



The Commonwealth of Massachusetts

Massachusetts Gaming Commission

NOTICE OF MEETING and AGENDA

December 18, 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, December 18, 2012

1:00 p.m.

Division of Insurance

1000 Washington Street

1st Floor, Meeting Room 1-E

Boston, Massachusetts

PUBLIC MEETING - #43

1. Call to order
2. Approval of Minutes
 - a. December 4, 2012 Meeting
 - b. December 11, 2012 Meeting
3. Administration
 - a. Report from the Director of Administration
 - i. Master schedule
 - b. Personnel searches
 - c. Employee Manual – Chapter 6 Review
4. IEB Report
 - a. Scope of licensing
 - b. Investigations status report
5. Key Policy Questions
 - a. #18
 - b. Future questions
 - c. Region C status review - VOTE
6. Racing Division Report
 - a. Transition update
 - b. Local aid payments
7. Public Education and Information
 - a. Report from Ombudsman
 - i. Information requests from developers, communities or others
 - ii. Other matters
 - b. “Report from the Director of Communications and Outreach
8. Charitable Gaming

9. Enhanced Ethics


10. Research RFP

a. PMT

11. 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, and emailed to: regs@sec.state.ma.us, melissa.andrade@state.ma.us, brian.gosselin@state.ma.us.

12/14/12
(date)



Stephen P. Crosby, Chairman

Date Posted to Website: December 14, 2012 at 1:00 p.m.

The Commonwealth of Massachusetts
Massachusetts Gaming Commission

Meeting Minutes

Date: December 4, 2012

Time: 1:00 p.m.

Place: Division of Insurance
1000 Washington Street
1st 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 38th public meeting.

Approval of Minutes:

See transcript pages 2-3.

Commissioner McHugh stated that the minutes for November 20 have been distributed for approval.

Motion made by Commissioner McHugh to approve the minutes of November 20 as distributed. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 5-0-0 vote.

Project Work Plan:

See transcript pages 3-65.

Project Management Report – Chairman Crosby reviewed the Project Management Chart to provide an update on the status of the Commission’s workflow. He stated that because some of the bidders will be submitting their material early, the IEB can begin the background check process one month earlier than the anticipated January 15 commencement date. The Commission can start the Phase II application process as soon as June 1 if there are no hearings and the background checks begin early.

Chairman Crosby stated that the Commission is on track for issuing scope of licensing decisions. Commissioner Cameron stated that the Commission has not drafted the MOUs designed to support the IEB's activities, but she is working collaboratively with law enforcement agencies, the Attorney General, and other entities and will be ready to complete the MOU's soon. Chairman Crosby stated that there are several finalists for the Executive Director position, and the Commission's goal is to fill the position by the end of December. The Executive Director will then assist in hiring for the positions of Deputy Director of Investigations and Enforcement and General Counsel. Chairman Crosby stated that the Gaming Policy Advisory Committee should be up and running by January 15, 2013, pending appointments by the Governor.

Chairman Crosby stated that the Commission is approximately 45 days away from the deadline for submission of Phase 1 applications. When the deadline arrives, the Commission will know the identity of all of the applicants for Regions A and B and slots licenses.

Scope of Licensing and RFA-1 Status Report – Frederic Gushin, Managing Director of Spectrum Gaming Group, addressed the Commission to provide an update. He stated that Spectrum and Michael & Carroll are well into the scope of licensing evaluations, and they have issued reports to the Acting Director of IEB. Mr. Gushin stressed that the investigations are comprehensive and the consultants will move as quickly as possible while addressing all of the critical issues. He stated that the applicants bear the investigative cost, which is the standard across the United States. He stated that Spectrum and Michael & Carroll will be present next week at the meetings to discuss policy issues.

Commissioner Cameron provided an update on the scope of licensing. She stated that nine potential applicants have submitted proposals for the scope of licensing, two more proposals are expected, and the process of preparing responses is underway. She stated that the IEB is empowered to investigate anyone that it deems relevant to the application. She stated that the IEB will waive investigation of certain individuals, particularly those with less than a 1% interest in an applicant. However, if during the investigation the IEB determines that an individual who was waived exercises more influence than an owner with an interest greater than 1% or for some other reason should be investigated, the IEB will fully investigate that person. She stated that the IEB is empowered to investigate anyone it deems relevant to the application. Commissioner McHugh emphasized that, at the end of Phase I, the Commission will determine whether to accept the results of the investigation and whether there is someone who was not investigated that the Commission determines should have been investigated. He stated that the Commission will have an opportunity to correct any deficiencies in the investigation at that point. Commissioner Zuniga announced that the contract for investigations was executed this morning.

Commissioner McHugh provided a summary of the waiver process. He stated that applicants send their applications and requests for waivers to the IEB, and the IEB refers those materials to the consultants. The consultants perform the investigation and prepare a tentative set of recommendations. The consultants give the recommendations, with respect to waiver and non-waiver, back to the IEB for a check by the State Police. The State Police will make a recommendation to the Director of IEB, who will send a letter from the IEB to the applicant stating whether the IEB granted the requested waivers and listing those who must qualify and

those who need not qualify. The IEB will reserve the right to have further investigation and add further qualifiers as the investigation proceeds. At any time, the Commission has the full right to request whatever information is necessary for a complete investigation. The IEB will also advise the applicant that it may appeal to the full Commission any IEB denial of a requested waiver.

Motion made by Commissioner McHugh to acknowledge this process and approve of it as the Commission's waiver process. Motion seconded by Commissioner Zuniga. The motion passed unanimously by a 5-0-0 vote.

Key Policy Questions Status Report – Chairman Crosby confirmed that the Commission is prepared to move forward with a series of public meetings to address the key policy questions. The Commission has scheduled these meetings for December 11 through December 14.

Region C Status Review – Chairman Crosby stated that Commissioner McHugh has prepared a memorandum reviewing the status of Region C and asked Commissioner McHugh to provide an overview for the Commission.

Commissioner McHugh stated that on October 12 the Secretary of the Interior rejected the Compact negotiated between the State and the Mashpee Wampanoag tribe. He stated that the federal process for tribal casinos has three primary components: a site controlled by the Wampanoag tribe for a casino, a plan for developing the site, and an agreement with the City of Taunton that had been approved by the City's voters. He stated that obstacles in the path to a casino nevertheless remain. The first is the Compact, which the State and the Mashpee Wampanoag tribe will have to renegotiate. The second is a lawsuit filed by K.G. Urban, a commercial developer with a site in the New Bedford area. K.G. Urban claims that the whole tribal set-aside is a race based preference that violates the Fourteenth Amendment to the US Constitution. The third obstacle is the Commonwealth's own equivalent to the Fourteenth Amendment. A lawsuit may raise the same issues in state courts. The fourth obstacle is the fact that the tribal land has to be taken into trust, but the Supreme Court has determined that only tribes under Federal jurisdiction when the statute was passed in 1934 can have land taken into trust. At this time, it is unclear whether the Wampanoag tribe was under Federal jurisdiction in 1934.

Commissioner McHugh stated that these obstacles raise the question whether, by the time these issues are worked out, Region C will fall behind the other regions in terms of casino development and the benefits that the statute was designed to create. He recommended that the Commission consider some way to preserve all options and ensure that the benefits of the statute accrue to Region C, either through a tribal gaming facility or a commercial facility, before a lapse of time puts Region C substantially behind the other regions of the state.

Chairman Crosby stated that the Commission has advised the Tribe that this topic would be on the agenda today. He stated that the Commission received a letter from Chairman Cromwell stating that the Tribe is moving forward expeditiously and, as Chairman Cromwell understands it, Region C remains exclusively available for tribal gaming. Chairman Crosby stated that he disagrees with Chairman Cromwell regarding Region C remaining exclusively for tribal gaming.

Commissioner McHugh stated that the exclusivity is in the Compact, but the Compact was disapproved and has no force and effect. The statute itself does not contain an exclusivity provision. He stated that Section 91E of the Expanded Gaming legislation says that the Commission must issue a commercial RFA if a compact is not negotiated by the end of July or if the Commission concludes that the land is not going to be placed in trust. The legislation does not prevent the Commission from issuing an RFA before these two events occur.

Commissioner Cameron asked if Commissioner McHugh was considering a dual process of letting the Compact work itself out and, at the same time, starting a commercial process. Commissioner McHugh stated that this is an approach that may be worth thinking about to preserve the interests of Region C, the Tribe, and those who are interested in a commercial license. Commissioner Zuniga asked if the Commission should consider a timeline that would constitute an acceptable time to allow some of these issues to work themselves out.

Chairman Crosby stated that the Commission is respectful of the Tribe's rights to fully pursue its options under the law. After discussion, the Commission agreed that Commissioner McHugh would put in writing the options that have been discussed today and this discussion would continue at the next Commission meeting. Chairman Crosby stated that the discussion should take place through a process that will give all interested parties time to provide commentary.

Administration:

See transcript pages 65-69.

Personnel Searches – Chairman Crosby stated that the Commission has posted the Director of Supplier and Workforce Development position.

Stenography Procurement – Commissioner Zuniga stated that Director Glovsky has recommended that the Commission accept three vendors to prequalify for stenographic and transcript services based on the responses to the RFR conducted on October 26, 2012. The recommended vendors are Catuogno and Sten-Tel, Reporters, Inc., and Copley Court Reporting.

Motion made by Commissioner Zuniga to accept three vendors, Catuogno and Sten-Tel, Reporters, Inc., and Copley Court Reporting for stenographic and transcript services. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.

Employee Manual, Chapters 4 and 5 – Commissioner Zuniga stated that he has provided the Commission with a draft of chapters 4 and 5 of the Employee Manual, with the intention of voting to accept the chapters at the next Commission meeting.

Racing Division:

See transcript pages 69-71.

Report from Director of Racing Division – Commissioner Cameron stated that she is providing this report in Director Durenberger’s absence. She stated that the working group conducted its second meeting this past week at Plainridge and discussed equine medications, best practices, and model rules. She stated that today is the deadline for the posted positions for the Racing Division, and the Racing Division will schedule interviews for next week. She stated that staff is beginning to clean out the lab and is looking for storage for a great deal of racing files dating back to 1935, which the Racing Division will eventually archive electronically.

Public Education and Information:

See transcript pages 71-93.

Report from the Ombudsman – Mr. Ziembra stated that he continues to field questions from host and potential surrounding communities. His focus over this past week has been on the cities of Holyoke and Everett. He stated that the Commission received a number of questions this week regarding racing fund local aid payments, and the Commission will be providing an historical analysis of how those payments have been made going back to FY 2008. Mr. Ziembra stated that Counsel Murray has prepared a memorandum that the Commission will circulate in the next few days and distribute to the Legislature. He stated that the Commission continues to work on the policy questions and has reached out to the regional planning agencies, host communities, and surrounding communities to get answers to the questions that will be discussed next week. He asked the Commission whether the public comments that the Commission received should be posted to the Commission website. Chairman Crosby stated that the comments should be posted to the website.

Mr. Ziembra stated that he, along with Commissioner Zuniga, met with three of the regional planning agencies and potential host communities to discuss how the Commission can help smooth out the host and surrounding community process and discussion. Mr. Ziembra stated that he will work on getting out further notice to the entire region that may be impacted by any decisions made relative to Region C. Mr. Ziembra stated that he intends to issue an advisory to communities outlining the process of applying to the Commission for funding and the limitations that the communities may experience relative to municipal finance law.

AIA Forum – Commissioner Stebbins stated that the Commission is continuing to get the word out about the upcoming AIA forum. He stated that the forum will provide the commission with information that will be helpful as it exercises its statutory authority to create regulations regarding casino design, sustainability, and ability to reach certain LEED certification levels.

A brief recess was taken.

Chairman Crosby reconvened the 38th meeting.

Report from Director of Communications and Outreach – Director Driscoll provided information on the Commission’s new website. She stated that the Commission is establishing a portal that

will provide easy access to information in an easily accessible and user friendly manner. She provided the designers with information about how she wanted the information to be displayed and what information she wanted on the site's home page. The designers provided her with three design options. She stated that she is in the process of deciding which design of the three achieves her goals most effectively. She provided a PowerPoint presentation on the new website and each design option. She stated that the designers will finish the layout and then move on to the build out with a goal of having the website ready in January.

Motion made to adjourn, motion seconded and carried unanimously.

List of Documents and Other Items Used at the Meeting

1. Massachusetts Gaming Commission December 4, 2012 Notice of Meeting & Agenda
2. Massachusetts Gaming Commission 11/28/12 Summary Schedule Work Plan Update
3. December 3, 2012 Mashpee Wampanoag Tribe Letter
4. December 4, 2012 Memorandum Regarding Region C
5. November 27, 2012 Memorandum Regarding Recommendation to Pre-Qualify Vendors for Stenographic Services
6. Massachusetts Gaming Commission Section 4 of Employee Handbook
7. Massachusetts Gaming Commission Section 5 of Employee Handbook

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

The Commonwealth of Massachusetts
Massachusetts Gaming Commission

Meeting Minutes

Date: December 11, 2012

Time: 1:00 p.m.

Place: Division of Insurance
1000 Washington Street
1st 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 40th public meeting.

Approval of Minutes:

See transcript pages 2-3.

Chairman Crosby stated that the November 27 meeting minutes were ready for approval.

Motion made by Commissioner Stebbins to approve the minutes of November 27, 2012. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 5-0-0 vote.

Chairman Crosby stated that Commissioner Cameron has to leave at 2 o'clock so he would like to take the agenda out of order.

IEB Report:

See transcript pages 3-5.

Scope of Licensing – Commissioner Cameron stated that the scope of licensing process is well on its way. The consultants have been making recommendations to the IEB, and the IEB is making sure that it understands and agrees with the recommendations. The State Police are conducting additional checks to ensure that all of the qualifier waivers recommended by the

consultants are appropriate. The IEB has sent out three scope of licensing letters, with the goal of sending the rest of the letters by the end of the week.

Investigations Status Report – Commissioner Cameron stated that applicants for licensure have submitted two applications to the IEB, the IEB has begun the document review process, and has assigned investigative teams to the applications.

Key Policy Questions:

See transcript pages 5-25.

Region C Status Review - Commissioner McHugh stated that at the Commission's last meeting the Commission discussed a number of factors that warranted a decision about how to deal with Region C. The Commission's goal is to honor the tribal process while ensuring that Region C will not be left behind in the event that the resumed tribal negotiations are unsuccessful. He stated that he reviewed the discussion items and prepared a detailed memorandum describing three possible approaches to the current Region C situation. One approach would be for the Commission to do nothing at the moment and continue to wait for the tribal discussions to resolve. A second course would be for the Commission to do nothing at the moment but to set a deadline by which the Commission would take action if there is no tribal resolution. The third approach would be for the Commission to proceed on two tracks simultaneously, allowing the tribal process to continue to play itself out and, at the same time, setting a date for accepting applications for the RFA-1 process for commercial applicants in Region C. He stated that proceeding on parallel tracks would allow both the tribal process and commercial process to go forward until the RFA-1 is complete.

Commissioner McHugh stated that, if the Commission chose the third approach, fairness would require that the Commission set a separate deadline for the RFA-1 process in Region C to give commercial applicants in Region C the same 90 day period allowed to the commercial applicants in Regions A and B. He recommended that the Commission consider proceeding on the two track process. He stated that the Legislature did not intend to leave Region C behind economically, and proceeding on parallel tracks would be a risk reduction approach that allows the Commission to proceed in a responsible manner.

Commissioner Zuniga stated that he considers the third course to be the most advantageous. Commissioner Cameron stated that she also agrees with the third option. She stated that she was originally concerned that the commercial developers would be at somewhat of a disadvantage, but thinking of the parallel tracks in terms of competition of a different kind makes a lot of sense. She believes that proceeding on parallel tracks offers the Commission the ability to be flexible and prevent Region C from falling behind. Commissioner Stebbins stated that proceeding on parallel tracks is a good strategy to make sure that Region C does not fall behind. He asked if the parallel track process would prohibit the Tribe from becoming an applicant for a commercial license. Chairman Crosby stated that the Tribe could apply for a commercial license, and if the Tribe is not successful, it could still pursue a tribal casino if and when it does get land in trust.

Chairman Crosby clarified that there is nothing in the legislation that precludes the Commission from issuing a commercial license in Region C. He stated that, if the Commission adopts the parallel track approach, the Commission should hold a comment period to allow public feedback. Commissioner McHugh recommended that the Commission hold a one-week comment period and take a vote after the Commission reviews the comments.

Chairman Crosby stated that it is the predisposition of the Commission to enter into an RFA-1 phase for Region C as quickly as possible while respecting the Tribe's ongoing process and making no commitment to proceed with RFA-2 at the end of RFA-1.

Administration:

See transcript pages 25-40.

Report from Director of Administration - Chairman Crosby reviewed the master schedule to provide an update on the status of the Commission's workflow. He stated that the IEB would start the background checks a month earlier than planned. Chairman Crosby asked if the Commission is working on the pari-mutuel regulations and whether the Commission would need a sponsor for the legislation. David Murray, Consultant, stated that the Gaming Act only requires that the Commission write a report and draft legislative language. Chairman Crosby asked if Mr. Murray anticipates that the Commission will request legislative changes prior to the start of the racing season. Mr. Murray stated that, if the Commission voted in January to recommend legislative changes, then it is unlikely that the legislature would enact the changes in time for the racing season, but the racing season can start without any legislative changes.

Director Glovsky stated that she is spending much of her time working with Director Durenberger on the Racing Division transition, which they hope to have completed by the end of the year. She stated that she and Artem Shtatnov attended a demonstration on a document management system, which was interesting and provided valuable information to use in moving forward with finding a vendor to meet the Commission needs. Commissioner McHugh asked what the process would be to move forward the implementation of a document management system. Director Glovsky stated that the first step is to determine what the Commission's requirements are and then find someone who can help find a vendor. Commissioner McHugh stated that the need for this type of system becomes even more compelling as the Commission expands, and the Commission should include on the master schedule the process for selecting and installing the system.

Personnel Searches – Chairman Crosby stated that personnel searches are moving along as planned.

Employee Manual – Commissioner Zuniga stated that he submitted last week Chapters 4 and 5 of the Employee Manual for the Commissioners' review and he would like to vote on acceptance. Commissioner Cameron clarified that the information included in these chapters is comprised of best practices from other agencies.

Motion made by Commissioner Zuniga that Chapters 4 and 5 of the Employee Manual be approved as presented. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.

Incidental Purchases – Commissioner Zuniga stated that the Commission previously voted on a \$5,000 threshold for incidental purchases by the Commission. That is the threshold contained in statewide procurement regulations. He stated that the Executive Office of Administration and Finance has advised the Commission that this threshold is increasing to \$10,000, and Commissioner Zuniga recommended that the Commission vote to change the threshold to the new rate.

Motion made by Commissioner Zuniga to increase the threshold for incidental purchases to \$10,000 in accordance with the anticipated changes of 801 CMR, which are the procurement regulations issued by the Secretary of Administration and Finance and adopted by this Commission. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 5-0-0 vote.

Key Policy Questions (Continued):

See transcript pages 40-41.

December 11-15 Public Meetings – Chairman Crosby stated that the Commission will be meeting tomorrow for the second day's discussion of key policy questions.

Racing Division:

See transcript pages 41-45.

Report from Director of Racing Division – Director Durenberger stated that live racing in the Commonwealth concluded on November 29. She participated via telephone in the second working group meeting regarding regulatory reform. She will prepare a report regarding the discussion and where the Racing Division plans to go from here. She stated that the Racing Division is interviewing former Racing Commission staff with the goal of having new staff in place in January.

Chairman Crosby stated that the Commission's agenda lists a discussion of local aid payments; however, the Commission will not discuss local aid payments today.

Commissioner Cameron left the meeting.

Public Education and Information:

See transcript pages 45-48.

Report from the Ombudsman – Mr. Ziemba stated that he has been focusing on getting additional input on a number of the policy questions. He stated that he has had several discussions with

Legislative staff about the intent of the local aid provisions contained in the expanded gaming law. He also held discussions with potential host and surrounding communities. He announced that there is a community meeting in Everett this evening, which he will attend to explain the process that the Commission will undertake over the next few months. He stated that Springfield is hosting a community meeting tonight, during which applicants will make presentations and the public will have an opportunity to comment.

AIA Forum – Commissioner Stebbins stated that the AIA Forum is scheduled for tomorrow at 8:00a.m. at the Boston Society of Architects, 290 Congress Street. He stated that the forum will result in a white paper for the Commission with findings, suggestions, and recommendations that will be helpful for RFA 2 policy formulation .

Motion made to adjourn, motion seconded and carried unanimously.

List of Documents and Other Items Used at the Meeting

1. Massachusetts Gaming Commission December 11, 2012 Notice of Meeting Agenda
2. Massachusetts Gaming Commission November 27, 2012 meeting minutes
3. Massachusetts Gaming Commission Section 4 of Employee Handbook
4. Massachusetts Gaming Commission Section 5 of Employee Handbook
5. December 5, 2012 Memorandum Regarding Recommendation to Increase the Threshold for Approval of Certain Incidental Expenses
6. December 7, 2012 Memorandum Regarding Region C Options

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

SECTION 6. COMMUNICATIONS & OUTREACH

6.1 Communications

Communications with the Public

All contacts with the public and media and all speeches or other oral or written public statements made on behalf of the Commission, or concerning its activities, applicants or licensees, must be cleared in advance by the Commission's Director of Communications. In speeches and statements not made on behalf of Commission, 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 (and/or the secretary or the chair of the Commission) for appropriate handling.

Press Relations

The Director of Communications is the point person for all communications with the press (including inquiries from the press, press groups or any media outlet, as well as communications to the press like press releases, letters to the editor, and any clarification information to the press). Direct communication with the press is limited to the Director of Communications and the Commissioners. All inquiries from the press (even if received outside of the office, or outside of normal business hours) should be directed to the Director of Communications, and in her absence to the Chair of the Commission.

6.2 Information Technology Resources Policy *(this section was adopted on May 29, 2012)*

As part of the Commission's commitment to the utilization of current technologies, all of its employees shall have access to the internet. This policy governs the use of information technology resources ("ITRs"), including computers, PDA's, printers and other peripherals, programs, data, local and wide area networks, e-mail, and the Internet for employees and contractors ("users") of all divisions and departments under the direction of the Commission. The use of ITRs by any employee or contractor shall constitute acceptance of the terms of this policy. Accordingly, it is the responsibility of any person using Commission's ITRs to read, understand and follow this policy. The following rules require strict adherence.

Business Use: The internet and e-mail system is provided to facilitate the effective administration of the Commission's business. Users are permitted access to ITRs to assist in the performance of their jobs. The Commission reserves the right to modify this policy at any time.

Personal Use: Limited personal use of the internet and e-mail is allowed if (a) it is in compliance with this policy or any subsequent policy promulgated by the Commission (b) is reasonable in amount and (c) does not interfere with work performance or business needs. Internet use generates the possibility of breaches to the security of confidential information. It

also creates the possibility of contamination of our system via viruses or spyware. Spyware allows unauthorized people, outside of the Commission, potential access to passwords and other confidential information. Removing viruses or spyware from the Commission's network would require IT staff to invest time and attention better suited for the business of the Commission. For this reason, and to assure the appropriate use of work time, we ask all employees of the Commission to limit internet and personal e-mail use.

Ownership: All e-mail accounts, information, and messages that are created, sent, received, or stored in the Commission's e-mail system are the sole property of the Commission and are not the property of the employee or individual.

No Expectation of Privacy: The Commission's ITRs are the property of the Commonwealth of Massachusetts and are to be used in conformance with this policy. The Commission, in pursuit of legitimate needs for supervision, control and the efficient and proper operation of the workplace, will exercise the right to inspect any user's computer, any data contained in it, and any data sent or received by that computer. Users should be aware that the Commission's network administrators, in order to ensure proper network operations, will routinely monitor the volume of the Internet and network traffic together with the Internet sites visited. Use of the Commission's ITRs constitutes express consent for the Commission to monitor and/or inspect any data or messages created, sent, retrieved or received and any web sites accessed for any violations of law, breaches of the Commission's policies, communications that are harmful to the Commission, or for any other reason. Such monitoring may occur at any time, without notice, and without the user's permission.

Prohibited Acts: Provided below is a non-exclusive list of prohibited acts associated with the user's use of the Internet and Commission's e-mail system. Failure to observe this policy may subject individuals to disciplinary action, up to and including suspension of individual user accounts and/or termination of employment. Unless such use is reasonably related to the user's job, it is unacceptable for any reason to use Commission's ITR's:

- To use "Public" instant messaging (IM), including but not limited to, Internet Relay Chat (IRC), I Seek You (ICQ), and AOL Instant Messaging (AIM).
- For any illegal, fraudulent or commercial activities
- For any political purposes
- To send threatening or harassing messages, whether sexual or otherwise
- To access, download, transmit, or share sexually explicit, obscene, or pornographic materials
- To download, create or transmit words, images or references that could be viewed as libelous, offensive, harassing, illegal, impermissibly derogatory or impermissibly discriminatory on the basis of race, gender, national origin, ethnicity or sexual orientation.

- To infringe any intellectual property rights by copying or distributing unauthorized copyrighted materials
- To gain or attempt to gain unauthorized access to any computer or network
- For any use that causes interference with or disruption of network users and resources, including propagation of computer viruses or other harmful programs
- To access or intercept communications intended for other persons
- To misrepresent either the Commission or a person's role at the Commission
- To distribute chain letters
- To access online gambling sites or gaming sites unless accessing the site is necessary for the conduct of the Gaming Commission business
- To place confidential Commission materials (copyrighted software, internal correspondence, etc.) on any publicly accessible Internet computer without prior permission
- To access confidential data unless such access is required by the user's job or to disseminate rightfully accessed confidential information unless required by the user's job
- To use flash drives that have not previously been scanned for spyware (malware). Employees should ascertain from the IT department how best to ensure that previously used flash drives have been scanned to detect the presence of spyware.

User Responsibilities and Security Guidelines: Employees using the Commission's accounts are acting as representatives of the Commission. As such, employees should act responsibly and professionally so as to preserve the reputation of the Commission or the Commissioners. All communications should be written with the same level of care and professional judgment as paper memoranda or documents. In addition, users are expected to exercise reasonable judgment in interpreting this policy in making decisions about the use of the ITRs.

No employee may install software on his or her computer without approval of his or her Gaming Commission supervisor and an authorized representative of the Information Technology department. Any person with questions regarding the application or meaning of this policy should seek clarification from either the Information Technology department or the Human Resources department.

Computer Viruses: It is critically important that users take particular care to avoid compromising the security of the network. It is the employee's responsibility to ensure that their computer contains the appropriate malware and antivirus software before installing or updating any programs on their computers. Users should exercise reasonable precautions in

order to prevent the introduction of a computer virus into the local area or wide area networks. Virus scanning software should be used to check any software downloaded from the Internet or obtained from any questionable source. If an employee is not sure as to whether virus scanning software is active or running in their computer, the employee should verify with IT personnel prior to downloading or installing software. In addition, executable files (program files that end in “.exe”) should not be stored on or run from network drives. Finally, it is a good practice to scan portable media devices periodically to see if they have been infected.

Users should never share their passwords with anyone else, and should promptly notify IT personnel if they suspect their passwords have been compromised. In addition, users who will be leaving their PCs unattended for extended periods should log off of the network.

Use of Blackberries, Smartphones, Lap Tops or other Portable Devices: The Commission may in some instances approve the purchase of certain portable devices for the convenience of certain individuals if determined that it is in the interest of the Commission and for the purposes of conducting the business of the Commission after normal business hours or off site. This portability does not in any way limit this policy (i.e., business use, personal use, prohibited uses, etc.). In order for an individual to obtain a portable device, the business case for the use and need has to be approved by the employee’s supervisor. Access to a portable device does not supersede any other policies relative to time and attendance.

6.3 Social Media

The Commission recognizes that social media (networking sites) are a common form of communication and that some Commission employees maintain personal websites, weblogs, microblogs (e.g., Twitter) and/or contribute content to such sites. In general, the Commission views such activity positively, and respects the right of Commission employees to use them as avenues of self-expression and outreach, while expressing their views as private citizens on matters of public concern. When an employee publishes a statement on a matter that concerns or relates to Commission business, however, the Commission has an interest in ensuring that there is no adverse or disruptive impact on the Commission.

The Commission expects employees to observe the following important guidelines:

- Commission employees must take proper care not to purposefully or inadvertently disclose any information that is confidential, privileged, sensitive or proprietary to the Commission. Any questions about what constitutes confidential, privileged, sensitive or proprietary information should be directed to the Human Resources Division or the General Counsel’s Office.
- Since the personal site is a public space, the Commission expects its employees to be respectful to the Commission and its staff. Employees should not use the Internet to disparage the name or reputation of the Commission, its licensees, its staff, adversely impact the ability of Commission employees to do their jobs, disrupt Commission’s business, or threaten or intimidate other Commission employees, and may be subject to discipline for such conduct.

- As with other forms of communication, the employee should not engage in personal, racial, or sexual harassment, unfounded accusations, or remarks that would contribute to a hostile workplace.

In the event that an employee of the Commission misuses social media or another form of communication in a manner that is not in accordance with, or in direct violation of the guidelines in this chapter, the Commission may issue disciplinary action against the employee, ranging from a verbal warning up to and including termination.

With the exception of the Director of Communications and staff directly assigned to the Communications department, all time and effort that an employee spends on a personal site should be done on the employee's personal time, without use of any state resources such as an office computer, and without interfering with job duties or work commitments. Employees are prohibited from registering their work email addresses (Xx.Yy@state.ma.us) on personal social media sites.

In an effort to communicate more effectively and foster a participatory and transparent process, the Commission has undertaken steps to be active in social media sites (Twitter, Facebook). All content submitted to these sites on behalf of the Commission (as in section 6.1 of this handbook) shall be cleared in advance with the Director of Communications.

6.4 Speaking Engagements

As the Commission strives to ensure that its decision-making and regulatory systems engender the confidence of the public and participants, the Commission established a Speakers Bureau to provide an important face-to-face opportunity to communicate directly and facilitate a dialogue with MGC's vast constituency. The MGC Speakers Bureau also provides an opportunity to reach a specific target audience of key stakeholders such as civic and business organizations. It is incumbent upon the Commission to ensure that the public is well-informed on a number of critical issues associated with expanded gaming including but not limited to the licensing process, increased economic opportunities, community mitigation issues and the overall mission of MGC. The Speakers Bureau provides MGC with an opportunity to communicate its roles and responsibilities as well as the Commission's dedication to reducing to the maximum extent possible the potentially unintended consequences of expanded gaming. In order to create the most efficient process, requestors will be required to have a minimum audience of 30 attendees, make the request 30 days in advance and fill out a request form located on MGC's website.

It is the policy of the Commission to foster a transparent and participatory process. As such, the Commission and Commissioners are available to speak at events in organizations with a legitimate purpose and relevant topics for discussion that may relate to the business of the commission. All speaking engagements must be approved in advance by the Director of Communications.

Participation in any speaking engagement is assumed to be in an official capacity (as a Commissioner or staff of the Commission), unless expressly stipulated and clarified prior to the event.

The individual invited to participate in a speaking engagement should ascertain the following information prior to seeking approval from the Director of Communications:

- Sponsoring organization or individual (if any)
- Group(s) that can be reasonably expected to attend

The Director of Communications may make a determination that a speaking engagement does not meet the guidelines of this section or is not relevant to the mission and work of the Commission.

The individual presenting before the group is responsible for ascertaining whether a conflict of interest or the appearance of a conflict of interest may arise out of such speaking engagement. Individuals should seek the advice of the State Ethics Commission and/or the General Counsel when evaluating potential conflicts of interest.

6.5 Public Records Requests / Records Retention

The Massachusetts Gaming Commission is subject to the Commonwealth's Public Records law (M.G.L. chapter 66 section 10).

As per the law, a requestor of records does not need to invoke any section of the public records law or the law itself to make a public records request. Requests do not have to be made in writing, but the staff responding to the request or the custodian of the record may ask the requestor to put their request in writing for the purposes of clarification of the documents being sought. An electronic mail is sufficient.

All requests must be forwarded to a "Supervisor for Records Requests" at the Gaming Commission. The Commission may designate the General Counsel or his/her staff as the Supervisor of Records Requests. In their absence, all requests must be forwarded to the Commissioner Secretary of the Commission, or the Chair of the Commission. Thereafter, all employees must follow the directions of the Supervisor with respect to gathering records the Supervisor deems relevant to the request. The Supervisor(s) shall note the time that the request was made. The Supervisor is not necessarily the custodian of all or the pertinent records.

The supervisor(s) shall inform any employees who are or may be the custodian of the record(s) that a public records request has been made.

The custodians of the records shall confirm the scope and amount of the request with the supervisor. The custodians shall estimate the amount of search time to obtain the records and photocopy or print such records (where the records are kept electronically), and the number of pages that such printouts or photocopying may amount to.

The Commission may assess a photocopying or printing fee of no more than \$0.10 per page. The Commission may also assess a reasonable hourly rate of the lowest paid staff for the photocopying and search of the record. The hourly rate is \$18 / hour (even if the persons doing the searching or photocopying have a higher pay rate).

The supervisor and custodian(s) shall first estimate the number of copies and hours required to comply with such request, and communicate this estimate to the requestor prior to

compiling and photocopying the records. The fee will apply only if in the aggregate (photocopying/printing plus search time) is estimated to exceed \$10.

At any time after the request, the requestor must be informed that an option available to them is to present themselves at the offices of the Commission and examine the records requested. Upon examination the requestor may wish copies of certain or all the records examined. All photocopying will be assessed at no more than \$0.10 per page whether the person examining / compiling the record is a staff of the Commission or the person requesting the record. If the records being examined are only the original records, the requestor may only examine the records in the presence of a staff member of the Commission.

As per the public records law, certain sensitive information may be redacted/obscured from the photocopy. This information includes social security numbers, or other personal information. Certain information regarding potential and actual licensees may fall in this category, or information obtained as result of background investigations. Other sensitive information may include information obtained as part of an on-going administrative proceeding. The Commission will issue policy statements / directives relative to the type of information of an employee, licensee or prospective licensee that may be withheld for security purposes.

In general, the Commission will abide by the records retention policies of the Commonwealth, unless expressly stated in statute, directly in conflict with other statutes (i.e., open meeting law), or a more stringent policy adopted by the Commission. The Commission will issue policy statements relative to records retention policies.

6.6 MGC Mission of Transparency and a Participatory Process

6.6.1 Questions and Comments from the Public

As part of its participatory process, the Commission welcomes the comments and questions from the public but acknowledges that at times it may not be very efficient to respond to every question the Commission may receive. The Commission is committed to informing the public mainly through its website (www.mass.gov/gaming), but may also use other social media. The website includes a section to post written questions to the Commission. Where possible, the Commission will attempt to respond to individual questions.

The Commission main goal of a transparency includes the goal to provide reasonable accommodations for public attendance to and viewing of its public meetings. All meetings of the Commission are a public meeting and hence open to the public. The Commission makes available the full transcripts of its weekly public meetings, as well as the summary minutes to its meetings to the public via the website, and at times may stream live feed of its public meetings via the internet.

6.6.2 Quality Assurance of Information

The Commission has established a quality assurance process for the review of information that is to be posted to the website (including answers to Frequently Asked Questions, or presentations, minutes, transcripts and videos of public meetings). This process consists of at a minimum having an individual (not directly responsible for the original content) at the Commission perform a quality review prior to its posting. The objective of this review is to ensure that there are no typos, missing or unclear information.

The individual performing the quality review may be a Commissioner, the Executive Director, the General Counsel, the Director of Communications or the Director of Administration. In the case that any of those individuals is preparing the content for posting, a second individual is required to perform the quality review.

All employees of the Commission are expected and compelled to notify the Director of Communications if they find any information posted in the website, social media, or elsewhere that is believed to be in error or outdated.

Key Policy Question #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?

This question is intimately related to other questions concerning the role of the Commission in various aspects of the host community agreement and referendum. While the Commission has been clear that it intends to honor the “local control” emphasis in the enabling legislation, we have also established the principle that local control may be overridden by the Commission’s broad authority under G.L. c. 23K, §1(10) and §4(14), if actions at the local level may impede the critical processes established by the Commission and/or reflect badly on the integrity of the licensing process.

The Commission received 5 comments on this question:

Respondent	Approval	Comment
City of Revere	No	No legislative intent; local officials qualified to accomplish this task
Paul Vignoli	Yes	
Sterling Suffolk Racecourse	No	Extended comments on the lack of legislative intent and emphasis on the local control emphasized in the HCA process
Shesky & Froelich/City of Springfield	No	Local officials capable of accomplishing this; similar to other local guidance on local initiative petitions
Martha Robinson	Yes	Process needs corrective mechanism

Because the referendum on whether or not to host expanded gaming is such a critical element in the Legislature’s process, and since the “concise summary” of the host community agreement is such an important element in the integrity of that referendum, I found this the one place where I have thought oversight by the Commission in the HCA/Referendum process might be appropriate. I was particularly troubled by the representative of Sterling Suffolk Racecourse (during the discussion of an earlier question) that apparently SSR interprets the “concise summary” called for in c. 23K, §15(13) as a summary merely of the prescribed ballot question, rather than a concise summary of the host community agreement which is referred to earlier in the section: “that the signed agreement between the host community and the applicant shall be made public with a *concise summary*, approved by the City Solicitor or Town Council” (emphasis added.) If I heard this assertion properly, I would be quite concerned about not having approval rights for the content of the summary.

However, I think it is clear cut that the legislative intent was that the concise summary to be included with the ballot question refers to a concise summary of the host community agreement. That is not only the interpretation that the Commission and our lawyers have made, it was similarly the interpretation of the City of Revere (referring to the content of the summary in question, “in addition, I respectfully

submit that local officials are highly qualified to effectively inform voters on the contents of a host community agreement.”) and Shefsky and Froelich on behalf of the City of Springfield (“We believe that the City Solicitor or Town Councilor of a particular host community is capable of drafting a summary of the host community agreement for the ballot question as required by G.L. c. 23K, §15(13).”)

Recommendation: I somewhat reluctantly conclude that the Commission should not assert a routine approval right over the content of the summary of the HCA which accompanies the ballot question. My interpretation of the legislative intent is that the Legislature did expect that this part of the process would be very much in the control of the municipality, and it will be up to city officials, citizens, and local media to determine the appropriateness of the summary.

However, as we have reserved our right to intervene at any stage in the local process if we feel that it impedes our process or may impugn the integrity of the process, so similarly I believe we should reserve the right to intervene on the issue of the content of a summary if we find that it neglects or subverts a critical element of legislative intent.

MEMORANDUM

To: Massachusetts Gaming Commission

From: Stephen Crosby

Date: December 17, 2012

Considerations on the licensing status of Region C

Just as the Legislature did in its drafting of the Commission's enabling legislation, the Commission has been attempting to balance a variety of competing public interests in its approach to awarding an expanded gaming license to Region C, Southeastern Massachusetts. As we understand the legislative intent, those interests include the following:

- Recognizing the legitimate historic and legal rights of federally recognized tribes in Massachusetts
- Assuring equal treatment for the residents of Southeastern Mass in terms of jobs and economic development
- Limiting Southeastern Mass to a single Category 1 (casino) license and limiting Massachusetts to no more than 3.
- Creating a stable, predictable gaming business environment in Southeastern Mass.

In order to balance these interests, the Legislature in effect created a window of opportunity for a Native American Tribe to win the single license in Region C. As evidence of the Legislature's intent that this be a limited window, the Legislature set certain circumstances under which the Commission must begin the commercial application process (such as failure of timely execution and approval of a Compact, or determination that land-in-trust would not be forthcoming). And, perhaps more importantly, the Legislature never precluded the Commission from beginning the commercial process at any time in its own discretion.

Generally speaking, the Commission's position has been that if a Compact can be approved and the land-in-trust allocation made in a "reasonable" time, that this will be the preferred route. Limiting the single casino to a Tribe avoids the prospect of two casinos and moves the process in Southeastern Mass expeditiously.

With the disapproval of the Compact by the Department of the Interior, the Commission has had to face the question of whether a compact and land-in-trust will happen in a "reasonable" time, as well as try to assess all of the other contingencies outlined in Commissioner McHugh's memo of December 3. In an attempt to try to balance all of the competing interests under these circumstances, the Commission has considered starting the "parallel track" process outlined in Commissioner McHugh's memo of December 10. Under this scenario, the Tribe would continue to pursue the Compact and land-in-trust, but at the same time the Commission's lengthy

background check phase (RFA-1) would be proceeding for interested commercial parties, so that if in the end the tribal process is unsuccessful, not much time would have been lost for the resulting commercial process.

Although the parallel track being considered by the Commission has real benefits, none of the three principal options available to the Commission is without risk:

- Should the Commission continue to wait for the Tribe's success without starting the commercial process, there is a risk that the commercial process will ultimately get underway in Southeastern Mass considerably later than the commercial process in the other regions, resulting in a competitive disadvantage for the commercial venture, and a substantial delay in jobs and economic development for the people of Southeastern Mass.
- If the Commission proceeds with the commercial process, and subsequently a land-in-trust award is made by the Department of the Interior, there is the risk that the Tribe will open a Class 2 (Indian gaming) facility with little or no revenue share with the Commonwealth, to the substantial disadvantage of the commercial entity, and creating the Legislature's undesired outcome of 2 casinos in the region.
- The parallel track may have a negative impact for both the Tribe and commercial entities: the Tribe's status may be implicitly degraded, with the implication that failure in its efforts may be imminent; and commercial entities must proceed in an environment of uncertainty as to whether there will ultimately be a competitive process, and with the possibility that an award will be made to the Tribe completely independent of the merits of their particular proposals.

The Commission is painfully aware that all of these options have serious risks and imperfections, and has reached out to all interested parties to comment on its proposal. We have received comment and feedback from many Legislators, the Mayor of Taunton and his advisors, the Mashpee Wampanoags and their advisors, and a commercial entity, KG Urban Enterprises. All of the written comments have been posted to the Commission's website.

After considering all of this comment, I believe we can draw several conclusions:

- The Governor and the Tribe are in renegotiations on a Compact, which could be considered by the Legislature early in its next session
- Pursuing the commercial path runs a considerable risk of having the Tribe proceed with Class 2 gaming on its own
- The parallel track creates serious uncertainty for commercial bidders
- Regardless of what the Commission says, the parallel path may have the unintended consequence of creating a disadvantageous environment for the Tribe in its attempt to get the Compact approved in the Legislature.

Consequently, I recommend that the Commission postpone our final decision, as requested by the Mashpee Tribe, on issuing RFA-1 for a commercial license in Southeastern Mass for 90

days, until March 15, 2013. This extension of the “pre-commercial license” window will provide the Governor, the Tribe and the Legislature an opportunity to execute a satisfactory Compact, and will continue to provide the Tribe a reasonable opportunity to demonstrate its ability to claim the Region C license that was envisioned in the enabling Legislation.



Barry M. Gosin
Principal

T 212.372.2100
F 212.681.0344
www.kgurban.com
bgosin@ngkf.com

125 Park Avenue, 6th Flr.
New York, NY 10017

December 14, 2012

Mr. Steven Crosby
Chairman
Massachusetts Gaming Commission
84 State Street, Suite 720
Boston, Massachusetts 02109

RE: Region C Status Review

Dear Chairman Crosby:

I write as an equity principal in KG Urban Enterprises. As you are aware, KG has been working for many years on our plan for an urban waterfront resort casino in the City of New Bedford, in Region C.

At its meetings on December 4 and December 11, 2012, the Massachusetts Gaming Commission (the "Commission") discussed at some length the status of Region C. At both meetings, there was extensive discussion of the possibility of a "dual" or "parallel" track application process for a commercial resort gaming license in Region C. Since the Commission has invited public comment before voting on the implementation of a dual or parallel track process, I am writing to express KG's views on this concept. We wish to respectfully state that such a parallel or dual track is profoundly problematic from both a business and legal standpoint.

It is imperative that once the commercial licensing process is opened in Region C, that process must not be subject to revocation or suspension on any basis which is not also applicable to the processes in Regions A and B. Specifically, the Region C commercial license process cannot be conditional, subject to, or contingent upon the progress the Mashpee Wampanoag tribe might make toward an Indian casino. A contingent process will leave many gaming investors unable to commit the substantial capital as well as the time, effort and personnel resources necessary to proceed as an applicant in a process that could be aborted for reasons having nothing to do with the quality of a proposed project. Under the "dual track" process discussed by the Commission, an applicant is forced to assess not just its own ability to win a license on the merits, as in Regions A and B, but faces an additional and highly-significant variable totally outside each applicant's control, or even ability to influence through its own business decisions. Specifically, there is the possibility that the strength of a Region C applicant's qualifications, and the quality of the proposal itself, could be rendered irrelevant if the Mashpee tribe is deemed to have achieved "sufficient progress" toward an Indian casino.

Region C has been thus far ignored by most of the commercial gaming industry because of the Massachusetts Gaming Act's preference for the Mashpee tribe. The implementation by the Commission of a conditional or contingent process will simply compound this existing inequity. A contingent process will continue to leave the Southeast in an inferior position relative to Regions A and B by fundamentally distorting the economics of applying for the Region C license, and thereby discouraging investment in Region C.

The Commissioners have all correctly noted during your deliberations regarding Region C that commercial applicants in Regions A and B will all expend substantial resources to compete for a resort gaming license with no guarantee of winning that license. But that competition will occur solely on the merits. Any competition for a single commercial concession in a particular jurisdiction presupposes that everyone who competes cannot win. In fact, all competitors enter the process knowing that all but one of them will in fact lose. But they also enter the process knowing that the wise investment of additional time and effort in their proposal will increase their chances of prevailing. A decision to compete thus becomes a classic business decision regarding both the allocation of resources and the tactical and strategic decision-making (both on selection and deployment of personnel, and on the substance of the proposal itself) which causes an applicant and its investors to conclude that the company's qualifications and proposal will best all others. The process in Regions A and B is the same for everyone -- the existence of the process, and of the commercial license on which the applicants are bidding, are not in doubt.

Moreover, all applicants in Regions A and B enter the licensing process with both the knowledge and expectation that the process will proceed to a conclusion. Each applicant's risk hangs only on its own ability to put forward the best proposal. An applicant is wagering its own resources on its own ability to be better than its competitors and that is the very essence of the business a casino builder and operator is in. And while several Commissioners have noted that the Commission can decline to issue a license at the close of the process in those Regions, the Act permits this only should the Commission fail to receive any meritorious proposal. Thus every applicant in Regions A and B enters the competitive fray with the certainty that as long as its proposal is sufficiently meritorious, it will win -- either because it beats out other meritorious proposals, or because the Commission deems it meritorious even in the absence of other meritorious proposals. Neither the actions of any one applicant, nor the actions of an outside party, can suspend the process itself, affect the very existence of the process itself, nor affect the availability of the license itself.

In stark contrast, a contingent process in Region C will cause the Southeast to be viewed by investors not as a conventional allocation of resources to compete in an open commercial licensing process on the merits as they do in other jurisdictions, but as a fundamentally flawed business proposition: an uncertain and therefore potentially reckless investment in a process that remains subject to being aborted based on outside events beyond an applicant's control. This is a risk that quite simply does not exist in Regions A or B. And it is a risk of an entirely different nature than the risk taken by Region A and B applicants. Those applicants are betting solely on their own ability to put forth the winning application. Indeed, it is the very fairness of the process mandated by the Commission for Regions A and B, a process with no variables other than merit and quality, which has already attracted such a deep pool of interested applicants and will result in such a wide variety of proposals in those Regions.

We understand that the Commission proposes at this time to commence only with Phase I under the dual or parallel track, and intends to reassess the Indian situation once applicants have been qualified before deciding whether to open Phase II of the process to formal applications and proposals. This does not mitigate or fundamentally alter the critical flaws of a dual or parallel track process outlined above -- it magnifies them. True, the \$400,000 fee to pre-qualify is not, by itself, onerous in the context of qualifying to propose and build a \$500,000,000 casino resort property. But when one factors in the internal and outside resources needed to complete the pre-qualification process, the fatal flaw remains the same: the Commission is creating and commencing with a contingent process that may or may not ultimately proceed. This obligates Region C applicants to commit to a creeping expenditure of substantial resources to qualify for a Phase II that may not ever actually begin. It is exactly this type of uncertainty that

frightens away those who invest in high-visibility, large-scale commercial gaming development. Applicants for pre-qualification in Regions A and B faced no such uncertainty when the Commission commenced with Phase I.

Finally, even beyond the business implications of the entire Region C process possibly being aborted based on an extraneous factor, that the process would be aborted specifically because of the Mashpee's pursuit of tribal gaming implicates the fundamental violation of the Equal Protection Clause inherent in Section 91 of the Massachusetts Gaming Act. In fact, a dual or parallel track process for Region C created and implemented solely because of the Mashpee Wampanoag Tribe's existence, while Regions A and B proceed on a single track that guarantees a decision on the merits, only serves to underscore the serious Constitutional issues which have already been raised. As the Commission is aware, we continue to vigorously pursue our Constitutional claims before Judge Nathaniel Gorton in the United States District Court in Boston, as directed by the United States Court of Appeals for the First Circuit.

For all of the foregoing reasons, we urge the Commission to level the playing field in the entire Commonwealth by opening Region C to commercial gaming applicants on terms identical to those upon which the Commission has opened Regions A and B. Such action by the Commission will not only keep Region C from falling further behind the other Regions, it will attract the largest and deepest pool of qualified applicants, and thereby reap for Southeastern Massachusetts the economic benefits the legislature intended to deliver to the entire Commonwealth of Massachusetts when it passed the Gaming Act. To be clear, KG asks not that the Commission implement our notion of a "fair" process for Region C. We ask the Commission to do no more, but no less, than implement in the Southeast the Commission's own concept of a fair commercial licensing process: the one the Commission itself created for and is presently implementing in Regions A and B.

I hope that the foregoing is helpful to the Commission as it continues to discuss and deliberate the future of Region C.

Thank you for providing KG Urban Enterprises with the opportunity to comment.

Very truly yours,



Barry M. Gosin



Barry M. Gosin
Principal

T 212.372.2100
F 212.681.0344
www.kgurban.com
bgosin@ngkf.com

125 Park Avenue, 6th Flr.
New York, NY 10017

December 17, 2012

Mr. Steven Crosby
Chairman
Massachusetts Gaming Commission
84 State Street, Suite 720
Boston, Massachusetts 02109

RE: Region C Status Review

Dear Chairman Crosby:

I am in receipt of your e-mail of December 16, 2012. Thank you for the reply.

KG's internationally regarded gaming market analysts, potential investors, and our investment banker who finances these projects, all agree that Southeastern Massachusetts is one of the strongest potential markets in the United States for a resort gaming property of the type we propose. Neither the presence of a Class II slot property licensed by the Commonwealth, nor the eventual presence of a federally licensed Class II Indian gaming property, nor both, fundamentally alters the economics of our proposed Category I casino property in New Bedford. We have consistently advised those who conceived and crafted the Gaming Act that KG has been and remains unfazed by and unafraid of the future competition that an Indian Property in Southeastern Massachusetts might present. We remain committed to this position today.

Moreover, KG's urban waterfront redevelopment and industrial building re-use concept is a sufficiently unique product that a property of the sort we propose at Cannon Street will experience a bare minimum of lost business to either category of slot property discussed above.

Once again, thank you for providing KG Urban Enterprises with the opportunity to comment.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Barry M. Gosin', is written over a horizontal line.

Barry M. Gosin



The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES
STATE HOUSE BOSTON, MA 02133-1020

SHAUNNA L. O'CONNELL
STATE REPRESENTATIVE
3RD Bristol District

Committees:
House Ways and Means
Ethics
Personnel and Administration

STATE HOUSE, ROOM 237
TEL. (617) 722-2305
FAX (617) 626-0397
shaunna.o'connell@mahouse.gov

December 17, 2012

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

Dear Commissioner Crosby,

I write in reference to recent discussion by the Massachusetts Gaming Commission regarding Region C. As you may know, the district I represent as State Representative includes most of the City of Taunton, who has partnered with the Mashpee Wampanoag Tribe to host the Tribe's destination resort casino.

During the debate over expanded gaming in the Commonwealth, careful consideration was given to the rights of federally recognized Indian tribes to conduct gaming and how the Commonwealth would work with a gaming-eligible federally recognized tribe in a fair, practical way that would acknowledge their unique rights while also protecting the Commonwealth's interests and maximizing job creation and economic development in Southeastern Massachusetts.

Legislators engaged in extensive debate over these matters before we ultimately passed the Expanded Gaming Act of 2011 and sent it to Governor Patrick for his signature. Among the issues debated were the requirements the law would impose on a tribe as well as whether any deadlines should be imposed.

The law required the tribe to purchase or have an option to purchase land, negotiate an intergovernmental agreement with the host community, schedule and win a popular referendum in that community, negotiate a Tribal-State compact with the Governor, and have that compact approved by the legislature. The deadline to meet all of these requirements was established as July 31, 2012. Much to the surprise of many observers, the Mashpee Wampanoag Tribe met all of these requirements on their proposed destination resort casino in Taunton.

It is important to point out two requirements that the law did not make. First, although the law required the Tribe to negotiate a compact with the Governor and receive legislative approval before July 31st, it was silent on the issue of federal approval of said compact. While we all wish the compact had been approved by the Department of the Interior, the disapproval does not indicate that the Tribe has somehow failed to meet a requirement; thus, the Tribe and the Governor should be afforded time to reach another agreement which the legislature can again consider.

Second, the legislature considered setting a deadline on the Tribe to receive its land in trust. Amendments were filed that would have imposed this deadline, they were debated, and the legislature voted not to include such a deadline. The statute clearly provides that the gaming commission can consider bids for a Category 1 license in Region C only if the commission first determines that the tribe will not have land taken into trust by the United States Secretary of Interior.

Like the Commission, I am eager to see the jobs and economic benefits of a destination resort casino in Southeastern Massachusetts. Significant progress has been made by the Mashpee Wampanoag Tribe and the City of Taunton and its residents to move this project forward.

I am also aware of the feelings of some of my colleagues who wish to see proposals for destination resort casinos in their cities or towns; however, the fact remains that the Expanded Gaming Act respects the federal rights of the Mashpee Wampanoag Tribe to conduct gaming in Southeastern Massachusetts. The Tribe has met every requirement of this law.

The City of Taunton and its residents have overwhelmingly approved the project and are deeply invested in bringing this incredible economic opportunity to the city, which eagerly looks forward to the good careers and influx of resources this project will provide.

Thank you for the opportunity to comment on this matter.

Sincerely,

Shaunna O'Connell
State Representative



COMMONWEALTH OF MASSACHUSETTS
HOUSE OF REPRESENTATIVES
 STATE HOUSE, BOSTON 02133-1054

ANTONIO CABRAL
 STATE REPRESENTATIVE
 13TH BRISTOL DISTRICT
 STATE HOUSE, ROOM 466
 BOSTON, MA 02133
 TEL. (617) 722-2017

CHAIRMAN
 HOUSE COMMITTEE ON BONDING, CAPITAL EXPENDITURES
 AND STATE ASSETS
 (508) 997-8113 (DISTRICT)
 E-Mail:
 Antonio.Cabral@MAhouse.gov

December 7, 2012

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

Re: Class III Gaming License, Region C

Chairman Crosby,

I want to thank you and your fellow commissioners for considering how to ensure that the recently opened application process for Class III casino licensure is fair for every region of the Commonwealth. I write to urge the Commission to move immediately to allow Region C potential bidders to join the Request for Applications Phase I ("RFA-1") process currently under way for Regions A and B.

As you know, native tribes seeking to open a casino offering Class III gaming in Massachusetts faced substantial hurdles at the time we in the Legislature passed the Gaming Act in 2011. As a member of that Legislature, I share your view, expressed in your recent public remarks, that the Legislature crafted the Gaming Act to allow for only a brief window for tribes to explore their opportunities for casino development in recognition of these substantial hurdles the tribes faced and of the importance of insuring that Region C not be left behind as the other Regions moved toward opening casinos.

The United States Department of Interior's rejection of the Tribal Compact agreed between the Commonwealth and the Mashpee Wampanoag Tribe on October 12, 2012 and recent federal court decisions have added substantially to those hurdles, as Commissioner McHugh noted in his December 4, 2012 Memorandum to the Commission. In fact, it is now even more challenging for any tribe to be able to offer Class III gaming in Massachusetts pursuant to existing law in any reasonable time frame. It is, therefore, imperative that the Commission move immediately to allow Region C to join the rest of the Commonwealth in the ongoing licensing process. The Commission can and should open the existing RFA-1 application process to Region C bidders and extend the deadline for filing applications pursuant to 205 CMR 110 to allow Region C bidders to adequately prepare their applications.

We in Southeastern Massachusetts began the discussion of bringing casinos to Massachusetts more than two decades ago. The residents of my city, New Bedford, have twice voted to express their desire for casino development. I hope the Commission will immediately exercise the discretion granted to them in the Gaming Act to allow our Region to join the rest of the Commonwealth and investigate casino development opportunities.

Sincerely,



ANTONIO F.D. CABRAL

State Representative, 13th Bristol District

Chairman, Committee on Bonding, Capital Expenditures and State Assets

Cc: Commissioner Gayle Cameron
Commissioner James McHugh
Commissioner Bruce Stebbins
Commissioner Enrique Zuniga

S.C

Smith, Segel & Ruddock

Counsellors At Law
50 Congress Street
Suite 500
Boston, MA 02109
Telephone (617) 523-0600
Facsimile (617) 523-7171

Louis A. Rizoli, Of Counsel
(617) 775-0528

December 11, 2012

Mr. Stephen Crosby
Chairman
Massachusetts Gaming Commission
84 State Street, Suite 720
Boston, MA 02109

Dear Chairman Crosby:

I write on behalf of the Mashpee Wampanoag Tribe ("the Tribe").

As you know, Chairman Cromwell has previously written to the Commission about the great progress the Tribe has made and is making towards fulfilling the Tribe's dream of economic development for Southeastern Massachusetts through the opening of a casino in Taunton. The Tribe has now asked me to respond briefly to the letter sent to the Commission by Attorney E. Abim Thomas on November 27, 2012. The Tribe believes that Attorney Thomas' letter contains several inaccurate statements concerning the Massachusetts Expanded Gaming Act, Acts 2011, Ch. 194 and the Tribe very much disagrees with Attorney Thomas' conclusion that the Commission may begin to solicit bids for a commercial gaming license in Region C.

First, under the heading of Legal Interpretations, Ms. Thomas states:

The Expanded Gaming Act was signed into law for the purposes of advancing "job creation and economic development in the Commonwealth⁴"

Footnote 4 states: "See Governor Patrick Signs Expanded Gaming Legislation (Nov. 22, 2011), available at <http://www.mass.gov/governor/pressoffice/pressreleases/2011/111122-gaming-bill-signed.html>

The Governor's press release is of no legal significance. Section 1 of Chapter 23K of the Massachusetts General Laws inserted by section 16 of chapter 194 of the acts of 2011 does state legislative intent.

It provides, in pertinent part:

The General Court finds and declares that:

(5) the commonwealth must provide for new employment opportunities in all sectors of the economy, particular opportunities for the unemployed, and shall preserve jobs in existing industries in the commonwealth; this chapter sets forth a robust licensing process whereby an applicant for a gaming license shall submit a comprehensive plan for operating a gaming establishment which includes how the applicant will foster and encourage new construction through capital investment and provide permanent employment opportunities to residents of the commonwealth;

(6) promoting local small businesses and the tourism industry, including the development of new and existing small business and tourism amenities such as lodging, dining, retail and cultural and social facilities, is fundamental to the policy objectives of this chapter;

Atty. Thomas then goes on to state that:

1. The Commission is empowered to seek applications in Region C regardless of the outcome of the compact and the land-in-trust decision and quotes parts of Section 91 as follows:

Section 91(e) of the Expanded Gaming Act states: "if a mutually agreed upon compact has not been negotiated by the governor and Indian tribe or if such compact has not been approved by the general court before July 31, 2012, the commission shall issue a request for application for a category 1 license in Region C."

In subsection 91(e), there is no period after Region C. Rather, subsection (e) continues to state after the words Region C:

"pursuant to chapter 23K of the General Laws not later than October 31, 2012; provided, however, that if, at any time on or after August 1, 2012, the commission determines that the tribe will not have land taken into trust by the United States Secretary of the Interior, the commission shall consider bids for a category 1 license in Region C under said chapter 23K."

Atty. Thomas then goes on to quote various sections of G.L. c. 23K referenced in her footnotes 5 and 6 but she does not state that Section 91 of said chapter 194 consists of five subsections (a) through (e). It is noteworthy that both subsections (a) and (e) begin with the following words:- "Notwithstanding any general or special law or rule or regulation to the contrary," These words are extremely important, and it should be noted that they do not appear in subsections (b), (c) or (d). Therefore as case law has stated time and again, statutes are written so as to give effect to each

word. This means that in spite of what appears in any other law, rule or regulation, this subsection would supersede any such language¹.

We now must turn to the language of said subsection (e):

(e) Notwithstanding any general or special law or rule or regulation to the contrary, if a mutually agreed upon compact has not been negotiated by the governor and Indian tribe or if such compact has not been approved by the general court before July 31, 2012, the commission shall issue a request for applications for a category 1 license in Region C pursuant to chapter 23K of the General Laws not later than October 31, 2012; provided, however, that if, at any time on or after August 1, 2012, the commission determines that the tribe will not have land taken into trust by the United States Secretary of the Interior, the commission shall consider bids for a category 1 license in Region C under said chapter 23K.

After the important notwithstanding language it states "if a mutually agreed-upon compact ² has not been negotiated by the governor and Indian tribe or if such compact has not been approved by the general court before July 31, 2012³ the commission shall issue a request for applications for category 1 license in Region C pursuant to Chapter 23K of the general laws no later than October 31, 2012;

Since the conditions of this phrase have been met, then the Commission shall not issue a request for applications for category 1 license in Region C by October 31, 2012.

Said subsection (e) then goes onto state....; provided, however, that if at any time after August 1, 2012, the Commission determines that the tribe will not have taken land into trust by the United States Secretary of the Interior, the Commission shall consider bids for a category 1 license in Region C under said Chapter 23K.

The statute provides only one circumstance in which the Commission may consider bids for a category 1 license in Region C if and only if the Commission determines that the Tribe will not have land taken into trust by the United States Secretary of the Interior. As you know, the Tribe's land into trust application is currently pending before the Department of the Interior ("DOI") which has sole jurisdiction to make any decision.

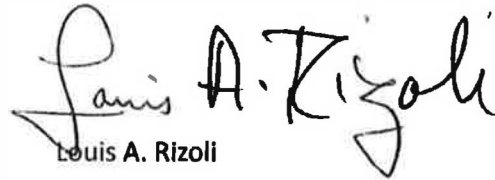
¹ See Stop and Shop Supermarket Co. v. Urstadt Biddle Preps, Inc., 433 Mass. 285, 289 (2001)

² See Subsection (d) which states "A compact negotiated and agreed by the governor and the tribe shall be submitted to the general court for approval.

³ On July 12, 2012 Governor Patrick submitted to the Legislature House Bill 4260 which is the agreed upon compact between the Commonwealth of Massachusetts and the Mashpee Wampanoag Tribe. On July 16, 2012, the House of Representatives approved the compact and on July 17, 2012 the Senate approved the compact. On July 30, 2012, Governor Patrick signed Chapter 1 of the Resolves of 2012 approving and acknowledging the actions of the Legislature.

Thank you for your consideration in this matter. Please feel free to contact me if you desire more information or wish to discuss this matter further. On behalf of my client, I respectfully request a written response to my letter.

Very truly yours,

A handwritten signature in black ink that reads "Louis A. Rizoli". The signature is written in a cursive style with a large initial "L" and "R".

Louis A. Rizoli

LAR/ss



The Town of Barnstable

Office of Town Manager

367 Main Street, Hyannis MA 02601

www.town.barnstable.ma.us



Office: 508-862-4610
Fax: 508-790-6226
Email: tom.lynch@town.barnstable.ma.us

Thomas K. Lynch, Town Manager

December 18, 2012

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

Chairman Crosby,

Thank you for the opportunity to comment on the re-opening of Region C to Phase 1 Request for Applications as the Gaming Commission begins to reassess gaming in Region C as the tribal process proceeds.

While we understand the Commonwealth's approach to gaming we have grave concerns about the impact of such large scale development in Barnstable and offer the following comment for your consideration.

The Town of Barnstable serves as the regional hub for Cape Cod. Barnstable's village of Hyannis, the urban core of the Cape, serves as the job and service center, hosts regional transportation systems, healthcare and government facilities all set within an environment of natural systems. Natural systems within Barnstable, and as they connect to regional systems, are integral to our economy and quality of life.

Rapid growth in past decades created a demand for infrastructure capacity that Barnstable strives to provide for itself and regional users. Barnstable's infrastructure systems are planned to provide capacity for existing development and modest economic growth. Implementing improvements to address unmet needs for wastewater and roadway safety and congestion infrastructure to appropriately accommodate existing development is ongoing and will continue into the future.

The impacts inherent with the large scale development contemplated for gaming in Region C can not be supported in Barnstable – not by our environment, not by our infrastructure and not by our economy.

Kind regards,

Thomas K. Lynch
Town Manager

Milby, Brandon (MGC)

From: Koczera, Robert (HOU) <robert.koczera@mahouse.gov>
Sent: Friday, December 14, 2012 12:24 PM
To: mgccomments (MGC)
Subject: Region C

Dear Members of the Massachusetts Gaming Commission:

The Massachusetts Gaming Commission should make a timely decision on the ability of the Mashpee Wampanoag tribe to secure land in federal trust in light of the Carcieri Supreme Court decision. The unlikelihood that Congress will pass legislation to address the Carieri decision adds to the urgency for the Gaming Commission to allow for a commercial category 1 license for region C. To do otherwise would be a great disservice to the people of the southeast region of the Commonwealth, who would benefit from the job opportunities a commercial casino would bring to the area. The Carcieri decision effectively blocks land being taken into trust, at a minimum it ensures the process to place land in federal trust will be litigated taking years, not months to resolve, with the definite possibility of an adverse result.

I strongly encourage the Commission to pursue the schedule Commissioner McHugh is proposing relative to pre-qualifying commercial developers for region C, to ensure this region does not fall behind the other two regions of the Commonwealth. The Massachusetts Gaming Commission should affix a date no later than June 2013 to allow commercial bids for a category 1 license in region C. Such a timeframe would ensure region C is not left behind relative to the issuance of category 1 license in the other two regions of the Commonwealth. It is important for the Commission to use their authority to set a date certain from which the Commission will act on the issuance of a commercial casino license in region C.

Sincerely,

Robert M. Koczera
Massachusetts State Representative
Eleventh Bristol District

Milby, Brandon (MGC)

From: Nick Tigano <nicktigano@gmail.com>
Sent: Monday, December 17, 2012 6:33 PM
To: mgccomments (MGC)
Subject: Region C

Dear Chairman and Commisioners of the MGC,

I would like to start by thanking you for accepting input on this very important issue. I feel as though you have done an exceptional job in regards to transparency, and care for the residents of this great state. Your management thus far of the process makes me confident that you will effectively administer the legislation, and regulate the casinos that will soon be built across the Commonwealth.

That being said, it is that same confidence that turns into fear for the lack of regulatory oversight this same commission will have over a tribal casino. With all other issues aside, that very fact alone concerns me dearly.

I write to you today to make 2 points. The first point is that it is imperative to the region that you accept bids from commercial developers. I think that in doing so, you will be able to clearly identify the benefits of a commercial casino over that of a tribal. I think that we as a state have done a fair job and gave sufficient time for a tribal casino to take hold, but facing the facts that the Mashpee Wampanoag will NEVER get land into trust is imperative. It is imperative not only to the Gaming Commission and the Commonwealth, but to the residents, municipalities, and businesses of Region C.

The other item in which I would like to point out, to help you in coming to a decision on how to move forward with the region is that even if the Mashpee Wampanoag do get their land in trust application approved, I want to make it very clear to you that I will be among the first of at least a few local residents to file suit, halting any and all development until the higher court has made a decision. This has been done as in the Patchak decision (Doc. #11-247). Even in the absence of my lawsuit, it is evident that others in the region, including businesses, will likely file suit as well.

Please understand that I do not mean this as a threat of any means, simply as a reminder that there are too many uncertainties with allowing this tribe more and more time to meet the requirements under IGRA, and the expanded gaming legislation, and this will hold up the region indefinitely until this very commission, with their rightful jurisdiction, decides to open the region and show the tribe that the only thing "inevitable" about their casino is the fact that it will never come, and that the members of the tribe, along with their children will forever be indebted by this horse and pony show.

I thank you again for allowing the residents of this great state to be a part of the process, and wish you all a very merry holiday season.

Best Regards,

Dominic Tigano
1701 County Street
East Taunton, MA 02718

From: Carolyn Crowell
To: mgccomments (MGC)
Subject: Region C
Date: Sunday, December 16, 2012 3:18:04 PM

I am for the Wampanaog 's request for gaming in Mass.

There should be no other licenses given to other groups in eastern Mass. The competition with 2 other licenses in the state is enough competition for the gambling dollar, with the proximity with those already existing in Conn.

Carolyn Crowell

Attached for public and practitioner comment is draft TIR 12-X, Withholding on Wagering Winnings. The TIR provides guidance on the tax law changes made by St. 2011, c. 194, An Act Establishing Expanded Gaming in the Commonwealth ("the Act"). The TIR explains amendments made by the Act to G.L. c. 62, the personal income tax, G.L. c. 62B, withholding of personal income tax, and G.L. c. 62C, tax administration. Please e-mail any comments on the draft Technical Information Release no later than January 11, 2013 to the following address: rulesandregs@dor.state.ma.us

WORKING DRAFT FOR PRACTITIONER COMMENT 12/17/12



Personal Income Tax, Withholding,
Tax Administration
Technical Information Release 12-X

Massachusetts
Department of
Revenue

Withholding on Wagering Winnings

On November 22, 2011, the Commonwealth enacted An Act Establishing Expanded Gaming in the Commonwealth ("the Act").¹ The Act added new chapter 23K to the General Laws which provides for expanded gaming in Massachusetts under the jurisdiction of the Massachusetts Gaming Commission. The Act authorizes the Massachusetts Gaming Commission to license certain gaming establishments: one casino in each of three regions in the state, and a single slots parlor that can be in any region. This TIR explains the changes made by the Act to chapter 62, the personal income tax, chapter 62B, the withholding tax, and chapter 62C, tax administration.

A. Personal Income Tax, G.L. c. 62

For purposes of the personal income tax, Massachusetts gross income is federal gross income as defined under the Internal Revenue Code ("Code" or "IRC") of January 1, 2005, with certain modifications not relevant here.² Federal gross income is all income from whatever source derived, except from those sources specifically excluded by the Code. Federal gross income includes winnings from all types of wagering, including the Massachusetts lottery and other lotteries, casino gaming, bingo, raffles, dog and horse track betting and any other type of gambling.³

A resident of Massachusetts must include in Massachusetts gross income any lottery and wagering winnings includible in federal gross income, whether the winnings are from wagering in Massachusetts or in another state or jurisdiction. A resident may take a credit against the Massachusetts personal income tax for income taxes due to other states, any territory or possession of the United States, Canada or any of its provinces, on any item of Massachusetts gross income.⁴

A nonresident is subject to the personal income tax on certain types of Massachusetts gross income that arise from Massachusetts sources.⁵ Under the Act, the scope of Massachusetts source income is expanded to include the following wagering winnings:

¹ St. 2011, c. 194.

² G.L. c. 62, §§ 1, 2.

³ IRC § 61(a).

⁴ G.L. c. 62, § 6(a).

⁵ G.L. c. 62, § 5A.

. . . items of gross income derived from or effectively connected with: . . . (2) the participation in any lottery or wagering transaction within the commonwealth, including gaming winnings acquired at or through a gaming establishment licensed under chapter 23K; . . .⁶

Accordingly, a nonresident's lottery or wagering winnings from Massachusetts sources are subject to the Massachusetts personal income tax. For a nonresident, wagering income is Massachusetts source income if the winnings are derived from any of the following: (1) A casino or slots parlor located in Massachusetts, (2) the Massachusetts lottery, (3) a multijurisdictional lottery if the ticket was purchased within Massachusetts, (4) pari-mutuel wagering paid by a Massachusetts racetrack, or (5) any other wagering transaction within Massachusetts.

A nonresident whose Massachusetts gross income (Massachusetts source income) exceeds either \$8,000 or the prorated personal exemption, whichever is less, is required to file a Massachusetts income tax return.⁷ If a nonresident's state of residence has an income tax, the nonresident may be able to claim a credit for tax paid to Massachusetts on the income tax return for the home state.

B. Withholding of Personal Income Tax, G.L. c. 62B

The Act, effective November 22, 2011, provides that wagering winnings are subject to Massachusetts withholding as follows:

Every person, including the United States, the commonwealth or any other state, or any political subdivision or instrumentality of the foregoing, making any payment of lottery or wagering winnings which are subject to tax under chapter 62 and which are subject to withholding under section 3402 of the Internal Revenue Code, without the exception for slot machines, keno and bingo played at licensed casinos in subsections (q)(5) and (r) of said section 3402 of the Internal Revenue Code, shall deduct and withhold from such payment an amount equal to 5 percent of such payment, except that such withholding for purposes of this chapter shall apply to payments of winnings of \$600 or greater notwithstanding any contrary provision of the Internal Revenue Code. For the purposes of this chapter and chapter 62C, such payment of winnings shall be treated as if it were wages paid by an employer to an employee.⁸

Accordingly, a payor of Massachusetts lottery or wagering winnings of \$600 or greater is required to deduct and withhold Massachusetts personal income tax in an amount equal to five percent of a payment made to a Massachusetts resident or a nonresident, in the following situations:

1. The winnings are subject to tax under chapter 62, and
2. The payment is subject to withholding under § 3402 of the Code⁹, modified as follows:

⁶ G.L. c. 62, § 5A as amended by St. 2011, c. 194, § 27.

⁷ G.L. c. 62, §§ 5 and 5A; A nonresident taxpayer's personal exemption must be prorated based on the ratio of Massachusetts source income to the gross income that would have been taxed to the taxpayer had he or she been a Massachusetts resident for the taxable year.

⁸ G.L. c. 62B, § 2 (seventh paragraph, first and second sentences), as amended by St. 2011, c. 194, § 28.

⁹ In general, wagering winnings that are subject to federal withholding are those in excess of \$5,000. The federal regulations provide that winnings subject to withholding means any payment from:

1. A wager placed in a State-conducted lottery resulting in winnings greater than \$5,000;
2. A wager placed in any other sweepstakes, wagering pool, or lottery, including a pari-mutuel pool with respect to horse races, dog races, or jai alai, resulting in winnings greater than \$5,000; and
3. Any other wagering transaction where the winnings exceed \$5,000 and are at least 300 times as large as the amount of the wager.

- Payments of winnings of \$600 or greater are subject to Massachusetts withholding notwithstanding higher dollar thresholds for federal withholding in § 3402 of the Code.
- Payments of winnings of \$600 or greater from a slot machine, keno or bingo played at licensed casinos are subject to Massachusetts withholding notwithstanding an exemption from federal withholding in § 3402 of the Code.¹⁰

Horse and Dog Racing. Under prior law,¹¹ there was an exemption from Massachusetts withholding for winnings from horse and dog racing. The Act removed the exemption from Massachusetts withholding for winnings from horse and dog racing. Under the Act, a payment of winnings of \$600 or greater from horse or dog racing (including winnings from simulcast horse or dog racing) is subject to Massachusetts withholding.¹²

Massachusetts Withholding Required on Certain Winnings Exempt from Federal Withholding. Where the winner provides his or her taxpayer identification number (TIN), Code § 3402(q)(5) provides an exemption from federal withholding on winnings from a slot machine, keno and bingo.¹³ However, Massachusetts does not adopt this exemption from withholding. Thus, Massachusetts withholding is required from a payment of winnings of \$600 or greater from a slot machine, keno or bingo.

Winnings Treated As Wages. For the purposes of chapter 62B, Withholding of Taxes on Wages and Declaration of Estimated Income Tax, and chapter 62C, Tax Administration, a payment of winnings is treated as if it were wages paid by an employer to an employee and withheld according to the applicable employer withholding schedule.¹⁴

Identification. Before or at the time a person receives a payment of winnings that is subject to Massachusetts withholding, the payee must furnish to the person making such payment a statement, made under the penalties of perjury, containing the name, address and taxpayer identification number of the person receiving the payment and of each person entitled to any portion of such payment.¹⁵ Proof of identity includes a Driver's License or other State-issued photo identification.

¹⁰ Federal law requires casinos to report winnings of \$1,200 or more from bingo and slot machines. The federal requirement is a reporting requirement, not a requirement that the casino withhold tax from winnings from a slot machine, keno or bingo.

¹¹ Prior to the Act, pursuant to G.L. c. 62B, § 2 (seventh paragraph), wagering winnings subject to Massachusetts withholding were described as follows:

Every person, including the United States, the commonwealth or any other state, or any political subdivision or instrumentality of the foregoing, making any payment of winnings, except winnings from horse and dog racing, which are subject to tax under chapter sixty-two and which are subject to withholding under section thirty-four hundred and two (q) of the Internal Revenue Code shall deduct and withhold from such payment an amount equal to five per cent of such payment, except that such withholding for purposes of this chapter shall apply to payments of winnings of \$600 or greater notwithstanding any contrary provisions of the Internal Revenue Code, as amended from time to time. For purposes of this chapter and chapter sixty-two C, such payment of winnings shall be treated as if it were wages paid by an employer to an employee.

¹² The Massachusetts Gaming Commission regulates simulcasting for horse racing, harness racing, and dog racing. Effective January 1, 2010, dog racing in Massachusetts is prohibited. See G.L. c. 128A, § 14E. However, under the regulation of the Massachusetts Gaming Commission, simulcasting in Massachusetts of dog racing taking place outside of Massachusetts is permitted.

¹³ Although not subject to federal withholding, the following winnings must be reported to the Internal Revenue Service on Form W2-G: (1) Winnings (not reduced by the wager) of \$1,200 or more from a bingo game or slot machine, and (2) Winnings (not reduced by the wager) of \$1,500 or more from a keno game. If a winner fails to provide his or her TIN, the winnings are subject to federal withholding.

¹⁴ G.L. c. 62B, § 2 (seventh paragraph, third sentence).

¹⁵ G.L. c. 62B, § 2 (seventh paragraph, fourth sentence).

Amounts Subject to Massachusetts Withholding. Payors must withhold Massachusetts personal income tax each time a payor makes a single payment of lottery or wagering winnings of \$600 or greater. It does not matter that several individuals may jointly hold the winning ticket and each person's "share" is less than \$600.¹⁶ If the proceeds from the wager qualify as winnings subject to Massachusetts withholding, then the total proceeds from the wager, and not merely amounts in excess of \$600 are subject to withholding. In determining the amount paid with respect to a wager, proceeds which are not money, e.g. where the winnings consist of a car or boat, shall be taken into account at the fair market value.

Form W2-G. The payor must provide a withholding statement, Form W2-G, Certain Gambling Winnings, on all winnings of \$600 or greater. Some winners will receive the Form W2-G at the time of the payment of wagering or gaming winnings. If not, the payor must furnish a Form W2-G to the payee before January 31 of the following year.¹⁷

Liability for Failure to Withhold or Pay Over Withheld Taxes. A payor or other person required to withhold who fails to withhold or pay to the Commissioner any sum required by the withholding statutes to be withheld or paid shall be personally and individually liable therefor to the Commonwealth, together with related interest and penalties under G.L. c. 62B and G.L. c. 62C.¹⁸

C. Annual Reports by Entities Doing Business in Massachusetts, G.L. c. 62C, § 8

Information Return. Every person or entity doing business in the Commonwealth who makes payments which are taxable to the recipient under G.L. c. 62, the personal income tax, must file an annual report with the Commissioner: (1) giving the names and addresses of all residents of Massachusetts and other persons deriving income in Massachusetts to whom it has paid any income subject to the personal income tax during the preceding calendar year on the same basis as is required by the federal government under the Code, and (2) state in such report the amount of such income so paid by it.¹⁹

Under the Act, the same basis of reporting must be utilized for income that is subject to taxation or withholding under chapter 62 or 62B but is not subject to federal taxation or withholding under the Code.²⁰ Thus, a person making payments of winnings subject to the Massachusetts personal income tax is required to file an information return in Massachusetts even if the winnings are not subject to federal income tax or withholding.²¹

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WORKING DRAFT FOR PRACTITIONER COMMENT 12/17/12

¹⁶ If winnings are to be split among several winners, winners are reported on Form 5754, Statement by Person(s) Receiving Gambling Winnings.

¹⁷ G.L. c. 62B, § 5 (first paragraph).

¹⁸ G.L. c. 62C, § 5.

¹⁹ G.L. c. 62C, § 8. See also Department Directives 93-5, 94-10, and 97-3 which set out the reporting requirements for filing annual information reports.

²⁰ G.L. c. 62C, § 8 (first paragraph), as amended by St. 2011, c. 194, § 30.

²¹ G.L. c. 10, § 38 provides for the licensing of certain organization to conduct beano games, raffles or bazaars. The Act does not change the longstanding requirement under G.L. c. 62C, § 18 that every organization operating or conducting a game under G.L. c. 10, § 38 must within ten days after such game is held file an information return with the Commissioner containing the names and addresses of all persons receiving prizes over \$500 in such game and the amount of every such prize.