



# The Commonwealth of Massachusetts

## Massachusetts Gaming Commission

### NOTICE OF MEETING and AGENDA

September 25, 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, September 25, 2012  
1:00 p.m.  
Boston Convention and Exhibition Center  
415 Summer Street  
Room 150  
Boston, Massachusetts

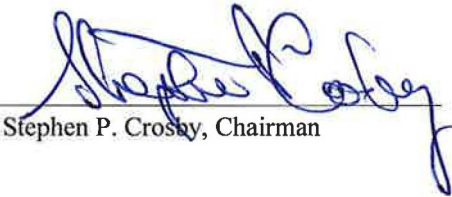
#### **PUBLIC MEETING - #29**

1. Call to order
2. Approval of minutes
  - a. September 11, 2012 Meeting
  - b. September 18, 2012
3. Project Work Plan
  - a. Consultant status report
    - i. Strategic Plan draft
    - ii. Draft Master Schedule
  - b. "Out of sequence" policy decisions and/or community/developer advisories
  - c. Phase I regulations
4. Administration
  - a. Personnel searches
  - b. Report from Director of Administration
5. Finance/Budget
  - a. Update
  - b. Commission personnel policy
6. Racing Division
  - a. Operations Update
7. Public Education and Information
  - a. Community and/or Developer outreach/responses to requests for information
    - i. Chelsea questions
    - ii. Springfield Ethics Commission opinion
  - b. Acting Ombudsman Report
    - i. List of key contacts for applicants
    - ii. Community mitigation reimbursements
  - c. Discussion of Diversity/Inclusion Forum September 19<sup>th</sup>
    - i. Possible new Deputy Director

8. Research Agenda
  - a. Status report
  
9. Other business – reserved for matters the Chair did not reasonably anticipate at the time of posting

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

9/21/12  
(date)

  
Stephen P. Crosby, Chairman

**Date Posted to Website:** September 21, 2012 at 1:00 p.m.

The Commonwealth of Massachusetts  
Massachusetts Gaming Commission

Meeting Minutes

**Date:** September 11, 2012

**Time:** 1:00 p.m.

**Place:** Springfield Technical Community College  
Scibelli Hall Auditorium  
Springfield, MA

**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 Commission's 26<sup>th</sup> public meeting. A moment of silence was observed for all who died as a result of the September 11, 2001 attacks.

**Approval of Minutes:**

See transcript pages 2-5.

Commissioner McHugh stated that the minutes for August 28, 2012 are ready for approval. Several corrections were made to the minutes.

*Motion made by Commissioner McHugh that the minutes of August 28, as corrected, be adopted. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 5-0-0 vote.*

Chairman Crosby made a correction to the September 4, 2012 minutes.

*Motion made by Commissioner McHugh to approve the minutes of September 4 as corrected. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.*

**Springfield Schedule and Process:**

See transcript pages 5-117.

Chairman Crosby stated that the Commission invited Domenic J. Sarno, the Mayor of Springfield, to attend this meeting to so that the Commission could discuss with him the City's selection of a gaming consultant and the process the City is using to select a Class I casino developer or developers. Mayor Sarno addressed the Commission. He stated that the City's goal

is to obtain the best possible casino proposal for the City, its residents, and the Commonwealth. The City's process, he stated, was designed to be open and transparent. To that end he and his representatives had met with the City Council, community groups, neighborhood groups and will continue to meet with those groups both to update them on the progress of the selection effort and to seek their input on it. He continued by stating that the Commission and the City both have roles in the selection process and he looks forward to working cooperatively with the Commission in that endeavor.

Mayor Sarno then invited Joseph F. Wagner, Co-chair of the Legislature's Joint Committee on Economic Development and Technology, to address the Commission. Chairman Wagner began by stating that application of many provisions of the expanded gaming legislation was, by legislative design, subject to the Commission's interpretation. He also stated that he appreciated the Commission's effort to create a transparent process, free of politics, for implementing the legislation and he also agreed that local officials in Springfield have tried to be transparent in their approach to choosing a potential developer or developers. He stated that the politics he sees being played are more often than not being played by people with casino interests. He would like to see a successful project in Western Massachusetts and he pledged his support to the Commission and to local officials to provide legislative guidance.

Edward Pikula, Springfield City Solicitor, and Kevin Kennedy, the City's Chief Development Officer, then addressed the Commission. Mr. Pikula stated that under the expanded gaming legislation the City is responsible for negotiating the best possible host community agreement. He stated that the gaming industry is highly specialized. Casino operators have high powered consultants in order to negotiate the best possible agreement they can obtain and the City needs to utilize the same kind of high-powered consultants. He stated that the City is concerned about the appearance of conflict of interest but that the consultant had followed the disclosure procedure required by Mass, Gen Laws 268A, § 26(b)(3). Mr. Pikula provided a copy of this disclosure to the Commission. As for the selection process, Mr. Pikula said that the City posted an RFP to solicit consultants and received replies from many consultants. The respondent ultimately chosen was the Chicago firm of Shefsky and Froelich, which disclosed to the City that it represented MGM and Penn National in Illinois and that it had represented Hard Rock in the past. The firm stated, however, that it did not represent any gaming company with Massachusetts interests and would not do so while it was assisting the City.

Chairman Crosby asked if the City Council were involved in the RFP and selection process. Mr. Pikula stated that Springfield has a Plan A charter under which the Mayor is responsible for the executive functions and the City Council is the legislative branch. He stated that, thus far, the City Council's only involvement in the process had to do with appropriating a budget. Chairman Crosby asked if the City Council was aware of Shefsky & Froelich representation of MGM and Penn National at the time it approved the budget. Mr. Pikula stated that he believed that the budget process preceded the selection of a consultant. Chairman Crosby asked when the request for an opinion was made to the Ethics Commission. Mr. Pikula stated that the request was made on August 31. Mr. Pikula also stated that the City has a signed contract with the Shefsky and Froelich for the services the firm will provide.



Commissioner Cameron asked how the City would respond to a potential casino bidder who claims to see a conflict. Mr. Pikula stated that the City, as well as Shefsky & Froelich, does not see a conflict and opinion from the Ethics Commission is pending. Commissioner Cameron asked if the City will make the Ethics Commission ruling public. Mr. Pikula stated that that would be a decision made by Shefsky & Froelich. Chairman Crosby stated that everyone involved in this process needs to go out of their way to be extraordinarily sensitive to what could possibly be construed as the opportunity, or the potential, for something other than total objectivity and the merits in this process. He stated that the Commission has an obligation to be fair, and transparent and participatory and to ensure public confidence in the integrity of the gaming licensing process. That obligation led it to ask the questions it was posing. Commissioner Zuniga asked if the City was planning on issuing the RFR it intended to issue on September 5. Mr. Pikula stated that the RFR is currently on hold.

Mr. Kennedy stated that if the Ethics Commission ruling comes back with a negative result, he will recommend to the Mayor the steps necessary to correct the situation. Moving beyond the subject of consultant selection, Mr. Kennedy stated that the City has four interested developers. He provided some background on the process the City has followed to date and on the City's future plans. He stated that the City will maintain its focus on creating the best possible world class casino and working with the Commission to attain the best result possible for Massachusetts. He outlined the criteria that will be used in the RFR process. Commissioner Zuniga stated that only one applicant interested in Springfield has submitted an application fee to the Commission and asked if Springfield had considered making payment of that fee a requirement for an acceptable RFR response. Mr. Pikula stated that the City is considering making the payment of the fee a requirement for the City's Phase 2 process. He stated that Springfield would like its process to complement the Commission's process.

Commissioner McHugh stated that he is concerned with the timing of the City's process, for it appears that the City's goal is to have an agreement with the developers signed in January, 2013. He stated that it is very unlikely the Commission will have in place by January all of the criteria that the Commission will ultimately used to select the best application. That being the case, he asked what will happen if Springfield has already put an agreement to a popular vote but the agreement does not address development criteria that are important to the Commission. He stated that the Commission and City should be working cooperatively in that regard and recommended holding off the execution of an agreement until the Commission promulgates regulations describing important Phase 2 criteria. Chairman Crosby stated that the Commission is also telling other communities not to close the door on their host community agreements until the Commission has promulgated regulations describing the criteria it deems essential. In response, Mr. Kennedy and Mayor Sarno outlined the economic difficulties facing the City and explained why they believed it was important for the City to work in a faster time frame than the Commission was contemplating. Chairman Crosby stressed that even if Springfield speeds up its end of the process, the entire process will not necessarily move more quickly because the Commission will still have to conduct suitability examinations which can take up to six months, and ultimately no final decision will be made on any Western Massachusetts casino until all applications are completed and submitted.

Commissioner Stebbins expressed concern with coordination of timelines between the City and Commission. He asked if one project or two projects will be put before the citizens for a vote. Mr. Kennedy stated that the City had not made a final decision on that question but it would probably put one project to a popular vote, though it is keeping all options open.

After Mayor Sarno, Mr. Kennedy and Mr. Pikula discussed these issues with the Commission, Michael Schaller and Kimberly Copp from the law firm of Shefsky and Froelich addressed the Commission. Mr. Schaller stated that the firm advised the City to follow the same two-phase selection process used in Detroit, Michigan and outlined the Detroit process for the Commission. Mr. Schaller also addressed the question of conflict of interest. He stated that in his industry integrity is paramount. He stated that his firm is registered in Illinois as a lobbyist for MGM and Penn Gaming, meaning that they represent both companies on routine regulatory matters before the Illinois Gaming Commission, and all of this work is done by Paul Jensen, one partner in the firm. Mr. Jensen will not be a part of the Shefsky & Froelich team advising Springfield. Shefsky & Froelich's representation of MGM and Penn Gaming was fully disclosed to the City during the selection process. Moreover, the firm filed the disclosure required by Mass. Gen. Law c. 268A, § 23(b)(3) on August 31. It also requested a formal opinion from the State Ethics Commission on its representation of MGM and Penn Gaming under the circumstances outlined above. He stated that his firm will work in a fair and unbiased manner. Commissioner Cameron asked if they will make the Ethics Commission opinion public and Mr. Schaller stated that they will. Chairman Crosby stated that the firm must not have considered there could be an appearance of conflict.

At the end of the discussion Chairman Crosby thanked the Mayor and all who participated. He stated that the Commission will discuss the issues further and will await the Ethics Commission opinion.

*A brief recess was taken.*

### **Research Agenda:**

See transcript pages 117-129.

After the meeting resumed, Chairman Crosby introduced Frank Robertson, Executive Director of Partners for a Healthier Community. Mr. Robertson stated that Partners is a private not-for-profit organization that has a partnership with Baystate. He stated that Partners is interested in applying for a grant to conduct an assessment of the potential health impact of a major casino project on the communities in and surrounding the place where the casino is located. He stated that locating a casino in Western Massachusetts has the potential for creating benefits and/or having adverse effects on the health of the population. He stated that Partners is considering an application to Robert Wood Johnson Foundation that would create a health/casino partnership. If they are successful, Partners will receive the grant in January and will have three to six months to perform an in-depth and critical analysis a potential health benefits and impacts. He stated that the expanded gaming legislation requires consideration of public health and a project like the one contemplated by Partners would assist the Commission in meeting this requirement. He

stated that he would like the Commission to be a full partner in the Partners project.

Chairman Crosby stated that the Commission has been charged with conducting a broad, statewide research project on the socio-economic impact of gaming. He suggested contacting Robert Wood Johnson and explaining what the Commission is considering to see if the Foundation would consider the Commission's project and the Partners project to be two different projects, or a single project in which the Commission and Partners were collaborating. Mr. Robertson stated that this was a great idea and thought Robert Wood Johnson would be very excited to hear about it. It was agreed Mr. Robertson would provide Commissioner Stebbins with the appropriate contact information to move the discussion forward.

**Administration:**

See transcript pages 129-139.

Executive Director Search Update – Commissioner Stebbins stated that the posting for the Executive Director closed on September 7, 2012. He is in the process of setting up initial phone interviews, as well as in person visits to Boston. He stated that the agenda and process is being laid out so the Commission adheres to Open Meeting Law guidelines and respects the candidates' privacy.

Additional Hires – Commissioner Zuniga stated that he has submitted a memorandum to approve Isaacson Miller to help with the search for General Counsel. Commissioner McHugh will be coordinating the hiring process.

*Motion made by Commissioner Zuniga to enter into a contract with Isaacson Miller as articulated in the recommendation for the fee stipulated at \$45,000. Motion seconded by Commissioner Cameron. The motion passed by unanimously by a 5-0-0 vote.*

Commissioner McHugh stated that there are five finalists for the position of staff attorney. The interviews have been scheduled and should be concluded by next week. His goal is to have a recommendation of a candidate in the coming weeks, pending a background investigation. He stated that he will be sending Boston University a job description for its fellowship program and hopes to have someone on board soon.

Commissioner Cameron stated that she would like to use JuriStaff to assist in the hiring of a Deputy Director of Investigations and Enforcement, as they have identified potential candidates while conducting the Executive Director search. She will work with Commissioner Zuniga to put this process together.

Report from Director of Administration/Project Management Consultant – Director Glovsky stated that she has deferred presentation of the master schedule until she has had enough opportunity to review it. Late yesterday she received the strategic plan from the consultants and would like an opportunity to review it before she presents it to the Commission. She will be working with Commissioner Zuniga on the next phase of the contract with the consultants. She

reminded the Commissioners the deadline for submitting information about potential MIT externs is Saturday. She stated that the procurement has been completed for brand identity and web development.

**Finance/Budget:**

See transcript pages 139-145.

Commissioner Zuniga stated that Jackrabbit Designs has been selected as the firm for brand identity and website development. He supplied a memorandum outlining the RFR process which was handled by Brandon Milby and Directors Driscoll and Glovsky.

*Motion made by Commissioner Zuniga that the Commission accept the proposal submitted by Jackrabbit Designs and pursue contract negotiation and detailed scoping for the services described in the responses to the RFR 2012 dated August 22, 2012. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.*

Commission Personnel Policy – Chairman Crosby stated that he and Commissioner Zuniga have been charged with talking with the Human Resources Department of the Commonwealth to understand the Commission's rights, obligations and options relative to bargaining units amongst its employees. He stated that a meeting was held with Paul Dietl and other staff from HRD who explained that the Commission is presumed to be subject to Mass. Gen. Laws c. 150E, the Commonwealth's public employee law. He stated that Commissioner Zuniga and Director Glovsky will engage in research to determine best practices for the Commission to follow.

**Racing Division:**

See transcript pages 145-161.

Operations Update – Commissioner Cameron stated that each Massachusetts racetrack must submit an application each year outlining its proposed operations for the ensuing year. She has received applications and is in the process of scheduling hearings on them. The hearings will be held in October. She also stated that the one racing matter before the Commission for a decision today involves the appeal of Mr. Case, the details of which were described to the Commission at an earlier meeting. Mr. Case's attorney has filed a letter with the Commission stating that Mr. Case does not intend to file any objections to the tentative decision rendered by Commissioner Cameron and has requested that the entire appeal, including Commissioner Cameron's tentative decision, be withdrawn and the tentative decision removed from all publications where it appears. Commissioner Cameron recommended the Commission not allow the appellant to withdraw the entire matter. A brief discussion followed and revealed that the other Commissioners were in agreement with Commissioner Cameron's recommendation.

*Motion made by Commissioner Cameron that the Commission deny the request by Mr. Pocaro on behalf of Mr. Case that the entire appeal be withdrawn. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.*

Commissioner Cameron stated that she is working on the matter of simulcasting for the racetracks and hopes to have a proposal to the full Commission in the coming weeks. She stated that she, along with Commissioner Stebbins, will be interviewing for an Executive Assistant next week, and has interviewed a candidate for the paralegal position.

Director of Racing Search – Commissioner Cameron stated that the process is moving forward and interviews and background checks are being completed.

EPA Suit Suffolk Downs – Commissioner Cameron stated that she received a detailed package from the EPA relative to all the issues that have transpired with Suffolk Downs, which has entered into a consent decree. Suffolk Downs will pay significant penalties for runoff issues. They have been working under a temporary pollution prevention measure which will become permanent with the consent decree. Compliance requirements have been put into place.

### **Project Work Plan:**

See transcript pages 161-165.

Consultant Status Report - Chairman Crosby stated that the Commission has received the 421 page draft of the strategic plan. It will be reviewed with the consultants via telephone and in two weeks there will be a meeting to discuss the schedule and the strategic plan.

Phase 1 Regulations – Chairman Crosby stated that the September 10 public hearing was conducted and the Commission will process the oral and written comments. Commissioner McHugh stated that all the comments will be submitted to Anderson and Kreiger, who will assemble them and forward them to the gaming consultants, who will make a recommendation to the full Commission for action at its September 25 hearing. He is confident the regulations will be in final form for presentation to the Secretary of State by September 28, which will allow the Commission to release the RFA-1 application form on schedule in mid-October.

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

See transcript pages 165-178.

Community and/or Developer Outreach/Responses to Requests for Information – Commissioner McHugh stated that there has been a request for information from the Palmer Water and Sewer Department and he is working on this, along with an inquiry from Chelsea.

Acting Ombudsman Report – Chairman Crosby stated that an inquiry was submitted from the Citizens Committee in Palmer asking what the next steps are after a host community agreement has been signed. Chairman Crosby stated that he will be advising it is desirable not to execute a host community agreement until the Commission has determined whether or not an applicant is qualified.

Chairman Crosby stated that a letter was received from Troy Siebels, Chair of the Mass Performing Arts Center Coalition, requesting to talk to the Commission about entertainment venues in casinos. He asked whether the Commission is ready to open up its public meetings for people who want to provide advice on matters pertaining to RFA-2. Commissioner Stebbins stated that the Commission could benefit from hearing from these groups and incorporate the information into the strategic planning process but the Commission has to determine now is the appropriate time to do so. Commissioner McHugh stated that it would not be practical to have presentations of that sort at least for the next couple of weeks because the commission will be heavily engaged in working out the details of the strategic plan. Chairman Crosby stated that entertaining public comment like this should be included on the Commission's Gantt chart. It was agreed the next couple of weeks would be premature but as the Commission hones its schedule this commentary can begin.

Ombudsman Search Update – Commissioner Stebbins stated that over 40 resumes were received for the Ombudsman position. The field has been narrowed down to four finalists and Chairman Crosby will be meeting with all four finalists tomorrow.

Discussion of Diversity/Inclusion Forum, September 19, 2012 – Brandon Milby indicated there are approximately 160 people signed up to attend this forum, which will begin at 8:30 a.m.

AIA Massachusetts Proposal – Chairman Crosby stated that the Commission has in its packet a letter from the American Institute of Architects, in collaboration with the Boston Society of Architects, asking if the Commission would value having an educational forum to discuss the issues of aesthetics, environment, and sustainability that they might be able to present. The Commission agreed that this is a great idea and decided to invite the Association to attend a Commission meeting and discuss substantive ideas in addition to content of a possible forum. Commissioner Stebbins agreed to coordinate this effort.

### **Research Agenda (Continued):**

See transcript pages 178-179.

Status Report – Chairman Crosby stated that he had a meeting with John Auerbach and his staff from the Department of Public Health, as well as representatives from the Lottery Commission, the Treasurer's Office, and the Department of Transportation to brainstorm the research RFI. He stated that the draft RFI should be ready tomorrow and he hopes to post it by the end of the week.

### **Discussion of Springfield Schedule and Process:**

See transcript pages 179-192.

Chairman Crosby opened discussion among the Commissioners relative to the Springfield process discussed earlier in the meeting. Commissioner Cameron stated that the Commission should hold off conversation on the ethics question until the Ethics Commission issues an

opinion. Commissioner Zuniga recommended looking at all the information presented today and having a discussion at the next Commission meeting. Commissioner McHugh stated that he would like to gather more information on the Detroit model which may help the Commission make a determination. Commissioner Stebbins agreed that he would also like to have more information on the Detroit model. He recommended that the Commission send a communication to the Mayor of Springfield expressing appreciation for his team being here today, but also expressing the Commission's continued concerns. Chairman Crosby and Commissioner Zuniga questioned Springfield's insistence on expediting this process. After further discussion the Commission agreed to gather additional information for discussion at a later meeting.

### **Other Business:**

See transcript pages 192-201.

Chairman Crosby stated that he and Commissioner Zuniga had a telephone conversation this morning with an investment banker about the idea of going to New York and talking to the participants in the financial markets. The investment banker felt quite strongly that the Commission could have a material impact on equity investors who might be interested in the casino licensing process. He recommended that the Commission explore the possibility of hiring the investment banker to assist in presentations to a targeted audience. The services would be billed on an hourly rate for up to \$150,000 and he asked for the Commission's feedback on whether to proceed with this process. Commissioner Zuniga stated that, as part of the discussion process, the Commission should talk to developers who, at least to this point, have remained on the sidelines. Commissioner McHugh stated that if discussions with investors can increase competition or the facility with which applicants can raise capital for their projects the discussions are a good idea, though they will have to take place quickly because the qualification piece of the application process is about to begin. He recommended seeking advice from a securities lawyer to outline what can and cannot be said at any such meetings. Commissioner Stebbins stated that he thinks the discussions are worth exploring and will be worthwhile if they help generate more competition. Chairman Crosby expressed reservation about the amount of money the process may cost. The investment banker projects that it will take several months to set up the presentations, get the appointments, and travel with the Commission to make the presentations. Commissioner Zuniga suggested asking the existing casino license applicants if the approach to Wall Street just described is a good idea. Commissioner McHugh stated that asking current applicants would be appropriate if it were done in a public, transparent way.

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

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

1. Massachusetts Gaming Commission September 11, 2012 Notice of Meeting & Agenda
2. August 28, 2012 Meeting Minutes
3. September 4, 2012 Meeting Minutes

4. September 10, 2012 Memorandum Regarding Recommendation to Approve Execution of a Contract for the Search of a General Counsel
5. September 10, 2012 Memorandum Regarding Recommendation to Contract for Brand Identity and Website Development
6. August 10, 2012 letter from Jeffrey R. Pocaro, Esq. Regarding Walter Case
7. September 3, 2012 letter from William J. Geary, Esq.
8. Consent Decree entered by Suffolk Downs
9. August 27, 2012 letter from AIA Massachusetts
10. Casino Health Impact Assessment Partnership

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



The Commonwealth of Massachusetts  
Massachusetts Gaming Commission

**Meeting Minutes**

**Date:** September 18, 2012

**Time:** 1:00 p.m.

**Place:** Division of Insurance  
1000 Washington Street  
1<sup>st</sup> Floor, Meeting Room 1-E  
Boston, Massachusetts

**Present:** Commissioner Stephen P. Crosby, Chairman  
Commissioner Gayle Cameron  
Commissioner James F. McHugh  
Commissioner Bruce Stebbins  
Commissioner Enrique Zuniga

**Absent:** None

**Call to Order:**

Chairman Crosby opened the 27<sup>th</sup> public meeting.

**Approval of Minutes:**

See transcript page 2.

Commissioner McHugh stated that the September 11 meeting was lengthy and the minutes are not ready for review.

**Springfield Schedule and Process:**

See transcript pages 2-20.

Chairman Crosby Open the meeting with a discussion of the Commission's meeting last week with Springfield Mayor Domenic Sarno and other Springfield officials and representatives. He stated that the Commission received a letter from Kevin Kennedy, Springfield's head of Planning and Economic Development, stating that the City has agreed to modify its process to require that developers who would respond to the City's RFP must also file a formal application with the Commission and the City will not have a vote on a host community agreement until the Commission has completed its qualification investigations. Chairman Crosby stated that Springfield is still awaiting a decision by the Ethics Commission relative to its consultant, Shefsky and Froelich.

Commissioner Zuniga made reference to the statutory timeframe for conducting a vote after a host community agreement is executed and the request for an election is received. Chairman Crosby stated that the subject is one that the Commission needs to discuss and perhaps issue an advisory. Commissioner McHugh asked why it is necessary for the Commission to take up that subject now. Chairman Crosby stated that the Commission should make certain that everyone understands the relationship between the host community agreement, the community vote and the manner in which the vote is scheduled. Commissioner McHugh agreed.

Commissioner Zuniga outlined his concerns with the process Springfield has proposed. He disagreed that the three reasons the City cited for the manner and speed with which it intended to conduct its process actually justified the process or the speed. Commissioner Cameron stated that she shared Commissioner Zuniga's concerns. After seeing the letter from Mr. Kennedy, however, it appeared to her that Springfield officials had heard the Commission's concerns and ideas and were making a good faith effort to work collaboratively with the Commission. Commissioner Stebbins stated that the legislation was not entirely clear on what happens when there multiple developers are competing for agreement with a single city and he agreed the Springfield officials were making an effort to work collaboratively.

**Administration:**

See transcript pages 20-22.

Chairman Crosby stated that all the job searches are underway. The job posting for Deputy Director of Investigations and Enforcement Bureau has been posted. Commissioner McHugh clarified the hiring process for the Staff Attorney. He has interviewed the candidates, with assistance from Commissioner Cameron, and he will select a finalist for presentation to the full Commission after the candidate successfully completes a background investigation.

**Finance/Budget:**

See transcript pages 22-25.

Update - Commissioner Zuniga stated that an inquiry has been received from one host community as to the process and procedure for disbursing funds to cover expenses the municipality incurs in the study and negotiation of a proposed host or surrounding community agreement. He will be drafting a reimbursement procedure to present to the Commission at its next meeting. On a separate issue, he stated that he has been advised that the threshold for incidental purchases will be increased from \$5,000 to \$10,000 and he will be coming back to the Commission with a recommendation to adopt this threshold. He stated that he is working with Director Glovsky on modifications to some aspects of the consultant contracts and will be coming back to the Commission with a draft or drafts in the near future.

**Racing Division:**

See transcript pages 25-31.

Operations Update – Commissioner Cameron stated that public hearings on racetrack licenses for the 2013 season will be held on October 18 at 10:00 a.m. in Plainville and at 2:00 p.m. in Boston. At those hearings, the operators will outline their plans for next year. She stated that some basic changes to the license application form have been made. The changes are designed to show the shift of responsibility for track operations from the former State Racing Commission to the Gaming Commission. A more comprehensive modification of the form will be done next year after all the rules and procedures are reviewed.

Commissioner Cameron then reviewed a case discussed earlier in the racing season. After hearing, she had made and issued a tentative decision to lift the ejection of Mr. Marcano. If the commission adopted that decision, he would be allowed to begin the process of being relicensed. Mr. Marino has signed a waiver stating he will not be objecting to the tentative decision.

*Motion made by Commissioner Cameron to accept Mr. Marino's waiver of appellate rights and give immediate final approval to Commissioner Cameron's tentative decision. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.*

Chairman Crosby stated that the Commission has received a letter from Attorney William Geary about the EPA role relative to Suffolk Downs. Commissioner McHugh stated that the letter suggested that Suffolk Downs be asked to send certain communications and responses between themselves and the EPA to the Commission so it can be kept informed on this process. Chairman Crosby agreed this would be a good idea as the Commission is ultimately responsible for the facilities it oversees.

**Project Work Plan:**

See transcript pages 31-51.

Consultant Status Report – Kathleen O'Toole was present representing the Commission consultants. She stated that the 491 page draft of the strategic plan was delivered last week and it will be discussed at the Commission's next public meeting.

She stated that during the past week the consultants have worked with Anderson & Kreiger to deliver a document that provides the Commission with recommendation for addressing comments the Commission received from the public with respect to the Phase 1 regulations. The consultants also conducted research and provided some advice to Commission regarding some of the Springfield issues. They have been working with Director Glovsky on logistical aspects of the Phase 2 process and have begun drafting an MOU template that can be used for MOUs with other gaming jurisdictions, law enforcement agencies, and other agencies with which the Commission will need to enter agreements.

Commissioner McHugh stated that the strategic plans proceed in a linear fashion and asked if there are areas in which the Commission can proceed in a non-linear fashion. Commissioner Zuniga stated that the strategic plan mentions the option of awarding licenses for different regions at different times but does not address the award of a slots parlor license. He suggested not waiting until all the regulations of Phase 2 are final, but perhaps think about issuing regulations for different pieces in some type of sequential, or staggered, way. He stated that the Commission could begin to discuss that approach at its next meeting when discussing the strategic plan. Commissioner McHugh expressed concern that the Commission may be taking on too much if it tries to conduct a conceptual discussion at the same time it is discussing schedule for workflow.

Chairman Crosby stated that he thinks of the process on which the Commission is now embarking encompasses three distinct issues. One issue involves providing cities, towns, and developers with a clarification of the host community agreement vetting process and could be accomplished through an advisory. Another issue involves the criteria the Commission will use to award licenses. Development and approval of those criteria will take some time and require hearings. Finally, the question of whether to sequence the award of licenses is a major issue that also will take some time to consider and decide. Commissioner McHugh questioned whether, in the process of drafting Phase 2 regulations, important policies issues could be isolated and worked on to give early guidance to cities and towns. Commissioner Zuniga stated that policy decisions the Commission made should be prominently posted so that those affected by the decision can incorporate them into their plans and decision-making.

Phase 1 Regulations – Commissioner McHugh stated that the Commission’s legal consultants have delivered a document in which all of the public comments received on the Phase 1 regulations are listed next to the section of regulations to which they apply. There are some disagreements on how to handle some of the comments, so he will be reviewing these comments with the goal of delivering a second document to the Commission on Friday containing a single recommendation for how to handle each of the comments. That document will form the basis for any necessary discussion with the consultants at the next public meeting. After that discussion, that Commission can decide on appropriate changes to the Phase 1 draft and the revised draft can be delivered to the Secretary of State for publication on September 28.

Wall Street Project – Commissioner Zuniga stated that he has been working on a process to locate people who could assist the Commission to conduct a financial assessment or research in order to foster investment interest by the financial community. He is working with staff to prepare an RFR document that will be issued shortly. Chairman Crosby stated that he has been working with Commissioner Zuniga on this and would not want to pursue it if there is no value in doing so. However, in discussions with bankers, he and Commissioner Zuniga were told there would be value, though they received varying perspectives on what that value would be. The goal is to discuss the subject further and then determine what the value engaging in discussions with the financial community would bring to the Commissions processes, the competition for licenses or the ease with which developers could raise capital to carry out their proposals.

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

See transcript pages 51 -64.

Community and/or Developer Outreach/Responses to Requests for Information – Commissioner McHugh stated that he was in Winthrop last week where Police Chief Terence Delehanty raised some interesting questions. One question was whether the Commission is planning to reach out to police departments in other jurisdictions that post gaming facilities to try to obtain whatever data those departments have about the level of observed changes, if any, in antisocial behavior after casinos began operating. The second question was whether the Commission’s studies will take into account the depressed state of the economy when establishing baselines. Chief Delehanty pointed out that without taking the state of the economy into account, baseline studies may not give a true picture of a casinos impact on surrounding areas. Chairman Crosby stated that the study will have to have controls in place for those variables.

Commissioner McHugh stated that he is continuing to work on the answers to the questions posed by the City of Chelsea.

Acting Ombudsman Report – Chairman Crosby stated that he had other Commissioners had received a letter dealing with the Commission’s published protocol regarding interactions between developers and cities and towns in which the developers proposed a project. He also received a letter from Plainridge detailing some of the work they did he had done before the protocol was published. He stated that he has included in the Commission meeting packet an update of the advisory to cities and towns regarding timelines and processes that is now posted on the Commission’s website. The update contains some minor changes to the schedule. The biggest change concerns the likely date for issuing licenses with the early date being sometime in the Fall of 2013 but the more likely being March or April of 2014. Commissioner McHugh stated that he would like to explore the dates in this document further, but requested that the Commission defer consideration until it had an opportunity to meet with the consultants and discuss the strategic plan next week.

Ombudsman Search Update – Chairman Crosby stated that the hiring process is continuing and he hopes to have someone on board soon to fill this position.

Report from Director of Communications and Outreach – Director Driscoll stated that an agreement was signed last week with Jackrabbit, a website development company. They are in the process of building out the project management chart and will be briefing her on this process and the development of a logo. Her goal is to keep the process moving as quickly as possible. Chairman Crosby asked if someone is working on ensuring the existing website is kept current. He stated that he just redid his welcome letter, which he realized was outdated. Director Driscoll stated that she is working on keeping the existing website up to date.

Discussion of Diversity/Inclusion Forum, September 19, 2012 – Chairman Crosby stated that former City Councilor Bruce Bolling’s funeral is scheduled for the same time as the forum. He stated that he spoke with Ron Marlowe, who is organizing the forum, about possibly rescheduling it. Mr. Marlowe stated that the best way to honor Councilor Bolling’s memory

would be to have the forum and promote its diversity objectives, so the Commission is moving forward with the forum as scheduled. He stated that approximately 175 people are registered and the forum will begin at 8:30 a.m.

AIA Massachusetts Proposal – Commissioner Stebbins stated that the Commission has received a letter from the American Institute of Architects and he has spoken with their executive director, who will be attending one of the Commission meetings in October. He stated that a conversation with an AIA representative at a Commission meeting might be the first step in a process that would include an educational forum at some future time.

**Research Agenda:**

See transcript pages 64-66.

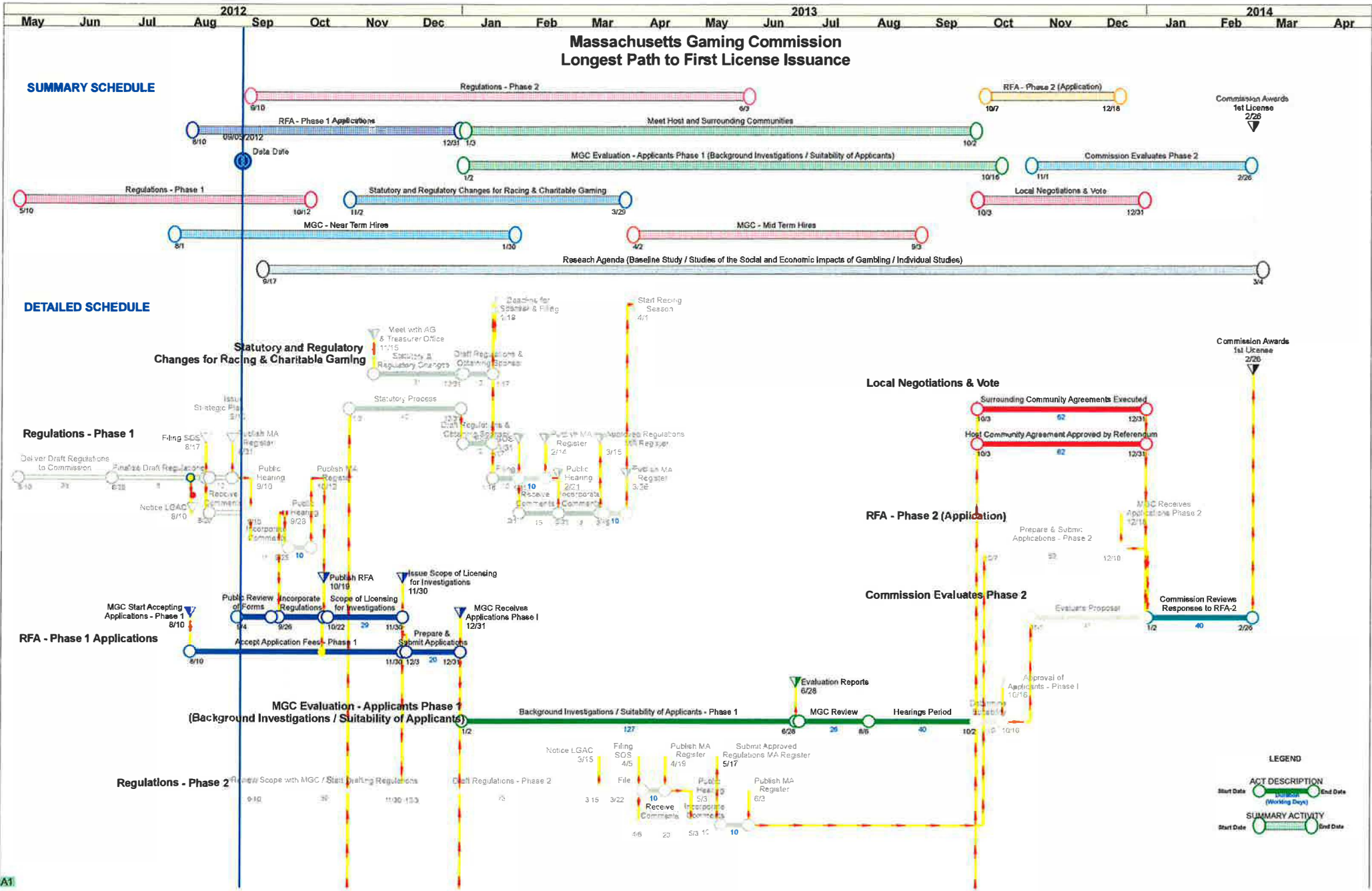
Status Report – Chairman Crosby stated that the RFI for the research project has been finalized and will be posted today.

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

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

1. Massachusetts Gaming Commission September 18, 2012 Notice of Meeting & Agenda
2. September 18, 2012 Letter from Springfield Planning & Development Regarding Springfield Casino Host Agreement Process
3. September 18, 2012 Memorandum Regarding Racetrack Licensing Process

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



Summary of Public Comments on Draft Phase 1 Regulations  
9/13/12 Draft

Source	Subject	Line <sup>1</sup>	§	Public Comment	Recommendation
Suffolk Downs	Delegation	142	101.00, 104.00	The proposed regulations, particularly in sections 101.00 and 104.00, broadly authorize the Commission to delegate functions to employees, other agencies, outside counsel, and other agents. SSR strongly supports delegation of functions to appropriate personnel where the nature of the action does not call for Commissioner-level or Deputy Director-level involvement other than for appellate review or confirmation. In the interest of preserving the integrity of the process and insulating decisions from challenge on the grounds of improper delegation, SSR recommends that the Commission take specific care in deciding what to delegate and to whom. We note that Section 104.00 recognizes that delegation is subject to Chapters 23K and 30A, but the proposed regulations do not set forth limits or guidelines for ensuring proper delegation. To avoid having the process slowed by challenges to the authority of those making decisions on its behalf, the Commission should ensure that its delegations are within its statutory authority.	No change recommended.
Suffolk Downs	Adjudicatory Proceedings	142	101.00	As reflected by the authority citations at the end of section 101.00, all of the Commission's adjudicatory proceedings must be conducted in accordance with Chapter 30A (subject to whatever modifications are in the Gaming Act). Section 101.00 identifies five particular adjudicatory proceedings and specifies procedural regulations to govern them, but does not account for other adjudicatory proceedings that the Commission may conduct. It may be that the Commission intends to add to section 101.00 in the Phase 2 regulations, but as drafted (and in light of Chapter 30A), it appears all non-specified adjudicatory proceedings will be governed by the formal rules of procedure set forth in 801 CMR 1.01. The Commission may want to consider confirming or clarifying how other adjudicatory proceedings will be handled.	OK No change recommended: Commission will address other adjudicatory proceedings in the Phase 2 regulations.

<sup>1</sup> Line numbers are the first line in the draft regulations relevant to the comment.



Summary of Public Comments on Draft Phase 1 Regulations  
9/13/12 Draft

Source	Subject	Line <sup>1</sup>	§	Public Comment	Recommendation
Suffolk Downs	Adjudicatory Proceedings: Special Procedures	189	101.03	Section 101.03(1)(b) addresses the Commission's statutory authorization to direct a presiding officer to conduct adjudicatory hearings, but omits reference to the requirements of c. 23K, § 3(h) that the presiding officer (1) if not a commissioner, be an employee of the Commission; and (2) cannot issue the final decision of the agency but rather must make a written report to the Commission upon which the Commission will make the final decision. We recommend that the Commission add these required steps to the regulations so that affected persons can see the entire process in one document. The Commission may also want to consider specifying the means by which parties and/or interested persons to the proceeding may make written and/or oral arguments to the Commission concerning the presiding officer's report.	No change recommended. Among other things, the requested change would prohibit sending matters to DALA.
Suffolk Downs	Adjudicatory Proceedings: Special Procedures	211	101.04	<p>It is not clear from Chapters 23K and 30A that the Bureau has authority to appoint a presiding officer of an adjudicatory proceeding who is not an employee of the Commission or a DALA judge. The authorization in c. 23K, § 3(h) for the Commission to appoint employees to be hearing officers by inference may suggest that non-employees are not to be appointed, and the Bureau is obviously part of the Commission. As noted in the general comment above about delegations, both the Commission and its applicants share the goal that implementation of the Gaming Act not be slowed by questions about the authority of delegees to have taken actions assigned to them.</p> <p>Related to this comment, the Commission should consider clarifying the relationship of the work product of the delegated presiding officer to the decision of the Bureau that is subject to appeal to the Commission. For example, does the presiding officer submit a written report to the Deputy Director for his or her action in the manner contemplated by c. 23K, § 3(h)? If that is the case, it may mitigate the question about the authority of delegees.</p>	Same comment.

Summary of Public Comments on Draft Phase 1 Regulations  
9/13/12 Draft

Source	Subject	Line <sup>1</sup>	§	Public Comment	Recommendation
Leo Deschenes	Appeals to Commission	238	101.04(1)(e)-(h)	<p>If the right to appeal is mandated by law to all other respondents to outsourcing, product, and service providers etc. then I can understand why that practice cannot easily be changed. However, if the right to appeal practice would be unique to the Casino bids/applicants or in any way discretionary I would suggest that the Commission revisits the pros/cons of allowing Casino applicants to appeal.</p> <p>The appeal process would add time line impact of an estimated 60 days, 30 days to appeal and probably 30 days to review. During this time I assume no awards can be finalized. I can see other potential negatives to allowing appeals but in all candor do not see any potential positive outcomes from allowing appeals.</p> <p>While I know the intent of the appeal process would be to maintain the total integrity of the bidding process, I could see it being interpreted by others as an "end around" play and would never have an outcome that would satisfy all. If the appeal is denied it may be viewed as a charade, and if it is upheld it could be viewed as some type of insider deal---my point is that the integrity of the Gaming Commission and award process stands to be questioned while the actual intent of the appeal process would be based on being totally fair to all applicants.</p> <p>If the Commission, and those acting as proxies for the Commission, in their review of the applicants have done the high level of due diligence required by this application/bidding process there should be no need to entertain appeals.</p>	<p>No change recommended.</p> <p>The right to appeal the Bureau's findings discussed in 205 CMR 101.04(e)-(h) is required by G.L. c. 23K, § 30(g) (applicant for a key gaming employee license) and § 31(h) (applicant for a gaming vendor license).</p>

Summary of Public Comments on Draft Phase 1 Regulations  
9/13/12 Draft

Source	Subject	Line <sup>1</sup>	§	Public Comment	Recommendation
Mohegan Sun	Definitions: Publicly-traded corporation	281	102.02	<p>Encourages the Commission to define the term “publicly-traded corporation” in the Regulations. This term is used in M.G.L. c. 23K, § 14(a) but not defined in the Act. Clarifying that this term includes licensees and holding companies with public reporting obligations to the Securities and Exchange Commission because of equity or debt security offerings may help streamline the licensing process and also the financial review of licensees and vendor applicants in the future. We recommend the following definition based on Section 5:12-39 of the New Jersey Casino Control Act and Section 1103 of the Pennsylvania Race Horse Development and Gaming Act:</p> <p>“Publicly traded corporation”- A person, other than an individual, which:</p> <p>(1) has a class or series of securities registered under the Securities and Exchange Act of 1934 (48 Stat.881, 15 U.S.C. § 78a et seq.);</p> <p>(2) is a registered management company under the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.); or</p> <p>(3) is subject to the reporting obligations imposed by section 15(d) of the Securities and Exchange Act of 1934 by reason of having filed a registration statement which has become effective under the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.) or by reason of an indenture entered into pursuant to an exemption from registration under the Securities Act of 1933.</p>	Accept the suggestion. Define “publicly-traded corporation” and incorporate the implications of that new definition in the regulations.
Sec. of State <sup>2</sup>	Definitions	281	102.02(1)	Remove subsection 102.01 or fully define terms therein.	Fully define the terms.

<sup>2</sup> The Secretary of State’s Office communicated its comments by telephone to A&K and reflected some of these changes in its revised draft of the Phase 1 regulations.

Summary of Public Comments on Draft Phase 1 Regulations  
9/13/12 Draft

Source	Subject	Line <sup>1</sup>	§	Public Comment	Recommendation
Suffolk Downs	Definitions: Competitively-sensitive information	439	102.02	SSR endorses the Commission's apparent intent, shown by the designations on specimen application forms released in connection with the September 4, 2012 Commission meeting, to include within the categories of exempt information personal contact information of applicants and qualifiers such as home addresses and telephone numbers, as well as information required to be submitted as to family members of applicants and qualifiers. SSR recommends that the Commission maintain those designations as it finalizes the forms and that it consider amending the definition of competitively-sensitive information to codify those protections.	No change recommended. The personal contact information is exempt pursuant to the privacy exemption in the Massachusetts Public Records Law.
Mohegan Sun	Definitions: Dependent	468	102.02	While this definition, as drafted, is consistent with the same definition in New Jersey ( <i>N.J.A.C.</i> § 13:69-7.2) and other jurisdictions, in order to provide consistency to the use of the term in item 5.a. on the Multi-Jurisdictional Personal History Form (PHD-MA), the term should also include dependent children. Including dependent children of a natural person in this definition will also clarify that, for purposes of 205 CMR 108.02(3)(a), a person may not make an otherwise prohibited political contribution on behalf of or through a dependent child.	Change to include “a spouse or child residing with a prohibited person or who are claimed as dependents for federal tax reporting purposes.”
Mohegan Sun	Definitions: General Counsel	495	102.02	To be consistent with the definitions of Chief financial and accounting officer and Deputy director, the definition of General Counsel should read “means the general counsel OR ACTING GENERAL COUNSEL of the Commission.”	Change as indicated in red at left.

Summary of Public Comments on Draft Phase 1 Regulations  
9/13/12 Draft

Source	Subject	Line <sup>1</sup>	§	Public Comment	Recommendation
Suffolk Downs	Definitions: Political Contributions	520	102.02	<p>The definition of political contribution as used in the contribution ban proposed in section 108.02 exceeds the scope of contributions prohibited by § 46. The proposed regulations define "<i>political contribution</i>" by reference to the definition of "contribution" under Chapter 55. 205 CMR 102.02(2)...</p> <p>Whereas § 46 is limited to contributions to candidates and parties and to committees, etc., organized in support of candidates and parties, the Chapter 55 definition also applies to contributions to committees promoting or opposing referenda or other questions submitted to voters. Under proposed section 108.02, read literally, a gaming license applicant could not contribute to an entity set up to support a host community referendum under chapter 23K, which is clearly not the intent of § 46. Footnote: We note that the proposed regulations not only define "political contribution" but also have a separate definition of "contribution," which is defined both more narrowly and more broadly than is "contribution" in Chapter 55. The proposed 205 CMR definition is narrower than the Chapter 55 definition because it applies only to candidates and political organizations, not to all political committees, ballot questions, etc. At the same time, it is broader than the Chapter 55 definition because it applies to all payments to candidates, not just contributions, which includes payments made in exchange for equivalent value. As a result of those differences, 205 CMR's definition of "contribution" is closer to the scope of § 46 than is 205 CMR's definition of "political contribution," but the regulations nevertheless use "political contribution" in the ban set forth in section 108.02(1).</p>	<p>Why do we need 108.02(1) and (2)? Slightly revised (3) could become part of 108.01 and used to determine whether a contribution was made by an agent or other person acting on behalf of a prohibited person. Such a revision would do away with the referendum issue which might raise constitutional issues (see FNB v. Bellotti) and would take us out of Citizens United, which deals only with independent expenditures.</p>
Mohegan Sun	Definitions: Political organization	523	102.02	<p>While the definition of "Candidate" is clear that it does not apply to federal candidates, the use of the terms committee and political party should clarify in this definition and/or in 205 CMR 108.01(1) that a contribution to a national party committee, such as the Democratic or Republic[an] National Committees, or to the committee of a federal candidate for Congress or U.S. Senate is permitted, even though such a committee may, in turn, if permitted under state campaign contribution laws, contribute to a state candidate from its general receipts.</p>	<p>Recommend removal of "or political party" from 108.01(1)(c). No change recommended. 108.01(c), with the recommended change, is limited to state candidates and officials.</p>

Summary of Public Comments on Draft Phase 1 Regulations  
9/13/12 Draft

Source	Subject	Line <sup>1</sup>	§	Public Comment	Recommendation
Suffolk Downs	Definitions: Trade Secret	586	102.02	SSR also recommends that the Commission consider adding "marketing" information, processes and methods to the types of confidential information covered by the definition of "trade secrets." In the highly competitive market for patrons of all of the various entertainment options offered by resort casinos, many operators have developed proprietary and confidential marketing programs and patron database information that deserve protection alongside the other categories in the proposed definition. Because resort casinos generally do not offer "products" in the form of goods (other than in connection with certain promotional offerings that may include goods as a prize), SSR is concerned that marketing information may not be deemed within the meaning of "merchandising," which is included in the proposed definition.	Add "marketing information, processes and methods" to the definition of "competitively-sensitive information"
Sec. of State	Waivers	607	102.03(4)	Section is vague. SOS recommends detailing procedures for granting waivers or removing section.	Add standards for waiver
Mohegan Sun	Effective Date	632	102.06	... while the intent may have been to ensure the Regulations were not made effective earlier than permitted under applicable law, Mohegan Sun at Palmer respectfully suggests that the Regulations should be effective upon promulgation and therefore this provision may be stricken.	Strike the provision.
Sec. of State	Effective Date	632	102.06	Remove section 102.06 since regulations will be stamped with effective date at bottom.	Strike the provision.
Leo Deschenes	Confidentiality	641	103.00	Competitively Sensitive Information, Confidential Information, Trade Secrets, Intellectual Property etc. are addressed in multiple line items. My comment/suggestion would be to have an appendix to the Phase 1 document that pulls a recap of all response items that are to be considered confidential, proprietary etc. to facilitate the treating of these items as confidential. Otherwise there would appear to be a degree of risk of accidental disclosing this confidential information to others who do not have a legitimate "need to know".	No change recommended.  The Commission has provided specimen applications forms annotated to show which responses the Commission considers confidential: see <a href="http://www.mass.gov/gaming/newsroom/internal-press-releases/seeking-public-comment-phase-1-application-forms.html">http://www.mass.gov/gaming/newsroom/internal-press-releases/seeking-public-comment-phase-1-application-forms.html</a>

Summary of Public Comments on Draft Phase 1 Regulations  
9/13/12 Draft

Source	Subject	Line <sup>1</sup>	§	Public Comment	Recommendation
Mohegan Sun	Categories of Protected Information	668	103.02	205 CMR 103.02 provides five exceptions to the general proposition that “all records made or received by the commission or the bureau shall be public records and shall be available for disclosure on request...” However, 205 CMR 103.04, 103.05, 103.10 and 103.11 limit a claimant to asserting only one of the five exemptions –the “confidential information exemption” if it believes that documents that it has provided to the Commission should not be disclosed. These provisions should be amended to provide that claimants may assert that any one of the five exemptions apply, not just the “confidential information” exemption. For example, a document may not be “confidential information”, but may be excluded from the definition of “public record” pursuant to M.G.L. c. 4, § 7, cl. 26, and claimants should have the ability to assert that documents that are not subject to the public records law should not be disclosed. 205 CMR 103.04(2) contains the appropriate language where it provides that “whenever any confidentiality claimant asserts in writing that any particular record <i>is exempt from disclosure as described in 205 CMR 103.02(1) through (5)</i> , the official custodian shall consult the commission’s general counsel...”(emphasis supplied). Mohegan Sun at Palmer urges the Commission to be consistent throughout 205 CMR 103.00 and allow claimants to assert any of the five exemptions contained in 205 CMR 103.02.	No change recommended. As noted in the comment, 103.04(2) contains language that allows a claimant to assert any one of the five exemptions contained in 103.02. The commission’s determination whether information qualifies as exempt “confidential information” defined in 102.02(2) requires information from the confidentiality claimant that the commission is highly unlikely to have before the claim is asserted. For that reason, special treatment of requests for confidentiality of that kind of information is required. The other four categories of confidential information are categories defined by statute as to which there is a significant body of regulatory and decisional law to guide the commission’s judgment. The distinction between those two categories of information permeates the way they are handled in the various subsections of section 103 of the regulations.
Suffolk Downs	Disclosure of Confidential Information	778	103.07(2), (3)	SSR appreciates the Commission's intent to provide notice of the release of confidential information to the person who furnished it and, whenever practicable, to give such notice prior to the release. 205 CMR 103.07(2),(3). SSR encourages the Commission to modify those provisions to make clear that they apply to all of the categories of exempt information as set forth in 103.02, not just to confidential information as defined in the regulations. SSR also suggests adding a minimum time period for the prior notice, such as ten days, to give the person who furnished the information an opportunity to take protective steps.	Recommend changing 103.07 (2) to encompass all five categories of exempt information. No other change is recommended as stated in federal law may take precedence over any waiting period the commission prescribes in a regulation.
Sec. of State	Disclosure of Confidential Information	789	103.07(3)	Phrase “whenever practicable” in subsection regarding notice prior to the release of confidential information is vague and should be removed.	Recommend changing the regulations to make "practicable" more specific.

Summary of Public Comments on Draft Phase 1 Regulations  
9/13/12 Draft

Source	Subject	Line <sup>1</sup>	§	Public Comment	Recommendation
Suffolk Downs	Categories of Confidential Information	824	103.10	SSR believes that applicants and other persons submitting materials to the Commission should be able to request protection for information in any of the five categories of exempt information set forth in section 103.02. As drafted, section 103.10 suggests that the request process is available only for "confidential information" as defined in the proposed regulations. While confidential information includes trade secrets, competitively sensitive information and other propriety information, it does not necessarily include all the information covered by the statutory exemptions to the Public Records Law and the other categories of exempt information identified in section 103.02.	No change recommended. See above recommendation with respect to Mohegan Sun comment regarding line 668. 103.04 (2) allows a claimant to assert that information falling into any of the five categories listed in 103.02 is exempt from disclosure.



Summary of Public Comments on Draft Phase 1 Regulations  
9/13/12 Draft

Source	Subject	Line <sup>1</sup>	§	Public Comment	Recommendation
IGT	Requests for Protecting Confidential Information: Submittal Requirements	851	103.10	<p>We appreciate the Commission’s efforts in balancing its desire for transparency while protecting the confidentiality of highly sensitive and personal information provided by applicants and licensees. The public dissemination of the contents of any application could place an applicant and its officers, directors, and key employees in a highly vulnerable position in areas related to trade secrets, identity theft and, potentially, personal safety. In addition, other gaming jurisdictions may request the Commission enter into a Memorandum of Understanding regarding disclosure prior to sharing information in their files. IGT respectfully requests the Commission consider the attached suggestions in relation to proposed rule 205 CMR 103:</p> <p>Vendors of gaming related equipment are subject to licensure in hundreds of national, state, provincial, tribal and municipal jurisdictions in which legal gaming activity is conducted. Gaming operators may also be licensed in numerous jurisdictions in which they conduct gaming operations. While each jurisdiction has its own unique requirements as to the information that must be provided for consideration of licensure, many request similar information. Additionally, while not provided with the application submission, many records may be requested during the course of a licensing investigation subject to the discretion of the investigative agent. To go through each record for which a claim of confidentiality is made and determine to which jurisdiction the information has been provided would prove to be an onerous process. Furthermore, the majority of legal gaming jurisdictions have broad confidentiality provisions that protect nearly all information provided to the regulatory authority in the administration of the gaming statutes and regulations. IGT respectfully suggests that in lieu of providing a listing of each jurisdiction to which the information has been provided, that the claimant for confidentiality provide information related to any jurisdictional denial of a request for confidentiality related to that record.</p>	Change to “A statement whether, to the best of the provider's knowledge, the information has previously been provided to a governmental agency that does not treat it as confidential or that has denied a request for confidential treatment.”

Summary of Public Comments on Draft Phase 1 Regulations  
9/13/12 Draft

Source	Subject	Line <sup>1</sup>	§	Public Comment	Recommendation
Suffolk Downs	Requests for Protecting Confidential Information: Submittals Requirements	851	103.10(2)(e)	<p>SSR understands that the Commission's purpose in requesting information in support of requests for confidentiality, 205 CMR 103.10(2), is to gather information as to whether the information is treated as confidential by the claimant and is not in the public domain. SSR observes that the list of specific supporting information requested appears to mirror the regulations of the Department of Environmental Protection, and suggests that the Commission re-consider whether all of the requested information is appropriate in the gaming context. In particular, SSR is concerned about the ability of any applicant, qualifier, vendor, or other person who routinely submits significant amounts of data to regulators in many jurisdictions to provide all of the information requested by section 103.10(2)(e). That section calls for:</p> <p style="padding-left: 40px;">a list of all other Federal, State and local agencies to which the same record or contents thereof has been submitted, whether the confidentiality of the information is protected by law in that jurisdiction, which of them have been requested to keep that record confidential, the status of the requests, and a copy of the responses by said agencies or the courts to the requests.</p> <p>The national operators among the existing and potential gaming license applicants, of which Caesars is just one, either do not have some of the requested information or cannot obtain it in a commercially reasonable fashion. Because of the number of jurisdictions in which national operators are involved and the number of submittals that they have made, it would require exhaustive research over years of filings to conclusively determine whether a particular piece of information has previously been submitted to a regulator. For example, operators, vendors, and other persons who routinely submit applications in numerous jurisdictions are often not made aware if a public request is made to a gaming regulatory agency who subsequently determines that the information should be protected. In this instance, licensees are generally not advised of such a request and a determination by the regulatory agency. Moreover, where other regulators apply the process envisioned by the Commission, which is to defer determination of confidentiality requests until a public records request is made, there is no response to a request to provide. Lastly, many operators, vendors, and other persons who routinely submit applications in numerous jurisdictions have been licensed in those jurisdictions for several years and, while initial requests for information may have been made in the early stages of the legalization of gaming in those jurisdictions, documentation regarding decisions on disclosure are more than likely beyond the record retention period of the agencies and are no longer available.</p> <p>SSR recommends that the Commission consider replacing proposed section 103.10(2)(e) with a statement of whether, to the best of the provider's knowledge, the information has been provided to an agency that does not treat it as confidential or that has denied a request for confidential treatment.</p>	Change to "A statement whether, to the best of the provider's knowledge, the information has previously been provided to a governmental agency that does not treat it as confidential or that has denied a request for confidential treatment."

Summary of Public Comments on Draft Phase 1 Regulations  
9/13/12 Draft

Source	Subject	Line <sup>1</sup>	§	Public Comment	Recommendation
Mohegan Sun	Procedure for Acting on Requests for Protecting Confidential Information	868	103.11	205 CMR 103.11 describes the Commission's procedure when it receives a public records request <i>for Phase I application documents</i> that an applicant deems exempt and for which the Commission has not presumptively deemed exempt, and 205 CMR 103.04 described the Commission's procedure when it receives a public records request <i>for all other documents</i> asserted to be exempt. Mohegan Sun at Palmer respectfully suggests that the Commission may want to note that 205 CMR 103.04 applies "except as set forth in 205 CMR 103.11" to make clear this distinction.	Recommend making the requested change.

Summary of Public Comments on Draft Phase 1 Regulations  
9/13/12 Draft

Source	Subject	Line <sup>1</sup>	§	Public Comment	Recommendation
Suffolk Downs	Procedure for Acting on Requests for Protecting Confidential Information	868	103.11	<p>SSR generally endorses the Commission's proposed process for making determinations on requests for confidential treatment, principally set forth in section 103.11. We suggest that the Commission consider adding the following elements:</p> <ul style="list-style-type: none"> <li>a. a process for confidentiality claimants to provide the Commission with supplemental information in support of the request for confidential treatment in response to the particular public records request prompting the determination;</li> <li>b. an option for confidentiality claimants to withdraw information that the Commission determines is not proprietary, confidential or commercially sensitive rather than have it be disclosed (recognizing that such a withdrawal may require withdrawal of an entire application or lead to denial of an application);</li> <li>c. a postponement by longer than the proposed 10 days of the effectiveness of a denial of confidentiality pending appeal. SSR reads the proposed regulations to provide that, under section 103.06, the Commission would not stay release of information pending the outcome of an administrative or judicial review of the denial. Rather, SSR presumes that the postponement is designed to allow the confidentiality claimant to seek a reversal of the decision or a stay of or injunction against release of the information. However, SSR believes that ten days does not provide a sufficient opportunity for the confidentiality claimant to obtain that relief, especially in light of the fact that, under section 102.05, the period is ten calendar days, including any holidays, not ten business days.</li> </ul>	Adopt all three changes. Allow 14 days for c.

Summary of Public Comments on Draft Phase 1 Regulations  
9/13/12 Draft

Source	Subject	Line <sup>1</sup>	§	Public Comment	Recommendation
Mohegan Sun	Electronic Filing	1261	106.03	Mohegan Sun at Palmer strongly supports electronic filing as provided in 205 CMR 106.03 and recommends that it not be limited only to the RFA-1 and RFA-2 processes, but be adopted as a practice for any filing, whether related to initial licensure or not, and include other formats as may be directed by the Commission as technology advances.	No change recommended at this time. We should consider this suggestion for future regulations.
Sec. of State	Electronic Filing	1271	106.03(2)	Phrase “wherever possible” qualifying requirement to file machine-readable and text searchable is vague and should be removed.	Change to read: “Subject to applicable technological limitations.”
Suffolk Downs	Political Contributions: Prohibited Persons	1405	108.01	SSR has no policy objection to the scope of the persons to whom the Commission's proposed ban on political contributions would apply, but notes that it appears the regulations exceed the scope of c. 23K, § 46 because they apply to more than gaming license applicants and their affiliated companies and officers, directors, key gaming employees, and principal employees. In light of the emerging Supreme Court standards protecting political speech, see <u>Citizens United v. Federal Election Commission</u> , 558 U.S. 50 (2010), and the risk that exceeding the scope of § 46 may bring the whole regulatory structure into constitutional doubt, we recommend that, if the Commission intends to proceed with the broader scope indicated in the regulations, it consult with the Attorney General, seek confirmatory legislative authority, and/or adopt a savings clause to protect unobjectionable sections.	No change recommended. The language of the regulation tracks the language of § 46.
Mohegan Sun	Political Contributions: Disclosure	1489	108.03	Mohegan Sun at Palmer supports 205 CMR 108.03, which requires the disclosure of all political and community contributions since the enactment of the Act on November 22, 2011.	No change recommended.
Citizens for Jobs and Growth in Palmer	Community Agreements	1515	110.00	Palmer and Mohegan Sun will have completed the host development agreement as outlined in the law by this December, what happens immediately after the development agreement is finalized, in the licensing procedure?	No change needed to Phase 1 Regulations. The Commission should issue a policy statement dealing with the issue and then incorporate the policy statement in the Phase 2 regulations.

Summary of Public Comments on Draft Phase 1 Regulations  
9/13/12 Draft

Source	Subject	Line <sup>1</sup>	§	Public Comment	Recommendation
Suffolk Downs	Bifurcated Process	1539	110.02(2)	<p>In 205 CMR 110.01(2), the Commission may want to consider adding language to clarify that, while passing Phase 1 is recommended for participation in Phase 2, it is not sufficient in itself to make one eligible to receive a gaming license and does not satisfy the prerequisites set forth in c. 23K, § 15. For example, under the statute, a host community agreement is required before an RFA-2 application can be submitted.</p> <p>Footnote: A similar issues appears with respect to the "Instructions for Applicants for a Gaming License RFA Phase 1 Application," released on September 4, 2012, which state that "[a]11 applicants found suitable . . . will be eligible to proceed to Phase 2 of the process and submit RFA Phase 2 applications."</p>	No change recommended.
Leo Deschenes	Disclosure Forms	1552	111.00	<p>I suspect you may find that some casinos are privately held and those that are public may have complicated holding company relationships.... My request/comment would be to hold privately held and holding company relationships to the same general disclosure standards that would be imposed on a [standalone] publicly incorporated casino.</p> <p>It is critical to this evaluation to have complete transparency into the casinos that respond and not let anyone be exempt from full disclosure due to the fact that they are privately held or part of a larger holding company relationship.</p>	No change recommended: The Phase 1 Regulations carefully consider and address confidentiality issues.

Summary of Public Comments on Draft Phase 1 Regulations  
9/13/12 Draft

Source	Subject	Line <sup>1</sup>	§	Public Comment	Recommendation
Mohegan Sun	Phase I Application Requirements	1552	111.00	The definition of "publicly traded corporation" recommended above would be valuable to the Commission in clarifying certain requirements under 205 CMR 111 or in exercising its discretion to waive certain requirements. For example, 205 CMR 111.02(1)(f)(17) requires an applicant to list the "name, address and date of birth" of each person holding a debt or security device of an applicant. This requirement is not appropriate or necessary for publicly traded corporations, as defined, because the list would be too vast and is consistently changing. Similarly, the requirement in 205 CMR 111.02(1)(f)(20) that applicants list contracts with suppliers, etc. that are \$250,000 or above may be appropriate for the applicant itself, but for its ultimate holding company that is a publicly traded corporation, as defined above, it may be burdensome to provide and for the Commission to review. Publicly traded corporations are required to report on "material contracts" in their SEC filings and this may be a more appropriate reporting requirement.	Recommend insertion of definition and application to the cited sections.
Suffolk Downs	Disclosure Forms	1552	111.00	We note that various provisions of section 111.00 refer to an "affidavit of truth," which is a term that, so far as we are aware, is not used in Massachusetts practice. SSR recommends that those words be replaced with words such as "affidavit as to the truth of the statements in the application."	Change language.

Summary of Public Comments on Draft Phase 1 Regulations  
9/13/12 Draft

Source	Subject	Line <sup>1</sup>	§	Public Comment	Recommendation
Assistant Sec. for Access and Opportunity	Business Entity Disclosure Form	1639	111.02(f)(8),(9)	<p>The data submission [required] by this section is important because it affords the Commission an opportunity to look within the business entity to gauge the entity's commitment to diversity where it has the greatest ability to effect it – in the make-up of the organization, and not by looking at aggregate numbers but at the representation within levels of governance and operation in which strategy and decision-making take place. Please take note: My testimony is not meant to suggest that a firm lacking diversity at the corporate governance and/or senior officer level should be disqualified as an applicant or is incapable of effecting positive diversity outcomes in employment and procurement activity. In fact, such a firm might feel compelled to take extraordinary actions to demonstrate its commitments to diversity are substantive.</p> <p>Instead, my testimony is meant to commend the Commission. Absent this look into the firm, the Commission would be left to rely solely on the firm's ability to write a compelling diversity plan. I believe it is useful for the Commission to have some idea of each firm's commitment regarding matters of diversity and inclusion long before it sits to evaluate the strength of the firm's diversity plan and opportunities it purports to make real.</p>	No change recommended.
Suffolk Downs	Business Entity Disclosure Form	1652	111.02(1)(f)(12)	This provision regarding non-officers receiving compensation of more than \$250,000 should specify whether it applies only to employees or also to others, including directors, agents and consultants. Also, if broader than employees, the provision should carve out vendors covered by 205 CMR 111.02(20).	No change recommended.
Suffolk Downs	Business Entity Disclosure Form	1707	111.02(1)(f)(23)	We suggest the Commission consider having the scope of the disclosure of existing litigation mirror the material litigation disclosure requirements adopted by the SEC and used, for example, in its forms 10K and 10Q. We also suggest the Commission consider using the BED only for litigation involving the responding entity and not for directors, trustees, or officers. To the extent the BED requires information for directors, officers and trustees, we believe that the disclosure should be limited to litigation related to their capacity with the applicant and recommend the Commission so specify in the regulations and/or the BED.	No change recommended.



Summary of Public Comments on Draft Phase 1 Regulations  
9/13/12 Draft

Source	Subject	Line <sup>1</sup>	§	Public Comment	Recommendation
Leo Deschenes	Business Entity Disclosure Form	1811	111.02(1)(f)(29)(j)	In addition to the name, phone number address of the current outside auditor, I would ask you to consider asking when the entity (the casino) last changed auditors and the reason for the change. Perhaps this then could be added to the due diligence work that will be done once all Phase 1 responses have been received. Verify if the casino and auditor stories are in sync.	No change recommended.
Suffolk Downs	Multi-Jurisdictional Personal History Disclosure Form	1858	111.03	SSR supports the Commission's apparent intention to use the standard Multi-Jurisdictional Personal History Disclosure Form promulgated by the International Association of Gaming Regulators, as evidenced by the specimen form distributed on September 4. We note that the potential contents of the PHD-MA as described in section 111.03 include some items that are not in the standard form. To the extent the Commission is considering altering the standard form for use in Massachusetts, we recommend against doing so. Any additional inquiries may be made through the Massachusetts supplemental form.	No change recommended.
Suffolk Downs	Massachusetts Supplemental Form	2051	111.04	The Massachusetts supplemental form as described in section 111.04 and laid out in the specimen form distributed on September 4 duplicates various inquiries of the Multi-Jurisdictional form. The redundancies include: the recent picture; all of the personal data on page 6 of the specimen form other than social security number and optional race designation; citizenship information; and the reference requests. SSR suggests that the Commission eliminate the duplications to facilitate completing the forms and reduce the instances of confidential information that will need to be redacted in the event of a public records request.	No change recommended.
Mohegan Sun	Surrender of Gaming License	2144	111.05(4)	In 205 CMR 111.05(4), Mohegan Sun at Palmer recommends differentiating between the surrender of a license for up to five years, during which the credential holder could seek reinstatement, and the permanent surrender of a license. The Commission or Bureau would retain the licensing file of someone seeking to temporarily surrender their license while permanently purging or returning to the credential holder personal and confidential tax returns and records of someone retiring from the industry or otherwise not interested in resuming a surrendered license.	No change recommended.

Summary of Public Comments on Draft Phase 1 Regulations  
9/13/12 Draft

Source	Subject	Line <sup>1</sup>	§	Public Comment	Recommendation
Cities of Boston and Revere	Community Disbursements	2265	114.03	<p>1. The cities read 114.03 to be in conflict with the Expanded Gaming Law</p> <p>2. The [section] authorize community reimbursements, in accordance with M.G.L. c. 23K, § 15(11), which the cities strongly support. However, prior to the Commission reimbursing host communities, subsection (2) places an additional and onerous new requirement on municipalities not included in the Expanded Gaming Law. Prior to the Commission reimbursing a host community for the cost of determining the impact of a proposed gaming establishment, subsection (2) requires a letter of authorization to the Commission signed by: (1) the applicant and (2) a host (or surrounding) municipality. The cities suggest that reimbursement to a host (or surrounding) municipality should not be so tethered to approval by an applicant. Rather, a host (or surrounding) municipality should be able to seek and obtain reimbursement for the cost of determining the impact of a proposed gaming establishment regardless of whether an applicant agrees by signing a letter of authorization. The cities disagree with the proposed regulation because as it stands, the reimbursement procedures require an applicant's approval, a requirement not found in the Expanded Gaming Law or M.G.L. c. 23K, § 15(11). In large part, the cities themselves are bearing the cost of determining the impacts of a proposed gaming establishment and should not be required to gain the applicant's approval for state reimbursement.</p>	<p>No change recommended. Because we are in Phase 1 and have not seen the substantive content of the proposed development, we have no way of measuring the propriety of the request for funds in cases where there is a disagreement. Therefore, we are limited at this point to agreed-upon disbursements. We can, and should, if you policy, followed by regulations, dealing with contested disbursement as the phase 2 process proceeds ss disbursements</p>
Mass. Municipal Assoc.	Community Disbursements	2272	114.03(2)	<p>The reimbursement process would be improved by allowing a host or surrounding community to submit its impact study costs or impact mitigation agreement costs directly to the Massachusetts Gaming Commission for reimbursement. Once an applicant has paid its \$400,000 application fee to the Commission, there is no compelling reason to involve the applicant in the decision making process for any disbursement of those funds. The requirement that an applicant co-sign a request for host or surrounding community reimbursement could become a stumbling block if the applicant does not sign the request for any reason. The process should be improved and streamlined by allowing host or surrounding community reimbursement requests to be made solely by the host or surrounding community to the Commission.</p>	<p>See previous comment.</p>

Summary of Public Comments on Draft Phase 1 Regulations  
9/13/12 Draft

Source	Subject	Line <sup>1</sup>	§	Public Comment	Recommendation
Cities of Boston and Revere	Community Disbursements	2272	114.03(2)	The cities also encourage the Commission to change the language of subsection (2) from “the commission <i>may</i> , at any time and from time to time, make community disbursements to that host or surrounding municipality” to “the commission <i>shall</i> , at any time and from time to time make community disbursements...” (emphasis supplied). The cities believe that the Legislature, in its wisdom, thought that the applicant should bear the costs associated with pursuing a gaming license. Therefore, where the MGC has accepted an applicant’s fee, the Commission <i>shall</i> reimburse host communities for the cost of determining the impacts of a proposed gaming establishment.	See previous comments.

Summary of Public Comments on Draft Phase 1 Regulations  
9/13/12 Draft

Source	Subject	Line <sup>1</sup>	§	Public Comment	Recommendation
Mohegan Sun	Community Disbursements	2272	114.03(2)	<p>M.G.L. c. 23K, § 15(11) provides that each applicant shall pay the initial application fee of \$400,000 and <i>"not less than \$50,000 of the application fee shall be used to reimburse host and surrounding communities for the cost of determining the impact of a proposed gaming establishment and for negotiating community mitigation impact agreements."</i> (emphasis added). This Section also provides that "if the costs of the investigation exceed the initial application fee, the applicant shall pay the additional amount to the commission within 30 days after notification of insufficient fees or the application shall be rejected." 205 CMR 114.03(2) is arguably inconsistent with M.G.L. c. 23K, § 15(11) because it requires an applicant to pay additional funds even if the costs of the investigation have not exceeded the initial application fee. Similarly, 205 CMR 114.03(2) goes beyond the statute in contemplating automatic rejection of the application for a new condition not specified in Section 15(11).</p> <p>Mohegan Sun at Palmer supports the Commission's desire to make available "not less than \$50,000" for host and surrounding communities but is concerned that the inconsistencies between the Act and the Regulations may cause delay and uncertainties, both in the letters of authorization contemplated by 205 CMR 114.03(2) and in the process of identifying and negotiating with surrounding communities since host and surrounding communities may need to wait for community disbursements from the Commission. Accordingly, Mohegan Sun at Palmer respectfully suggests that the Commission estimate how much of the application fee will be necessary for the background investigation process as a general estimate. Based on earlier testimony from the Commission's consultants and discussion at some of the earlier forums, this estimate may be in the range of \$100,000. Then, the Commission could designate the balance, in this example \$300,000, so that applicants, host and surrounding communities could plan and execute letters of authorization accordingly. In the event that the Commission needs additional funds from a particular applicant after the estimated funds for this purpose are used at any time, then it would be able to bill the applicant through the process described in 205 CMR 114.04.</p>	<p>This comment raises an issue of statutory interpretation. It need not be resolved now because all disbursements under the phase 1 regulations are consensual but will require consideration as the process proceeds.</p>

Summary of Public Comments on Draft Phase 1 Regulations  
9/13/12 Draft

Source	Subject	Line <sup>1</sup>	§	Public Comment	Recommendation
Suffolk Downs	Phase 1 Procedures	2 3 8 2	115.02, .03	SSR suggests that the Commission consider refining some of the language of sections 115.02 and 115.03 to clarify that suitability investigations are being done by the Bureau. For example, to maximize confidentiality protections under the Public Records Law, section 115.02(1) should specify that RFA-1 applications are to be filed with the Bureau, rather than with the Commission to be referred to the Bureau.	No change recommended.
Mohegan Sun	Contractor Investigator	2 3 9 9	115.03(1)	The second sentence of 205 CMR 115.03 provides that the bureau may refer an investigation to a contract investigator "or retain the application for investigation by the bureau." This sentence suggests that the contractor investigators are separate from the bureau and potentially perform some independent function. However, 205 CMR 105.10(1) appropriately provides that contractor investigators assist the bureau in its investigations. Accordingly, Mohegan Sun of Palmer respectfully suggests that this second sentence be stricken.	Change the language to make it clear that the independent contractors function as a part of the Bureau.
Suffolk Downs	Contractor Investigators	2399	115.03(1)	SSR also suggests that the Commission consider deleting the second sentence of section 115.03(1), which states that "The bureau may refer the application for investigation, in whole or in part, to a contractor investigator pursuant to 205 CMR 105.11 or retain the application for investigation by the bureau." Given the clarity with which section 105.10 sets forth the role of contractor investigators in assisting the Bureau with the investigations it conducts, the quoted sentence is unnecessary. More significantly, it is problematic because it suggests that the Bureau the designated law enforcement agency — is not "retaining" and not "investigating" the applications to which contractor investigators contribute. This is contrary to the statutory mandate that the Bureau <u>conduct</u> investigations, c. 23K, §§ 12(a), 14(i), and is in tension with section 105.10, which establishes contractor investigators as agents of the Bureau who report directly to the Deputy Director and who are sworn to the faithful performance of official duties under Chapter 23K and the regulations. 205 CMR 105.10(4).	See previous comment.

Summary of Public Comments on Draft Phase 1 Regulations  
9/13/12 Draft

Source	Subject	Line <sup>1</sup>	§	Public Comment	Recommendation
Mohegan Sun	Adjudicatory Proceedings	2417	115.04	<p>205 CMR 115.04(3) requires an adjudicatory proceeding pursuant to 205 CMR 101.03(1) on each Phase I report prepared by the bureau. However, M.G.L. c. 23K, §17(f) only requires an adjudicatory hearing "[u]pon denial of an application" and upon request of an applicant to "contest any findings of fact by the bureau relative to the suitability of the applicant." Id. After completing its investigation, the Bureau is charged with issuing a report pursuant to 205 CMR 115.03(2) for applicants for a gaming license. If that suitability report is favorable, without conditions and uncontested, then there may be no reason to proceed with an adjudicatory hearing before the Commission. The applicant may want to waive its opportunity for an adjudicatory hearing and the Commission, if it determines there is no need for a hearing, may agree. The Commission may want to review and approve the suitability report in open session, subject to any redaction of confidential information, but mandating an adjudicatory hearing when the findings are not contested will detract from the Commission's desire to streamline the process and realize the economic benefits to the Commonwealth of expanded gaming.</p>	<p>There should be a hearing in all cases but that hearing need not be an adjudicatory one if the suitability report is entirely favorable. The language of the regulations should be changed to make this clear.</p>

Summary of Public Comments on Draft Phase 1 Regulations  
9/13/12 Draft

Source	Subject	Line <sup>1</sup>	§	Public Comment	Recommendation
Mohegan Sun	Persons Required to be Qualified	2468	116.02, .03	<p>Mohegan Sun at Palmer respectfully urges the Commission to give clearer guidance on the judgment and discretion it will exercise over the licensing of lenders and financial sources in 205 CMR 116.02 and the availability of waivers pursuant to 205 CMR 116.03 and should also ensure that any filings required of such financial sources are strictly confidential. The Pennsylvania Gaming Control Board amended its regulations with respect to the licensing of "principals" in recent years, and we encourage the Commission to consider adopting the following, consistent with 58 Pa. Code §433a, as an addition to 205 CMR 116, where appropriate:</p> <p>(1) A lender to an applicant or licensee that is obtaining financing for the construction or operation of a Category 1 or Category 2 facility shall be required to be licensed unless the following apply:</p> <p style="padding-left: 40px;">(a) The lender is in the business of providing debt or equity capital to individuals or entities.</p> <p style="padding-left: 40px;">(b) The loan is in the ordinary course of the lender's business.</p> <p style="padding-left: 40px;">(c) The lender does not have the ability to control or otherwise influence the affairs of the applicant or licensee.</p> <p style="padding-left: 40px;">(d) A lender that is required to be licensed may lend to an applicant or licensee if the lender has filed a completed application in accordance with 205 CMR 101.00 to 117.00 and has received lender authorization from the commission or bureau.</p> <p>(2) A person that acquires a debt instrument issued by an applicant or licensee in a public or exempt private offering shall not be required to be licensed if:</p> <p style="padding-left: 40px;">(a) The person does not have any right or ability to control or influence the affairs of the licensee.</p> <p style="padding-left: 40px;">(b) The person's acquisition of the debt instrument is in the ordinary course of business and is not part of a plan or scheme to avoid the requirements of this section.</p> <p>(3) Notwithstanding any provision to the contrary in this section, the commission may require the licensure of any person that holds a debt instrument issued by an applicant or licensee if the commission has reason to believe that the person would not satisfy the character requirements of these regulations or M.G.L. c. 23K.</p>	<p>Make the requested changes except broaden (3) to a reason to believe that the person would not satisfy any of the requirements of the Phase 1 regulations.</p>

Summary of Public Comments on Draft Phase 1 Regulations  
9/13/12 Draft

Source	Subject	Line <sup>1</sup>	§	Public Comment	Recommendation
MGM	Persons required to be qualified	2479	116.02(1)(a)(3)	<p>MGM recognizes and is familiar with the importance to make certain specific individuals within the organization meet all the standards pre-subscribed in order to qualify for a license. The standards as to whom within a “corporation” should be subject to the vetting process, including the 15% threshold for shareholders are fair.</p> <p>However, subsections (b), (c), and (d) apply to “Limited Liability Corporations,” “Limited Partnerships” and “Partnerships” respectively and their standards for vetting differ from “Corporations.” Those classifications require all members to qualify without imposing the same 15% ownership minimum.</p> <p><b>Request:</b> We would respectfully submit there should be balanced treatment for all qualifications regardless of ownership or organizational structure.</p>	The 15% requirement should be changed to 5% for shareholders of the Corporation. For institutional investors, the 15% threshold should remain. No other changes are recommended.
Suffolk Downs	Persons required to be qualified	2560	116.02(1)(e); 116.03(1)(d)	SSR commends the Commission for targeting the proposed scope-of-licensing regulations in section 116.00 to require qualification of the persons who can exercise control over or provide direction to gaming license applicants. This is demonstrated both in the reservation of the right to require any such person to qualify regardless of title (section 116.02(1)(e)) and in making available waivers to any person who cannot exercise control or provide direction to the applicant (section 116.03(1)(d)).	No change recommended.
Mohegan Sun	Waivers	2569	116.03	With respect to waivers, 205 CMR 116.03, Mohegan Sun at Palmer urges the Commission to clarify that waivers can be obtained prior to the applicant filing its forms as well as the procedure for seeking waivers.	Both changes are recommended.
ifSuffolk Downs	Waivers	2569	116.03	SSR also suggests that the Commission include in the regulations a process for requesting waivers authorized by the statute. The New Jersey Casino Control Commission has recently revised its regulations addressing the waiver process (N.J. Admin. Code § 13:69C-5A.1), and the MGC may consider those procedures as a possible model.	No changes are recommended beyond those addressed in the previous comment.



Summary of Public Comments on Draft Phase 1 Regulations  
9/13/12 Draft

Source	Subject	Line <sup>1</sup>	§	Public Comment	Recommendation
MGM	Waivers	2574	116.03(1)(a)	<p>While we applaud the Commission for providing a mechanism to exempt those individual who have a de minimis financial interest or play no role in any executive function we believe there are some issues with the drafting of this section.</p> <p>Section (1)(a) provides for waiver of holders of less than 5% of the common stock of a corporation. First, this is inconsistent with 116.02(1)(a)(3) which only requires 15% or greater owners to qualify in a corporation. More importantly, there is no waiver for owners of other types of entities. For example a private equity fund, which typically is a passive investor with no management control over the business, could not get a waiver under this regulation though such entities are often part of the financing structure of large developments of this nature. Other jurisdictions specifically include passive institutional investors in their exemption provisions (specifically Nevada and New Jersey) and allow the opportunity for such entities to seek an exemption with ownership interests of up to 25%.</p> <p><b>Request:</b> It would be our recommendation to make the waiver and threshold requirements consistent across all forms of ownership and organizational structure. In order to accomplish this the Commission should establish an ownership threshold of up to 25%, subject to the nature of ownership and the level of control over the business, consistent with other jurisdictions including New Jersey's automatic waiver and Nevada's discretionary waiver.</p>	116.02(1)(a)(3)(a) should be changed to 5% from 15%, consistent with statute at section 14(c); no other change recommended as there is a waiver provision for institutional investors; reject 25% threshold as inconsistent with statute at section 14(c)- 15% threshold for institutional investors should remain.
Suffolk Downs	Waivers	2574	116.03(1)(a)	SSR suggests that, in accordance with Chapter 23K, the Commission consider revising the language of section 116.03(1)(a) to clarify that a waiver of the qualification requirement is available to a person holding less than 5% ownership of an applicant company regardless of its form of organization. Section 14(c) of Chapter 23K, on which this waiver category is based, refers to owners of "applicant companies," not applicant corporations. Section 116.03(1)(a), on the other hand, references owners of the stock of "corporations."	No change recommended. If privately held entities want to exempt some of their owners, they can file for a waiver.

PROPOSED 205 CMR 101.00 – 117.00  
Suffolk Downs’ Notes regarding form, consistency, errata & typographical errors

Section	Comment/Edit	Explanation	Commission Resolution
101.00 & 102.00	Switch the order of Sections 101.00 and 102.00.	It would be better to have the generally applicable provisions of 102.00 come first; they include the definitions (some of which are used in 101.00)	No change needed.
101.00	Consider an introductory comment recognizing in text that adjudicatory proceedings are governed by Chapter 30A.	This is will give affected persons more directed guidance as to the sources of law governing the proceedings than does listing Chapter 30A in the authorities note.	No change needed.
101.00	Make textual reference to/describe effect of c.§ 23K, § 17(g), which provides that gaming license applicants shall not be entitled to any further review if the application for a gaming license is denied.	This major feature of the applicant process is conspicuously absent from these provisions.	Add clarifying language to §115.05 (5)
101.02(1) & 101.02(2)	Change “205 CMR 101.00” to “205 CMR 101.04”	More specific reference to the exceptions in 101.04; consistency with 101.01(1).	No change needed.
101.02(2)	Delete “informal”	Consistency with 101.01(1) and 101.02(1), which do not use “formal”.	No change needed.
101.03(1)(a)	Change “205 CMR 101.03(1)(a)” to “205 CMR 101.01(1)(a)”	Incorrect cross-reference; as drafted, provision refers to itself.	Make the requested change.
101.03(1)(c)	Delete the following underlined words from this provision: “The applicant shall have the affirmative obligation to establish by clear and convincing evidence <u>both</u> its affirmative qualification for licensure <u>and the absence of any disqualification for licensure.</u> ”	It is unclear what standards the Commission would and could use to determine that an applicant has proven a negative.	No change needed.
102.02(2)	In definition of candidate, change “Commonwealth” to “state”	Consistency with Chapter 55.	Make the requested change.
102.02(2) (cont.)	In line 528, delete “or holder”	The legislature considered both “holders” and “applicants” in the scope of this provision, but chose to omit holders. Compare HB3697, HB3711, and SB2015 <u>with</u> SB2035, HB3807, & St. 2011, c. 194.	Make the requested change. License holders are entitled to make limited contributions under §24 of the Act.
102.06	Delete this section, which specifies an effective date for the regulations.	The regulations will become effective upon publication in the Massachusetts Register.	Make the requested change.
103.01	Change “are intended” to “is intended”	typo	Make the requested change.
103.02	Delete category 5.	There is overlap among the categories of non-public records. Notably, category (5) is one of the exemptions in MGL c. 4, § 7, cl. 26, all of which are incorporated through category (1).	No change needed.
103.02(2)	Change “information defined” to “information as defined”	typo	Make the requested change.

PROPOSED 205 CMR 101.00 – 117.00

Notes regarding form, consistency, errata & typographical errors

<b>Section</b>	<b>Comment/Edit</b>	<b>Explanation</b>	<b>Commission Resolution</b>
103.04(2)	This provision should carve out the determinations made pursuant to 103.11 and 103.12.	By its terms, the general provision of section 103.04(2) would apply to the determinations addressed by the Commission under 103.11 and 103.12.	Make the corrected change.
	“Commission’s General Counsel” should be “General Counsel”	General Counsel is a defined term.	Make the corrected change.
103.07	Delete “confidential information as defined in 205 CMR 102.02(2)”	The phrase is redundant because the information is included within the scope of 103.02(1) through (5).	Make the requested change.
103.09/.10	Consider reserving section number 103.10 for regulations concerning non-public record designations for RFA-2 applications, or change the title of 103.09 so that it is not limited to Phase 1.	This presumes that the Commission’s Phase 2 regulations are going to address confidential information and otherwise non-public information to be provided in connection with the RFA-2 Application.	No change needed.
103.10(2)(c)	Change “103.12” to “102.02(2)”	The definition in 102.02 sets forth the criteria for confidential information; 103.12 is a reconsideration provisions providing no criteria.	Change 103.12 to 103.11
105.10(1)	Add “licensed in Massachusetts” after “private investigative business or businesses”		No change necessary.
106.02(3)	The word “involving” should be changed to “conducted by.”	The regulations should recognize that the Commission does not control the mode of service of papers in adjudicatory proceedings in which the Commission is involved but which take place in other forums (e.g., the MCAD or some other state or federal administrative agency).	Change to "conducted by or on behalf of."
111.02	The specimen form released by the Commission on September 4, 2012, contains numerous topics that are not included in 205 CMR 111.02.		No change needed.
111.03	The provisions of 111.03 concerning the content of the Multi-Jurisdictional Personal History Disclosure Form should refer not to the “applicant” (which will be a business entity) but rather to the person completing the form.		Change the word "applicant" to "qualifier."

PROPOSED 205 CMR 101.00 – 117.00

Notes regarding form, consistency, errata & typographical errors

Section	Comment/Edit	Explanation	Commission Resolution
111.03 & .04	Revise the listings of disclosure form contents in 111.03 and 111.04 so that they better track the specimen forms released on 9/4/12.	Various items listed in 111.03 as appearing in the Multi-Jurisdictional form do not appear in the specimen form released on 9/4/12, but rather appear in the Mass. Supplemental form (e.g., social security number; gaming licensee or applicant with whom the person is affiliated; request for tax returns).	No change necessary.
111.02(1)(f)(28)	Change “111.0 <u>3</u> (1)(f)(27)(c)” to “111.0 <u>2</u> (1)(f)(27)(c)”	typo	Make the requested change.
117.01(2)(g)	“117(2)” should be “117.01(2)”	typo	Make the requested change.
Passim	Underlining extends past heading into blank space after colon (e.g., 101.04(1)(b) & various definitions in 102.02(2).)	typos	Make the requested change.

**205 CMR: MASSACHUSETTS GAMING COMMISSION  
Commission Redline Draft – September 25, 2012**

205 CMR 101.00: M.G.L. c. 23K ADJUDICATORY PROCEEDINGS

Section

- 101.01: Hearings Before the Commission
- 101.02: Hearings Before the Bureau
- 101.03: Special Procedures for Hearings Before the Commission
- 101.04: Special Procedures for Hearings Before the Bureau

101.01: Hearings Before the Commission

(1) Except as set forth in M.G.L. c. 23K and 205 CMR 101.03, the commission will conduct the following types of adjudicatory hearings in accordance with the procedures in 801 CMR 1.01: *Formal Rules*:

~~(a)~~ Hearings before the commission pursuant to M.G.L. c. 23K, § 17(f), to contest any findings of fact by the bureau relative to the suitability of the applicant for an initial gaming license or the renewal of a gaming license, including without limitation, recommendations and recommended conditions resulting from the RFA-1 process pursuant to 205 CMR 115.00: *Phase 1 Suitability Determinations, Standards and Procedures* and the ~~Rfa~~RFA-2 process described in 205 CMR 110.00: *Issuance of Request for Category 1 and Category 2 License Applications*.

(2) Nothing in 205 CMR 101.00 shall govern or affect hearings conducted pursuant to 205 CMR 1.00 through 13.00.

101.02: Hearings Before the Bureau

(1) Except as set forth in M.G.L. c. 23K and 205 CMR 101.00, the bureau will conduct the following types of hearings in accordance with the procedures in 801 CMR 1.01: *Formal Rules*:

- (a) Hearings before the bureau pursuant to M.G.L. c. 23K, § 30(g) to contest the findings of the bureau relative to a key gaming employee license –or a renewal application with respect thereto; and
- (b) Hearings before the bureau pursuant to M.G.L. c. 23K, § 31(h) to contest the findings of the bureau relative to a gaming vendor license application or renewal.

(2) Except as set forth in M.G.L. c. 23K and 205 CMR 101.00, the bureau will conduct the following types of hearings in accordance with the informal procedures in 801 CMR 1.02: *Informal/Fair Hearing Rules*:

- (a) Hearings before the bureau pursuant to M.G.L. c. 23K, § 30(g) to contest the findings of the bureau relative to a gaming employee license, or a gaming service employee registration or a renewal application with respect thereto; and
- (b) Hearings before the bureau pursuant to M.G.L. c. 23K, § 31 to contest the findings of the bureau relative to non-gaming vendor registration.

101.03: Special Procedures for Hearings Before the Commission

Hearings Concerning Phase 1 Determinations of Suitability. For hearings before the commission pursuant to M.G.L. c. 23K, § 17(f) and 205 CMR 101.01(1) concerning the bureau's Phase 1 recommendations and findings of fact pursuant to 205 CMR 115.00: *Phase 1 Suitability Determinations, Standards and Procedures*, the following provisions of M.G.L. c. 23K and 205 CMR 101.00 shall supersede any conflicting provisions of 801 CMR 1.01: *Formal Rules*:

- (a) Standing: No person other than an aggrieved applicant shall have automatic standing to participate in the hearing under 205 CMR 101.~~0301~~(a).
- (b) Presiding Officer: Pursuant to M.G.L. c. 23K, § 3(h), the chair may direct that all of the commissioners participate in the hearing and decision of the matter before the commission. In the alternative, pursuant to M.G.L. c. 23K, § 3(h), the chair with the concurrence of one other commissioner may appoint a presiding officer to preside over the hearing. The notice scheduling the time and place for the pre-hearing conference shall specify whether the commission or a designated individual shall act as presiding officer in

**205 CMR: MASSACHUSETTS GAMING COMMISSION**  
**Commission Redline Draft – September 25, 2012**

the particular case.

(c) Burden of Proof: The applicant shall have the affirmative obligation to establish by clear and convincing evidence both its affirmative qualification for licensure and the absence of any disqualification for licensure.

(d) No appeal from Commission's Determination of Suitability. Pursuant to M.G.L. c. 23K, § 17(g), the applicant shall not be entitled to any further review from the commission's determination of suitability.

101.04: Special Procedures for Hearings Before the Bureau

Formal Hearings. For hearings before the bureau pursuant to 205 CMR 101.02(1), the following provisions of M.G.L. c. 23K and 205 CMR 101.00 shall supersede any conflicting provisions of 801 CMR 1.01: ~~-Formal Rules-~~

(a) Standing: Same as 205 CMR 101.03(a).

(b) Presiding Officer: The deputy director shall appoint a presiding officer to preside over the hearing who may be any of the following:

1. An attorney from the commission, the bureau, or the attorney general's office;
2. An outside counsel;
3. An administrative law judge from the Massachusetts Division of Administrative Law Appeals;
4. A retired Massachusetts or ~~f~~Federal judge.

(c) Burden of Proof: Same as 205 CMR 101.03(c).

(d) Decision: Pursuant to M.G.L. c. 23K, § 4(15), in its decision after the hearing, the bureau may approve, deny, limit, condition, restrict, revoke or suspend such finding of suitability, license or renewal as the bureau deems reasonable to effectuate the purposes of M.G.L. c. 23K. Any orders by the bureau denying an application, determination of suitability, license, or renewal shall be accompanied by an explanation of the reasons that an applicant did not meet the qualifications for licensure under M.G.L. c. 23K.

(e) Notice of Decision: The bureau shall notify the applicant in person or by mail of the decision, of the applicant's right to appeal the decision to the commission and of the 30 day time limit on the right to appeal.

(f) Appeal to Commission from Bureau Decision: An applicant aggrieved by a decision of the bureau after a hearing pursuant to 205 CMR 101.04 may appeal that decision to the commission by filing a notice of appeal within 30 days of the date of the bureau's notice of decision under 205 CMR 101.04(e). The notice of appeal shall be filed with the commission at its main office and a copy shall be simultaneously transmitted to the bureau.

(g) Record Review: The commission shall hear and decide any appeal under 205 CMR 101.04(f) on the record of the bureau's hearing under 205 CMR 101.04(~~1~~).

(h) No Further Review: The decision of the commission on any appeal under 205 CMR 101.04(f) shall be final and the applicant shall not be entitled to further review.

(i) Waiver: If no hearing is timely requested concerning the bureau's decision under 205 CMR 101.02, or if no appeal is timely filed from the bureau's decision after a hearing under 205 CMR 101.04(f), then the bureau's decision shall be the final decision of the commission and the applicant shall not be entitled to further review.

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REGULATORY AUTHORITY

205 CMR 101.00: M.G.L. c. 7, § 4H; c. 23K, §§ 3(h), 4(15), (28), (29), (37); 5;13; 17(f), (g); 30(g); 31; 35(g); ~~-36(c), (d), (e), (f); and c. 30A.~~

**205 CMR: MASSACHUSETTS GAMING COMMISSION**  
**Commission Redline Draft – September 25, 2012**

205 CMR 102.00: CONSTRUCTION AND APPLICATION

Section

- 102.01: Authority
- 102.02: Definitions
- 102.03: Construction and Amendments
- 102.04: Words and Terms; Tense, Number and Gender
- 102.05: Computation of Time

102.01: Authority

205 CMR 101.00 through 117.00 are issued pursuant to M.G.L. c. 23K, §§ 4(37) and 5, unless otherwise specified.

102.02: Definitions

As used in 205 CMR 101.00 through 117.00, the following ~~additional~~ words and phrases shall have the following meaning, unless the context clearly requires otherwise:

~~Affiliate is defined in M.G.L. c. 23K § 2.~~

~~Applicant is defined in M.G.L. c. 23K § 2.~~

~~Application is defined in M.G.L. c. 23K § 2.~~

~~Bureau is defined in M.G.L. c. 23K § 2.~~

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Bureau Decision is defined in 205 CMR 115.03: *Phase 1 Investigation and Recommendations by the Bureau* and 205 CMR 101.00: *M.G.L. c. 23K Adjudicatory Proceedings*.

Bureau Hearing is defined in 205 CMR 101.02: *Hearings Before the Bureau*.

~~Business is defined in M.G.L. c. 23K § 2.~~

Business Entity Disclosure Form (BED) is defined in 205 CMR 111.024: *Business Entity Disclosure Form - Category 1 and Category 2 Entity Applicants and Holding/Intermediary Companies Phase 1 Application Requirements(3)*.

Candidate means a person seeking nomination or election to any local, county, or ~~Commonwealth~~ state public office in Massachusetts, but shall not include a person seeking nomination or election to any Federal public office.

~~Capital Expenditure is defined in M.G.L. c. 23K § 2.~~

~~Cashless Wagering System is defined in M.G.L. c. 23K § 2.~~

~~Category 1 License is defined in M.G.L. c. 23K § 2.~~

~~Category 2 License is defined in M.G.L. c. 23K § 2.~~

~~Chair is defined in M.G.L. c. 23K § 2.~~

~~Cheat is defined in M.G.L. c. 23K § 2.~~

~~Cheating and Swindling Device or Cheating and Swindling Game is defined in M.G.L. c. 23K § 2.~~

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Chief Executive Officer means:



**205 CMR: MASSACHUSETTS GAMING COMMISSION**  
**Commission Redline Draft – September 25, 2012**

- (a) As to gaming licensees or applicants the natural person who is ultimately responsible for the daily conduct of the gaming establishment business of one or more affiliated gaming licensees or applicants, regardless of the form of business association of the gaming licensee or applicant or the particular title which that person or any other person holds; and
- (b) As to gaming vendor licensees or applicants, the natural person who bears ultimate responsibility for the organization and business activities of the enterprise.

Chief Financial and Accounting Officer means the chief financial and accounting officer of the commission.

Close Associate is defined in M.G.L. c. 23K § 2.

Commission is defined in M.G.L. c. 23K § 2.

Commissioner is defined in M.G.L. c. 23K § 2.

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Community Contribution means a political contribution or contribution in kind made by an applicant for a gaming license to a municipality or a municipal employee as allowed by M.G.L. c. 23K, § 47.

Competitively-sensitive Information means all records which are, and those portions of records which contain, confidential personal or business information which if made publicly available would have a reasonable likelihood of placing a person at a competitive disadvantage, or be detrimental to or otherwise cause substantial damage or irreparable harm to the person such as identity theft, industrial espionage, unfair competition, or similar adverse consequences. Competitively-sensitive information includes, without limitation, social security numbers, passport numbers and other unique identifying information, research and development information, financial records, banking or lending records, mortgage and credit history, lists of customers or business contacts, pricing information, marketing information, processes and methods, and any other unique information, methodology, technique, system, or feature which is restricted by appropriate security measures in the ordinary course to the individual or person or to top management, counsel, research and development staff, and expert consultants only.

Complimentary Service or Item is defined in M.G.L. c. 23K § 2.

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Confidential Information means all records which are, and those portions of records which contain:

- (a) trade secrets, competitively-sensitive information and other proprietary information provided to the commission, the bureau, and their agents and employees in the course of an application or an investigation; and
- (b) trade secrets and other information protected from public disclosure by a nondisclosure agreement between the gaming licensee and the commission pursuant to M.G.L. c. 23K, § 21(a)(7).

Confidentiality Claimant means any person who makes a claim that any records, material or information submitted to the commission, the bureau, or their agents and employees constitutes confidential information.

Conservator is defined in M.G. c. 23K § 2.

Contractor Investigator is defined in 205 CMR 105.10: *Authority to Retain and Utilize Contractor Investigators*.

Contribution means a payment, transfer or pledge of money or a thing of value to or for the benefit of a candidate or political organization.

Credit Card is defined in M.G.L. c. 23K § 2.

Credit Instrument is defined in M.G.L. c. 23K § 2.

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205 CMR: MASSACHUSETTS GAMING COMMISSION  
Commission Redline Draft – September 25, 2012

Dependent Person means a person who is:

- (a) An employee or co-employee of a prohibited person;
- (b) An employee or co-employee of a person affiliated with a prohibited person; or
- (c) An enterprise or firm, or an officer, director, partner, owner or principal employee of an enterprise or firm, that is a party to any contract with, or is bidding for or seeking to enter any contract with, or regularly represents or provides services to, a prohibited person.
- (d) A child residing with a prohibited person or who is claimed as a dependent by a prohibited person for federal tax reporting purposes.

Deputy Director means the deputy director of the bureau.

Director of Gaming Enforcement means the assistant attorney general designated by the attorney general as the director of gaming enforcement pursuant to M.G.L. c. 12, § 11M(b).

Director of Security means an employee of a gaming establishment in charge of and with overall supervisory responsibility for security of the gaming establishment.

Director of Surveillance means an employee of a gaming establishment in charge of and with overall supervisory responsibility for surveillance at the gaming establishment.

Division is defined in M.G.L. c. 23K § 2.

Executive Director is defined in M.G.L. c. 23K § 2.

Financial Stability is defined in 205 CMR 117.00: *Phase ~~determination~~ 1 Determination of Financial Stability.*

Gambling is defined in M.G.L. c. 23K § 2.

Game is defined in M.G.L. c. 23K § 2.

Gaming is defined in M.G.L. c. 23K § 2.

Gaming Area is defined in M.G.L. c. 23K § 2.

Gaming Device or Gaming Equipment is defined in M.G.L. c. 23K § 2.

Gaming Employee is defined in M.G.L. c. 23K § 2.

Gaming Enforcement Unit –means the gaming enforcement unit established by the colonel of state police pursuant to M.G.L. c. 22C, § 70.

Gaming Establishment is defined in M.G.L. c. 23K § 2.

Gaming License is defined in M.G.L. c. 23K § 2.

Gaming Licensee is defined in M.G.L. c. 23K § 2.

Gaming Position is defined in M.G.L. c. 23K § 2.

Gaming Service Employee is defined in M.G.L. c. 23K § 2.

Gaming Vendor is defined in M.G.L. c. 23K § 2.

Gaming Vendor License is defined in M.G.L. c. 23K § 2.

General Counsel means the person designated by the commission as its general counsel or acting general counsel.

Governing Body is defined in M.G.L. c. 23K § 2.

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205 CMR: MASSACHUSETTS GAMING COMMISSION  
Commission Redline Draft – September 25, 2012

Gross Revenue or Gross Gaming Revenue is defined in M.G.L. c. 23K § 2.

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Holding Company is defined in M.G.L. c. 23K § 2.

Host Community is defined in M.G.L. c. 23K § 2.

Impacted Live Entertainment Venue is defined in M.G.L. c. 23K § 2.

Institutional Investor is defined in M.G.L. c. 23K § 2.

Intermediary Company is defined in M.G.L. c. 23K § 2.

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Investigatory Material means any document, record, transcript, complaint, evidentiary material of any nature, correspondence, memoranda, report, work product, or other information concerning any examination, any investigation (whether formal or informal), or any related litigation, which pertains to or may disclose:

- (a) the possible violation by any person of any provision of any statute, rule, or regulation administered by the commission or the bureau, by any other federal, state, local or foreign governmental authority, by any professional association, or by any securities industry self-regulatory organization as well as all written communications from, or to, any person complaining of or otherwise furnishing information respecting such possible violations;
- (b) information relating to an ongoing investigation that could potentially alert subjects to the activities of investigative officials;
- (c) confidential investigative techniques the disclosure of which would prejudice future law enforcement efforts;
- (d) any details in witness statements, which if released create a grave risk of directly or indirectly identifying a private citizen who volunteers as a witness; and
- (e) the background of any person the disclosure of which would constitute an unwarranted invasion of personal privacy.

Junket is defined in M.G.L. c. 23K § 2.

Junket Enterprise is defined in M.G.L. c. 23K § 2.

Junket Representative is defined in M.G.L. c. 23K § 2.

Key Gaming Employee is defined in M.G.L. c. 23K § 2.

License is defined in M.G.L. c. 23K § 2.

List of Excluded Persons is defined in M.G.L. c. 23K § 2.

Lottery is defined in M.G.L. c. 23K § 2.

Major Policymaking Position is defined in M.G.L. c. 23K § 2.

Massachusetts Supplement Form (PHD-MA-SUPP) is defined in 205 CMR 111.041: ~~*Massachusetts Supplemental Form Phase I Application Requirements(3)*~~.

Money means cash or instruments that are convertible to cash in any negotiable currency.

Multi-jurisdictional Personal History Disclosure Form (PHD-MA) is defined in 205 CMR 111.043: ~~*Multi-Jurisdictional Personal History Form Phase I Application Requirements(3)*~~.

Non-Gaming Vendor is defined in M.G.L. c. 23K § 2.

Operation Certificate is defined in M.G.L. c. 23K § 2.

Person is defined in M.G.L. c. 23K § 2.

Political Contribution means a contribution as defined in M.G.L. c. 55, § 1, except for a

**205 CMR: MASSACHUSETTS GAMING COMMISSION**  
**Commission Redline Draft – September 25, 2012**

community contribution as defined in 205 CMR 102.02: Community Contribution.

Political Organization means any committee of any political party in the Commonwealth of Massachusetts, as structured and defined in accordance with M.G.L. c. 23K, §§ 46 and 47, or any group committee or association organized in support of such political party or any candidate. 205 CMR 102.02: Political Organization shall not mean include a national party committee or the committee of a federal candidate for the United States Senate or House of Representatives, even though such a committee may contribute to a state candidate from its general receipts.

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Promotional Gaming Credit is defined in M.G.L. c. 23K § 2.

Prohibited Person means any officer, director, key gaming employee, qualifier or principal employee of an applicant for a gaming license or of any holding, intermediary or subsidiary company thereof, applicant for or holder of a gaming license, or any holding, intermediary or subsidiary company thereof; or any officer, director, key gaming employee or qualifier of any of these companies; or any person or agent acting on behalf of any of these companies or persons. 205 CMR 102.02: Prohibited Person shall not include that class of licensees who, pursuant to M.G.L. c. 55, § 7A are allowed to make contributions not to exceed \$200.00 per annum.

Proprietary Information means all records which are, and those portions of records which contain personal or business information which, owing to its confidential nature, is in the ordinary course subjected to strict measures to preserve its confidentiality including, confidentiality agreements, non-competition agreements, encryption and password protection for electronic information, restriction of access to those with a need-to-know, and other policies, procedures, security measures or markings designed to protect the secrecy of information and to keep the information strictly confidential.

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Publicly-Traded Corporation means a person, other than an individual, which:

- (1) has a class or series of securities registered under the Securities and Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a et seq.);
- (2) is a registered management company under the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.); or
- (3) is subject to the reporting obligations imposed by section 15(d) of the Securities and Exchange Act of 1934 by reason of having filed a registration statement which has become effective under the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.) or by reason of an indenture entered into pursuant to an exemption from registration under the Securities Act of 1933.

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Qualification or Qualified is defined in M.G.L. c. 23K § 2.

Qualifier is defined as a person whose qualification must be established in evaluating the suitability of an applicant in accordance with the standards and criteria set forth in M.G.L. c. 23K, § 12(a) and 205 CMR 115.01: *Phase 1 Determination Standards* ~~(1)(d)~~ and 205 CMR 116.02: *Persons Required to be Qualified*.

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Record means a book, paper, map, photograph, recorded tape, financial statement, statistical tabulation, or any other documentary material or data, regardless of physical form or characteristics.

Rewards Card is defined in M.G.L. c. 23K § 2.

RFA-P1 or RFA-1 Process is defined in 205 CMR 110.00: *Issuance of Request for Category 1 and Category 2 License Applications*.

Secretary means the secretary of the commission.

Security Protocols means the system for securing and preserving the confidentiality of records in accordance with 205 CMR 103.14: *Security Protocols; Restricted Access*.



**205 CMR: MASSACHUSETTS GAMING COMMISSION**  
**Commission Redline Draft – September 25, 2012**

Solicitation means a request, suggestion or recommendation made to a particular person, by any means of communication, that the person make a contribution; provided, however, that a statement to a person expressing support for or opposition to the election of any candidate, or support for or opposition to any political organization, which is made without reference to a contribution or a statement intended for and given public dissemination encouraging all persons to make contributions to any candidate or political organization, is not a solicitation.

Slot Machine is defined in M.G.L. c. 23K § 2.

State Police is defined in M.G.L. c. 23K § 2.

Subsidiary is defined in M.G.L. c. 23K § 2.

Surrounding Communities is defined in M.G.L. c. 23K § 2.

Table Game is defined in M.G.L. c. 23K § 2.

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Thing of Value means:

- (a) An item of real, personal or intellectual property that may be converted into money by selling it or pledging it as security for a loan or other advance of funds;
- (b) A loan of assets, property, personnel or facilities for use by a candidate or political organization, such as, without limitation, office space, automobiles, telephones or telephone services, or the time and effort of employees or consultants who are paid by the person making the contribution;
- (c) A personal or professional service that is not incidental to the expression of a person's ideological beliefs or membership in a political organization, and that has a value to the candidate or political organization;
- (d) A non-reimbursed expense that is not incidental to the expression of a person's ideological beliefs or membership in a political organization, and is of the type normally incurred by the candidate or political organization; or
- (e) Any thing, service, expense or other item of value similar to that identified in 205 CMR 102.02: Thing of Value, (a) through (d) which may be identified by the commission in an advisory ruling or other appropriate proceeding.

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Trade Secret means all records which are, and those portions of records which contain, anything tangible or intangible or electronically kept or stored, which constitutes, represents, evidences or records a secret scientific, technical, merchandising, production, manufacturing, or management information, design, process, procedure, formula, invention, method or improvement which its owner considers to be and treats as confidential and which is not available to the public by any other source. 205 CMR 102.02: Trade Secret shall include anything which is a trade secret pursuant to M.G.L. c. 266, § 30(4).

Transfer is defined in M.G.L. c. 23K § 2.

Wager is defined in M.G.L. c. 23K § 2.

102.03: Construction and Amendments

- (1) 205 CMR, shall be construed in accordance with generally accepted principles of statutory construction in the Commonwealth of Massachusetts, including those set forth in M.G.L. c. 23K.
- (2) 205 CMR shall be liberally construed to permit the commission, the bureau, and their agents and employees to effectively carry out their respective statutory functions and to secure a just and expeditious determination of issues properly presented to the commission and the bureau.
- (3) Nothing in 205 CMR shall be construed to conflict with any provision of M.G.L. c. 23K.

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205 CMR: MASSACHUSETTS GAMING COMMISSION  
Commission Redline Draft – September 25, 2012

~~(4)~~ (4) Waivers

~~(a) General. The commission may in its discretion waive or modify any provision or requirement contained in 205 CMR 110.00 through 112.00 and 115.00 through 117.00, not specifically required by law, where the commission finds that:~~

~~(i) Granting the waiver is consistent with the purposes of M.G.L. c. 23K;~~

~~(ii) Granting the waiver will not interfere with the ability of the commission or the bureau to fulfill its duties;~~

~~(iii) Granting the waiver will not adversely affect the public interest; and~~

~~(iv) Not granting the waiver would cause a substantial hardship to the person requesting the waiver.~~

~~(b) Filings. All requests for waivers shall be in writing, shall set forth the specific provision to which a waiver is sought, and shall state the basis for the proposed waiver.~~

~~(c) Determination. The commission may grant a waiver, deny a waiver, or grant a waiver subject to such terms, conditions and limitations as the commission may determine.~~

~~Any waiver request not acted on by the commission within sixty (60) days of filing shall be deemed denied. There shall be no further review from any determination by the commission or any constructive denial of a waiver request. In special cases and for good cause shown, the commission or bureau may relax, waive or permit deviations from 205 CMR.~~

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102.04: Words and Terms; Tense, Number and Gender

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In construing 205 CMR 101.00 through 117.00, except when otherwise plainly declared or clearly apparent from the context: words in the present tense shall include the future tense; words in the masculine shall include the feminine and neuter genders; and words in the singular shall include the plural and the plural shall include the singular.

102.05: Computation of Time

(1) Unless otherwise specifically provided by law, computation of any time period referred to in 205 CMR 101.00 through 117.00 shall begin with the first day following the act which initiates the running of the time period. The last day of the time period is to be included unless it is a Saturday, Sunday, or legal holiday in which event the period shall run until the end of the next business day. When the time period is seven days or less, intervening Saturdays, Sundays, or legal holidays shall be excluded in the computation. When a time period is greater than seven days each intervening calendar day shall be included in the computation.

(2) Whenever a provision of 205 CMR 101.00 through 117.00 requires that an act or event occur on a specified day or date, and such day or date falls upon a Saturday or Sunday or legal holiday, such provision shall be construed to refer to the next business day immediately following such day or date.

REGULATORY AUTHORITY

205 CMR 102.00: M.G.L. c. 12, § 11M; c. 23K, §§ 2, 4(37), -5, 9(b), 12(a), 21(a)(7), 46, 47; c. 22C, § 70; c. 55, §§ 1, 7A; and c. 266, § 30.

**205 CMR: MASSACHUSETTS GAMING COMMISSION**  
**Commission Redline Draft – September 25, 2012**

205 CMR 103.00: ACCESS TO AND CONFIDENTIALTY OF COMMISSION RECORDS

Section

- 103.01: Purpose, Authority and Applicability
- 103.02: Availability of Public Records
- 103.03: Official Custodians; Individual Responsible for Personal Data System
- 103.04: Determinations by the Official Custodian, the General Counsel and the Commission
- 103.05: Effect of Requests for Confidentiality
- 103.06: Postponing Denial of Confidentiality Pending Appeal
- 103.07: When Confidential or Exempt Information May Be Disclosed by the Commission
- 103.08: Confidential Information Subject to Promise of Confidentiality
- 103.09: Information Provided in Response to Requests for Applications - Phase 1
- 103.10: Requests for Protecting Confidential Information
- 103.11: Procedure for Acting on Requests for Protecting Confidential Information
- 103.12: Reconsidering Confidentiality Determinations
- 103.13: Executive Session Consideration of Confidential or Exempt Information
- 103.14: Security Protocols; Restricted Access
- 103.15: Records Retention

103.01: Purpose, Authority and Applicability

205 CMR 103.00 is promulgated pursuant to M.G.L. c. 23K, §§ 4(37), and 5. 205 CMR 103.00 is intended to assure that public access to, and the confidentiality of, records made or received by the commission and the bureau are in conformity with M.G.L. c. 23K, § 9(b) and § 21(a)(7); M.G.L. c. 66, § 10; M.G.L. c. 4, § 7, cl. 26; and 950 CMR 32.00: *Public Records Access*.

103.02: Availability of Public Records

All records made or received by the commission or the bureau shall be public records and shall be available for disclosure on request pursuant to 205 CMR 103.00 and 950 CMR 32.00: *Public Records Access*, except the following, which shall be exempt from disclosure to the extent permitted by law:

- (1) all records, including without limitation investigatory materials, specifically excluded from the definition of "public record" pursuant to M.G.L. c. 4, § 7, cl. 26;
- (2) all confidential information as defined in 205 CMR 102.02: *Definitions*;
- (3) all records which are or which contain "criminal offender record information", "evaluative information", or "intelligence information" pursuant to M.G.L. c. 6, § 167, the disclosure of which would not be in compliance with M.G.L. c. 6, §§ 167 through 178Q;
- (4) all records which are or which contain "personal data" pursuant to M.G.L. c. 66A, § 1, the disclosure of which would not be in compliance with M.G.L. c. 66A; or which are or which contain "personal information" –pursuant to M.G.L. c. 93H, § 1, the disclosure of which would not be in compliance with M.G.L. c. 93H; and
- (5) all records specifically or by necessary implication exempted from disclosure by statute including, but not limited to, the exemption statutes listed by the supervisor of public records in the official *Guide to the Massachusetts Public Records Law: Appendix*.

103.03: Official Custodians; Individual Responsible for Personal Data System

(1) Pursuant to M.G.L. c. 66, § 6, and M.G.L. c. 23K § 3(f) and (i), subject to the oversight of the chair, the secretary shall be the official custodian of all books, documents and papers filed by the commission and of its minute book; the chief financial and accounting officer shall be the official custodian of its books of account and accounting records; the deputy director shall be the official custodian of all records of the bureau; and the executive director shall be the official custodian of all other records of the commission. In the case of an absence or vacancy

**205 CMR: MASSACHUSETTS GAMING COMMISSION**  
**Commission Redline Draft – September 25, 2012**

in the office of an official custodian, or in the case of disability as determined by the commission, the chair may designate an acting custodian to serve until the vacancy is filled or the absence or disability ceases. Each official custodian may, with the permission of the chair, from time to time delegate to another commissioner, employee or employees of the commission or the bureau responsibility for the custody of some or all public records under his or her jurisdiction.

(2) Pursuant to M.G.L. c. 66A, § 2, subject to the oversight of the chair, the executive director shall be the individual immediately responsible for any personal data system maintained by the commission; the deputy director shall be the individual immediately responsible for any personal data system maintained by the bureau; and each shall conform to the requirements of M.G.L. c. 66A and 801 CMR 3.00: *Privacy and Confidentiality* for preventing unauthorized access to or dissemination of personal data under his or her jurisdiction. In the case of an absence or vacancy in the office of an individual immediately responsible for any personal data system, or in the case of disability as determined by the commission, the chair may designate an acting person to serve as the individual immediately responsible for any personal data system until the vacancy is filled or the absence or disability ceases. The executive director or the deputy director may, with the permission of the chair, from time to time delegate to another commissioner or employee of the commission or the bureau immediate responsibility for any personal data system under his or her jurisdiction.

103.04: Determinations by the Official Custodian, the General Counsel and the Commission

(1) No information which is exempt from disclosure under 205 CMR 103.02 or which a confidentiality claimant asserts to be confidential information defined in 205 CMR 102.02: *Definitions* shall be disclosed in response to any request for public records unless the Commission has expressly so authorized in accordance with 205 CMR 103.00.

(2) Subject to 205 CMR 103.04(1), and to the Commission's determinations pursuant to 205 CMR 103.11 and 205 CMR 103.12, the official custodian designated in accordance with 205 CMR 103.03 shall determine whether any particular record within his or her jurisdiction is subject to disclosure as a public record or is exempt from disclosure as described in 205 CMR 103.02(1) through (5). Whenever the official custodian has a doubt or question about whether any particular record is subject to disclosure as a public record or exempt from disclosure as described in 205 CMR 103.02(1) through (5), and whenever any confidentiality claimant asserts in writing that any particular record is exempt from disclosure as described in 205 CMR 103.02(1) through (5), the official custodian shall consult the ~~commission's~~ general counsel who shall, subject to 205 CMR 103.04(1), resolve such doubt, question or dispute, and such request shall be granted or denied, only in accordance with a written determination signed by the general counsel; provided further that the general counsel may refer any such doubt, question or dispute to the commission for its resolution.

103.05: Effect of Requests for Confidentiality

Whenever a confidentiality claimant requests in writing that particular records be deemed to be or to contain confidential information as defined in 205 CMR 102.02: *Definitions*, such records or information shall be treated as confidential and may not be deemed public records until the confidentiality request has been approved or denied pursuant to 205 CMR 103.04, 103.10 and 103.11.

103.06: Postponing Denial of Confidentiality Pending Appeal

Whenever the commission denies a request to deem records to be or to contain confidential information as defined in 205 CMR 102.02: *Definitions* exempt from disclosure as described in 205 CMR 103.02(1) through (5), such denial shall take effect ten days after the date thereof so that any person aggrieved by said denial may appeal to another State agency with jurisdiction over the subject matter thereof, or to a court of competent jurisdiction. During this ten-day period, the records in question shall be treated as confidential and may not be deemed public records. This ten-day period may be extended by the commission in extraordinary situations. Any extension shall be in writing and signed by the ~~commission's~~ general counsel.



**205 CMR: MASSACHUSETTS GAMING COMMISSION**  
**Commission Redline Draft – September 25, 2012**

103.07: When Confidential or Exempt Information May be Disclosed by the Commission

(1) Notwithstanding any provision of 205 CMR 103.00 to the contrary, confidential information as defined in 205 CMR 102.02: *Definitions* and information otherwise exempt from disclosure as described in 205 CMR 103.02(1) through (5) shall be subject to disclosure by the commission only:

- (a) to the extent necessary to comply with Federal Law;
- (b) to the extent necessary to comply with or carry out the responsibilities contained in M.G.L. c. 23K or other state law;
- (c) to the extent necessary for any enforcement action, whether criminal or civil, judicial or administrative;
- (d) upon presentation of proper identification, to the person who furnished the specific information to the commission or the bureau; or
- (e) upon presentation of a timely and duly executed and notarized authorization by the person who furnished the specific information to the commission or the bureau, to any other person making a written request for the specifically identified information.

(2) If confidential information otherwise exempt from disclosure as described in 205 CMR 103.02(1) through (5) is released or otherwise disclosed to any person under any circumstances other than those identified in 205 CMR 103.07(1)(d) and (e), written notice of such release or disclosure shall be provided to –the last known address ~~whenever practicable be given to~~ the commission has in its records for the –person who furnished the confidential information to the commission or the bureau, unless such notice may prejudice the possibility of effective law enforcement or otherwise imperil the integrity of the commission's or the bureau's operations. To the extent known, the notice shall include:

- (a) The name and address of the person to whom the information was released or disclosed;
- (b) A description of the information released or disclosed; and
- (c) The date of the release or disclosure.

(3) ~~Subject to Whenever practicable~~ 205 CMR 103.07(2), any such notice of confidential information to be released or disclosed will shall be given prior to the release or disclosure to provide an opportunity for review.

103.08: Confidential Information Subject to Promise of Confidentiality

For confidential information to be protected from public disclosure by a nondisclosure agreement pursuant to M.G.L. c. 23K, § 21(a)(7) or by other promise of confidentiality pursuant to M.G.L. c. 4, § 7, cl. 26(g), the nondisclosure agreement or other promise of confidentiality must be made in writing and signed by the chair, the secretary or a person designated by the commission.

103.09: Information Provided in Response to Request for Applications - Phase 1

(1) In accordance with M.G.L. c. 23K, § 9(b), an application for a license in response to the commission's Request for Applications-Phase 1, 205 CMR 110.00: *Issuance of Request for Category 1 and Category 2 License Applications*–, shall be a public record except those portions of the application containing information otherwise exempt from disclosure pursuant to 205 CMR 103.02(1) through (5).

(2) As guidance to applicants and the public, the commission shall issue a set of specimen annotated application forms and distribute such forms together with the Request for Applications-Phase 1 pursuant to 205 CMR 111.00: *Issuance of Request for Category 1 and Category 2 License Applications Phase 1 Application Requirements*. These specimen annotated application forms shall designate as "Exempt/Redact" all information or categories of information which, at a minimum, the commission considers to be exempt from disclosure in accordance with 205 CMR 103.02(1) through (5).

(3) To assist the commission in protecting from inadvertent disclosure information subject to 205 CMR 103.02(1) through (5), applicants shall follow the procedures in 205 CMR 103.10(1)



**205 CMR: MASSACHUSETTS GAMING COMMISSION**  
**Commission Redline Draft – September 25, 2012**

in completing and submitting the required forms pursuant to 205 CMR 111.00: ~~Issuance of Request for Category 1 and Category 2 License Applications~~ Phase 1 Application Requirements.

(4) All information submitted by an applicant in the RFA Phase 1 application, other than that described as "Exempt/Redact" in 205 CMR 103.09(2), shall be presumed to be available for public disclosure on request unless a confidentiality claimant demonstrates or the commission otherwise finds that a separable portion of the information is exempt from disclosure pursuant to 205 CMR 103.02(1) through (5). Confidentiality claimants shall make such a demonstration in accordance with the provisions of 205 CMR 103.10 through 103.12.

103.10: Requests for Protecting Confidential Information

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Except as set forth in 205 CMR 103.09, no record shall be deemed to be or to contain confidential information as defined in 205 CMR 102.02: *Definitions* unless a person requests the commission in writing to protect the information as confidential information. The request shall be made and substantiated as follows:

(1) Each record containing information that is the subject of a confidentiality request shall be clearly marked "CONFIDENTIAL". To assist the commission in complying with 205 CMR 103.02, persons shall separately submit confidential portions of otherwise non-confidential records. If submitted separately, the record that is the subject of a confidentiality request shall be clearly marked "CONFIDENTIAL" and the record from which confidential information has been redacted shall be clearly marked "REDACTED".

(2) The request for confidentiality shall be supported with the following information, which shall be treated as a public record:

- (a) The time period for which confidential treatment is desired.
- (b) The reason the record was provided to the commission or the bureau, and the date of submittal.
- (c) The basis for the claim that the record contains confidential information and, if applicable, the basis for believing that the criteria in 205 CMR 103.12-11 are satisfied.
- (d) The extent to which the person requesting that the record be kept confidential has disclosed the contents of that record to other persons without a restriction as to confidentiality imposed by agreement or by law.
- (e) ~~A list of all other Federal, State and local agencies to which the same record or contents thereof has been submitted, whether the confidentiality of the information is protected by law in that jurisdiction, which of them have been requested to keep that record confidential, the status of the requests, and a copy of the responses by said agencies or the courts to the requests.~~ A statement whether, to the best of the provider's knowledge, the information has previously been provided to a governmental entity that does not treat it as confidential or that has denied a request for confidential treatment.
- (f) A statement that the information is not required to be disclosed or otherwise made available to the public under any other ~~f~~Federal or state law.
- (g) How making the record a public record would place the applicant at a competitive disadvantage pursuant to M.G.L. c. 23K, § 9(b), be detrimental to a gaming licensee if it were made public pursuant to M.G.L. c. 23K, § 21(a)(7), or otherwise cause irreparable harm or damage to the person requesting confidentiality.
- (h) If the record was submitted voluntarily for use in developing governmental policy and upon a promise of confidentiality pursuant to M.G.L. c. 4, § 7, cl. 26(g), and not in compliance with a regulation or order of the commission or a court, whether and if so why making the record a public record would tend to lessen the availability to the commission or the bureau of similar records in the future.

103.11: Procedure for Acting on Requests for Protecting Confidential Information

The commission shall act on a confidentiality request made pursuant to 205 CMR 103.10 subject to the following provisions:

(1) If the commission has received a request to inspect or copy a record which is the subject of a confidentiality request on which the commission has not made a final decision, the

**205 CMR: MASSACHUSETTS GAMING COMMISSION**  
**Commission Redline Draft – September 25, 2012**

commission shall notify:

- (a) the person who made the request to inspect or copy the record that:
    1. the record in question is the subject of a pending confidentiality request, and therefore not a public record;
    2. the request to inspect or copy is initially denied; and
    3. a final decision will be made when the commission determines whether the record in question is entitled to confidentiality protection.
  - (b) the confidentiality claimant of the request to inspect or copy the record.
- (2) The commission shall determine whether the record, if made public, would divulge confidential information as defined in 205 CMR 102.02: *Definitions*. The Commission shall give notice of its determination(s) to the confidentiality claimant and all persons who requested to inspect or copy the record.
- (3) If the commission determines that a record would, if made public, divulge confidential information as defined in 205 CMR 102.02: *Definitions*, the record in question shall be deemed confidential and may not be deemed a public record for such length of time, and subject to such terms, conditions and limitations, as the commission may include in the determination. The commission shall so notify the person who submitted the record to the commission or the bureau, the confidentiality claimant, and all persons making a request to inspect or copy the record in question.

(4) All notices given pursuant to 205 CMR 103.11(2) and (3) shall be in writing, shall be delivered by hand, by certified mail, return receipt requested, or by electronic mail, and shall include:

- (a) the reasons for the determination,
- (b) notice that the determination constitutes a final decision of the commission,
- (c) notice that the determination may be subject to review by one or more other State agencies or by the courts,
- (d) if the determination is that the record in question, if made public, would not divulge confidential information as defined in 205 CMR 102.02: *Definitions*, notice that, ~~pursuant to 205 CMR 103.06~~, the record in question shall become a public record ~~ten-fourteen~~ days after the date of the commission's determination unless, a person aggrieved by said determination appeals the determination to another State agency with jurisdiction over the subject matter thereof, or to a court of competent jurisdiction. This ~~tenfourteen~~-day period may be extended only in extraordinary situations, and any such extension must be in writing and signed by the commission's general counsel pursuant to 205 CMR 103.04.

(5) If pursuant to 205 CMR 103.11, the commission's determination denies a request to protect confidential information made pursuant to 205 CMR 103.10, the confidentiality claimant may, within ten days from the date of the commission's notice of such determination, submit to the commission one request to reconsider such determination, which request to reconsider shall set forth any and all supplemental information supporting the claim of confidentiality and further addressing the criteria of 205 CMR 103.10(2). The commission shall act on the request to reconsider following the procedures in 205 CMR 103.11(1)-(4). The request for reconsideration shall stay the effect of the commission's original denial and the fourteen day period set forth in 205 CMR 103.11(4) shall run from the date of the commission's notice of its ruling on the request for reconsideration.

(6) If pursuant to 205 CMR 103.11, the commission's determination denies a request to protect confidential information made pursuant to 205 CMR 103.10, the confidentiality claimant may, at any time before the expiration of the applicable fourteen day period set forth in 205 CMR 103.11(4), submit a written request to the commission pursuant to 205 CMR 111.05: *Withdrawal of Application*, to withdraw with prejudice the application to which the information relates and to order the information permanently sealed or returned to the applicant. If the commission allows the request to withdraw the application with prejudice, the commission may order the information permanently sealed or returned to the applicant to the extent permitted by M.G.L. c. 4, § 7, cl. 26, and M.G.L. c. 23K.

**205 CMR: MASSACHUSETTS GAMING COMMISSION**  
**Commission Redline Draft – September 25, 2012**

If the commission determines that newly discovered information or changed circumstances make it appropriate for the commission to reconsider and possibly modify a prior grant of confidentiality, the commission shall so notify the person who submitted the record to the commission or the bureau, and the confidentiality claimant. The notice shall give the person and the confidentiality claimant a reasonable period of time to substantiate, pursuant to 205 CMR 103.10, keeping the record in question confidential. The amount of time originally established in the notice maybe reasonably extended by the commission. After this time has passed, or after the commission has received a written response from the confidentiality claimant, whichever occurs first, the commission shall make a new determination whether the record in question shall be deemed either confidential or a public record.

103.13: Executive Session Consideration of Confidential or Exempt Information

Pursuant to M.G.L. c 30A, § 21(a)(7), the commission may meet in executive session to review information which is exempt from disclosure as described in 205 CMR 103.02(1) through (5); or to conduct an in camera inspection of records to enable the commission to resolve matters as to confidentiality or exemption pursuant 205 CMR 103.04(1) or (2), to act on requests for protecting confidential information pursuant to 205 CMR 103.11, or to reconsider confidentiality determinations pursuant to 205 CMR 103.12.

103.14: Security Protocols: Restricted Access

(1) The executive director, subject to the direction of the commission, shall establish and maintain secure storage areas, methodologies and procedures to protect tangible and electronic confidential information defined in 205 CMR 102.02: *Definitions* and information otherwise exempt from disclosure as described in 205 CMR 103.02(1) through (5) contained in the records of the commission or the bureau. Records containing such information shall be kept, managed, accessed and used in accordance with the security protocols.

(2) Records for which confidential information claims have been made and related supporting materials, and information for which such claims have been finally adjudicated in favor of the confidentiality claimant, shall be kept, managed, accessed and used in accordance with the security protocols. Materials and information for which such claims have been finally adjudicated against the confidentiality claimant may be permanently removed from the protection of the security protocols.

(3) The executive director the deputy director and the official custodians shall be responsible for implementing the security protocols for records under their respective custody.

(4) Personnel and authorized agents of the commission or the bureau who require information contained within the secure tangible and electronic storage areas for the effective performance of their duties may, upon request to its official custodian, examine documents containing such information in accordance with the security protocols.

(5) The commission and the bureau shall keep the number of tangible and electronic copies of confidential information defined in 205 CMR 102.02: *Definitions* and information otherwise exempt from disclosure as described in 205 CMR 103.02(1) through (5) to a minimum and shall ensure that all copies of such information are maintained in a manner consistent with the requirements of the security protocols. No copies of such documents or information may be made or transmitted except in accordance with the security protocols; where necessary to the authorized duties and operations of the commission, the bureau, or their employees and authorized agents; or where release of the confidential information is authorized pursuant to 205 CMR 103.00. Any notes concerning such information made by commission or bureau employees or agents shall be treated as confidential pursuant to 205 CMR 103.00.

(6) Commission or bureau employees or authorized agents who violate the procedures required by 205 CMR 103.00 or the security protocols established pursuant thereto shall be subject to disciplinary action.

103.15: Records Retention

**205 CMR: MASSACHUSETTS GAMING COMMISSION**  
**Commission Redline Draft – September 25, 2012**

The commission shall follow the records retention schedule set forth in the *Massachusetts Statewide Records Retention Schedule* (2011 Edition) published by the Records Conservation Board in conjunction with the Massachusetts Archives and the supervisor of public records, which records retention schedule shall apply to all records within the commission's possession including all records containing confidential information defined in 205 CMR 102.02: *Definitions* and information otherwise exempt from disclosure as described in 205 CMR 103.02(1) through (5).

REGULATORY AUTHORITY

205 CMR 103.00: M.G.L. c. 4, § 7; c. 6, §§ 167-178; c. 23K, §§ 4(37); 5; 9(b),21(a)(7); c. 30A, § 21; c. 66, § 10; c. 66A, § 1; and c. 93H, § 1.

**205 CMR: MASSACHUSETTS GAMING COMMISSION**  
**Commission Redline Draft – September 25, 2012**

205 CMR 104.00: DELEGATION OF AUTHORITY

Section

104.01: Delegation of Commission Authority

104.02: Delegation of Chair's Authority

104.01: Delegation of Commission Authority

(1) Subject to M.G.L. chs. 23K and 30A, the commission may, in its discretion, delegate the authority of the commission to perform any of its functions under M.G.L. c. 23K or 205 CMR 101.00 through 117.00, with the exception of final decisions regarding Phase 1 and Phase 2 determinations of qualification for gaming licenses, to a commissioner or commissioners, or to the executive director, the bureau, the deputy director, or any other employee of the commission, on such terms and conditions as the commission may specify. Any action taken and determination made pursuant to such delegation shall not require further approval, ratification or other action by the commission.

(2) All delegations of commission authority made pursuant to 205 CMR 104.01(1) shall remain in effect until amended, suspended, modified or revoked by the commission.

(3) The commission may review, reconsider, amend, modify, suspend or revoke any action taken or determination made pursuant to such delegation.

(4) Whenever M.G.L. c. 23K or 205 CMR 101.00 through 117.00 requires that the commission provide notice of an action taken or determination made, and such action is taken or determination is made pursuant to delegation pursuant to 205 CMR 104.01(1), such notice shall be provided by the individual or entity exercising delegated authority.

(5) In any delegation to the bureau, pursuant to M.G.L. c. 23K, § 4(32), the commission shall not place any restriction upon the bureau's ability to investigate or prosecute violations of M.G.L. c. 23K or 205 CMR.

104.02: Delegation of Chair's Authority

(1) The chair may, in his or her discretion, delegate to another commissioner or commissioners or to the executive director the authority of the chair to perform any of his or her duties and responsibilities under M.G.L. c. 23K or 205 CMR.

(2) All delegations of made pursuant to 205 CMR 104.02(1) shall remain in effect until amended, suspended, modified or revoked by the chair.

(3) The chair may, on his or her own initiative, review, reconsider, amend, modify, suspend or revoke any action taken or determination made pursuant to such delegation.

(4) Whenever M.G.L. c. 23K or 205 CMR 101.00 through 117.00 requires that the chair provide notice of an action taken or determination made, and such action is taken or determination is made pursuant to delegation pursuant to 205 CMR 104.02(1), such notice shall be provided by the individual exercising delegated authority.

REGULATORY AUTHORITY

205 CMR 104.00: M.G.L. c. 23K §§ 3(g), 3(h), 3(i); 4(32), 4(37); 5; and 6(a).

205 CMR: MASSACHUSETTS GAMING COMMISSION  
Commission Redline Draft – September 25, 2012

205 CMR ~~CMR~~ 105.00: INVESTIGATIONS AND ENFORCEMENT BUREAU

Section

- 105.01: Duties and Responsibilities
- 105.02: Subpoena Power
- 105.03: Authority to Require Testimony under Oath
- 105.04: Orders and Directives
- 105.05: Civil Penalties
- 105.06: Seizure of Unlawful Devices, Games or Machines
- 105.07: Coordination with the Massachusetts State Police
- 105.08: Coordination with the Massachusetts Attorney General
- 105.09: Coordination with the Massachusetts Alcoholic Beverages Control Commission
- 105.10: Authority to Retain and Utilize Contractor Investigators

105.01: Duties and Responsibilities

(1) The bureau shall be the primary enforcement agent for regulatory matters under M.G.L. c. 23K and 205 CMR 101.00 through 117.00 and shall have all of the powers and duties of the bureau enumerated in St. 2011, c. 194, M.G.L. c. 23K and 205 CMR 101.00 through 117.00.

(2) The bureau shall be under the supervision and control of the deputy director who shall be the executive and administrative head of the bureau and shall be responsible for administering and enforcing the laws relative to the bureau and to each administrative unit of the bureau. The duties of the deputy director shall be exercised and discharged subject to the direction, control and supervision of the chair or to the executive director by appropriate delegation of authority pursuant to 205 CMR 104.02: *Delegation of Chair's Authority*.

(3) The bureau shall be a law enforcement agency and its employees shall have such law enforcement powers as necessary to effectuate the purposes of M.G.L. c. 23K, including the power to receive intelligence on an applicant or licensee, and to investigate any suspected violations of M.G.L. c. 23K.

(4) With respect to the investigation and enforcement of gaming establishments and licensees, the bureau may obtain or provide pertinent information regarding applicants or licensees from or to law enforcement entities or gaming authorities and other domestic, ~~federal~~ Federal or foreign jurisdictions, including the Federal Bureau of Investigation, and may transmit such information to each other electronically or via other secure methods.

(5) The bureau shall conduct investigations into the qualifications and suitability of all applicants, qualifiers and other persons required to be registered or investigated in connection with any form of license or registration pursuant to M.G.L. c. 23K and 205 CMR 101.00 through 117.00, including without limitation an investigation of qualifications and suitability to hold a gaming license pursuant to M.G.L. c. 23K.

105.02: Subpoena Power

(1) Pursuant to M.G.L. c. 23K, § 4(31) and M.G.L. c. 30A, § 12, the deputy director is authorized in the name of the commission to issue subpoenas, in the conduct of investigations and adjudicatory proceedings, to compel the attendance of witnesses and to produce documents and records, including but not limited to written materials, materials maintained and stored in any form of documentary or electronic media, internet, intranet, other electronic, analog or digital formats, and at any place or virtual location within the Commonwealth of Massachusetts.

(2) Subpoenas pursuant to 205 CMR 105.02(1) concerning an adjudicatory proceeding shall be issued in accordance with M.G.L. c. 30A, § 12, and 205 CMR 101.00: *M.G.L. c. 23K Adjudicatory Proceedings*.

(3) Subpoenas pursuant to 205 CMR 105.02(1) may be served by bureau employees and

205 CMR: MASSACHUSETTS GAMING COMMISSION  
Commission Redline Draft – September 25, 2012

agents, including contractor investigators.

105.03: Authority to Require Testimony Under Oath

Pursuant to M.G.L. c. 23K, § 4(31) and M.G.L. c. 30A, § 12, the deputy director may designate specific bureau employees and agents, including contractor investigators, to require testimony under oath in bureau investigations and hearings.

105.04: Orders and Directives

The bureau shall have power and authority, without limitation, to issue orders and require compliance pursuant to and in accordance with M.G.L. c. 23K, § 35.

105.05: Civil Penalties

The bureau shall have power and authority, without limitation, to assess a civil administrative penalty pursuant to and in accordance with M.G.L. c. 23K, § 36.

105.06: Seizure of Unlawful Devices, Games or Machines

Pursuant to M.G.L. c. 23K, § 42, any device, game or gaming device possessed, used, manufactured, distributed, sold or serviced in violation of M.G.L. c. 23K shall be subject to seizure and forfeiture by the division or the bureau. Forfeiture proceedings shall be conducted as provided in M.G.L. c. 94C, § 47(b) through (j). For purposes of M.G.L. c. 94C, § 47(d) and M.G.L. c. 271A, § 3, the commission shall be considered a police department and shall be entitled to a police department's distribution of forfeiture proceedings.

105.07: Coordination with the Massachusetts State Police

The bureau will coordinate with the Gaming and Enforcement Unit in accordance with the provisions of M.G.L. c. 22C, § 70, M.G.L. c. 23K, § 6, and M.G.L. c. 12, § 11M.

105.08: Coordination with the Massachusetts Attorney General

The bureau will coordinate with the division in accordance with the provisions of M.G.L. c. 12, § 11M, M.G.L. c. 22C, § 70, and M.G.L. c. 23K.

105.09: Coordination with the Massachusetts Alcoholic Beverages Control Commission

The bureau will coordinate with the Gaming Liquor Enforcement Unit of the Massachusetts Alcoholic Beverages Control Commission in accordance with the provisions of M.G.L. c. 10, § 72A and M.G.L. c. 23K.

105.10: Authority to Retain and Utilize Contractor Investigators

(1) The commission may, pursuant to M.G.L. c. 23K, § 4, and any applicable procurement procedures, retain qualified contractor investigators, either directly or pursuant to a contract or contracts with a private investigative business or businesses, to assist the bureau in conducting initial suitability, qualification, and background investigations of license applicants and qualifiers in accordance with the criteria set forth in M.G.L. c. 23K and 205 CMR 101.00 through 117.00.

(2) In retaining contractor investigators, the commission may establish minimum qualifications in terms of education, training, and experience in ~~f~~Federal, state or local, civil or criminal, law enforcement, regulatory and investigative matters.

(3) Prior to entering a contract with the commission, each prospective contractor investigator and, if applicable, his or her related business shall be subject to an expedited background inquiry by the bureau through the gaming and enforcement unit, which shall include, without limitation, an examination of prior criminal history, financial stability, reputation for integrity, honesty, good character; and education, training, and experience in ~~f~~Federal, state or local, civil or criminal, law enforcement, regulatory and investigative matters. If a contractor investigator and, if applicable, his or her business entity is deemed suitable and qualified by the



205 CMR: MASSACHUSETTS GAMING COMMISSION  
Commission Redline Draft – September 25, 2012

bureau in its discretion based on this expedited background inquiry, then the commission on behalf of the bureau may enter into a contract for the professional services of the contractor investigator in a form and with terms such acceptable to the commission.

(4) Once retained, each contractor investigator shall be provided with the necessary authority and credentials to serve as an official agent of the bureau in conducting initial suitability, qualification, and background investigations of license applicants and qualifiers in accordance with the criteria set forth in M.G.L. c. 23K and 205 CMR 101.00 through 117.00.

(5) Immediately on being retained each contractor investigator shall be sworn to the faithful performance of his or her official duties under M.G.L. c. 23K and 205 CMR 101.00 through 117.00. —Before a contractor investigator can participate in any investigation under M.G.L. c. 23K or 205 CMR 101.00 through 117.00, the investigator shall execute a certification acknowledging his full understanding and acceptance of the authority given, applicable confidentiality provisions, and the limits to such an investigative authority.

(6) Each contractor investigator shall report to the deputy director of the bureau. In the case of an absence or vacancy in the office of the deputy director, each contractor investigator shall report to an interim supervisor designated by the chair to supervise such investigators and investigations.

(7) Any contract entered by the commission for the services of any contractor investigator may be terminated by the commission, without cause, liability or recourse.

REGULATORY AUTHORITY

205 CMR 105.00: St. 2011, c. 194; M.G.L. c. 10, § 72A; c. 12, § 11M; c. 22C, § 70; c. 23K §§ 4(37), 5, 6, 35, 36, 42; c. 30A, § 12; and c. 94C, § 47.



205 CMR: MASSACHUSETTS GAMING COMMISSION  
Commission Redline Draft – September 25, 2012

205 CMR 106.00: INFORMATION AND FILINGS

Section

- 106.01: Offices; Hours
- 106.02: Communications; Notices
- 106.03: Electronic Filing by Applicants during RFA-1 and RFA-2 Processes
- 106.04: Petitions for Adoption, Amendment or Repeal of Regulations
- 106.05: Advisory Services and Advisory Rulings

106.01: Offices; Hours

The commission will post on its website and update the address of the main office and the office hours of the commission and the bureau and the address and contact information for public information about the commission.

106.02: Communications; Notices

- (1) Except as otherwise provided by 205 CMR 101.00 through 117.00 or as specified by the commission on its website, all applications, papers, process or correspondence relating to the commission or the bureau shall be addressed to, submitted to, filed with or served upon the commission or the bureau, respectively, at its main office.
- (2) Service of process upon the commission or the bureau shall be made in accordance with Mass. R. Civ. P. 4(d)(3).
- (3) Service of all papers, documents, notices and pleadings in adjudicatory proceedings ~~involving~~ conducted by or on behalf of the commission or the bureau shall be made in accordance with 205 CMR 101.00: *-M.G.L. c. 23K Adjudicatory Proceedings*.
- (4) Except as set forth in 205 CMR 106.0503, all other applications, papers, documents, notices, correspondence or filings shall be deemed to have been received by the commission when delivered to the main office of the commission or to the chair, a commissioner, or such employee or employees of the commission as may be designated by the chair and posted on the commission's website. Except as set forth in 205 CMR 106.0503, all other applications, papers, documents, notices, correspondence or filings shall be deemed to have been received by the bureau when delivered to the main office of the bureau or to the deputy director or such employee, employees, or agents of the bureau as may be specified by 205 CMR 101.00: *-M.G.L. c. 23K Adjudicatory Proceedings* or as may be designated by the deputy director as posted on the commission's website.
- (5) Except as otherwise specifically provided by M.G.L. c. 23K or 205 CMR 101.00 through 117.00, the commission or the bureau as applicable:
  - (a) will send any notice of public hearing and any decision of the commission or the bureau concerning a specific applicant, licensee or registrant to the applicant, licensee or registrant either by in hand delivery, by certified, registered, or express mail, or by electronic mail to the address shown in the most recent application or notice of change of address received from such person; ~~and~~
  - (b) may send any other papers, documents, notices, or correspondence by any method specified in 205 CMR 106.02(5)(a) or by first class mail, postage prepaid. Notices from the commission or the bureau shall be deemed to have been received upon the earlier of in hand delivery, electronic mail transmission, or deposit in the United States mail, postage prepaid, and the time specified in any such notice shall commence to run from that date.
- (6) Applicants, licensee and registrants shall immediately notify the commission and the bureau in writing of any change of address, and shall specifically request that all future notices or other communications be sent by the commission or the bureau to the new address.
- (7) Any applicant, licensee or registrant who desires to have notices or other communications from the commission or the bureau sent to an address other than that specified in the most

205 CMR: MASSACHUSETTS GAMING COMMISSION  
Commission Redline Draft – September 25, 2012

recent application or notice of change of address on file with the commission and the bureau shall file with the commission and the bureau a written notice of change of address, and, within a reasonable time after receipt thereof by the commission and the bureau, subsequent notices and other communications from the commission or the bureau will be sent to the applicant, licensee or registrant at such address.

106.03: Electronic Filing by Applicants during RFA-1 and RFA-2 Processes

(1) The commission shall develop and post on its website administrative procedures pursuant to which all applications, papers, documents, correspondence and other information submitted by an applicant to the commission or the bureau during the RFA-1 process pursuant to 205 CMR 115.00: *Phase 1 Suitability Determinations, Standards and Procedures* and the RFA-2 process described in 205 CMR 110.00: *Issuance of Request for Category 1 and Category 2 License Applications* must be filed by electronic means as provided therein. Any document required by 205 CMR 101.00 through 117.00 to be signed or notarized shall be signed or notarized, scanned and submitted in PDF form. All applicants must comply with those administrative procedures.

(2) All such electronic submissions shall be made in PDF format. Subject to technological limitations, a ~~Wherever possible,~~ ll such submissions shall be machine-readable and text searchable.

(3) In accordance with the administrative procedures, electronic submission may be made via the internet or by filing at the main office of the commission or the bureau, as applicable, a disk containing the electronic submission. For electronic submissions via the internet, the commission or the bureau will electronically transmit a Notice of Electronic Filing which will constitute confirmation of the filing of the submission with the commission or the bureau as applicable. In the event the applicant does not receive a Notice of Electronic Filing, it is the applicant's duty to take appropriate measures to confirm timely receipt of the electronic submission by the commission or the bureau as applicable.

(4) Electronic filing via the internet will be generally available 24 hours a day; however, that availability shall not alter any filing deadline, whether set by regulation, commission or bureau order, or the RFA itself. All electronic submissions of documents must be completed prior to 5:00 P.M. to be considered timely filed that day.

106.04: Petitions for Adoption, Amendment or Repeal of Regulations

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(1) Any interested person may file a petition with the commission pursuant to M.G.L. c. 30A, § 4, for the adoption, amendment or repeal of any regulation. Such petition shall be in writing, be signed by the petitioner or petitioner's attorney, be submitted to the commission at its main office, and include the following information:

- (a) The name and address of the petitioner and the petitioner's attorney;
- (b) The substance of the requested adoption, amendment or repeal of a regulation;
- (c) The reasons for the request;
- (d) The specific interest of the petitioner affected by the requested regulation;
- (e) Reference to the statutory authority under which the commission may take the requested action; and
- (f) Such data, views and arguments as the petitioner thinks pertinent to the request.

(2) After receipt of a petition for the adoption, amendment or repeal of a regulation submitted in accordance with 205 CMR 106.04(1), the commission may consider the petition at an open meeting pursuant to M.G.L. c. 30A, § 20, and determine, in its discretion, whether or not to take any action on or as a result of the petition. At the meeting the commission may, but shall not be required to, entertain comments or questions from members of the public pursuant to M.G.L. c. 30A, § 20(f). Within 20 days after the meeting, the commission will notify the petitioner as to its determination, if any, concerning the petition. The commission may, but is not required to, explain the reasons for any determination on a petition.

(3) The submission of a petition for the adoption, amendment or repeal of any regulation

205 CMR: MASSACHUSETTS GAMING COMMISSION  
Commission Redline Draft – September 25, 2012

pursuant to 205 CMR 106.04(1), and any action, inaction, determination or notice by the commission pursuant to 205 CMR 106.04(2) with respect thereto, shall not constitute a regulation and shall confer no legal rights, duties or privileges whatsoever on the petitioner or any other person.

106.05: Advisory Services and Advisory Rulings

The commission may, in its discretion, provide advisory services pursuant to M.G.L. c. 23K, § 4(7), or make advisory rulings pursuant to M.G.L. c. 30A, § 8.

REGULATORY AUTHORITY

205 CMR 106.00: M.G.L. c. 23K, §§ 4(7)(37); 5; and c. 30A, §§ 4, 8.

205 CMR: MASSACHUSETTS GAMING COMMISSION  
Commission Redline Draft – September 25, 2012

205 CMR 107.00: PROFESSIONAL PRACTICE

Section

- 107.01: General Provisions
- 107.02: The Practice of Law
- 107.03: Notice of Appearance by Attorney

107.01: General Provisions

No person may practice law, accountancy, architecture, professional engineering, land surveying or any other profession or occupation regulated by the laws of the Commonwealth of Massachusetts before the commission in any manner other than in accordance with law, the ethical standards applicable to the particular profession and 205 CMR 101.00 through 117.00. Practice shall include any matter connected with the representation of the interest of a client, including the making of any appearance and the preparing or filing of any necessary written document, correspondence or other paper relative to such interests.

107.02: The Practice of Law

- (1) No individual, other than a member, in good standing, of the bar of the Commonwealth of Massachusetts, shall practice law before the commission; provided, that a member of the bar, in good standing, of any other state may appear and practice, by permission of the commission, in any particular matter before the commission as set forth in 205 CMR 107.02(2).
- (2) Notwithstanding 205 CMR 107.02(1), an attorney who is a member of the bar of the highest court of any state may appear and practice before the commission in a particular matter by leave granted in the discretion of the commission, provided he or she files a certificate that:
  - (a) he or she is a member of the bar in good standing in every jurisdiction where he or she has been admitted to practice;
  - (b) there are no disciplinary proceedings pending against him or her as a member of the bar in any jurisdiction; and
  - (c) he or she has read and is familiar with M.G.L. c. 23K and 205 CMR 101.00 through 117.00; and provided further, that his or her application for leave to practice before the commission is on request of a member, in good standing, of the bar of the Commonwealth of Massachusetts, who shall:
    - 1. represent the client concurrently as its local counsel on the same particular matter;
    - 2. appear of record in the particular matter; and
    - 3. be responsible for the conduct of the out-of-state attorney in the particular matter; and provided further that both such attorneys shall sign all papers submitted or filed by counsel with the commission on behalf of their mutual client.
- (3) A natural person who is not a member of the bar and to whom 205 CMR 107.02(1) and (2) are not applicable may appear and practice before the commission only in his or her own behalf.

107.03: Notice of Appearance by Attorney

- (1) Each attorney practicing law before the commission shall promptly file with the commission a notice of appearance in each particular matter and on behalf of each client represented and may be required to file evidence of his authority to act in such capacity. The address of each attorney, telephone number, and e-mail address shall be stated. The signature of an attorney to a document shall constitute an appearance by the attorney who signs it, unless the paper states otherwise, and shall constitute a certificate that the attorney has read the document and that to the best of his or her knowledge, information, and belief there is a good ground to support it.
- (2) In the event an attorney changes his or her address during a particular matter in which he or she has appeared, the attorney shall immediately notify the commission in writing. – Unless otherwise provided by 205 CMR 107.00, an attorney may withdraw from a particular matter by filing written notice of withdrawal with the commission, together with proof of service on his

205 CMR: MASSACHUSETTS GAMING COMMISSION  
Commission Redline Draft – September 25, 2012

or her client and any other parties to the particular matter.

REGULATORY AUTHORITY

205 CMR 107.00: M.G.L. c. 23K, §§ 4(37) and 5; c. 221, § 46A.

205 CMR 108.00: COMMUNITY AND POLITICAL CONTRIBUTIONS

Section

- 108.01: ~~Prohibited Political Contributions~~ Statement of Governing Principles  
108.02: ~~Prohibited Political Contributions and Solicitations~~  
~~108.03: Mandatory Disclosure of Political Contributions and Community Contributions~~

108.01: Prohibited Political Contributions Statement of Governing Principles

(1) As specified in M.G.L. c. 23K, § 46, no applicant for a gaming license, nor any holding, intermediary or subsidiary company thereof, nor any ~~prohibited person~~~~officer, director, key gaming employee or principal employee of an applicant for a gaming license or of any holding, intermediary or subsidiary company thereof,~~ nor any person or agent on behalf of any such applicant, company or ~~prohibited~~ person, shall directly or indirectly, pay or contribute any money or thing of value to:

- (a) an individual who holds a municipal, county or state office;
- (b) any candidate for nomination or election to any public office in the Commonwealth of Massachusetts, including a municipal office; or
- (c) any group, ~~political party,~~ committee or association organized in support of any such candidate ~~or political party;~~ provided, however, that the provisions of 205 CMR 108.01 ~~this section~~ shall not prohibit an individual who is a candidate for public office from contributing to the candidate's own campaign.

~~(2) All political contributions or contributions in kind made by an applicant for a gaming license to a municipality or a municipal employee, as defined in M.G.L. c. 268A, § 1, of the host community of the applicant's proposed gaming establishment shall be disclosed by the applicant to the commission in accordance with 205 CMR 111.03: Multi-Jurisdictional Personal History Disclosure Form and to the city or town clerk of the host community. Applicants shall also fully and completely comply with 970 CMR (Office of Campaign and Political Finance) so as to enable timely and expeditious public reporting.~~

~~108.02: Prohibited Political Contributions and Solicitations~~

~~(1) No prohibited person shall, directly or indirectly, make, cause to be made, any political contribution or solicit any person to make on behalf of a prohibited person a political contribution which is prohibited pursuant to 205 CMR 108.01(1), on behalf of a prohibited person.~~

~~(2) A political contribution shall be considered to have been made on behalf of a prohibited person if, without limitation, it is made:~~

- ~~(a) With money or a thing of value that is owned or controlled by a prohibited person; or~~
- ~~(b) By any person in response to a solicitation by a prohibited person and under such circumstances as established that the political contribution was involuntary or would not have been made but for the influence of the prohibited person over the person making the political contribution.~~

~~(3) (2)~~ In determining whether a ~~political contribution was made by a person on behalf of a prohibited person pursuant to 205 CMR 108.02(1)(2),~~ contribution or payment was made by a prohibited person or any entity described in 205 CMR 108.01(1), the commission shall consider all relevant facts and circumstances, including, but not limited to, the following:

- (a) Whether the person making the ~~political payment or~~ contribution or payment is a spouse or dependent person with regard to the prohibited person;
- (b) The nature and importance of any economic, business, personal, familial or other relationship between the person making the ~~political~~ contribution or payment and the entity or prohibited person that currently exists, that existed at the time the ~~political contribution~~ contribution or payment was solicited and made, or that is reasonably anticipated to exist in the foreseeable future;
- (c) The timing and nature of any communications that may have occurred between the person making the ~~political contribution~~ contribution or payment and the entity or prohibited person regarding the prohibited person's desire to raise funds for the candidate

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205 CMR: MASSACHUSETTS GAMING COMMISSION  
Commission Redline Draft – September 25, 2012

- or political organization that received the ~~political contribution~~ contribution or payment;
- (d) The ability or inability of the ~~entity or~~ prohibited person to control or affect the actions of the person making the ~~political contribution~~ contribution or payment, and any evidence that any such ability played a role in the decision to make the ~~political contribution or~~ payment;
- (e) Any prior ~~political~~ contributions or payments to or expressions of support for the candidate or political organization that was the recipient of the ~~political contribution~~ contribution or payment by the person making the ~~political contribution~~ contribution or payment, and the timing of any such prior ~~political contribution~~ contributions or payments or expressions in relation to the establishment of the relationship between the prohibited person and the person making the ~~political contribution~~ contribution or payment;
- (f) Whether the person making the ~~political contribution~~ contribution or payment is a resident of Massachusetts— or has significant property or business interests in Massachusetts;
- (g) The timing and nature of any communications that may have occurred between the person making the ~~political contribution~~ contribution or payment and the recipient of the ~~political contribution~~ contribution or payment regarding the ~~entity or~~ prohibited person's solicitations on behalf of or expressions of support for the candidate or political organization;
- (h) Whether there is a pattern or regular course of conduct involving ~~political contribution~~ contributions or payments to one or more candidates or political organizations by the person making the ~~political contribution~~ contribution or payment;
- (i) Whether there is a pattern or regular course of conduct involving ~~political contribution~~ contributions or payments to one or more candidates or political organizations on the part of a spouse, employees, contractors or other dependent persons of a prohibited person or any affiliated person or entity thereof; and
- (j) Whether the ~~entity or~~ prohibited person has, directly or indirectly, reimbursed or offered to reimburse the person making the ~~political contribution~~ contribution or payment for all or any portion of the contribution.

108.032: Mandatory Disclosure of Political Contributions and Community Contributions

(1) An applicant or qualifier shall disclose to the commission in the Phase 1 application all political contributions and community contributions from November 22, 2011 through the date the Phase 1 application is filed. This duty of disclosure shall continue after the submission of the application and throughout the period of examination and investigation of the applicant and its qualifiers by the bureau and commission. The failure to make such disclosures shall constitute a violation of M.G.L. c. 23K, § 13 and 205 CMR 112.00: *Required Information and Applicant Cooperation*, and may subject the applicant licensee or qualifier to a negative determination of suitability or denial of its application for a gaming license or to a revocation of a gaming license or determination of suitability for licensure, and any other remedial actions by the commission.

(2) All political contributions or contributions in kind made by an applicant for a gaming license to a municipality or a municipal employee, as defined in M.G.L. c. 268A, § 1, of the host community of the applicant's proposed gaming establishment shall be disclosed by the applicant to the commission in accordance with 205 CMR 111.03: Multi Jurisdictional Personal History Disclosure Form and to the city or town clerk of the host community. Applicants shall also fully and completely comply with 970 CMR (Office of Campaign and Political Finance) so as to enable timely and expeditious public reporting.

(32) The duty to disclose set forth in 205 CMR 108.032(1) and (2) shall not prohibit disbursements to host or surrounding municipalities pursuant to 205 CMR 114.03: *Community Disbursements*.

REGULATORY AUTHORITY

205 CMR 108.00: M.G.L. c. 23K, §§ 4(37), 5, 46 and 47.





205 CMR: MASSACHUSETTS GAMING COMMISSION  
Commission Redline Draft – September 25, 2012

205 CMR 110.00: ISSUANCE OF REQUEST FOR CATEGORY 1 AND CATEGORY 2 LICENSE APPLICATIONS

Section

110.01: Phased Process for Request for Applications

110.02: Timing of the RFA-P1 Process

110.01: Phased Process for Request for Applications

(1) The application process for both a category 1 license and a category 2 license shall proceed in two phases. The first phase shall be known as Request for Applications Phase 1 ("RFA-1") and the second phase shall be known as Request for Applications Phase 2 ("RFA-2").

(2) Only those applicants that are found by the commission to be qualified pursuant to a determination of suitability at the conclusion of RFA-1 in accordance with 205 CMR 115.00: *Phase 1 Suitability Determinations, Standards and Procedures* shall be permitted to proceed to the second phase, RFA-2.

110.02: Timing of the RFA-1 and RFA-2 Processes

(1) The commission shall issue a public request for applications including the availability of the RFA-1 or RFA-2 application forms, which shall be published in a manner designated by the commission.

(2) The issuance of the commission's RFA-1 for category 2 license applications shall precede the issuance of the RFA-1 for category 1 license applications; and the issuance of the RFA-2 for category 2 license applications shall precede the issuance of the RFA-2 for category 1 license applications.

(3) The commission shall establish a deadline for the submission of each type of application which shall be specified in the request under 205 CMR 110.02(1).

REGULATORY AUTHORITY

205 CMR 110.00: M.G.L. c. 23K, §§ 4(37), 5, 8(a), 12, and 14.

205 CMR: MASSACHUSETTS GAMING COMMISSION  
Commission Redline Draft – September 25, 2012

205 CMR 111.00: PHASE 1 APPLICATION REQUIREMENTS

Section

- 111.01: Phase 1 Application Requirements
- 111.02: Business Entity Disclosure Form - Category 1 and Category 2 Entity Applicants and Holding/ Intermediary Companies
- 111.03: Multi-j~~jurisdictional~~ Jurisdictional Personal History Disclosure Form
- 111.04: Massachusetts Supplemental Form
- 111.05: Withdrawal of Application

111.01: Phase 1 Application Requirements

- (1) The requirements set forth in 205 CMR 111.000 apply to the Phase 1 determination of suitability issued by the commission unless otherwise noted.
- (2) Commission Consultation. The commission or its designees may conduct one or more consultation meetings to provide guidance on Phase 1 standards and procedures and answer any appropriate inquiries.
- (3) Applicants must use the appropriate application forms issued or adopted by the commission. Each application shall be prepared and submitted in accordance with the applicable provisions of M.G.L. c. 23K and 205 CMR 101.00 through 117.00 and the instructions on the commission's forms. Applicants for a category 1 license or a category 2 license shall, at a minimum, submit the following completed forms to initiate RFA-1 review under 205 CMR 111.02: *Business Entity Disclosure Form - Category 1 and Category 2 Entity Applicants and Holding/-Intermediary Companies*; 205 CMR 111.03: *Multi-j~~jurisdictional~~ Jurisdictional Personal History Form*; and 205 CMR 111.04: *Massachusetts Supplemental Form*.
- (4) At a minimum, the application must contain:
  - (a) all the relevant information required in 205 CMR 111.00;
  - (b) the license fee pursuant to 205 CMR 114.00: *Fees*; and
  - (c) disclosure of payments or contributions to local governments pursuant to 205 CMR 108.032: *Mandatory Disclosure of Political Contributions and Community Contributions*.
- (5) Applicants have an affirmative responsibility to submit a complete Phase 1 application in the forms specified under 205 CMR 111.0201(3) by the deadline established by the commission. The commission shall have no obligation to accept or review an incomplete application submitted by the established deadline.
- (6) The commission may, in its discretion, extend the time for filing a complete application to enable an applicant to cure a deficiency in its application, provided that the application was submitted and the applicable fee was paid before the established deadline, or to provide reasonable additional time for filing in cases in which extraordinary circumstances prevented a timely filing.

111.02: Business Entity Disclosure Form - Category 1 and Category 2 Entity Applicants and Holding/ Intermediary Companies

- (1) A BED shall be in the format prescribed by the commission and may require the applicant to provide the following information and such additional information as the commission may, in its discretion, determine:
  - (a) The name, title, phone number and e-mail address of a person to be contacted in reference to the application;
  - (b) The current or former official trade names used by the business entity, and the dates of use;
  - (c) The name of the license applicant and, if the applicant is other than the applicant business entity, the nature of the applicant's business entity's relationship to the license applicant;
  - (d) The date of incorporation or formation;
  - (e) The current or former business addresses and website of the business entity with

205 CMR: MASSACHUSETTS GAMING COMMISSION  
Commission Redline Draft – September 25, 2012

relevant time frames;

(f) A description of the present and former businesses engaged in by the business entity and its holding companies, subsidiaries and intermediary companies, including, but not limited to:

1. Competitive conditions in the industry;
2. The principal products produced, services rendered and methods of distribution;
3. Information about raw materials essential to the business entity's operation;
4. Information relating to intellectual property rights;
5. A description of any material changes to the business entity's mode of conducting business;
6. A description of any former business the business entity was engaged in during the last ten years and the reasons for the cessation of such business, including relevant time frames;
7. The name, last known address, occupation and date of birth of each incorporator or founding member;
8. The name, home address, business address, date of birth, occupation, race, gender, ethnicity and title of current and former directors, and trustees and the dates such position was held during the ten years and reason for leaving;
9. The name, home address, business address, date of birth, race, gender, ethnicity and title of current officers of the business entity, and the dates of office;
10. The name, last known home address, current business address, date of birth and occupation of former officers for the business entity for the last ten years, and the dates of office;
11. The annual compensation of officers;
12. The name, business address, date of birth and position of each person, other than an officer, who receives annual compensation of more than \$250,000.00 and the length of time employed and amount of compensation;
13. A description of all bonus, profit sharing, pension, retirement, deferred compensation or similar plans;
14. A description of the nature, type, number of shares, terms, conditions, rights and privileges of all classes of securities or other ownership interest issued or to be issued including the number of shares of each class authorized or to be authorized and the number of shares of each class outstanding;
15. The name, home address and date of birth of each shareholder, the class held, number of shares held and the percentage of outstanding voting or non-voting securities or other ownership interest held;
16. A description of the nature, type, terms, covenants, conditions and priorities of all outstanding debt and security devices utilized by the business entity;
17. Other than for a publicly traded corporation unless specifically required by the commission on the bureau, ~~the~~ the name, address and date of birth of each person holding the debt or security devices in 205 CMR 111.032(1)(f)16~~7~~, the type of debt instrument held, the original debt amount and current balance;
18. A description of the nature, type, terms and conditions of all securities options, including the title and amount of securities subject to option, the name and address of each option holder and the market value at the time of issuance;
19. The following information for each account or the last ten years held in the name of the business entity or its nominee, or otherwise under the direct or indirect control of the business entity:
  - a. The name and address of the bank, savings and loan or other financial institution;
  - b. The type of account;
  - c. The account number; and
  - d. The dates held;
20. Other than for a publicly traded corporation unless specifically required by the commission on the bureau, ~~the~~ the name and address of all persons with whom the business entity has contracts or agreements of \$250,000.00 or more in value, including employment contracts of more than one-year duration or who have supplied goods and services within the past six months, and the nature of such contract or the goods and services provided;
21. The name and address of each company in which the business entity holds securities or other ownership interest, type of securities or other ownership interest

held, purchase price per share or interest, number of shares held, and percentage of ownership, if more than 5%;

22. Information regarding any transaction within the last five years involving a change in the beneficial ownership of the business entity's equity securities on the part of any current or former director, officer or beneficial owner of more than 10% of any class of equity security;

23. A description of any civil, criminal, administrative and investigatory proceedings in any jurisdiction, for the business entity and each director, trustee or officer as follows:

- a. Any arrest, indictment, charge or conviction for any criminal or disorderly persons offense;
- b. Any criminal proceeding in which such person has been a party or has been named as an unindicted co-conspirator;
- c. Existing civil litigation to which the business entity is a party, if damages are reasonably expected to exceed \$250,000.00;
- d. Any judgment, order, consent decree or consent order entered against the business entity pertaining to a violation or alleged violation of the Federal antitrust, trade regulation or securities laws or similar laws of any jurisdiction; and
- e. Any judgment, order, consent decree or consent order entered against the business entity pertaining to a violation or alleged violation of any other state or Federal statute, regulation or code which resulted in the imposition of a fine or penalty of \$50,000.00 or more within the past ten years;

24. For the business entity and any holding or intermediary company, information regarding any judgments or petitions for bankruptcy or insolvency and any relief sought under any provision of the Federal Bankruptcy Act or any state insolvency law; and any receiver, fiscal agent, trustee or similar officer appointed for the property or business of the business entity or any holding or intermediary company within the last ten years;

25. During the last ten years, whether the business entity has had any license or certificate denied, suspended or revoked by any government agency in Massachusetts or any other jurisdiction, the nature of such license or certificate, the agency and its location, the date of such action, the reasons therefore and the facts related thereto;

26. During the last ten years, whether the business entity or any director, officer, employee or any person acting for or on behalf of the business entity has made any payments, bribes or kickbacks to any employee, company, organization or government official, foreign or domestic, and regardless of whether such incident or incidents was lawful in the jurisdiction of its occurrence, to obtain favorable treatment or to obtain a competitive advantage;

27. During the last ten years, whether the business entity, its parent, any subsidiary or related entity or individual has:

- a. Donated or loaned the business entity's funds or property for the use or benefit of or in opposing any government, political party, candidate or committee either foreign or domestic;
- b. Made any loans, donations or disbursements to its directors, officers or employees for the purpose of making political contributions or reimbursing such individuals for political contributions, either foreign or domestic; or
- c. Maintained a bank account or other account, either foreign or domestic, not reflected on the books or records of the business entity, or maintained any account in the name of a nominee of the business entity;

28. The names and addresses of any current or former directors, officers, employees or third parties who would have knowledge or information concerning 205 CMR 111.032(1)(f)27.c.;

29. A copy of the following:

- a. Annual reports to shareholder for the last five years;
- b. Any annual reports prepared within the last five years on Form 10K pursuant to the Securities Exchange Act of 1934, §§ 13 or 15d;
- c. An audited financial statement for the last fiscal year, including, without limitation, an income statement, balance sheet and statement of sources and application of funds, and all notes to such statements and related financial schedules;
- d. Copies of all annual financial statements prepared in the last five fiscal years,

205 CMR: MASSACHUSETTS GAMING COMMISSION  
Commission Redline Draft – September 25, 2012

any exceptions taken to such statements by an independent auditor retained by the business entity and the management response thereto;

e. The most recent quarterly unaudited financial statement prepared by or for the business entity which, if the business entity is registered with the Securities Exchange Commission (SEC) may be satisfied by providing a copy of the most recently filed Form 10Q;

f. Any current report prepared due to a change in control of the business entity, acquisition or disposition of assets, bankruptcy or receivership proceedings, changes in the business entity's certifying accountant, or other material events, which, if the business entity is registered with the SEC, may be satisfied by providing a copy of the most recent filed Form 8K;

g. The most recent Proxy or Information Statement filed pursuant to the Securities Exchange Act of 1934, § 14;

h. Registration Statements filed in the last five years pursuant to the Securities Act of 1933;

i. All reports and correspondence not otherwise submitted in the last five years by independent auditors for the business entity which pertain to the issuance of financial statements, managerial advisory services or internal control recommendations;

j. The name, address and telephone number of the current outside auditor(s);

30. A certified copy of the articles of incorporation, charter and bylaws, and all amendments and proposed amendments thereto;

31. If a business entity:

a. A current ownership organization chart of the business entity, its parent company and each subsidiary of the business entity;

b. A functional table of organization for the business entity, including position descriptions and the names of persons holding such positions;

32. If a corporation: copies of Internal Revenue Service Forms 1120 (Corporate Income Tax Return) and 941 (Employer's Quarterly Federal Tax Return) filed for the last five years;

33. If a partnership, copies of Internal Revenue Service Forms 1065 (Partnership Return Form) and 941 (Employer's Quarterly Federal Tax Return) filed for the last five years;

34. If a limited liability company, copies of its Federal returns for the last five years; and

35. A listing of any records, documents or other information submitted as appendices to the BED.

(2) In addition to the information in 205 CMR 111.02(1), a completed BED shall include the following documents, which shall be dated and signed by the president, chief executive officer, partner, general partner or sole proprietor, and notarized:

(a) A release authorization directing all courts, probation departments, selective service boards, employers, educational institutions, banks, financial and other institutions and all governmental agencies, Federal, state, and local, both foreign and domestic, to release any and all information pertaining to the business entity as requested by the commission, the bureau, and their agents and employees;

(b) A waiver of liability as to the Commonwealth of Massachusetts and its instrumentalities and agents for any damages resulting from any disclosure and publication of information acquired during the license or investigation process;

(c) Consent to inspection, searches and seizures and the supplying of handwriting exemplars; and

(d) A signed, dated and notarized ~~affidavit of truth~~ affidavit.

111.03: Multi-Jurisdictional Personal History Disclosure Form

(1) A PHD-MA shall be submitted by each category 1 and category 2 qualifier and shall be in a format prescribed by the commission and may require the applicant to provide the following information and such additional information as the commission may, in its discretion, determine:

(a) Name, including maiden name and any aliases or nicknames and applicable dates of use;

205 CMR: MASSACHUSETTS GAMING COMMISSION  
Commission Redline Draft – September 25, 2012

- (b) Date of birth;
- (c) Physical description;
- (d) Current address and residence history;
- (e) Social Security Number, which information is voluntarily provided in accordance with 5 U.S.C. § 552a;
- (f) Citizenship and, if applicable, information regarding resident alien status, including information regarding passports;
- (g) Marital history, spouse, dependents and other family data;
- (h) The gaming licensee or applicant, gaming vendor licensee or applicant or holding company, as applicable, with which the applicant is affiliated, and the nature of the applicant's position with or interest in such entity;
- (i) Telephone number at the current place of employment;
- (j) Employment history of the applicant and applicant's immediate family;
- (k) Education and training;
- (l) Record of military service;
- (m) Government positions and offices presently or previously held, and the offices, trusteeships, directorships or fiduciary positions presently or previously held with any business entity;
- (n) Trusteeships or other fiduciary positions held by the applicant and the applicant's spouse, and any denial or suspension of, or removal from, such positions;
- (o) Current memberships in any social, labor or fraternal union, club or organization;
- (p) Licenses and other approvals held by or applied for by the applicant or, where specified, the applicant's spouse, in the Commonwealth of Massachusetts or any other jurisdiction, as follows:
  - 1. Any professional or occupational license held by or applied for the by the applicant or the applicant's spouse;
  - 2. Motor vehicle registrations and operator licenses held by or applied for the by the applicant or the applicant's spouse, and any revocation or suspension thereof;
  - 3. Possession or ownership of any pistol or firearm, or any application for any firearm permit, firearm dealer's license, or permit to carry a pistol or firearm;
  - 4. Any license, permit, approval or registration required to participate in any lawful gambling operation in the Commonwealth of Massachusetts or any jurisdiction held by or applied for by the applicant; and
  - 5. Any denial, suspension or revocation by a government agency of a license, permit or certification held by or applied for by the applicant or the applicant's spouse, or any entity in which the applicant or the applicant's spouse was a director, officer, partner or any owner of a 5% or greater interest;
- (q) Any interest in or employment presently or previously held by the applicant with any entity which has applied for a permit, license, certificate or qualification in connection with any lawful gambling or alcoholic beverage operation in the Commonwealth of Massachusetts or any other jurisdiction; and any current employment or other association by the applicant's family with the gambling or alcoholic beverage industries in the Commonwealth of Massachusetts or any other jurisdiction;
- (r) Civil, criminal and investigatory proceedings in any jurisdiction, as follows:
  - 1. Arrests, charges or offenses committed by the applicant or any member of the applicant's immediate family;
  - 2. Any instance where the applicant has been named as an unindicted party or co-conspirator in a criminal proceeding or held as a material witness;
  - 3. Any appearance before, investigation by or request to take a polygraph examination by any governmental agency, court, committee, grand jury or investigatory body, and any refusal to comply with a request to do so;
  - 4. Any pardons, dismissals, suspensions or deferrals of any criminal investigation, prosecution, or conviction;
  - 5. Lawsuits to which the applicant was or is a party;
  - 6. Any citation or charge for a violation of a statute, regulation or code of any jurisdiction, other than a criminal disorderly persons, petty disorderly persons or motor vehicle violation; and
  - 7. Any use, distribution, or possession of any narcotic, hallucinogenic, drug, barbiturate, amphetamine or other substance listed in M.G.L. c. 94C other than pursuant to a valid prescription issued by a licensed physician;
- (s) Any exclusion or barring from any casino, gaming establishment or gambling/gaming

205 CMR: MASSACHUSETTS GAMING COMMISSION  
Commission Redline Draft – September 25, 2012

related entity in any jurisdiction; and

(t) Financial data, as follows:

1. All assets and liability of the applicant, and the applicant's spouse and dependent children as indicated on the net worth statement and supporting schedules in a format prescribed by the commission, including cash, bank accounts, notes payable and receivable, real estate and income taxes payable, loans, accounts payable and any other indebtedness, contingent liabilities, securities, real estate interests, real estate mortgages and liens, life insurance, pension funds, vehicles and other assets;
2. Bank accounts, including any right of ownership in, control over or interest in any foreign bank account, and safe deposit boxes;
3. Real estate interests held by the applicant or the applicant's spouse or dependent children;
4. Businesses owned;
5. Copies of Federal tax returns and related information;
6. Judgments or petitions for bankruptcy, insolvency or liquidation concerning the applicant or any business entity in which the applicant held a 5% or greater interest, other than a publicly traded corporation, or in which the applicant served as an officer or director;
7. Any business entity in which the applicant was an owner, director or officer which has been placed under some form of governmental administration or monitoring;
8. Any garnishment or attachment of wages, charging order or voluntary wage execution, including the amount, court, nature of the obligation and the holder of the obligation;
9. Any repossessions of real or personal property;
10. Any guarantees, co-signatures or insuring of payments of financial obligations of any persons or business entities;
11. Status as executor, administrator or fiduciary of any estate;
12. Life insurance policies on the applicant's life which name someone other than the applicant's family as a beneficiary;
13. Positions held, assets held, or interest received in any estate or trust;
14. Whether the applicant has ever been bonded for any purpose or been denied any type of bond, including the nature of the bond and if applicable, the reason for denial;
15. Insurance claims in excess of \$100,000.00 by the applicant or the applicant's spouse or dependent children;
16. Referral or finder's fees in excess of \$10,000.00;
17. Loans in excess of \$10,000.00 made or received by the applicant, the applicant's spouse or dependent children;
18. Gifts in excess of \$10,000.00 given or received by the applicant or the applicant's immediate family;
19. Brokerage or margin accounts with any securities or commodities dealer;
20. Currency exchanges in an amount greater than \$10,000.00;
21. Information regarding any instance where the applicant or any entity in which the applicant was a director, officer or holder of a five percent or greater interest has traded in foreign currencies or in a foreign commodities exchange, sold or purchased discounted promissory notes or other commercial paper, or been a party to any leasing arrangements in excess of \$50,000.00; and
22. Information regarding any ownership interest or financial investment by the applicant in any entity which holds or is an applicant for a license issued by the commission, or in any gambling venture which does not require licensure by the commission, including persons providing or reasonably anticipated to provide the applicant with support in the financing of such investment or interest; the extent and nature of the applicant's involvement in the management and operation of the entity; whether the applicant has or has agreed to assign, pledge or hypothecate such interest or investment, the nature and terms of any such transaction and a copy of any such agreement.

(2) In addition to the information in 205 CMR 111.03(1), a completed PHD-MA shall include the following:

- (a) The name, address, occupation and phone number of persons who can attest to the applicant's good character and reputation; ~~and~~
- (b) A waiver of liability as to the Commonwealth of Massachusetts and its

205 CMR: MASSACHUSETTS GAMING COMMISSION  
Commission Redline Draft – September 25, 2012

- instrumentalities and agents for any damages resulting from any disclosure and publication of information acquired during the license or investigation process;
- (c) Consent to inspection, searches and seizures and the supplying of handwriting exemplars; and
  - (d) A signed, dated and notarized ~~affidavit of truth~~affidavit.

111.04: Massachusetts Supplemental Form

A PHD-MA-SUPP shall be submitted by each category 1 and category 2 license qualifier in a format prescribed by the commission and may require the applicant to provide the following information and such additional information as the commission may, in its discretion, determine:

- (a) Name, including maiden name and any aliases or nicknames and applicable dates of use;
- (b) Date of birth;
- (c) Physical description, including a color photograph taken within the past six months;
- (d) Current address, mailing and home, if different;
- (e) Home and work telephone numbers;
- (f) Social Security Number, which information is voluntarily provided in accordance with 5 U.S.C. § 552a;
- (g) The gaming license applicant or holding company, as applicable, with which the applicant is affiliated, and the nature of the applicant's position with or interest in such entity;
- (h) Citizenship and, if applicable, resident alien status, including any employment authorization with expiration date; country of which the applicant is a citizen, place of birth, port of entry to the United States, and name and addresses of sponsor(s) upon the applicant's arrival;
- (i) Whether during the last ten years –any entity in which the applicant has been a director, officer, principal employee or a holder of 5% or more interest has:
  - 1. Made or been charged with (either itself or through third parties acting for it) bribes or kickbacks to any government official, domestic or foreign, to obtain favorable treatment or to any company, employee or organization to obtain a competitive advantage;
  - 2. Held a foreign bank account or has had authority to control disbursements from a foreign bank account;
  - 3. Maintained a bank account or other account, whether domestic or foreign, which is not reflected on the books or records of the business or which is in a name other than the name of the business;
  - 4. Donated, loaned or used funds or property for the use or benefit of or in opposing any government, political party, candidate or committee either domestic or foreign;
  - 5. Compensated any of its directors, officers or employees for time and expenses incurred in performing services for the benefit of or in opposing any government or political party domestic or foreign; or
  - 6. Made any loans, donations or other disbursement to its directors, officers or employees for the purpose of making political contributions or reimbursing such individuals for political contributions whether domestic or foreign;
- (j) Copies of Federal and foreign tax returns and related information for the last five years; and
- (k) A signed, dated and notarized release authorization which shall direct all courts, probation departments, military organizations, selective service boards, employers, education institutions, banks, financial and other institutions and all governmental agencies, Federal, state and local, both foreign and domestic, to release any and all information pertaining to the applicant as requested by the commission, the bureau or a contractor investigator.
- (l) A completed PHD-MA-SUPP shall include the following:
  - 1. The name, address, occupation and phone number of persons who can attest to the applicant's good character and reputation;
  - ~~and~~
  - 2. a waiver of liability as to the Commonwealth of Massachusetts and its instrumentalities and agents for any damages resulting from any disclosure and publication of information acquired during the license or investigation process; and



205 CMR: MASSACHUSETTS GAMING COMMISSION  
Commission Redline Draft – September 25, 2012

3. a signed, dated and notarized ~~affidavit of truth~~ affidavit.

111.05: Withdrawal of Application

- (1) Except as provided in 205 CMR 111.05(2), a written notice of withdrawal of an application or renewal papers may be filed by an applicant, qualifier, licensee or registrant at any time prior to final commission action thereon.
- (2) A withdrawal request submitted in accordance with 205 CMR 111.05(1) shall be permitted without the need for commission approval except under the following conditions, in which cases no withdrawal will be allowed without express commission approval upon a finding of good cause:
- (a) If a hearing on an initial application or renewal has been requested by a party or directed by the bureau or commission;
  - (b) If the application or renewal matter has been transmitted to a bureau presiding officer;
  - (c) If the application or renewal matter has been assigned to any other hearing examiner authorized by law to hear such matter; or
  - (d) If the commission has made a determination to hear the application or renewal matter directly.
- (3) If the commission agrees to grant withdrawal under any of the circumstances in 205 CMR 111.05(2), the commission may condition that withdrawal with appropriate terms it deems necessary, including, but not limited to, a period of time within which the applicant may not re-apply.
- (4) Any person or entity holding a credential issued by the commission, including, without limitation, a license or registration as a key gaming employee, a gaming employee, a gaming vendor, gaming service employee, or a non-gaming vendor may offer to surrender such credential by written request signed by the credential holder or a person authorized to sign on behalf of an entity. Surrender shall be for a term of five years from the date the request is granted by the commission. No refund of any kind shall be authorized or granted in connection with the surrender of a credential. Surrender shall be granted at the sole discretion of the commission.

REGULATORY AUTHORITY

205 CMR 111.00: M.G.L. c. 23K, §§ 4(37), 5, 9, and 12.

205 CMR: MASSACHUSETTS GAMING COMMISSION  
Commission Redline Draft – September 25, 2012

205 CMR 112.00: REQUIRED INFORMATION AND APPLICANT COOPERATION

Section

- 112.01: Additional Information
- 112.02: Obligation to Cooperate
- 112.03: Obligation to Provide Truthful Information

112.01: Additional information

(1) The commission, the bureau or their agents and employees may request additional information and documents from an applicant throughout the application review process including after the application has been deemed administratively complete under 205 CMR 111.00: *Phase 1 Application Requirements*. Failure by the applicant to timely submit the additional information as requested by the commission, the bureau or their agents and employees may be grounds, in the discretion of the commission, for denial of the application.

(2) All applicants, licensees, registrants and qualifiers under M.G.L. c. 23K and 205 CMR 101.00 through 117.00 shall comply with all requests of the commission, the bureau and their agents and employees for information and documents as authorized by the M.G.L. c. 23K and 205 CMR 101.00 through 117.00.

112.02: Obligations to Cooperate

(1) Applicants, licensees, registrants and qualifiers shall respond ~~as soon as practicable within ten days or within the time specified in an~~ information requests by the commission, the bureau and their agents and employees under 205 CMR 112.01 ~~to said information request~~.

(2) All applicants, licensees, registrants and qualifiers under M.G.L. c. 23K shall have a continuing duty to provide all information and documents requested by the commission, bureau, and their agents and employees and to cooperate in any investigation or hearing conducted by the commission, bureau, and their agents and employees, as authorized by M.G.L. c. 23K. Without limitation, an applicant, licensee, registrant and qualifier shall have a continuing duty to provide updated information to the commission, the bureau and their agents and employees in connection with the Phase 1 investigation by the bureau pursuant to 205 CMR -115.03: *Phase 1 Investigation and Recommendations by the Bureau* and any hearing by the commission or the bureau pursuant to 205 CMR 101.00: *M.G.L. c. 23K Adjudicatory Proceedings*.

(3) If the commission determines that an applicant, licensee, registrant, or qualifier has knowingly withheld information, knowingly failed to provide information or documents requested by the commission, bureau, or their agents and employees, or knowingly failed to cooperate with any investigation or hearing conducted by the commission, bureau, or their agents and employees, the commission may, with respect to such person:

- (a) Find that person ineligible to hold a license or registration or be qualified in connection with a license;
- (b) Suspend the relevant license, registration or qualification; or
- (c) Revoke the relevant license, registration or qualification.

112.03: Obligation to Provide Truthful Information

(1) No applicant, licensee, registrant or qualifier shall knowingly provide materially false or misleading information to the commission, the bureau, or their agents and employees.

(2) If the commission determines that an applicant, licensee, registrant, or qualifier has knowingly provided materially false or misleading information to the commission, the bureau, or their agents and employees, the commission shall, with respect to such person:

- (a) Find that person ineligible to hold a license or registration or be qualified in connection with a license;
- (b) Suspend, condition or revoke the relevant license, registration or qualification.

205 CMR: MASSACHUSETTS GAMING COMMISSION  
Commission Redline Draft – September 25, 2012

REGULATORY AUTHORITY

205 CMR 112.00: M.G.L. c. 23K, §§ 4(37), 5, and 13.

205 CMR: MASSACHUSETTS GAMING COMMISSION  
Commission Redline Draft – September 25, 2012

205 CMR 114.00: FEES

Section

- 114.01: Application Fees
- 114.02: Payment of Application Fees
- 114.03: Community Disbursements
- 114.04: Additional Fees for Investigations
- 114.05: Non-refundable Application Fees

114.01: Application Fees

Pursuant to M.G.L. c. 23K, § 15(11), each applicant for a gaming license shall pay to the commission a nonrefundable application fee of \$400,000 to defray the costs associated with the processing of the application and investigation of the applicant; provided, however, that if the costs of the investigation exceed the initial application fee, the applicant shall pay the additional amount to the commission within 30 days after notification of insufficient fees or the application shall be rejected.

114.02: Payment of Application Fees

For a gaming license, the applicant shall pay the initial non-refundable application fee of \$400,000 by certified check or secure electronic funds transfer made payable to the "Massachusetts Gaming Commission." The applicant shall submit this initial non-refundable application fee with its initial application and response to the RFA-1 process set forth in 205 CMR 110:00: *Issuance of Request for Category 1 and Category 2 License Applications*; provided, however, that an applicant for a gaming license may submit the initial non-refundable application fee before the submission of the initial application and response to the RFA-1 process provided that such early submission shall be accompanied by a certification in a form required by the commission confirming the applicant's intention to apply for a gaming license pursuant to M.G.L. c. 23K and the applicant's acknowledgement that the fee is non-refundable.

114.03: Community Disbursements

(1) Pursuant to M.G.L. c. 23K, § 15(11), not less than \$50,000 of the initial application fee for a gaming license shall be used to reimburse the host and surrounding municipalities in accordance with 205 CMR 114.03 for the cost of determining the impact of a proposed gaming establishment and for negotiating community impact mitigation ~~impact~~ agreements.

(2) Based on a letter of authorization to the commission signed by authorized representatives of an applicant and a host or surrounding municipality, the commission may, at any time and from time to time, make community disbursements to that host or surrounding municipality from available amounts paid by that applicant to the commission for community disbursements. If the total amount of payments authorized by an applicant exceeds the initial \$50,000 amount, the applicant shall immediately pay to the commission all such additional amounts authorized by such letters of authorization for community disbursements. If the applicant fails to pay any such additional amount to the commission within 30 days after notification from the commission of insufficient funds, the application shall be rejected.

(3) If 30 days have elapsed after the final issuance, denial or withdrawal of an application for a gaming license and there remains a balance of funds previously paid by the applicant for community disbursements and not previously encumbered or disbursed pursuant to 205 CMR 114.03(2), the commission in its discretion may disburse the remaining balance of such funds to the applicant's host or surrounding municipalities as the commission in its discretion may determine and in accordance with such policies and procedures as the commission may determine.

(4) The provisions of 205 CMR 114.03(4) do not prohibit community contributions permitted and reported in accordance with M.G.L. c. 23K, § 47, and 205 CMR 108.032: *Mandatory Disclosure of Political Contributions and Community Contributions*.

114.04: Additional Fees for Investigations

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- (1) Pursuant to 205 CMR 114.00, the applicant shall be responsible for paying to the Commission all costs incurred by the commission, directly or indirectly, for conducting any investigation into an applicant. As required by the procedure established pursuant to 205 CMR 114.04(5), the applicant shall pay to or reimburse the commission for all such investigation costs that exceed the initial application fee.
- (2) For purposes of 205 CMR 114.00, the costs for conducting any investigation into an applicant shall include, without limitation:
  - (a) All costs for conducting an investigation into an applicant and its qualifiers, the applicant's affiliates and close associates, and any other person subject to the jurisdiction of the commission under M.G.L. c. 23K relating to the application in question; and
  - (b) All fees for services, disbursements, out of pocket costs, allocated overhead, processing charges, administrative expenses, professional fees, and other costs directly or indirectly incurred by the commission, including without limitation all such amounts incurred by the commission to and through the bureau, the division, the gaming enforcement unit, the gaming liquor enforcement unit, and any contractor investigator.
- (3) The commission in its discretion shall establish, ~~and~~ post on its website, a schedule of hourly fees, wages, applicable fringe benefits, payroll taxes, overhead rates and other charges to be assessed by the commission to applicants for in-house personnel, services and work of the commission, the bureau, the division, the gaming enforcement unit, and the gaming liquor enforcement unit for conducting investigations into an applicant pursuant to 205 CMR 114.00.
- (4) The commission shall assess to the applicant all other costs paid by or for the commission, directly or indirectly, to any other person for conducting an investigation into an applicant plus an appropriate percent for overhead, processing and administrative expenses.
- (5) The commission in its discretion shall establish, and post on its website, a procedure by which it will calculate, assess, invoice, collect, require payment for, account for and reconcile payments by applicants to the commission for the costs for conducting any investigation pursuant to 205 CMR 114.00. In the case of a gaming license applicant, this procedure may include, without limitation, the requirement for the applicant to fund in advance a force account held by the commission and to maintain therein and replenish a minimum required balance of at least \$100,000 against which the commission may charge, with interest at 1% per month and late payment penalties, any costs for conducting the investigation not timely paid by the applicant in response to an invoice from the commission.

114.05: Non-refundable Application Fees

- (1) All required application fees and community disbursements pursuant to 205 CMR 114.00 shall be non-refundable, due and payable notwithstanding the withdrawal or abandonment of any application.
- (2) In connection with an application for a gaming license, the applicant, its affiliates, and each party to any agreement to purchase or lease the land for a gaming establishment, to own the gaming establishment, or to manage the gaming establishment shall be jointly and severally liable for any amounts chargeable to the applicant pursuant to 205 CMR 114.00.

REGULATORY AUTHORITY

205 CMR 114.00: M.G.L. c. 23K, §§ 4(26), 4(37), 5, 10(d), 15(11), 19(b), 20(f), 21(b), 22, ~~23(e)~~, 26, 30, 31, and 47.

205 CMR: MASSACHUSETTS GAMING COMMISSION  
Commission Redline Draft – September 25, 2012

205 CMR 115.00: PHASE 1 SUITABILITY DETERMINATION, STANDARDS AND PROCEDURES

Section

- 115.01: Phase 1 Determination Standards
- 115.02: Phase 1 Procedures
- 115.03: Phase 1 Investigation and Recommendations by the Bureau
- 115.04: Phase 1 Proceedings by the Commission
- 115.05: Phase 1 Determination by the Commission

115.01: Phase 1 Determination Standards

- (1) Phase 1 Determination Standards. The commission shall not issue an affirmative determination of suitability for any category 1 or category 2 applicants unless:
- (a) The applicant meets the standards in M.G.L. c. 23K, §§ 12, 16, 46 and 47.
  - (b) The applicant complies with the provisions of 205 CMR 111.00: *Phase 1 Application Requirements* and 205 CMR 115.00.
  - (c) The commission has determined that the applicant has demonstrated financial stability pursuant to 205 CMR 117.00: *Phase 1 Determination of Financial Stability*.
  - (d) All qualifiers under 205 CMR 116.02: *Persons Required to be Qualified* have been determined to be suitable by the commission or received a waiver under 205 CMR 116.03: *Waivers*.
- (2) Burden of Proof. All applicants for a Phase 1 suitability determination must establish their qualifications by clear and convincing evidence.

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115.02: Phase 1 Procedures

- (1) When a completed RFA-1 application is filed, the application shall be referred by the commission to the bureau for a determination of completeness and investigation.
- (2) Determination of Administrative Completeness. After receiving the application containing the information required by 205 CMR 111.02: *Business Entity Disclosure Form - Category 1 and Category 2 Entity Applicants and Holding/Intermediary Companies* the bureau will either determine that the application is sufficiently complete for purposes of initiating substantive review or request additional information from the applicant.
- (3) Notice. After the bureau has determined the application to be administratively complete pursuant to 205 CMR 111.02(2): *Business Entity Disclosure Form - Category 1 and Category 2 Entity Applicants and Holding/Intermediary Companies*(2), the commission shall notify the applicant of the determination and notify the public that an application has been filed.

115.03: Phase 1 Investigation and Recommendations by the Bureau

- (1) The bureau shall conduct an investigation into the qualifications and suitability of all applicants and qualifiers, as provided for in M.G.L. c. 23K, §§ 12 and 16. The bureau may ~~conduct the investigation~~refer the application for investigation, in whole or in part, with the assistance of ~~to one or more a~~ contractor investigators pursuant to 205 CMR 105.10: *Authority to Retain and Utilize Contractor Investigators*, ~~for retain the application for investigation by the bureau.~~
- (2) At the completion of the bureau's investigation, it shall submit a written report to the commission. At a minimum, this report will include: recommendations pursuant to M.G.L. c. 23K, §§ 12, 14-(i) and 16 and findings of fact pursuant to M.G.L. c. 23K, § 17(f) relative to the suitability of the applicant for a gaming license.

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115.04: Phase 1 Proceedings by the Commission

- (1) After the commission has received the bureau's report under 205 CMR 115.03(2) it shall provide a copy to the applicant and shall initiate a process for ~~thea public hearing or~~

205 CMR: MASSACHUSETTS GAMING COMMISSION  
Commission Redline Draft – September 25, 2012

adjudicatory proceeding.

(2) Applicant's Notice of Claim. If the applicant contests any of the bureau's recommendations or findings of fact it shall file a notice of claim with the commission within 30 days of receipt of the bureau's report.

(3) Adjudicatory Proceeding. ~~If the applicant files a Notice of Claim pursuant to 205 CMR 115.04(2) or on the commission's own initiative, t~~The commission shall conduct an adjudicatory proceeding pursuant to 205 CMR 101.03(1): *Special Procedures for Hearings before the Commission* ~~(+)~~ on ~~each~~the Phase 1 report by the bureau concerning the applicant pursuant to 205 CMR 115.03(2). The commission will issue a public notice in advance of the adjudicatory proceeding stating the date, time and place of the hearing.

(4) Public Hearing. ~~If the bureau's suitability report under 205 CMR 115.03(2) recommends an unconditional positive determination of suitability for the applicant, without findings of fact that are contested by the applicant, then the applicant may request and the commission may waive the need for an adjudicatory hearing concerning the bureau's report, in which case the commission shall review the bureau's suitability report in a public hearing, subject to redaction of confidential and exempt information described in 205 CMR 103.02(1) through (5). The commission will issue a notice in advance of the public hearing stating the date, time and place of the hearing and the form (oral or written) and conditions pursuant to which the commission will receive public comments.~~

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115.05: Phase 1 Determination by the Commission

(1) After the proceedings under 205 CMR 115.04, the commission shall issue a written determination of suitability pursuant to M.G.L. c. 23K, §§ 4(15), 12 and 17.

(2) Negative Determination. If the commission finds that an applicant failed to meet its burden of demonstrating compliance with the suitability standards in M.G.L. c. 23K and 205 CMR 115.00, the commission shall issue a negative determination of suitability.

(3) Positive Determination. If the commission finds that an applicant has met its burden of demonstrating compliance with the suitability in M.G.L. c. 23K and 205 CMR 115.00, the commission shall issue a positive determination of suitability which may include conditions and restrictions.

(4) The commission shall not entertain a Phase 2 application for any applicant unless and until the commission has issued a positive suitability determination on that applicant.

(5) No appeal from Commission's Determination of Suitability. Pursuant to M.L.G. c. 23K, § 17(g) the applicant shall not be entitled to any further review.

REGULATORY AUTHORITY

205 CMR 115.00: M.G.L. c. 23K, §§ 4(37), 5, 12, -13, 16, 17, 46 and 47.



205 CMR: MASSACHUSETTS GAMING COMMISSION  
Commission Redline Draft – September 25, 2012

205 CMR 116.00: PERSONS REQUIRED TO BE LICENSED OR QUALIFIED

Section

- 116.01: Persons Required to be Licensed
- 116.02: Persons Required to be Qualified
- 116.03: Waivers
- 116.04: Notification of Anticipated or Actual Changes in Directors, Officers or Equivalent Qualifiers
- 116.05: Notification of New Financial Sources
- 116.06: Notification Concerning Certain New Qualifiers of Holding, Intermediary or Subsidiary Companies and New Qualifying Entities
- 116.07: Qualification of New Qualifiers

116.01: Persons Required to be Licensed

No Category 1 or Category 2 license shall be issued by the commission or shall remain in effect unless and until the applicant and all qualifiers identified in 205 CMR 116.00 have been found by the commission to meet all standards necessary for a Phase 1 determination of suitability under 205 CMR 115.00: *Phase 1 Suitability Determination, Standards and Procedures*.

116.02: Persons Required to be Qualified

(1) The following persons shall be required to qualify as part of the Phase 1 determination for a Category 1 or Category 2 license:

- (a) If the applicant is a corporation:
  - 1. Each officer
  - 2. Each director
  - 3. In the judgment of the commission in accordance with this M.G.L. c. 23K:
    - a. each shareholder holding 45% or more of the common stock of the company
    - b. each lender
    - c. each holder of evidence of indebtedness
    - d. each underwriter
    - e. each close associate
    - f. each executive
    - g. each agent
    - h. each employee
- (b) If the applicant is a limited liability corporation:
  - 1. Each Member
  - 2. Each transferee of a Member's interest
  - 3. Each Director
  - 4. Each Manager
  - 5. In the judgment of the commission in accordance with M.G.L. c. 23K:
    - a. each lender
    - b. each holder of evidence of indebtedness
    - c. each underwriter
    - d. each close associate
    - e. each executive
    - f. each agent
- (c) If the applicant is a limited partnership:
  - 1. Each General Partner
  - 2. Each Limited Partner
  - 3. In the judgment of the commission in accordance with this M.G.L. c. 23K:
    - a. each lender
    - b. each holder of evidence of indebtedness
    - c. each underwriter
    - d. each close associate
    - e. each executive
    - f. each agent
- (d) If the applicant is a partnership:
  - 1. Each Partner



2. In the judgment of the commission in accordance with this M.G.L. c. 23K:
  - a. each lender
  - b. each holder of evidence of indebtedness
  - c. each underwriter
  - d. each close associate
  - e. each executive
  - f. each agent
  - e. In all cases, any person who, in the opinion of the commission, can exercise control or provide direction to a gaming licensee or applicant for a gaming license or holding, intermediary or subsidiary companies thereof.

(2) Other Qualifiers. The commission may, at its sole discretion, require other persons or companies that have a business association of any kind with the applicant to undergo a Phase 1 review and determination process under 205 CMR 115.00: *Phase 1 Suitability Determination, Standards and Procedures*. These affiliated companies or persons include, but are not limited to, holding, intermediary or subsidiary companies of the applicant.

#### 116.03: Waivers

(1) The commission may in its discretion waive qualification requirements for the following persons under the following conditions:

- (a) In the case of applicant corporations and holding, intermediary and subsidiary corporations, those persons holding less than 5% of the common stock of the company;
- (b) In the case of institutional investors, if the institutional investor holds less than 15% of the stock of the applicant, holding, intermediary or subsidiary company;
- (c) In the case of persons involved in the financing of the gaming establishment,  
provided: –

(i) A lender to an applicant or licensee that is obtaining financing for the construction or operation of a Category 1 or Category 2 facility shall be required to be licensed unless the following apply:

- (a) The lender is in the business of providing debt or equity capital to individuals or entities;
- (b) The loan is in the ordinary course of the lender's business; and
- (c) The lender does not have the ability to control or otherwise influence the affairs of the applicant or licensee.

(ii) A lender that is required to be licensed may lend to an applicant or licensee if the lender has filed a completed application in accordance with 205 CMR 101.00 to 117.00 and has received lender authorization from the commission or bureau.

(iii) A person that acquires a debt instrument issued by an applicant or licensee in a public or exempt private offering shall not be required to be licensed if:

- (a) The person does not have any right or ability to control or influence the affairs of the licensee; and
- (b) The person's acquisition of the debt instrument is in the ordinary course of business and is not part of a plan or scheme to avoid the requirements of this section.

(iv) Notwithstanding any provision to the contrary in 205 CMR 116.00, the commission may require the licensure of any person that holds a debt instrument issued by an applicant or licensee if the commission has reason to believe that the person would not satisfy the requirements of 205 CMR 101.00 through 117.00 or M.G.L. c. 23K; or

- (d) In the case of Any person that, in the opinion of the commission cannot exercise control or provide direction to a gaming licensee or applicant for a gaming license or a holding, intermediary or subsidiary company thereof.

(2) In determining whether to waive qualification requirements under 205 CMR 116.03(1) , the commission shall consider whether the person seeking the waiver obtained its interest for investment purposes only and does not have any intention to influence or affect the affairs of the applicant or any affiliated companies thereof.

(3) Any person may seek a waiver under 205 CMR 116.03(1) by filing a petition with the

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205 CMR: MASSACHUSETTS GAMING COMMISSION  
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Commission pursuant to 205 CMR 102.03(4).—: provided, however, that the commission or the bureau may require the submission of any such information deemed necessary to act on the request for a waiver or, at any time, if the commission or the bureau has reason to believe that the person would not satisfy any of the requirements of 205 CMR 101.00 through 117.00 or M.G.L. c. 23K.

(4) Any party granted a waiver under 205 CMR 116.03 which subsequently anticipates engaging in any activity that will or could influence or affect the affairs or operations of the applicant or the holding, intermediary or subsidiary company thereof, shall provide not less than 30 days' notice to the commission of such intent and the party shall not exercise any influence or effect on the affairs or operations of the applicant or the holding, intermediary or subsidiary company thereof unless and until the commission issues a determination of suitability under 205 CMR 115.00: *Phase 1 Suitability Determination, Standards and Procedures* for said party.

116.04: Notification of Anticipated or Actual Changes in Directors, Officers or Equivalent Qualifiers

(1) Each Category 1 and Category 2 applicant or licensee shall notify the commission, in writing, as soon as ~~practicable~~ it becomes aware, of the proposed appointment, appointment, proposed nomination, nomination, election, intended resignation, resignation, incapacitation or death of any qualifier.

(2) Upon receipt of a notice under 205 CMR 116.04(1), the commission shall refer the matter to the bureau for appropriate handling including, but not limited to, a notice to the new qualifier requiring the filing of an appropriate application and the subsequent investigation of that application.

116.05: Notification of New Financial Sources

(1) Each Category 1 and Category 2 applicant or licensee shall immediately notify the commission, in writing, as soon as it becomes aware that it intends to enter into a transaction bearing any relation to its gaming establishment project that may result in new persons involved in the financing of the gaming establishment.

(2) Upon receipt of a notice under 205 CMR 116.05(1), the commission shall refer the matter to the bureau for appropriate handling, including, but not limited to, a notice to the new financial source requiring the filing of an appropriate application and the subsequent investigation of that application.

116.06: Notification Concerning Certain New Qualifiers of Holding, Intermediary or Subsidiary Companies  
and New Qualifying Entities

(1) Each Category 1 and Category 2 applicant or licensee shall immediately notify the commission, in writing, as soon as it becomes aware of any new persons required to be qualified in connection with the holding, intermediary or subsidiary company of that Category 1 or Category 2 applicant or licensee in accordance with M.G.L. c. 23K.

(2) Upon receipt of a notice under 205 CMR 116.06(1), the commission shall refer the matter to the bureau for appropriate handling, including, but not limited to, a notice to the new person requiring the filing of an appropriate application and the subsequent investigation of that application.

116.07: Qualification of New Qualifiers

No new qualifiers may perform any duties or exercise any powers relating to the position that said qualifier is seeking to assume until qualified by the commission.

REGULATORY AUTHORITY

205 CMR: MASSACHUSETTS GAMING COMMISSION  
Commission Redline Draft – September 25, 2012

205 CMR 116.00: M.G.L. c. 23K, §§ 4(37), 5, 12, 14, and 16.

205 CMR: MASSACHUSETTS GAMING COMMISSION  
Commission Redline Draft – September 25, 2012

205 CMR 117.00: PHASE 1 DETERMINATION OF FINANCIAL STABILITY

Section

117.01: Phase 1 Determination of Financial Stability

117.01: Phase 1 Determination of Financial Stability

- (1) General. An applicant for a Category 1 or Category 2 license must demonstrate that it has the financial stability to construct and operate a gaming establishment.
- (2) Phase 1 Financial Stability Standards. In determining whether an applicant is financially stable at the time of the Phase 1 determination, the bureau and the commission shall review the Phase 1 application in accordance with the following standards:
  - (a) The ability to maintain a typical gaming establishment payroll and equivalent provisions adequate to pay winning wagers to gaming establishment patrons when due.
  - (b) The ability to meet ongoing operational expenses which are essential to the maintenance of continuous and stable gaming establishment operations.
  - (c) The ability to pay, as and when due, all local, state and ~~f~~Federal taxes, including the taxes and other fund payments imposed by M.G.L. c. 23K.
  - (d) The ability to make necessary capital and maintenance expenditures in a timely manner which are adequate to ensure maintenance of a superior, first-class facility of exceptional quality.
  - (e) To the extent known at the time, the ability to pay, exchange, refinance, or extend debts, including long-term and short-term principal and interest and capital lease obligations, which are expected to mature or otherwise come due and payable during the license term, or to otherwise manage such debts and any default with respect to such debts.
  - (f) Any other relevant matters that the commission may deem appropriate for evaluation.
  - (g) The bureau and commission may also evaluate the applicant's historic gaming industry or commercial performance, if any, that are relevant to the criteria set forth in 205 CMR 117.0001(2).
- (3) Any finding of financial stability for purposes of the Phase 1 determination of suitability, shall not be binding on any finding of financial stability for purposes of any Phase 2 determination of suitability by the bureau or the commission.

REGULATORY AUTHORITY

205 CMR 117.00: M.G.L. c. 23K §§ 4(37), 5, 9 and 12.

The Commissioners and all employees of the Massachusetts Gaming Commission are committed to a set of core values that will underpin and guide our work:

- We value an unyielding commitment to a participatory, transparent and fair process for the licensing of expanded gaming in Massachusetts.
- We value an environment with a free-flowing and open exchange of ideas in which all are encouraged to question and participate, with the understanding that all will use their best efforts to implement the resulting decisions.
- We value an uncompromising commitment to the integrity of the licensing and regulatory process, and strict adherence to the letter and spirit of our Enhanced Code of Ethics, with a thoughtful balance between the need for rigorous regulation and the burden of compliance.
- We value a diverse workforce and supplier base, and an inclusive culture internally and among our partners in the Massachusetts Gaming Industry.
- We value a deep commitment to customer service that assures a respectful and professional experience for all with whom we come in contact, no matter their point of entry or point of view.

# Massachusetts Gaming Commission

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## MEMORANDUM

Date: September 25, 2012  
To: Commissioners  
From: Enrique Zuniga  
Re: Procedure for Reimbursing Host Communities

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Recommendation: That the Gaming Commission adopt and communicate procedures in addition to those described in the draft regulations 205CMR114, for the reimbursement of costs associated with the community mitigation impact agreements.

### *205 CMR 114.03*

The Commission has proposed regulations to reimburse Host and Surrounding Communities for costs associated with the negotiation of community mitigation impact agreements. The regulation in question is 205 CMR 114.03. Applicants, host communities and surrounding communities are encouraged to read the regulations above, and the procedures herein.

### *Procedures for Reimbursement*

The host or surrounding community submits a “letter of authorization” to the Commission signed by authorized representatives of an applicant and a host or surrounding community.

“Authorized Representative” is the person(s) or body that can commit funds on behalf of the applicant (e.g., principal, general manager) or the person or body that can commit funds on behalf of the host or surrounding community (e.g., Mayor, Town Manager, Chair of Board of Selectmen).

The Host or Surrounding Community may choose one of the following two alternatives to seek and obtain reimbursement from the Commission:

1. If the Host or Surrounding Community is seeking to obtain funds prior to expending such funds:

- a. The letter should itemize and stipulate the amounts agreed to by the parties in advance of the monies being spent.
  - b. Upon review by the Commission of the letter of authorization the Commission may disburse 50% of the monies itemized in the letter of authorization, provided that the Commission has received the initial application fee from the applicant.
  - c. After the initial letter of authorization, the Host or Surrounding Community may submit one or more requests for reimbursement.
  - d. The request for reimbursement should contain attached proof of payment (or commitment) by the municipality to the entity (ies) agreed to by the parties.
    - i. Proof of payment includes a copy of an approved invoice with a copy of a warrant or check
  - e. The Commission may reimburse 50% of the costs that have been expended in such request(s) for reimbursement by the Community until the balance of the monies that the Commission has reserved for the Host or Surrounding Community have been expended in full.
2. If the Host or Surrounding Community is only seeking to be reimbursed for monies already spent (and agreed to with the applicant) in connection with the Costs for mitigation agreements:
- a. The Host or Surrounding Community may submit a letter of authorization signed by the Authorized Representatives
  - b. In addition, the Host or Surrounding Community must submit an itemization of all costs for which it is seeking reimbursement with proof of payment.
    - i. Proof of payment includes a copy of an approved invoice with a copy of a warrant or check

In accordance with CMR 25CMR114, in the event that costs for the negotiation of mitigation agreements are anticipated to exceed the \$50,000 minimum threshold that the statute sets forth, the host or surrounding community and/or applicant should notify the Commission as soon as possible, and may submit additional "letters of authorization" to the Commission and continue with the procedures described above.