must be taken to comply with all such legal requirements; however, it should be remembered that, in the absence of a specific legal requirement to disclose (as determined by the General Counsel), all MGC employees, consultants, contractors, and licensees are expected to take appropriate measures to safeguard Sensitive Information from improper disclosure and use at all times. If material is a "public record" within the meaning of the Public Records Act, it is subject to inspection by the public and cannot be destroyed or returned to those who delivered it to MGC, other than as specifically permitted under the Public Records Act. If material is deemed not to be a "public record," it is subject to some protection from disclosure under the law.

#### What Are "Public Records"?

For purposes of the Public Records Act, "public records" include all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by MGC. File notes and memoranda created by MGC employees or outside contractors and licensees could be deemed to be "public records, and the use of the Commission's Information Technology Resources can create "public records" which are subject to the retention requirements of and potential disclosure under the Act.

#### Exemptions under the Public Records Act

"Public records" do not include certain materials or data which fall within one of the specifically enumerated exemptions set forth in the Public Records Act or in other statutes, including MGC's enabling act, M.G.L. 23K. One such exemption is for certain internal personnel records.

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### Procedural Considerations and Mandatory Use of Policy and Procedures for the Submission of Sensitive Information

MGC staff may from time to time be exposed to types of information that may contain “sensitive” information that a submitting party often seeks to protect from public disclosure. While it is understandable that the owner of such information may wish to restrict its disclosure, MGC is a “public agency” pursuant to the Massachusetts Public Records Act, and the submission of such information to MGC is, generally speaking, subject to public disclosure (without notice and without restriction) upon MGC’s receipt of it. In response to the inherent tension between MGC’s obligation to honor public records requests in a timely and comprehensive manner, and a submitting party’s desire to restrict access to its Sensitive Information, MGC has implemented a *Policy and Procedures Regarding Submission of Sensitive Information* (the “Procedures”) and that policy is set out in Section 2.8 of this Handbook.

In addition, all communications seeking inspection or other disclosure of materials under the Public Records Act must be referred promptly to the General Counsel, as custodian of records for the Commission. Similarly, all subpoenas and other legal process documents requesting or seeking to compel disclosure of materials made or received by MGC, its consultants, or contractors must be delivered or promptly forwarded to the General Counsel upon receipt.

### **2.13. “Customer Relations” and Service**

As a public instrumentality, our “customers” are made up of every citizen of the Commonwealth of Massachusetts. Our daily interactions include: communication with individuals from the gaming, hospitality, racing sectors, local and regional economic development officials, government officials, business and industry constituents, academicians, and environmental and consumer advocates. Building positive working relationships with all these groups is an integral part of the important work we do.

You are encouraged to remember that you are a representative of MGC whenever you speak, correspond or meet with anyone in the course of your work for MGC. All employees are required to adhere to the highest standards of courtesy and politeness in our dealings with these individuals and groups who comprise our “customers.” MGC and even the Commonwealth of Massachusetts may be judged on the manner in which we conduct business. Because of this, we pride ourselves in our effort to provide the highest level of performance to those we serve, whether that service involves responding to a telephone call, answering a request for information from a co-worker, meeting with grant applicants, or making a presentation to the State Legislature. As MGC employees, this is our responsibility and our mandate, and something of which we may all be proud.

**To:** MGC Commissioners

**From:** Jennifer Durenberger, Director of Racing

**Date:** November 5th, 2012

**Re: Recommendations regarding the current equine drug testing laboratory**

**Background:**

Earlier this year, the Massachusetts Gaming Commission hired Last Frontier Consulting to review the current regulatory structure for horse racing in the Commonwealth and make recommendations to the Commission regarding that industry.

One of the recommendations put forth was to issue an RFP to identify an accredited equine drug testing laboratory to help the Commission enforce and uphold its existing and anticipated regulations regarding medication and testing of racehorse athletes.

Additionally:

- The MGC is a member of the Association of Racing Commissioners International. This body has promulgated a model rule for Laboratory Minimum Standards which also calls for laboratory accreditation. [ARCI 0011-0023 Testing]
- The National Thoroughbred Safety and Integrity Alliance, of which Suffolk Downs is a member, requires compliance with that same model rule in its Code of Standards.
- The Racing and Medication Testing Consortium, an industry group with stakeholders from all aspects of the horseracing industry – including both the Thoroughbred and Standardbred breeds – has been instrumental in providing guidance to the industry regarding accreditation standards

As the Last Frontier report points out, the current equine drug testing laboratory does not meet the standards in the Model Rule, and **I recommend that the RFP for the equine drug testing laboratory be issued as soon as possible and that the Commission vote on whether the existing laboratory should be closed down.**

Further considerations:

- The lease for the current laboratory expires at the end of this calendar year. The last samples will be received for testing by the end of November, leaving us approximately one month to inventory and dispose or rehome existing equipment.