



## **MASSACHUSETTS GAMING COMMISSION MEETING**

April 17, 2014  
10:30 a.m.

**Boston Convention and Exhibition Center**  
415 Summer Street, Room 152-A  
Boston, MA



Massachusetts Gaming Commission

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## **NOTICE OF MEETING and AGENDA**

April 17, 2014

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:

Thursday, April 17, 2014

10:30 a.m.

Boston Convention and Exhibition Center

415 Summer Street, Room 152A

Boston, MA

### **PUBLIC MEETING - #117**

1. Call to order
2. Approval of Minutes
  - a. March 20, 2014
  - b. April 3, 2014
3. Ombudsman Report – John Ziemba
  - a. Master Licensing Schedule Region C Amended Schedule – R. Day, Executive Director, K. Wells, Director of Investigations and Enforcement; C. Blue, General Counsel - VOTE
  - b. Request for Variance from 205CMR122 Capital Investment – Commissioner Zuniga - VOTE
  - c. MGM request to address the Commission regarding licensing timing issues
  - d. Region A Arbitration Deadline Requests
4. Racing Division – Jennifer Durenberger, Director
  - a. Administrative Update
  - b. Approval of Racing Operating Officials - VOTE
  - c. Consideration of Split Sample Labs
  - d. Controlled Therapeutic Substance Schedule Advisory
  - e. Horse Welfare Values – Discussion and Comments
5. Legal Report - Catherine Blue, General Counsel
  - a. Monitoring and Pre-Opening Emergency Regulations – R. Day, Executive Director
6. Workforce Development and Diversity – Jill Griffin, Director
  - a. Penn National Gaming and Turner Construction Diversity Plan Consideration - VOTE
  - b. Training Schools and Regulations – 1<sup>st</sup> Draft



Massachusetts Gaming Commission

7. Information Technology Division – John Glennon, CIO
  - a. Slots Standards and Approval Process Regulations – 2<sup>nd</sup> Draft
8. Administration – Rick Day, Executive Director
  - a. General Update
  - b. Monitoring Process Planning – J. Pinck, Pinck & Co.
  - c. Quarterly Budget Report – D. Lennon, CFAO
  - d. Policy Handbook Revisions – D. Lennon, CFAO
  - e. Potential Changes to 23K and Legislation –Chairman Crosby
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.massgaming.com](http://www.massgaming.com) 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).

April 14, 2014  
(date)

Stephen P. Crosby / jrc  
Stephen P. Crosby, Chairman

**Date Posted to Website:** April 15, 2014 at 10:30 a.m.



Massachusetts Gaming Commission





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## Meeting Minutes

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**Date/Time:** March 6, 2014 – 9:30 a.m.

**Place:** Boston Convention and Exhibition Center  
415 Summer Street, Room 102  
Boston, Massachusetts

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

**Absent:** None

Clicking on the time posted in the margin will link directly to the appropriate section of the video.

### Call to Order

See transcript page 2.

9:29 a.m. Chairman Crosby opened the 112th public meeting.

### Approval of Minutes

See transcript pages 2-5.

9:30 a.m. Commissioner McHugh stated that the minutes for the January 28, January 29, February 6, February 18, and February 20 public meetings are ready for approval.

*Motion made by Commissioner McHugh that the minutes of February 6, 2014 be accepted subject to any mechanical or typographical corrections that may later be made. Motion seconded by Commissioner Cameron. The motion passed unanimously.*

*Motion made by Commissioner McHugh that the minutes of February 20, 2014 be accepted subject to any mechanical or typographical corrections that may later be made. Motion seconded by Commissioner Cameron. The motion passed unanimously.*

*Motion made by Commissioner McHugh that the minutes of January 28, 2014, January 29, 2014, and February 18, 2014 be accepted subject to any mechanical or typographical corrections that may later be made. Motion seconded by Commissioner Cameron. The motion passed unanimously.*

### **Administration**

See transcript pages 5-67.

- 9:33 a.m. Executive Director Day provided an administrative update relative to license applications, a video guide for gaming employees, the MOU with State Police, recruitment of new employees, and the process for regulation promulgation.
- 9:43 a.m. Director Lennon provided an updated on Commission finances and internal operations.
- 10:04 a.m. Executive Director Day described the licensing schedule and highlighted the changes to the Region A schedule.
- 10:11 a.m. Ombudsman Ziemba presented the status of Region C and the Commission discussed methods for increasing competitiveness in the region.
- 10:35 a.m. Executive Director Day presented the final agenda for the Commission's Internet Gaming Forum.

### **RFA-2 Evaluation Process**

See transcript pages 67-97.

- 10:38 a.m. Jennifer Pinck and Nancy Stack provided an overview of the Category 2 licensing process and the implications for Category 1 evaluations.
- 11:11 a.m. The Commission took a brief recess.

### **Gaming Technology**

See transcript pages 97-127.

- 11:24 a.m. Director Glennon and Attorney Shtatnov provided an overview of the draft regulations for gaming devices and noted policy issues for Commission discussion at a future public meeting.

### **Surrounding Community Arbitration**

See transcript pages 127-142.

- 11:57 a.m. The Commission discussed the arbitration process for surrounding communities.

12:14 p.m. *Motion made by Commissioner McHugh that the Commission adopt a provision for allowing the Commission to alter an arbitrator's award if in the Commission's judgment that award is fundamentally inconsistent with the provisions or purpose of General Laws Chapter 23K, and further that the arbitrator's handbook be modified by striking the final sentence of the portion of the handbook labeled final decision of the arbitrators. And replacing that final sentence with a sentence that reads, "the arbitrators may make adjustments to the selected best and final offer only if necessary to remove a direct conflict between a provision of the selected award and a provision of the Gaming Act." Motion seconded by Commissioner Cameron. The motion passed unanimously.*

12:16 p.m. The Commission took a recess for lunch.

### **Research and Problem Gaming**

See transcript pages 142-205.

1:31 p.m. Director Vander Linden and Dr. Debi LaPlante discussed the efforts that Massachusetts has been taking to combat problem gaming.

1:42 p.m. Director Vander Linden and Marlene Warner discussed the Commission's responsible gaming framework.

1:58 p.m. Director Vander Linden and Deputy General Counsel Grossman presented the problem gaming voluntary self-exclusion regulations. The Commission discussed the public comments received and the changes made since the prior version of the regulations.

2:24 p.m. *Motion made by Commissioner Cameron that the Commission accept the draft of the voluntary self-exclusion regulations with whatever technical changes may be requested. Motion seconded by Commissioner Zuniga. The motion passed unanimously.*

2:25 p.m. Director Vander Linden provided an update on the current status of the research agenda.

### **Legal Division**

See transcript pages 205-206

2:38 p.m. Chairman Crosby requested that the legal division provide the Commissioners with more information on the public records process.

### **Workforce Development and Diversity**

See transcript pages 206-222.

2:40 p.m. Director Griffin discussed the Clean Energy Fair that occurred on February 2.

- 2:45 p.m. Director Griffin presented an overview of the diversity commitments from Penn National.
- 2:59 p.m. Chairman Crosby and Commissioner Cameron left the meeting.
- 3:00 p.m. The Commission took a brief recess.

### **Racing Division**

See transcript pages 222-248.

- 3:05 p.m. Director Durenberger presented the unclaimed wagers from 2012 and requested that the Commission approve the payments to the Commission for deposit into the appropriate accounts.
- 3:06 p.m. *Motion made by Commissioner Zuniga to approve the payments for the 2012 unclaimed wagers. Motion seconded by Commissioner Stebbins. The motion passed 3-0.*
- 3:07 p.m. Director Durenberger presented Raynham Park's request to simulcast special events and recommended that the Commission approve the request.
- 3:08 p.m. *Motion made by Commissioner Stebbins that the Commission approve the list of 2014 special events to be simulcast at Raynham Park. Motion seconded by Commissioner Zuniga. The motion passed 3-0.*
- 3:08 p.m. Director Durenberger presented updates to the racing legislation and recommended approving the first two sections as outlined in the memo.
- 3:12 p.m. *Motion made by Commissioner Zuniga that the Commission forward to the Legislature recommendations relative to extension of Chapters 128A and C as outlined in the memo here labeled Section one and Section two. Motion seconded by Commissioner Stebbins. The motion passed 3-0.*
- 3:13 p.m. Director Durenberger presented emergency regulations affecting 205 CMR 3.00 and 4.00 relative to conflict of interest, access to records, and the cost of fingerprinting. The Commission requested additional information and agreed to postpone the discussion until March 20.
- 3:32 p.m. Meeting adjourned.

### **List of Documents and Other Items Used**

1. Massachusetts Gaming Commission March 6, 2014 Notice of Meeting and Agenda
2. Massachusetts Gaming Commission Minutes of February 18, 2014
3. Massachusetts Gaming Commission Minutes of February 20, 2014
4. Massachusetts Gaming Commission February 28, 2014 Licensing Schedule Update

5. Category 1 and 2 Applicant Timelines
6. Massachusetts Gaming Commission March 11, 2014 Internet Gaming Forum Agenda
7. Massachusetts Gaming Commission March 4, 2014 Memorandum Regarding Surrounding Community Arbitration Process
8. Massachusetts Gaming Commission March 6, 2014 Division of Racing Memorandum Regarding Outstanding Tickets
9. Massachusetts Gaming Commission March 6, 2014 Division of Racing Memorandum Regarding Approval of Special Events to be Simulcast at Raynham Park
10. Massachusetts Gaming Commission March 6, 2014 Division of Racing Memorandum Regarding Proposed Extension of Existing Chapters 128A and 128C
11. Massachusetts Gaming Commission March 6, 2014 Division of Racing Memorandum Regarding Emergency Regulation Changes Affecting 205 CMR 3.00 and 4.00
12. Cambridge Health Alliance document
13. 205 CMR 133 Voluntary Self-Exclusion Regulation
14. Responsible Gaming Framework
15. Clean Energy Expo Agenda
16. 205 CMR 138 Gaming Devices and Electronic Gaming Equipment Regulation

/s/ Catherine Blue  
Catherine Blue  
Assistant Secretary



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## Meeting Minutes

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**Date/Time:** March 20, 2014 – 9:30 a.m.

**Place:** Boston Convention and Exhibition Center  
415 Summer Street, Room 102B  
Boston, Massachusetts

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

**Absent:** None

Clicking on the time posted in the margin will link directly to the appropriate section of the video.

### Call to Order

See transcript page 2.

9:30 a.m. Chairman Crosby opened the 113th public meeting.

### Approval of Minutes

See transcript page 2.

9:30 a.m. Commissioner McHugh stated that the minutes for the February 24 and the February 25-28 public meetings are ready for approval.

*Motion made by Commissioner McHugh that the minutes of February 24, 2014 and the minutes of February 25-28, 2014 be accepted subject to any mechanical or typographical corrections that may later be made. Motion seconded by Commissioner Cameron. The motion passed unanimously.*

### Administration

See transcript pages 3-77.

9:31 a.m. Executive Director Day provided an administrative update relative to the employee and vendor licensing process, internal hiring, and background investigations of

employees. Beginning April 3, Commission meetings will start at 10:30 a.m. instead of 9:30 a.m.

- 9:34 a.m. Executive Director Day presented the process for policy improvements at the Commission and stated that the Commission will review updated policies over the next several weeks. He recommended that the Commission currently approve the policies for commuting, travel and parking, and purchases.
- 10:32 a.m. *Motion made by Commissioner Zuniga that the Commission approve the recommendation as set forth by the Executive Director and CFO relative to the travel policy, the P-card policy and the expense reimbursement, the commuting benefits policy as described in the packets and as amended in this hearing. Motion seconded by Commissioner Stebbins. The motion passed unanimously.*
- 10:38 a.m. Director Lennon provided an overview of the results of the procurement process for the project monitoring and oversight of the gaming establishment construction. He recommended that the Commission prequalify both finalists, PMA Consultants and Pinck and Company, and then utilize Pinck and Company for monitoring the construction of the Plainridge slots parlor.
- 10:51 a.m. *Motion made by Commissioner Zuniga that the Commission accept the recommendations relative to the procurement of the oversight project manager and prequalify both the firms of Pinck and Company as well as PMA Consultants to conduct those services for the Commission. Motion seconded by Commissioner Cameron. The motion passed unanimously.*
- 10:52 a.m. The Commission took a brief recess.

### **Legal Division**

See transcript pages 77-107.

- 11:00 a.m. General Counsel Blue presented amendments to the Commission's binding arbitration regulations in 205 CMR 125.01(6)(c).
- 11:32 a.m. *Motion made by Commissioner McHugh that the Commission adopt on an emergency basis 205 CMR 125.01(6)(c) as presented in the Commissioners packet. Motion seconded by Commissioner Zuniga. The motion passed unanimously.*

### **Racing Division**

See transcript pages 107-120.

- 11:33 a.m. Director Durenberger provided an administrative update relative to the racing division's staff recruitment, schedule, background checks, simulcasting, and wager initiatives.

- 11:38 a.m. Director Durenberger stated that she is not recommending that the Commission approve the emergency regulations in the packet at this time and instead consider those regulations as part of a future set of regulations in June or July.
- 11:40 a.m. Director Durenberger presented Suffolk Down's requested racing schedule amendment and recommended its approval.
- 11:43 a.m. *Motion made by Commissioner Cameron that the Commission accept the proposed racing schedule amendment for Suffolk Downs. Motion seconded by Commissioner McHugh. The motion passed unanimously.*
- 11:44 a.m. Director Durenberger presented Plainridge Racecourse's racing schedule amendment to accommodate construction and recommended its approval.
- 11:46 a.m. *Motion made by Commissioner Stebbins that the Commission accept the revised racing schedule for 2014 for Plainridge Racecourse as presented. Motion seconded by Commissioner Cameron. The motion passed unanimously.*

### **Research and Responsible Gambling**

See transcript pages 120-148.

- 11:47 a.m. Director Vander Linden and Marlene Warner discussed problem gambling awareness month and the efforts that Massachusetts has been taking to combat problem gaming.
- 12:14 p.m. Director Vander Linden presented an amendment to the Commission's contract with Problem Gambling Solutions.
- 12:17 p.m. *Motion made by Commissioner Zuniga that the Commission accept the recommendation to amend and extend the contract with Problem Gambling Solutions as stated here in the Commissioner packet. Motion seconded by Commissioner Cameron. The motion passed unanimously.*
- 12:19 p.m. The Commission took a recess for lunch.

### **Ombudsman Report**

See transcript pages 148-192.

- 1:27 p.m. Ombudsman Ziembra provided a brief overview of the process for surrounding community determinations and the potential host community designation of the City of Boston.
- 1:29 p.m. Mayor Martin Walsh and Tom Frongillo presented the City of Boston's declaration as a host community to the proposals of Mohegan Sun and Wynn Resorts. The Commission discussed the issues briefly and agreed to hold a hearing on host community status at the following public meeting.



2:10 p.m. Ombudsman Ziemba described the process that the Commission has used and the analysis conducted in reviewing the surrounding community petitions.

**Everett – Surrounding Community Petition**

See transcript pages 192-243.

2:15 p.m. The Commission discussed the surrounding community petition of the City of Everett.

2:53 p.m. *Motion made by Commissioner Zuniga that, based on the evidence and the discussion presented before this Commission, the Commission designate the city of Everett as a surrounding community to the Mohegan Sun application based on the evidence presented here relative to potential traffic impacts on Route 16. Motion seconded by Commissioner Stebbins. The motion passed unanimously.*

2:55 p.m. The Commission discussed the involuntary disbursement petition of the City of Everett.

3:10 p.m. *Motion made by Commissioner McHugh that the Commission approve an involuntary disbursement of 50% of the amount requested by the City of Everett in categories two and three without specifying what the disbursement covers and delegate to the Ombudsman the ability to approve further disbursements to the extent that the parties agree to the disbursements. Motion seconded by Commissioner Cameron. The motion passed unanimously.*

3:12 p.m. The Commission took a brief recess.

**Cambridge – Surrounding Community Petition**

See transcript pages 243-283.

3:28 p.m. The Commission discussed the surrounding community petition of the City of Cambridge.

4:15 p.m. *Motion made by Commissioner McHugh that the Commission, because of the impact of traffic on the intersection at Land Boulevard and the McGrath and O'Brien Highway, designate Cambridge as a surrounding community. Motion seconded by Commissioner Stebbins. The motion passed unanimously.*

**Saugus – Surrounding Community Petition**

See transcript pages 283-309.

4:16 p.m. The Commission discussed the surrounding community petition of the Town of Saugus.

- 4:40 p.m. *Motion made by Commissioner McHugh that the Commission deny the petition of Saugus to be designated as a surrounding community. Motion seconded by Commissioner Cameron. The motion passed unanimously.*
- 4:40 p.m. The Commission discussed the involuntary disbursement petition of the Town of Saugus. The Commission postponed making a decision on the petition until it receives further information from the Town.

### **Ombudsman Report**

See transcript pages 309-320.

- 4:45 p.m. Ombudsman Ziembra presented the master licensing schedule for Region C and described the public comments that the Commission has received relative to deadlines and minimum capital investments.
- 4:58 p.m. Meeting adjourned.

### **List of Documents and Other Items Used**

1. Massachusetts Gaming Commission March 20, 2014 Notice of Meeting and Agenda
2. Massachusetts Gaming Commission Minutes of February 24, 2014
3. Massachusetts Gaming Commission Minutes of February 25-28, 2014
4. Massachusetts Gaming Commission March 4, 2014 Memorandum Regarding Policy and Financial Process Recommendations
5. DRAFT Massachusetts Gaming Commission Travel Policy and Guidelines
6. DRAFT Massachusetts Gaming Commission Procurement Card Policy
7. DRAFT Massachusetts Gaming Commission Transportation Commuting Benefits
8. Massachusetts Gaming Commission March 19, 2014 Regarding Oversight Project Manager RFR
9. 205 CMR 125.01(6)(c) as Amended
10. March 14, 2014 Suffolk Downs Letter Regarding Request to Amend Racing Schedule
11. March 15, 2014 Plainridge Racecourse Letter Regarding Request to Amend Racing Schedule
12. Massachusetts Gaming Commission March 20, 2014 Memorandum Regarding Proposed Amendment to Contract with Problem Gambling Solutions, Inc.
13. Commission Analysis Mohegan Sun/MA, Everett
14. Commission Analysis Wynn MA, LLC/Cambridge
15. Commission Analysis Wynn MA, LLC/Saugus
16. Surrounding Community Petition Response: Transportation
17. City of Boston Letter March 19, 2014
18. City of Boston Letter Relative to Host Community Status – Mohegan Sun
19. City of Boston Letter Relative to Host Community Status – Wynn MA, LLC

/s/ Catherine Blue  
Catherine Blue

Assistant Secretary



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## Meeting Minutes

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**Date/Time:** April 3, 2014 – 10:30 a.m.

**Place:** John B. Hynes Veterans Memorial Convention Center  
900 Boylston Street, Room 200  
Boston, MA

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

**Absent:** None

Clicking on the time posted in the margin will link directly to the appropriate section of the video.

### Call to Order

See transcript pages 2-3.

10:32 a.m. Chairman Crosby opened the 116th public meeting. The Commission took a moment of silence in recognition of the two firemen that lost their lives in the recent fire.

### Administration

See transcript pages 3-94.

10:34 a.m. Director Griffin highlighted actions that have occurred to enhance diversity in the Commonwealth's gaming industry and presented Penn National and Turner Construction's Diversity Plan for the Design and Construction Phase of Plainridge Park Casino. Karen Bailey, Alison Stanton, Emil Giordano, Timothy Wilmott, and Eric Schippers responded to the Commission's questions relative to the diversity plan.

11:09 a.m. Chairman Crosby introduced and the Commission discussed potential changes to Chapter 23K of the General Laws that were proposed by gaming applicants, including the \$600 state tax withholding threshold, the pending repeal legislation, on-site space for a day care center, tax rate guarantees, licensing parameters, annual

capital expenditures, on-site space for a mental health treatment center, pooling dealer tips, reports of complimentary services, cashless wagering, checking for unpaid child support and overdue taxes for winnings over \$600, reports of winnings over \$600, open ended funding for commission costs and the public health trust fund, parity of tax rates, credit issuance, and automatic disqualification based on CORI checks. Chairman Crosby will revise his memo taking into consideration the comments discussed and bring the document back to the Commission for a vote.

12:16 p.m. The Commission took a recess for lunch.

### **Legal Report**

See transcript pages 94-168.

1:03 p.m. General Counsel Blue and Deputy General Counsel Grossman presented a process for responding to the City of Boston's request to be designated as a host community with respect to both applicants in Region A. The Commission agreed to request briefs from any interested parties by April 17, request reply briefs by April 24, then hold a legislative hearing on May 1.

1:45 p.m. *Motion made by Commissioner McHugh that the Commission adopt the process for determining the "gaming establishment" as set out in the meeting materials with such minor adjustments as are necessary to change the recommendations into a pre-hearing notice and with the substantive change discussed with respect to the right of Region A applicants and the City of Boston to be heard at the May 1 meeting. Motion seconded by Commissioner Stebbins. The motion passed unanimously.*

1:47 p.m. General Counsel Blue presented the small business impact statement for the assessment and arbitration regulations.

1:48 p.m. *Motion made by Commissioner McHugh that the Commission adopt all three small business impact statements as printed in the meeting materials. Motion seconded by Commissioner Cameron. The motion passed unanimously.*

1:48 p.m. General Counsel Blue described the process by which the Commission responds to public records requests and responded to questions and recommendations of the Commissioners.

2:09 p.m. General Counsel Blue presented and the Commission discussed the updates to the monitoring and pre-opening regulations. Given the substantial changes and short time frame for review of the changes, the Commission agreed to continue reviewing the regulations and determine, at the following meeting, whether to promulgate the regulations on an emergency basis.

2:26 p.m. The Commission took a brief recess.

**Ombudsman Report**

See transcript pages 168-214.

- 2:37 p.m. Ombudsman Ziembra presented the schedule for licensing in Region C and the requests for extensions that the Commission received to modify deadlines. The Commission discussed three options for modifying the deadlines in Region C. The Commission agreed to extend the Region C application deadline until no earlier than September and determine a specific deadline at the following public meeting.
- 3:16 p.m. Ombudsman Ziembra introduced and the Commission discussed a potential variance to extend the Region B arbitration schedule by about two weeks for the arbitrations of Blue Tarp Redevelopment LLC with both the Town of Longmeadow and the Town of West Springfield.
- 3:30 p.m. *Motion made by Commissioner McHugh that the Commission grant Blue Tarp Redevelopment, LLC and the Town of West Springfield's request for a variance to extend the date for completion of the arbitrator's report until April 28, 2014 and grant Blue Tarp Redevelopment, LLC and the Town of Longmeadow's request for a variance to extend the date for completion of the arbitrator's report until April 30, 2014, provided that Blue Tarp Redevelopment LLC agrees to pay the license fee for a Category 1 Casino License, if it is awarded the license, by no later than June 30, 2014. Motion seconded by Commissioner Cameron. The motion passed unanimously.*

**Research and Problem Gambling**

See transcript pages 214-247.

- 3:32 p.m. Director Vander Linden presented the University of Massachusetts, Amherst's proposed longitudinal cohort study of gambling behavior in Massachusetts and recommended that the Commission grant a contract to the University of Massachusetts, Amherst to conduct the study.
- 4:07 p.m. *Motion made by Commissioner Zuniga that the Commission accept the recommendation as outlined by Director Vander Linden in terms of selecting the University of Massachusetts, Amherst team to conduct a cohort study at a time later determined by the Commission, as will be reviewed and voted on by the Commission before the end of the year. Motion seconded by Commissioner Cameron. The motion passed unanimously.*
- 4:09 p.m. The Commission took a brief recess.

**Licensing Division**

See transcript pages 247-263.

- 4:14 p.m. Director Acosta discussed the implementation of a process for adding new qualifiers, and recommended handling qualifier applications utilizing the same

process as for key gaming employees, with the Commission making a determination of suitability of the new qualifier at a public meeting after receiving a recommendation from the IEB. The Commission agreed.

4:19 p.m. Director Glennon provided an update on the Commission's implementation of a licensing management system.

**Other**

See transcript pages 263-265.

4:32 p.m. Commissioner Zuniga clarified an earlier point that the Commission discussed relative to the minimum capital investment for gaming applicants.

4:33 p.m. Meeting adjourned.

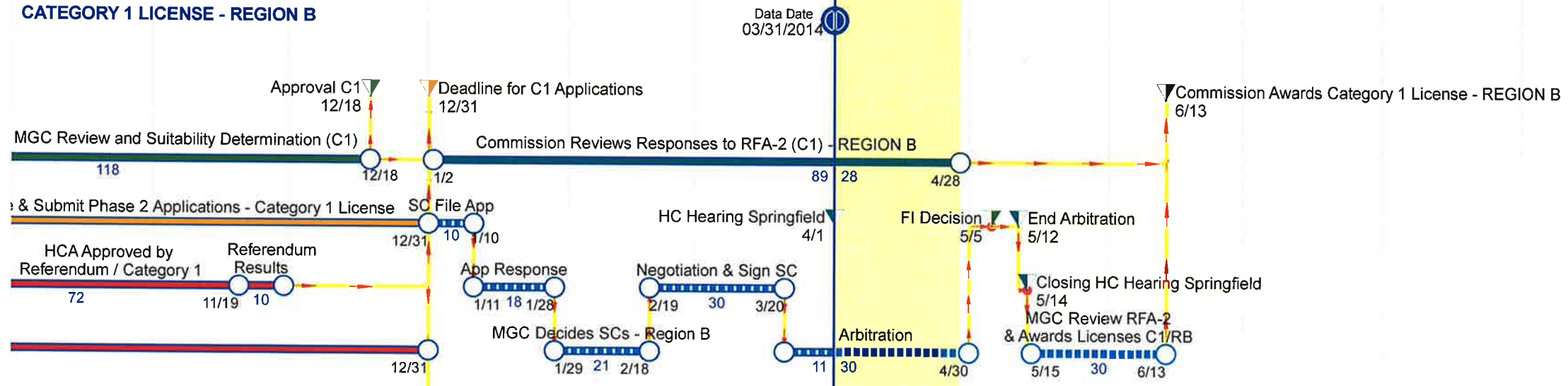
**List of Documents and Other Items Used**

1. Massachusetts Gaming Commission April 3, 2014 Notice of Meeting and Agenda
2. Diversity Plan for the Design and Construction Phase of Plainridge Park Casino
3. April 1, 2014 Massachusetts Gaming Commission Memorandum Regarding Proposed Legislative Changes and Attachments
4. April 3, 2014 Massachusetts Gaming Commission Memorandum Regarding Determining a Gaming Establishment
5. Three Small Business Impact Statements
6. DRAFT 205 CMR 135.00
7. Region C Comment Letters and Summary of Issues
8. Massachusetts Gaming Commission 4/3/2014 Licensing Schedule Update Region B: MGC Decision on Arbitration
9. Three Scenarios of Massachusetts Gaming Commission 3/31/2014 Licensing Schedule Update for Region C
10. Massachusetts Gaming Commission April 3, 2014 Memorandum Regarding Recommendation to Award Contract for Longitudinal Cohort Study on Gambling Behavior
11. Licensing Management System (LMS) Update

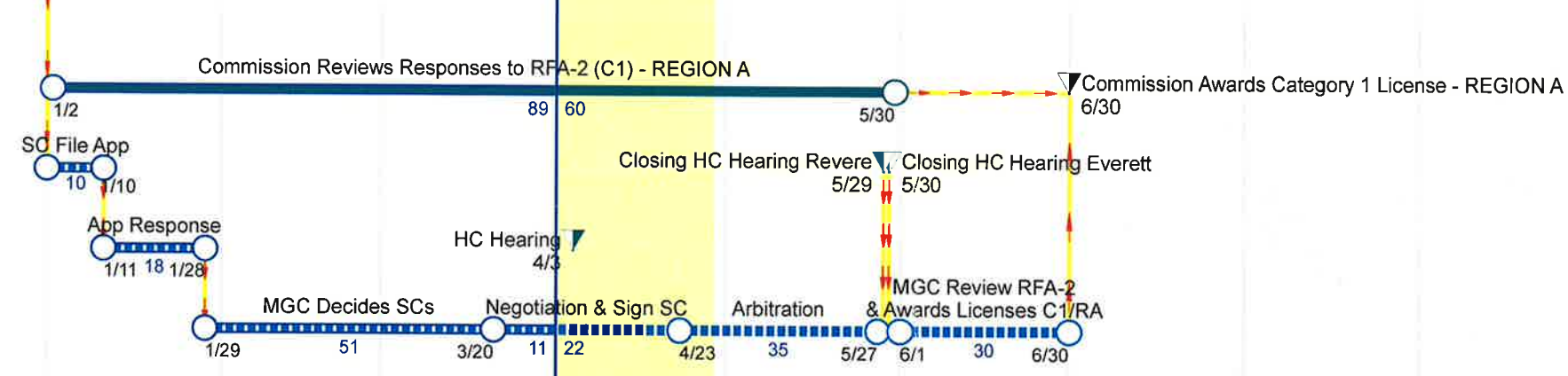
/s/ Catherine Blue  
Catherine Blue  
Assistant Secretary

# Massachusetts Gaming Commission / 2014-03-31 Licensing Schedule Update Region B: MGC Decision on Arbitration

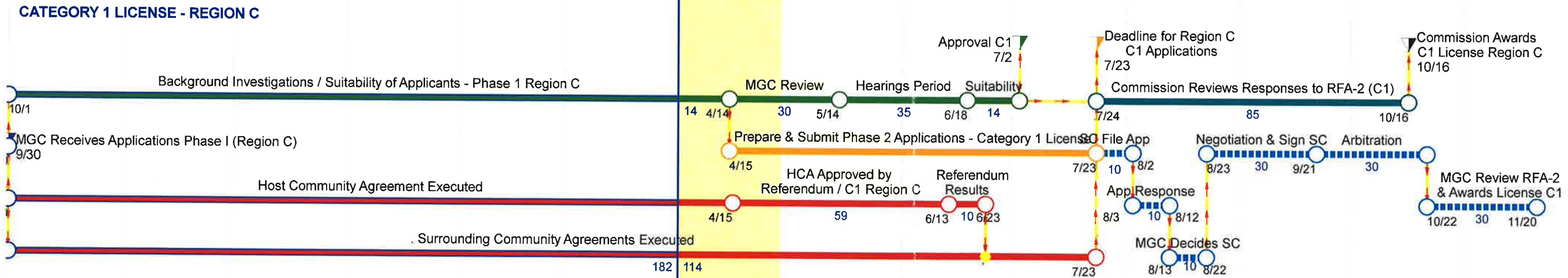
## CATEGORY 1 LICENSE - REGION B



## CATEGORY 1 LICENSE - REGION A



## CATEGORY 1 LICENSE - REGION C

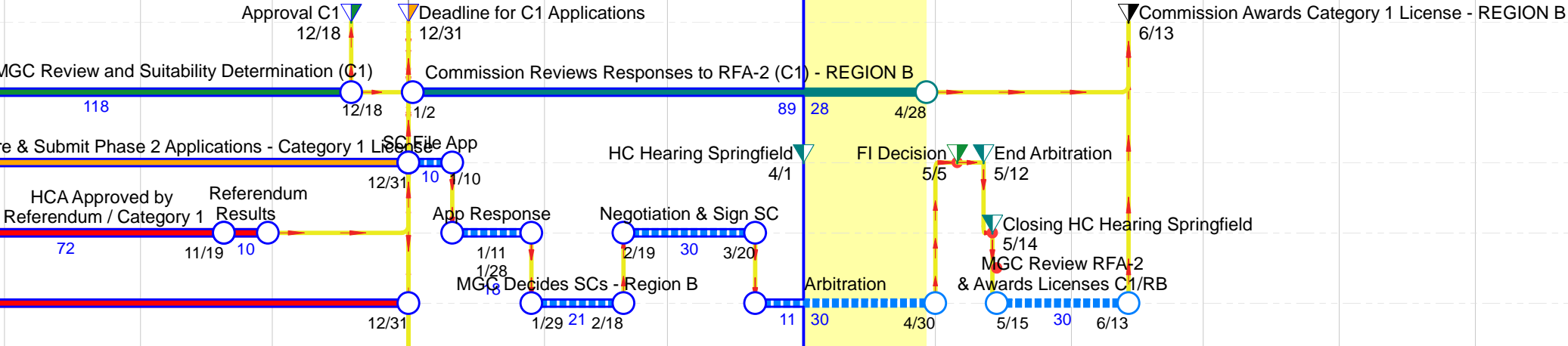




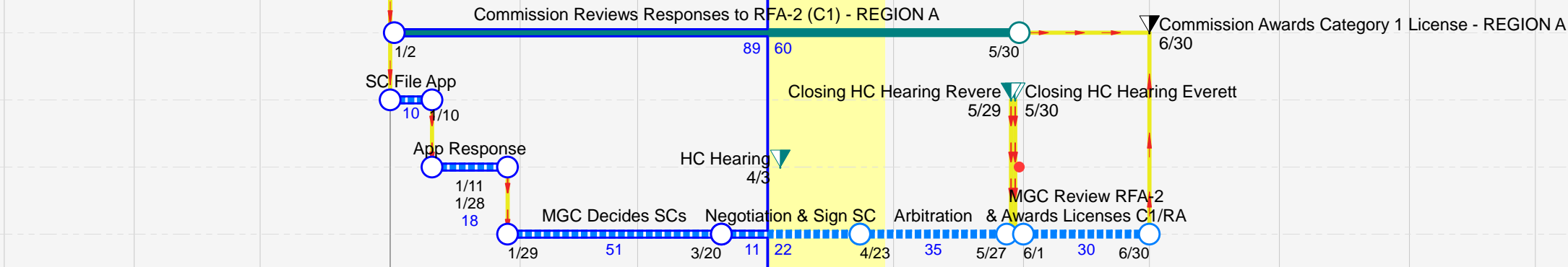
# Massachusetts Gaming Commission / 2014-03-31 Licensing Schedule Update

## Region C / Scenario 1: Applications Deadline on November 17th, 2014

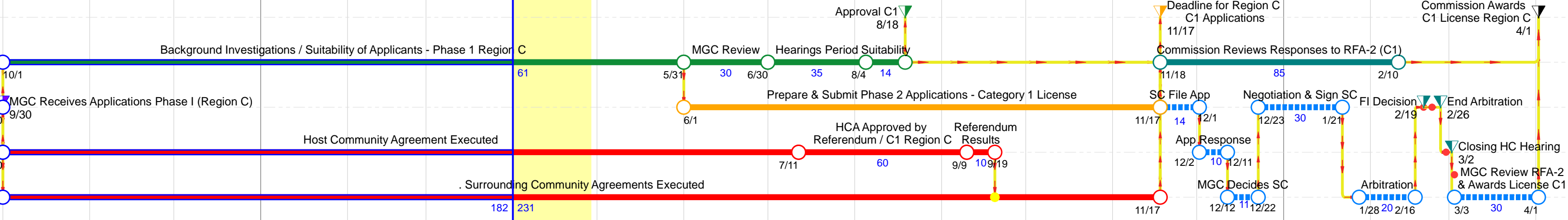
### CATEGORY 1 LICENSE - REGION B



### CATEGORY 1 LICENSE - REGION A



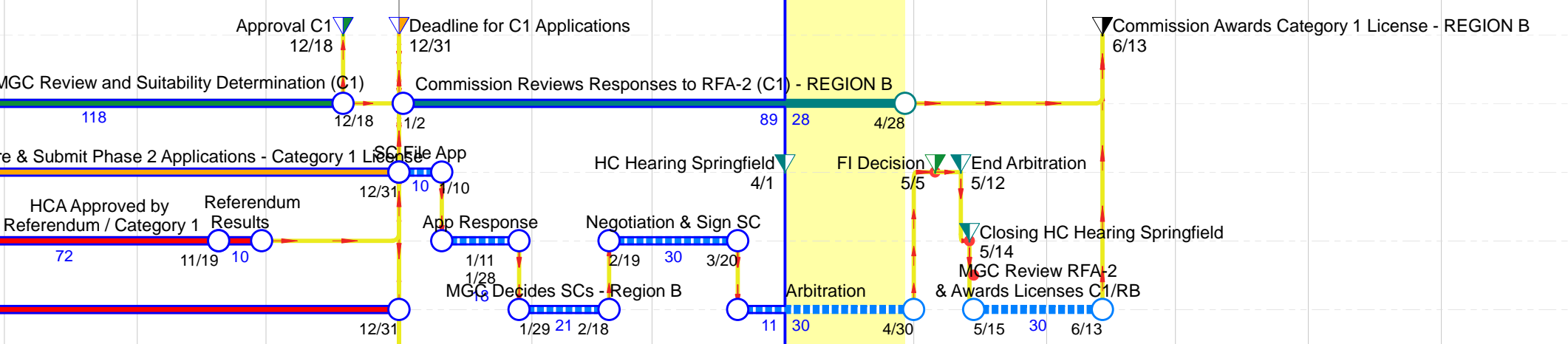
### CATEGORY 1 LICENSE - REGION C



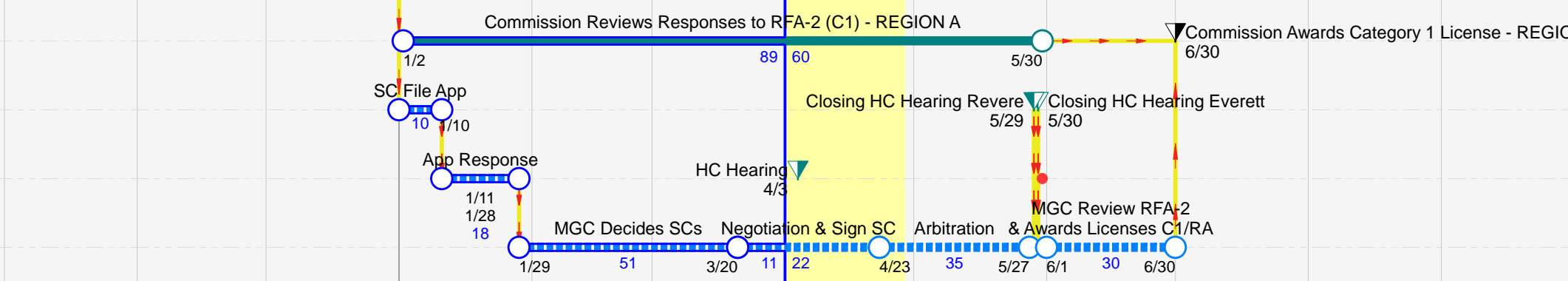
# Massachusetts Gaming Commission / 2014-03-31 Licensing Schedule Update

## Region C / Scenario 2: Applications Deadline on October 17th, 2014

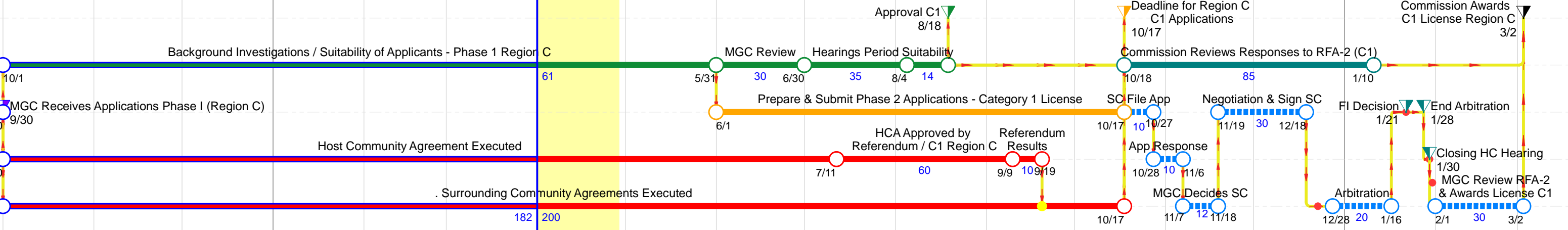
### CATEGORY 1 LICENSE - REGION B



### CATEGORY 1 LICENSE - REGION A



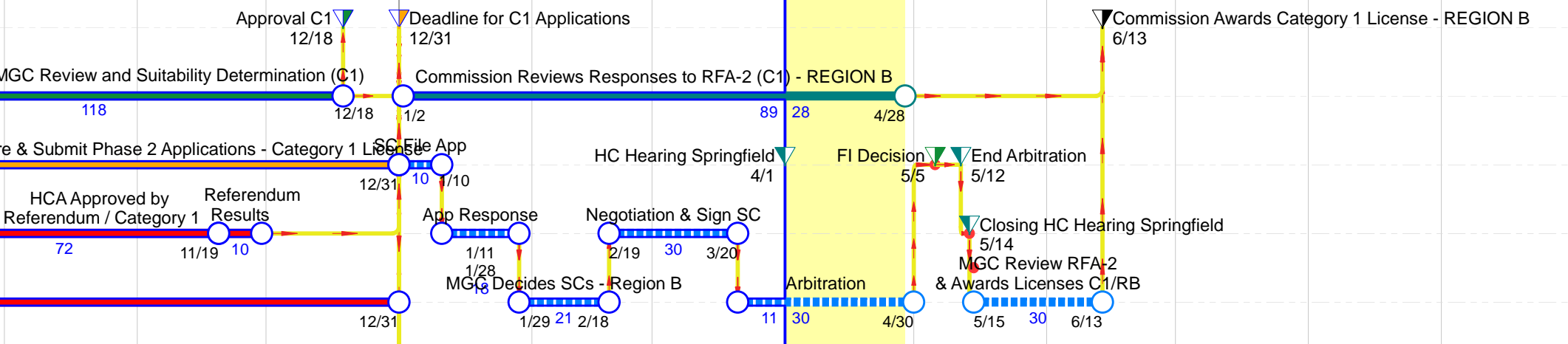
### CATEGORY 1 LICENSE - REGION C



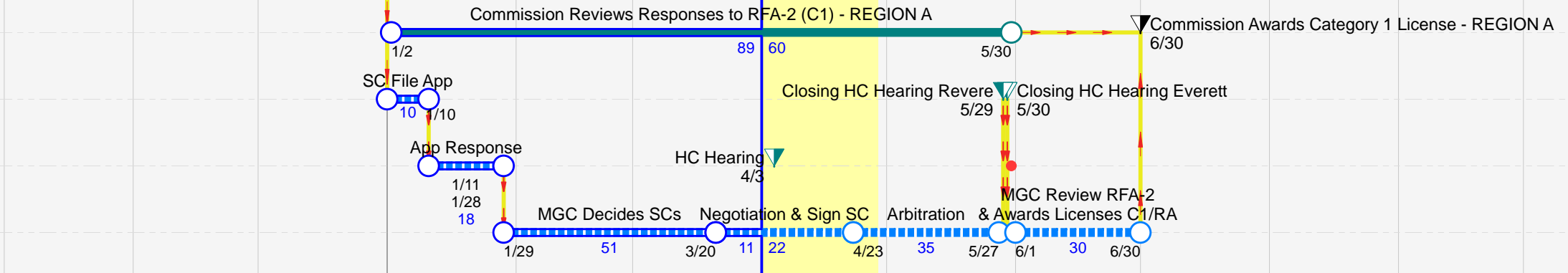
# Massachusetts Gaming Commission / 2014-03-31 Licensing Schedule Update

## Region C / Scenario 3: Applications Deadline on September 23rd, 2014

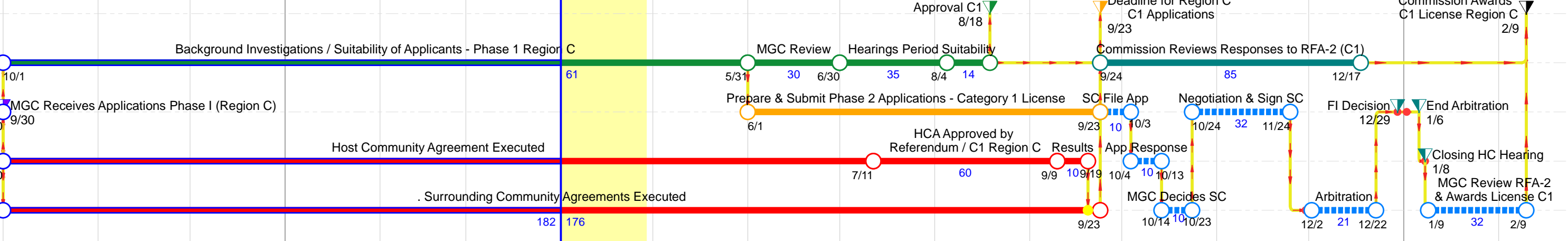
### CATEGORY 1 LICENSE - REGION B



### CATEGORY 1 LICENSE - REGION A



### CATEGORY 1 LICENSE - REGION C



Data Date 03/31/2014

**LEGEND**

- ACT DESCRIPTION (Green line with arrow)
- SUMMARY ACTIVITY (Blue dashed line)

**CATEGORY 1 APPLICANT TIMELINES**

Region A	Announcement	Host Community Agreement ("HCA") Executed	Time between Announcement and HCA Execution*	First Surrounding Community Agmt ("SCA") Signed	Time between Announcement and SCA Execution*	Date of Referendum	ENF Filed	Time between Announcement and ENF Filing*	DEIR Filed**	Time between Announcement and DEIR Filing*
Boston- Sterling Suffolk Racecourse	4/14/2011 <sup>1</sup>	8/27/2013	2 yrs, 4 mos, 14 days (867 days)			11/5/2013	2/6/13	1 yr., 9 mos., 23 days (644 days)	9/11/2013 Certificate 10/18/13	2 yrs., 4 mos., 21 days (874 days) 2 years, 6 months, 5 days (919 days)
Revere/Mohegan	11/27/2013 <sup>2</sup>	12/23/2013	27 days			2/25/2014			2/5/2014 - Notice of Project Change	2 mos. 10 days (71 days)
Everett - Wynn MA, LLC	11/28/2012 <sup>3</sup>	4/19/13	4 mos., 23 days (143 days)	11/12/2013 Malden	11 mos., 16 days (350 days)	6/22/13	Filed 6/12/13 Certificate 7/26/13	6 mos. 16 days (197 days) 7 mos. 29 days (241 days)	Filed: 12/18/13; Certificate 2/21/14	1 yr. 21 days (386 days) 1 yr. 2 mos. 25 days or (451 days)
Milford - Foxwoods/Crossroads Massachusetts, LLC	6/15/2010 <sup>4</sup>	9/11/2013	3 years, 2 months, 28 days (1185 days)			11/19/2013	10/21/13	3 years, 4 months, 7 days (1225 days)		
<b>Region B</b>										
Palmer Mohegan Sun Massachusetts LLC	8/2/2007 <sup>5</sup> (land purchase)	8/29/2013	6 yrs., 28 days (2220 days)			11/5/2013	10/9/13	6 yrs., 2 mos. 8 days (2261 days)		
Springfield MGM (Blue Tarp reDevelopment LLC)	8/22/2012 <sup>6</sup>	HCA Approved by City Council 5/10; signed by Mayor 5/14/13	8 mos., 23 days (266 days)	5 Filed with Application 12/31/2013	1 year, 4 months, 10 days (497 days)	7/16/13	Filed 3/20/13 Certificate 5/24/13	6 mos. 27 days (211 days) 9 mos. 34 days (276 days)	Filed 12/18/2013 Certificate 2/7/2014	1 yr. 3 mos., 27 days (484 days) 1 yr. 5 mos. 17 days (535 days)
W. Springfield HR Massachusetts LLC	1/10/2013 <sup>7</sup>	7/11/13	6 mos., 2 days (183 days)			9/10/13				

\* includes end date in calculation (1 day is added)

\*\* ENF & DEIR Filing Date is the date noted in the Environmental Monitor



**CATEGORY 2 APPLICANT TIMELINES**

	Announcement	Host Community Agreement ("HCA") Executed	Time between Announcement and HCA Execution	First Surrounding Community Agmt ("SCA") Signed	Time between Announcement and SCA Execution	Date of Referendum	ENF Filed	Time between Announcement and ENF Filing*	DEIR Filed**	Time between Announcement and DEIR Filing*
Leominster - Cordish/PPE Casino Resorts	7/8/2013 <sup>8</sup>	7/18/13	11 days	10/21/2013 Westminster	3 mos., 14 days (106 days)	9/24/13	Filed 8/7/13 Certificate 9/6/13	1 month (31 days) 1 month, 30 days (61 days)	2/5/2014	6 mos., 29 days (213 days)
Plainville Plainridge- Penn National	9/3/2013 <sup>9</sup>	7/8/13		10/24/2013 N. Attleboro	1 mos., 22 days (52 days)	9/10/13	6/6/12 NPC Certificate 7/6/12		DEIR Filed 12/19/12 Certificate 1/25/13 FEIR Filed 11/20/13	FEIR: 2 months, 18 days (79 days) 3 mos., 25 days (116 days)
Raynham Raynham Park LLC	12/19/2012 <sup>10</sup>	6/11/13	5 mos., 24 days (175 days)	11/12/2013 Taunton	10 mos., 25 days (329 days)	8/13/13	8/21/13	8 mos., 3 days (246 days)	1/22/2014	1 yrs. 1 mos. 4 days (490 days)
Millbury/MG&E	7/9/2013 <sup>11</sup>	7/23/2013	15 days			9/24/2013	8/21/13 Withdrawn	1 mos., 13 days (44 days)		
Tewksbury/ Penn	7/11/2013 <sup>12</sup>	7/19/2013	9 days			9/21/2013	8/21/2013 Withdrawn			

\* Includes end date in calculation (1 day is added)

\*\* ENF & DEIR Filing Date is the date noted in the Environmental Monitor

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- <sup>1</sup> Suffolk Downs Press Release, “Suffolk Downs Announces Strategic Alliance with Caesars Entertainment” 4/14/2011, <http://www.suffolkdowns.com/pdf/SSR%20Caesars%20Alliance%20rls.pdf>
- <sup>2</sup> Salsberg, Bob, “Mohegan Sun Back In The Massachusetts Casino Competition” CBS Boston, 11/27/2013, <http://boston.cbslocal.com/2013/11/27/mohegan-sun-back-in-the-massachusetts-casino-competition/>
- <sup>3</sup> Arsenault, Mark. “Casino developer Steve Wynn tours Everett site, but says no deal made to build there” *Boston Globe*, 11/28/2012  
<http://www.boston.com/metrodesk/2012/11/28/casino-developer-steve-wynn-tours-everett-site-but-says-deal-made-build-there/uUnvKeZ2vg9gKv8hRnmLCM/story.html>
- <sup>4</sup> Ross, Casey, “Developers seek upper hand in race for casino project” *Boston Globe*, 06/16/2012  
Details of resort-style complex for Milford revealed; at least six others pitched around state  
[http://www.boston.com/business/articles/2010/06/16/developer\\_seeks\\_upper\\_hand\\_in\\_race\\_for\\_casino\\_project/](http://www.boston.com/business/articles/2010/06/16/developer_seeks_upper_hand_in_race_for_casino_project/)
- <sup>5</sup> *Wikipedia The Free Encyclopedia* [http://en.wikipedia.org/wiki/Mohegan\\_Sun](http://en.wikipedia.org/wiki/Mohegan_Sun)
- <sup>6</sup> MGM Resorts International Press Release 08/22/2012  
<http://www.mgmspringfield.com/news/mgm-resorts-announces-plans.aspx>
- <sup>7</sup> Treeger, Don, “Big E CEO: Hard Rock casino proposal ‘once-in-lifetime economic opportunity’” *The Republican*, 01/11/2013  
[http://www.masslive.com/news/index.ssf/2013/01/big\\_e\\_ceo\\_hard\\_rock\\_casino\\_pro.html](http://www.masslive.com/news/index.ssf/2013/01/big_e_ceo_hard_rock_casino_pro.html)
- <sup>8</sup> Arsenault, Mark, “Slot parlor developer sets sights on Leominster”, *Boston Globe*, 07/08/2013  
<http://www.boston.com/news/local/blogs/in-the-cards/2013/07/08/slot-parlor-developer-sets-sights-leominster/gn5fK0I2GikP9I0PNb6MBO/blog.html>
- <sup>9</sup> Salsberg, Bob, “Penn National Reaches Option To Buy Plainridge Track”, *http://www.wbur.org*, 9/3/2013  
<http://www.wbur.org/2013/09/03/penn-national-plainridge-slots>
- <sup>10</sup> Elwell, Alice C., “Raynham Park owner submits application with the Massachusetts Gaming Commission for slots” *Taunton Daily Gazette*, 12/20/2012 <http://www.tauntongazette.com/x1781247160/Raynham-Park-owner-submits-application-with-the-Massachusetts-Gaming-Commission-for-slots>
- <sup>11</sup> “Casino developer looking at Millbury slots parlor” *The Eagle-Tribune*, 7/10/2013  
<http://www.eagletribune.com/boston/x243089374/Casino-developer-looking-at-Millbury-slots-parlor>
- <sup>12</sup> Arsenault, Mark, “Penn National Gaming pitching Tewksbury slot parlor”, *Boston Globe*, 7/11/2013  
<http://www.boston.com/news/local/blogs/in-the-cards/2013/07/11/penn-national-gaming-pitching-tewksbury-slot-parlor/2CFN4E9mrAn2CGt5WZnhkO/blog.html>

**COMMENT LETTERS  
 SUMMARY OF ISSUES**

<b>Date</b>	<b>Comment Letter Received</b>	<b>Timeline Variance</b>	<b>Other</b>
3/14/2014	John M. Donnelly of Donnelly Clark on behalf of Mass Gaming & Entertainment, LLC	“... we propose a revised RFA-2 application deadline of <b>December 31, 2014</b> , subject to our variance request being resolved by March 31, 2014 which will attract more eligible Phase 1 approved applicants to consider bidding for the Region C license.”	<p>“We request a variance from regulation 205CMR 122 (to apply to all applicants for a Category 1 license in Region C) such that subparts 1, 2, 3, and 4 in 205 CMR 122.04 are included in the calculation of the capital investment.</p> <p>We are not requesting that the other subparts of 205 CMR 122.04 be included in the calculation of the capital investment, even though most of all of such costs would generally be accepted as part of a project budget, including by lenders for financing purposes, and all require invested capital.”</p>
3/17/2014	Jonathan M. Silverstein, Special Counsel to City of New Bedford	<p>“...(a) extending the RFA-2 application deadline by sixty (60) days, to <b>September 22, 2014</b>;...”</p> <p>“Region A license is not expected to be awarded until the end of June-less than one month prior to the current RFA-2 deadline for Region C. Under this timeline, the unsuccessful bidder for the Region A license would be precluded from competing in Region C....”</p>	<p>“...(b) granting a variance to all Region C applicants from the requirement in 205CMR 119.01(7) that the referendum election required under G.L. c.23K, § 15(13) take place prior to submission of the RFA-2 application.</p> <p>“... The Commission has already waived this requirement for two specific applicants? The City proposes that the Commission waive this requirement and allow all potential host communities in Region C to hold their elections on or before <b>November 4, 2014</b>. As set forth below, each of the criteria listed in the Waiver Regulation is satisfied, and the Commission therefore has the discretion to grant the proposed waiver.”</p>
3/17/14	<b>New Bedford City Councillors:</b> David Alves, Joseph P. Lopes, Steven Martins, Linda M. Morad, James D. Oliveira, Kerry Winterson, Brian K. Gomes	“We fully support extending the RFA-2 deadline in the Southeast Region.”	“The uncertainty that has hung over Southeast Massachusetts because of what the gaming law's carve-out for the Mashpee Tribe has been significant. We appreciated the vote in April 2013 by the Gaming Commission to open the region to commercial applicants, but the continued pronouncements by the Mashpee Tribe, and by the Commonwealth's political leadership that supports the tribe's efforts, contributed to a continuing cloud that has hung over the region, and that we know from direct conversations delayed private-sector investor's interest.”
3/18/14	Barry M. Gosin, KG Urban Enterprises	“extend the RFA-2 filing deadline for Region C to <b>October 23, 2014</b> ”	

**COMMENT LETTERS  
 SUMMARY OF ISSUES**

<b>Date</b>	<b>Comment Letter Received</b>	<b>Timeline Variance</b>	<b>Other</b>
3/20/14	Kenneth Fiola, Jr. Esq. Executive Vice President  Fall River Office of Economic Development	“...the city of Fall River's opposition to extension of the Region C <b>July 23</b> application submission date as well as any attempt to change the Gaming Act to waive or preclude the holding of a local referendum question prior to the submission of complete application to the Gaming Commission for review. We are committed to the existing time schedule and playing by the promulgated rules.”	
3/29/14  (supplementing comments from 3/20/14)	Kenneth Fiola Jr., Esq., Executive Vice-President  Fall River Office of Economic Development	“...Fall River is not seeking nor does it desire, an extension of the RFA-2 application deadline by sixty days...”  “...a decision extending the application deadline and the award of a Region C Commercial License will delay the investment of millions of development dollars into the local and regional economy, delay the creation of the much needed union and non-union construction jobs and the projected 2500 to 3000 full time operational jobs delay the development of all indirect job opportunities and delay financial benefits to a city that is struggling to meet its public safety, educational and infrastructure responsibilities.”	“...Fall River is not seeking nor does it desire, an extension of the RFA-2 application deadline by sixty days or the granting of a variance to all Region C applicants from the requirement in 205 CMR 119.01(7) requiring that the referendum election required under G.L. c.23K s 15(13) take place prior to the submission of the RFA-2 Application.”  “...I hope that that the Commission will reject New Bedford's ill-advised variance request to waive the pre-application referendum election requirement prior to the submission of the RFA-2 Application.”  “...I request that the Massachusetts Gaming Commission reject any, and all time extensions or waiver requests pertaining to the required pre-application referendum election. The City of Fall River stands prepared to meet the <b>July 23, 2014</b> application submission deadline.”
3/27/14	William A. Flanagan, Mayor of Fall River	“I am writing to request that the Massachusetts Gaming Commission maintain the Region C, Category 1 License application submission deadline of <b>July 23, 2014</b> and not extend the same.”	“...At this point Foxwoods has secured an option on a 31 acre parcel of land located within Fall River and a fully negotiated and executed Host Community Agreement will be completed by <b>April 3, 2014</b> with a referendum vote taking place in early June.”
3/27/14	Alan Silvia, State Representative  7th Bristol District	“I would like to respectfully request that the Massachusetts Gaming Commission uphold the Region C, Category 1 License application submission deadline of <b>July 23, 2014</b> ”  “I respectfully request that the Massachusetts Gaming Commission maintain the <b>July 23, 2014</b> Region C, Category 1 License application and not extend the same.”	“...The finalized Host Community Agreement will be executed by both parties by <b>April 3, 2014</b> with a referendum vote taking place in early June.”



For Extension  
 Against Extension  
 Other Dates

**COMMENT LETTERS  
 SUMMARY OF ISSUES**

<b>Date</b>	<b>Comment Letter Received</b>	<b>Timeline Variance</b>	<b>Other</b>
3/28/14	Carole A. Fiola, State Representative  6th Bristol District	<p>“I am writing to respectfully request that the Massachusetts Gaming Commission Region C, Category 1 License application submission deadline of July 23, 2014 be upheld.”</p> <p>“...I respectfully request that the Massachusetts Gaming Commission maintain the July 23, 2014 Region C, Category 1 License application and not extend the same. Both the City of Fall River and Foxwoods Resort Casino have worked assiduously to ensure project's Region C, Category 1 License application adhere to the submission deadline of July 23, 2014.”</p>	
3/28/14	Robert A. Mellion, Esq., President and CEO  Fall River Chamber of Commerce and Industry	<p>“... we respectfully request that the Massachusetts Gaming Commission maintain the July 23, 2014 Region C, Category 1 License application and not extend the same.”</p>	
4/4/2014	City of Fall River	<p>“...that the Fall River City Council respectfully request that the Massachusetts Gaming Commission not extend the time frame for issuing a casino license in Region C, Southeastern Massachusetts.”</p>	



**City of Fall River**  
**Massachusetts**  
**Office of the Mayor**

**WILLIAM A. FLANAGAN**  
*Mayor*

April 16, 2014

Massachusetts Gaming Commission  
84 State Street, 10<sup>th</sup> Floor  
Boston, MA 02109

Dear Commissioners:

I am writing to request that the Massachusetts Gaming Commission not further extend the already deferred Region C, Category 1 License application submission deadline of September 23, 2014. I would also like to request that the Commission not reduce the \$500 million required project investment.

In a letter I sent to the Commission dated March 27, 2013, I requested that the Commission maintain the July 23, 2013 Region C, Category 1 License application submission deadline noting that the Fall River Foxwoods Casino project was on schedule to meet the July deadline. The City of Fall River and Foxwoods Resort Casino have been diligently working to site a destination resort casino within the City since 2013. The project has moved forward quickly in anticipation of the July deadline. With the Commission's decision to extend the deadline, we have adjusted our project timeline accordingly.

The July deadline was set by the Commission one year ago and the Commission has already granted a request for a deadline extension. To extend the application deadline further would be of great detriment to the Fall River Foxwoods Casino project. To have a project that is ready to move forward, yet hits multiple delays due to arbitrary deadline extensions leads to a great deal of uncertainty in community constituents and project proponents alike. As such, I respectfully request that the Commission not further extend the Region C, Category 1 application submission deadline of September 23, 2014 thus allowing projects that are ready to move forward the opportunity to do so.

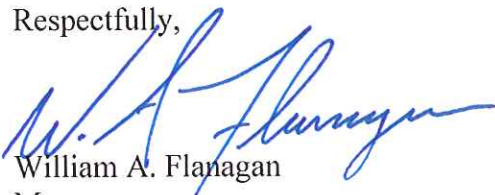
Next I would like to address the matter under consideration by the Commission of reducing the \$500 million capital investment requirement. The capital investment requirement throughout the state is \$500 million and the City of Fall River has a developer ready and willing to exceed that investment requirement. To decrease the investment requirement in Region C would enable lesser quality projects to take place in the southcoast, a region that is dire need of capital investment and employment opportunities.

The southcoast has historically experienced some of the highest unemployment rates in the state and is constantly looking to recruit new industry and new opportunities to get our citizens back

to work. While we have made great strides in doing so, the addition of a \$500 million (or greater) destination resort casino would bolster not only the number of employment opportunities for our citizens, but also the number of visitors to the area, which would bolster our economy as a whole. To reduce the investment requirement jeopardizes the integrity of the projects that would be allowed in the area and compromises the benefits of the project that are most attractive to the southcoast communities. As such, I respectfully request that the Commission uphold the current \$500 million capital investment requirement that had previously been established by the Commission and remains the standard in the other gaming regions throughout the Commonwealth.

If you have any questions or comments about my requests, please do not hesitate to contact me. Thank you for your time and consideration on this matter.

Respectfully,



William A. Flanagan  
Mayor





April 16, 2014

Mr. Stephen Crosby  
Chair  
Massachusetts Gaming Commission  
84 State Street, 10th Floor  
Boston, MA 02109

Dear Chairman Crosby and Members of the Commission:

I would like to take this opportunity to respectfully request that the Massachusetts Gaming Commission vote no on (I) the extension of the Master Licensing Schedule for Region C beyond the September 23, 2014 date that was discussed at the April 3, 2014 meeting of the Commission and (ii) the Request for Variance from 205 CMR 122 Capital Investment.

As noted in my March 29, 2014 letter to the Commission, the City of Fall River is working closely with Foxwoods to site a destination casino resort in Fall River and fully expect to meet the September 23, 2014 application submission deadline. Presently, the development team and the City are working closely to finalize a Host Community Agreement which will be executed in the near future by both parties and presented to the City Council with a request to schedule for a local referendum with a binding vote in early summer. To the extent that said vote is favorable, the vote will be certified and submitted as part of the September 23 application package. Unlike the City of New Bedford and others Fall River is not seeking nor does it desire, an extension of the RFA-2 application deadline beyond September 23, 2014 and I continue to disagree with New Bedford's and KG Urban Enterprise's assertion that such action will help foster greater competition.

Ultimately a decision extending the application deadline and the award of a Region C Commercial License will delay the investment of millions of development dollars into the local and regional economy, delay the creation of the much needed union and non-union construction jobs and the projected 2500 to 3000 full time operational jobs delay the development of all indirect job opportunities and delay financial benefits to a region that is struggling to meet its public safety, educational and infrastructure responsibilities.

With regard to the request before the Commission for a variance to 205 CMR 122 to lower the Capital Investment, let me be clear, by stating, that the City of Fall River, in its discussion with

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Mr. Stephen Crosby  
April 16, 2014  
Page 2

its development partner is not concerned with the minimum \$500 million investment the prospect of a tribal casino. While I continue to respect the process that is before the Mashpee Tribe, please be advised that the certainty, or uncertainty, of the success of the Mashpee casino is not causing any financial uncertainty with regard to implementation of the proposed destination resort casino development.

I feel that it is important that the minimum \$500 million capital investment formula be upheld so as to maintain quality development of a destination resort casino. Our experience with our development partner indicates that there is no need to change the formula to include measures outlined in 205 CMR 122.04.

In fact, if this request is being considered in light of an argument to suggest that a change in the formula is necessary to foster greater competition, I would argue that our experience indicates otherwise and approval of this request will result in the development of an inferior product to that which is offered in Regions A and B.

In addition to running the risk of developing an inferior product in comparison to Regions A and B, relief of the \$500 million dollar capital investment will also lessen the tax valuation of the product which could impact the value of a Host Community Agreement in terms of Annual Payment to the Community. Essentially, such an action could potentially undermine the overall economic benefit of the project to a host community as well as surrounding host communities.

To the extent that the Commission wishes to incent Region C because of the potential impact of the proposed Wampanoag casino, I respectfully request that the Commission revisit the minimum \$85 million licensing fee and undetermined annual fee to be paid by the successful Region C applicant. A partial relief of this license and annual fee or a full reimbursement of such fees when and, and if, the Wampanoag casino became a reality, would continue to protect the level of financial investment without allowing for the development of inferior product for Region C.

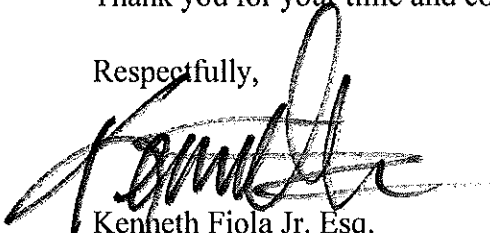
Such an action would (i) shift the financial risk to the Commonwealth as opposed to the region; (ii) guarantee a minimum \$500 million dollar quality investment in Region C and (iii) allow for an incentive for developers in the event that the Wampanoag Casino ever became a reality.

In closing I do not believe that Region C should be treated any different from Regions A or B. In fact, I recognize, and are fully aware, of the implications of the Mashpee Compact as it pertains to the overall casino development picture. Given the fact that there is no certainty that the Wampanoag tribe will ever take land into trust for casino purposes, I suggest that the Commission take no action at his point with regard the change of the 205 CMR 122 Capital Investment formula other than to consider an adjustment or reimbursement the Region C License and Annual Fee.

Mr. Stephen Crosby  
April 16, 2014  
Page 3

Thank you for your time and consideration in these matters.

Respectfully,



Kenneth Fiola Jr. Esq.  
Executive Vice-President

CC: Commissioner Gayle Cameron  
Commissioner Enrique Zuniga  
Commissioner James F. McHugh  
Commissioner Bruce Stebbins  
Rick Day Executive Director

Email: [john.s.ziamba@state.ma.us](mailto:john.s.ziamba@state.ma.us)

March 14, 2014

Massachusetts Gaming Commission  
84 State Street, 10<sup>th</sup> Floor  
Boston, MA 02109

Dear Massachusetts Gaming Commission,

On behalf of Mass Gaming & Entertainment, LLC, we respectfully submit the following as my client considers its interest in pursuing the Category 1 license in Region C:

- 1) A request for a variance from regulation 205 CMR 122, pursuant to 205 CMR 102.3(4); and
- 2) Comments on the Region C application timeline.

Chapter 23k of An Act Establishing Expanded Gaming in the Commonwealth, Chapter 194 of the Acts of 2011 (the "Act") is fundamentally designed to obtain the greatest possible benefits from licensing gaming establishments in the Commonwealth by selecting successful applicants through a competitive selection process. Further, Chapter 23k, Section 1(10) states that the Commission's authority shall be construed broadly to implement Chapter 23k. Adopting the requested variance and adjustment of the application timeline will advance the purposes of Chapter 23k by 1) encouraging competition for the Category 1 license in Region C and 2) promoting the sustainable financial viability of the Region C gaming establishment.

Part 1: Request for a Variance from Regulation 205 CMR 122

We are requesting a variance from the Commission's regulation (which would apply to all applicants for a Category 1 license in Region C) concerning how the amount of capital investment is calculated. We believe that certain items excluded from the calculation pursuant to 205 CMR 122.04 should be included to be consistent with industry norm for what would count towards a project budget and to right-size the investment for the size and risks of the Region C market. Our specific request is explained further at the end of this Part 1.

Background:

Section 10(a) of the Act reads in part:

*Section 10. (a) The commission shall set the minimum capital investment for a category 1 license; provided, however, that a gaming licensee shall make a capital investment of not less than \$500,000,000 into the gaming establishment which shall include, but not be limited to, a gaming area, at least 1 hotel and other amenities as proposed in the application for a category 1 license; and provided further, that the commission shall determine whether it will include the purchase or lease price of the land where the gaming establishment will be*

*located or any infrastructure designed to support the site including, but not limited to, drainage, utility support, roadways, interchanges, fill and soil or groundwater or surface water contamination issues....*

The recited section of the Act calls for a minimum capital investment of \$500 million and permits the Commission to determine whether the cost of land and certain infrastructure improvements will be included in the calculation of the capital investment. Pursuant to 205 CMR 122.04(1) and (4), the Commission has excluded land and off-site infrastructure costs from this calculation. Further, pursuant to the rest of 205 CMR 122.04, the Commission additionally has excluded several other legitimate, and significant, out-of-pocket project costs from this calculation that commonly are considered as part of a project budget, including by lenders for financing purposes.

We have put together a legitimate out-of-pocket project budget of approximately \$700 million, which is well in excess of the \$500 million requirement, but which does not meet the minimum capital investment as limited under 205 CMR 122. Only approximately \$375 - \$400 million of our current preliminary project budget would count towards the minimum capital investment pursuant to 205 CMR 122.

Consequently, although my client is prepared to spend substantially over \$500 million, as required by the Act, in order to satisfy 205 CMR 122, if it were to participate in Region C, it would be forced to spend more than what it believes the Region C gaming establishment can support. Therefore, under the current regulation without a variance, my client likely would decide to not compete for the Category 1 license in Region C because such a high expenditure would not be a financially prudent business decision based on the gaming market in Region C.

Importantly, the Act does not require the calculation of the capital investment to exclude items excluded under 205 CMR 122. The Act explicitly discusses land and certain infrastructure improvements, and gives the Commission the discretion to include or exclude such costs. Further, by omission, the Act does not contemplate the exclusion of certain other legitimate and significant project costs excluded under 205 CMR 122.04.

**Rationale:**

We respectfully provide the following rationales for this requested variance from regulation 205 CMR 122, which rationales correspond to the requirements in 205 CMR 102.3(4) for granting a variance:

**1. Granting the variance is consistent with the purposes of M.G.L. c. 23k.**

Adopting the requested variance will further the purposes of Chapter 23k by a) encouraging competition for the Category 1 license in Region C and b) promoting the sustainable financial viability of the Region C gaming establishment.

Potential applicants interested in Region C, after understanding the consequences of 205 CMR 122, may determine that the required capital investment under the regulation (which exceeds what the Act requires) is too burdensome and carries too much risk, and



therefore, elect to not pursue the Region C license.

Region C poses unique risks, which the applicants for the Category 1 licenses in Regions A and B do not face. Specifically:

- a. Most importantly, a tribal casino may open in Region C, making the Region C applicants the only ones that need to consider the possibility of another full resort casino in their region. Further, the tribal casino would not pay gaming taxes, so it would have a major competitive advantage by having the ability to spend significantly more on marketing and promotions to acquire and retain customers. In addition, a tribal casino would operate under a different set of operating standards and potentially conduct Internet gaming even though commercial operators could not. Although no one knows when a tribal casino will be built, if ever, Region C applicants must take the possible impact on their operations from a tribal casino into account when determining an appropriate capital budget for Region C.
- b. Due to the substantial competition around Region C, the Region C licensee likely will face a smaller market than the licensees in Regions A and B, even before a potential tribal casino opens. The Category 2 licensed facility will be located at Plainridge Racetrack, in very close proximity to Region C. Further, Twin River Casino and Newport Grand Slots in Rhode Island are much closer to Region C than the other regions.<sup>1</sup>

Consequently, the Region C licensee rationally cannot spend as much as the other Category 1 licensees. Overbuilding, or building more for the sake of building more (even if the market does not justify the supply), leads to underutilization and financial distress, which both the Region C licensee and Commonwealth should want to avoid.

2. **Granting the variance will not interfere with the ability of the Commission or the Bureau to fulfill its duties.**

A number of the excluded costs in 205 CMR 122.04, such as land, pre-opening interest expenditure, off-site infrastructure improvements, and upfront mitigation costs are legitimate project costs, which a casino developer or any other type of commercial developer would consider project costs.

Further, with a project budget of over \$500 million, Mass Gaming & Entertainment, LLC can develop, and intends to develop, a world-class gaming destination. It can still deliver the “wow factor”, but it needs to fit the size of the project to the size and risks of the market.

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<sup>1</sup> The Mohegan Sun and Foxwoods casinos in Connecticut are approximately the same distance to Springfield as to the potential Region C locations.

A first-class development which is financially responsible not only allows the Commission to fulfill its duties but helps it to do so. The requested variance would not interfere with the Commission or the Bureau in doing their duties with respect to reviewing the Phase 2 applications and awarding the Category 1 license in Region C to a deserving applicant and project which will be an asset for the region.

3. **Granting the variance will not adversely affect the public interest.**

Granting the variance will not adversely affect the public interest. Conversely, not granting the variance would adversely affect the public interest, especially for the public and communities located in Region C. The region needs economic development, including a catalyst for further employment and tourism, and a truly competitive process to award the Category 1 license in Region C will support those objectives by encouraging better proposals. Furthermore, forcing the licensee in Region C to spend more in capital investment than what the Region may be able to justify puts the financial viability of the gaming establishment at risk, when the sustainable financial health of the gaming establishment will be best for the Region C economy. The Act finds and declares that these are truly important aspects of the Act.

4. **Not granting the variance would cause substantial hardship to the person requesting the variance.**

Not granting the variance would cause substantial hardship since it will discourage Mass Gaming & Entertainment, LLC (and likely other potential applicants) from pursuing the Region C license. To require applicants to spend more than what Region C can support in light of the region's unique risks and competitive dynamics creates a hardship.

For the reasons provided above, we believe that the requirements to grant a variance are satisfied and granting the variance would benefit the Commonwealth.

**Request:**

We request a variance from regulation 205 CMR 122 (to apply to all applicants for a Category 1 license in Region C) such that subparts 1, 2, 3, and 4 in 205 CMR 122.04 are included in the calculation of the capital investment.

We are not requesting that the other subparts of 205 CMR 122.04 be included in the calculation of the capital investment, even though most or all of such costs would generally be accepted as part of a project budget, including by lenders for financing purposes, and all require invested capital.

Part 2: Comments on the Region C Application Timeline

Although it is difficult at this stage to assess the amount of time that will be necessary for applicants in Region C to be ready to submit their RFA-2 applications, we propose a revised RFA-2 application deadline of December 31, 2014, subject to our variance request being resolved by March 31, 2014, which will attract more eligible Phase 1 approved applicants to consider bidding for the Region C license.

Considerable time will be necessary for applicants to complete the following tasks in a thoughtful and comprehensive manner:

1. Negotiate and enter into a host community agreement, and subsequently, for the host community to conduct a public referendum;
2. Negotiate and enter into surrounding community agreements;
3. Obtain zoning approvals;
4. As part of the MEPA process, prepare an Environmental Notification Form (ENF) and receive a scoping certificate from the Executive Office of Energy and Environmental Affairs after a period of public comment; and
5. Prepare the RFA-2 application, which is very comprehensive.

Further, in the event any of the applicants have additional qualifiers in connection with their application in Region C, the Commission will need time to investigate those parties.

We sincerely appreciate your consideration of our variance request and comments on the timeline.

Sincerely,

*/s/ John M. Donnelly*

---

John Donnelly

Donnelly Clark

On behalf of Mass Gaming & Entertainment, LLC



# City of New Bedford MASSACHUSETTS

Office of City Council  
133 William Street · New Bedford · Massachusetts 02740  
TEL 508-979-1455 · FAX 508-979-1451

March 17, 2014

Mr. Stephen Crosby, Chair  
Massachusetts Gaming Commission  
84 State Street, 10<sup>th</sup> Floor  
Boston, MA 02109

Dear Chair Crosby & Members of the Gaming Commission:

We the undersigned, Members of the New Bedford City Council, appreciate the opportunity to be heard concerning the timing of the Region C Resort Casino License.

The uncertainty that has hung over Southeast Massachusetts because of what the gaming law's carve-out for the Mashpee Tribe has been significant. We appreciated the vote in April 2013 by the Gaming Commission to open the region to commercial applicants, but the continued pronouncements by the Mashpee Tribe, and by the Commonwealth's political leadership that supports the tribe's efforts, contributed to a continuing cloud that has hung over the region, and that we know from direct conversations delayed private-sector investor's interest.

Further, here in New Bedford, our Mayor chose not to engage with applicants who paid the Gaming Commission's application fee, first citing the uncertainty of the Mashpee bid, and more recently his own personal feelings and reservations about an issue that was duly passed into law by the Massachusetts Legislature. We owe it to our constituents in our City to do everything within our power to bring economic development and job creation to New Bedford. We would be delinquent in the responsibility our elected positions require were we to miss an opportunity to secure the investments of \$500 million in New Bedford because of an administratively set deadline.

We fully support extending the RFA-2 deadline in the Southeast Region.

David Alves  
David Alves, Councillor at Large/Chair of the  
Special Committee on Gaming/Casinos

Steven Martins  
Steven Martins, Councillor Ward Two

James D. Oliveira  
James D. Oliveira, Councillor Ward One

Joseph P. Lopes  
Joseph P. Lopes, Council President 2014

Linda M. Morad  
Linda M. Morad, Councillor at Large

Kerry Winterson  
Kerry Winterson, Councillor Ward Five

Brian K. Gomes  
Brian K. Gomes, Councillor at Large



**KOPELMAN AND PAIGE, P.C.**  
*The Leader in Municipal Law*

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March 17, 2014

**Jonathan M. Silverstein**  
jsilverstein@k-plaw.com

BY ELECTRONIC MAIL  
AND BY FIRST CLASS MAIL

Stephen Crosby, Chairman  
Massachusetts Gaming Commission  
84 State Street, 10th Floor  
Boston, MA 02109

Re: City of New Bedford Comments on Region C Timeline

Dear Chairman Crosby and Members of the Commission:

This office serves as special counsel to the City of New Bedford (“City”) concerning the City’s review of potential proposals to develop a Category 1 gaming facility in the City. Please accept this letter as the City’s response to the Commission’s request for public comment “on the Region C schedule and how [the Commission] can improve the competitive environment in Region C given the upcoming RFA-2 application deadline of July 23, 2014.” As discussed below, the City submits that the Commission can significantly improve the competitive environment in Region C by taking two actions: (a) extending the RFA-2 application deadline by sixty (60) days, to September 22, 2014; and (b) granting a variance to all Region C applicants from the requirement in 205CMR119.01(7) that the referendum election required under G.L. c.23K, §15(13) take place prior to submission of the RFA-2 application.

A. Developments Subsequent To The Commission’s Adoption Of The Region C Timeline Warrant Reconsideration Of That Timeline

As the Commission has noted, the current Region C schedule was adopted by the Commission in May 2013, and the City is mindful of the Commission’s desire to conduct its business in an efficient and expeditious manner. However, the City submits that a number of developments have occurred since the Commission established the timeline that warrant revisiting the RFA-2 deadline for Region C in order to foster competition..

First, only one applicant filed a RFA-1 application for Region C by the September 2013 deadline. The City submits that this paucity of applicants was not anticipated at the time the Commission adopted the current Region C timeline. This fact alone warrants taking steps to foster competition.

**KOPELMAN AND PAIGE, P.C.**

Stephen Crosby, Chairman  
Massachusetts Gaming Commission  
March 17, 2014  
Page 2

Second, in light of the lack of competitive applications for the Region C license, competition for that license can only come from applicants who unsuccessfully sought other licenses. When the Commission established the current timeline, it was anticipated that the Category 2 license may be issued in December 2013 and the Category 1 licenses for Regions A and B would be issued in April 2014. This would have allowed unsuccessful bidders for those licenses more time to enter the Region C competition. Now, the Region A license is not expected to be awarded until the end of June—less than one month prior to the current RFA-2 deadline for Region C. Under this timeline, the unsuccessful bidder for the Region A license would be precluded from competing in Region C.<sup>1</sup> Though not as severe, the unsuccessful bidders for the Category 2 license also face substantial temporal obstacles to entering the Region C competition.

Much has changed since the Commission established the Region C timeline in May of last year. The City submits that the determination of whether and to whom to issue a Category 1 license for Region C is of sufficient importance to warrant reexamination of that timeline and adjustment of the timeline to foster competition in the region. Therefore, the City respectfully requests that the Commission extend the current RFA-2 deadline by 60 days to September 22, 2014.

**B. The Commission May Properly Waive The Requirement That The Statutorily-Required Ballot Vote Occur Prior To Submission Of An RFA-2 Application**

Pursuant to the Commission's regulations, 205 CMR 119.01(7), an RFA-2 application must contain "a certificate showing that the applicant has received a certified and binding vote on a ballot question at an election in the host community in favor of the license." Though the ballot vote itself is a requirement of the Expanded Gaming Act, G.L. c.23K, §15(13), the requirement that the vote take place prior to submission of a final application is not. Accordingly, this requirement may properly be waived, in the discretion of the Commission, pursuant to 205 CMR 102.03(4) ("Waiver Regulation").

The Commission has already waived this requirement for two specific applicants.<sup>2</sup> The City proposes that the Commission waive this requirement and allow all potential host communities in Region C to hold their elections on or before November 4, 2014. As set forth below, each of the criteria listed in the Waiver Regulation is satisfied, and the Commission therefore has the discretion to grant the proposed waiver.

---

<sup>1</sup> Also unexpected was the substitution of one of the Region B applicants for a Region A applicant, which further limited the number of potential competitors for the Region C license.

<sup>2</sup> For Cordish in Leominster, the Commission granted a short waiver of the certification requirement. For Mohegan Sun in Revere, the Commission granted a two-month waiver of the election requirement itself.

**KOPELMAN AND PAIGE, P.C.**

Stephen Crosby, Chairman  
Massachusetts Gaming Commission  
March 17, 2014  
Page 3

1. Granting the waiver would be consistent with the purposes of G.L. c.23K

The premise upon which the Commission has solicited public comment regarding the Region C timeline is the fundamental goal of the Expanded Gaming Act itself—to foster competition in order to maximize the regional and state-wide benefits of expanded gaming. By voting now to grant a waiver from the pre-application election requirement, the Commission will further this goal by allowing for maximum participation in the Region C competition. Under such a waiver, and in conjunction with a modest 60-day extension of the RFA-2 application deadline, none of the unsuccessful applicants for other licenses will be precluded from competing for the Region C license. This is clearly consistent with the goals of the Act.

2. Granting the waiver would not interfere with the ability of the Commission or the Investigations and Enforcement Bureau to fulfill their duties

Granting the requested waiver would not interfere with the Commission's or IEB's fulfillment of their duties. Waiving the pre-application election requirement would not delay the Commission's evaluation of the RFA-2 submissions of Region C applicants. The Commission would continue to charge applicants for the costs of such review, and the choice of an applicant to submit a RFA-2 application prior to the required election would be its own risk. Similarly, any remaining suitability investigation/review by IEB, and resultant determinations by the Commission, would in no way be impaired or delayed by waiver of this requirement, which only relates to the host community referendum election.

Though the Commission may choose to modify its current goal of making the Region C license decision by the end of November 2014, it would not necessarily have to do so. During the intervening period between the proposed RFA-2 submission date of September 22, 2014 and the election deadline of November 4, 2014, the Commission could continue with all of the other aspects of its review and processing of the applications. Further, any surrounding community issues (designations and, if necessary, arbitrations) would be resolved during this timeframe. Immediately after the November 4 election, the Commission could complete its deliberations and vote on whether and to whom to issue the Region C license. In the event the Commission determined more time was required to make this determination, a short extension of its November 2014 goal (e.g., until the end of December 2014) would be a small price for maximizing the competitive environment in Region C.

3. Granting the waiver would not adversely affect the public interest

For the reasons previously discussed, waiving the pre-application election requirement of 205 CMR 119.01(7) would not adversely affect the public interest and, to the contrary, would substantially further the public interest in competition in Region C. Moreover, granting the waiver would result in a significantly more informed electorate, in that voters would have the full RFA-2 application available for review at the time of the election and would have had the benefit of a longer

**KOPELMAN AND PAIGE, P.C.**

Stephen Crosby, Chairman  
Massachusetts Gaming Commission  
March 17, 2014  
Page 4

period of public comment and debate on the proposal. Accordingly, the statutory purpose of having voters in potential host communities approve proposed gaming establishments would be far better served by granting the waiver than by denying it.

4. Denying the waiver would cause substantial hardship to the City, as well as to other potential host communities and applicants

As a potential host community to a Category 1 gaming facility, the City's goals are consistent with those of the Commission. The City has an interest in maximizing competition, finding the best potential developer/operator, evaluating the best potential site and making a fully-informed decision based upon the broadest range of proposals. The competitive environment in Region C has already been adversely affected by uncertainty regarding the potential for a tribal gaming facility in Taunton. Were the Commission to deny the requested waiver and adhere to its current RFA-2 deadline of July 23, the interests of both the Commission and the City would be substantially undermined. Indeed, it is possible that rigid adherence to the regulations and the current timeline would effectively preclude the City from entering into a Host Community Agreement at all. Forcing the City to make a decision of this magnitude on a purely procedural basis, and not based upon a reasoned, substantive evaluation of the merits of all potential proposals, would cause substantial hardship to the City and its voters.

C. Conclusion

With minor adjustments to the Region C schedule, and a waiver of the pre-application election requirement to allow potential host communities to vote on gaming establishment proposals up through the November 4, 2014 election, the competitive environment in Region C would be significantly enhanced, without substantially delaying the Commission's review of applications or potential award of a Category 1 license for the region. The City urges the Commission to take these modest but effective steps to further the goals of the Expanded Gaming Act and the interests of the people of the City, Region C and the Commonwealth.

Thank you for your consideration. Please do not hesitate to contact me if I or the City can provide any further information regarding this matter.

Very truly yours,



Jonathan M. Silverstein

JMS/jam  
cc: Hon. Jonathan F. Mitchell





**Barry M. Gosin**  
*Principal*

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New York, NY 10017

March 18, 2014

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

RE: Region C Request for Comments

Dear Chairman Crosby and Commissioners:

Thank you for the opportunity to submit comments regarding the current schedule in Region C and how to improve the competitive environment for gaming in that Region. KG Urban Enterprises, LLC ("KG") remains fully committed to developing a world class gaming facility in New Bedford and through that process bringing much needed jobs and economic growth to the Region. However, KG's development efforts have been hindered by certain misconceptions held by the gaming industry concerning the Commission's delay in opening the Region to commercial bidders and the likelihood of a tribal casino operating in the Region. To permit KG to fully address those concerns and to ensure a competitive process, KG respectfully submits that the Commission should extend the RFA-2 filing deadline for Region C to October 23, 2014.

Again, thank you for providing KG with an opportunity to comment.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Barry M. Gosin', written in a cursive style.

Barry M. Gosin



**City of Fall River  
Massachusetts  
Office of the Mayor**

**WILLIAM A. FLANAGAN**  
*Mayor*

March 27, 2014

Massachusetts Gaming Commission  
84 State Street, 10<sup>th</sup> Floor  
Boston, MA 02109

Dear Commissioners:

I am writing to request that the Massachusetts Gaming Commission maintain the Region C, Category 1 License application submission deadline of July 23, 2014 and not extend the same.


The City of Fall River and Foxwoods Resort Casino have been diligently working to site a destination resort casino within the City since 2013. At this point Foxwoods has secured an option on a 31 acre parcel of land located within Fall River and a fully negotiated and executed Host Community Agreement will be completed by April 3, 2014 with a referendum vote taking place in early June.

From November 2013 to present the City and Foxwoods have worked diligently towards meeting the July 23, 2014 deadline for the submission of the Gaming Application to the Massachusetts Gaming Commission. Further, the anticipated award date of November 2014 has also acted as a project milestone, which was given great weight in the overall project timeline. To delay the submission deadline and therefore the anticipated award date would be greatly detrimental to the project and to this economic development initiative.

Given the great progress the Foxwoods' Fall River Resort Casino project has made over the past few months and the overall project timeline, which ensure that the application will be submitted by the application deadline of July 23, 2014, along with the severe detriment to the project if the award deadline is extended, I respectfully request that the Massachusetts Gaming Commission maintain the July 23, 2014 Region C, Category 1 License application and not extend the same.

If you have any questions or comments about my request or the project, please do not hesitate to contact me. Thank you for your consideration on this matter.

Respectfully,

  
William A. Flanagan  
Mayor



# The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES  
State House, Boston 02133-1054

**ALAN SILVIA**  
STATE REPRESENTATIVE  
STATE HOUSE, ROOM 33  
TEL. (617) 722-2060  
EMAIL: Alan.Silvia@mahouse.gov



March 27, 2014

Massachusetts Gaming Commission  
84 State Street, 10<sup>th</sup> Floor  
Boston, MA 02109

Dear Commissioners:

I would like to respectfully request that the Massachusetts Gaming Commission uphold the Region C, Category 1 License application submission deadline of July 23, 2014. I understand the Commission has received a request to extend the deadline; however, the City of Fall River and Foxwoods Resort Casino have been working diligently to meet the established deadline and have built a project timeline around the Commission's previously published schedule.

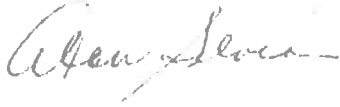
A working relationship between The City of Fall River and Foxwoods Resort Casino was first established in 2013 when Foxwoods approached the City with a proposal to locate a resort casino within Fall River. Foxwoods has already secured an option on a parcel of land located in the south end of Fall River, which is currently underutilized and an impediment to development in the area. Further, a Host Community Agreement is nearly complete with final detail negotiations underway. The finalized Host Community Agreement will be executed by both parties by April 3, 2014 with a referendum vote taking place in early June.

Since the time Foxwoods identified Fall River as the desired location for its resort casino project, both Foxwoods and the City of Fall River have worked conscientiously to ensure the Massachusetts Gaming Commission's Gaming Application deadline of July 23, 2014 would be met. Similarly, the November 2014 license award date has acted as a key milestone in the overall project timeline. Delaying the submission deadline and corresponding award date would hinder the overall project timeline, which would be detrimental to Foxwoods and its project, but also to the City of Fall River, which is in great need of this economic development opportunity.

The City of Fall River as well as Foxwoods Resort Casino have both worked diligently to ensure the Massachusetts Gaming Commission's Region C, Category 1 License application submission deadline of July 23, 2014 would be adhered to and to extend aforementioned deadline would do so at great detriment to the City of Fall River as well as the resort casino project itself. As such, I respectfully request that the Massachusetts Gaming Commission maintain the July 23, 2014 Region C, Category 1 License application and not extend the same.

Please contact me with any questions or comments regarding my request or the project. I would like to thank you for your time and attention to this matter.

Respectfully,

A handwritten signature in cursive script, appearing to read "Alan Silvia".

Alan Silvia, State Representative  
7<sup>th</sup> Bristol District

C: Rick Day Executive Director



*The Commonwealth of Massachusetts*

HOUSE OF REPRESENTATIVES  
STATE HOUSE, BOSTON 02133-1054

**CAROLE A. FIOLA**  
STATE REPRESENTATIVE  
8th BRISTOL DISTRICT

STATE HOUSE, ROOM 446  
TEL: (617) 722-2460  
Carole.Fiola@MAhouse.gov



March 28, 2014

Massachusetts Gaming Commission  
84 State Street, 10<sup>th</sup> Floor  
Boston, MA 02109

Dear Commissioners:

I am writing to respectfully request that the Massachusetts Gaming Commission Region C, Category 1 License application submission deadline of July 23, 2014 be upheld. It has come to my attention that the Commission has received a request to extend the application deadline; however, to do so would be of great detriment to those communities and entities that have been working diligently to adhere to the established deadlines.

Specifically, the City of Fall River and Foxwoods Resort Casino have been working together to locate a resort casino within Fall River since November 2013. Since that time, Foxwoods has secured an option on a parcel of land within Fall River that best meets the project criteria as well as the City's economic development objectives. The timeline for the execution of the Host Community Agreement and referendum vote have already been established, the dates of which are rapidly approaching on April 3, 2014 and early June, respectively.

Both the City of Fall River and Foxwoods Resort Casino have identified the project as a priority development and have worked diligently to fast track the same to adhere to the Massachusetts Gaming Commission's Gaming Application deadline of July 23, 2014. Further, the anticipated November 2014 license award date has played a vital role in the overall project timeline. To delay the submission deadline and license award date at this point in the application process, with the deadline less than four months away, hinders not only the overall project timeline, but also serves as a great injustice to the work that has already been completed in anticipation of the Commission's set deadlines.

In conclusion, I respectfully request that the Massachusetts Gaming Commission maintain the July 23, 2014 Region C, Category 1 License application and not extend the same. Both the City of Fall River and Foxwoods Resort Casino have worked assiduously to ensure the project's Region C, Category 1 License application adhere to the submission deadline of July 23, 2014. To extend the application deadline at this point would do so at a great detriment to the project as well as the economic development goals of the City of Fall River.

If you would like to discuss this matter further or require additional information regarding my request, please do not hesitate to contact me. Thank you for your time and consideration.

Respectfully,



Carole Fiola

# FALL RIVER AREA

CHAMBER OF COMMERCE & INDUSTRY INC.

SERVING BUSINESSES

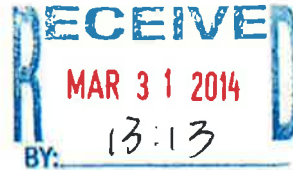
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## Fall River Area Chamber of Commerce & Industry, Inc.

200 Pocasset Street, Fall River, MA 02721 • Tel. 508-676-8226 • Fax 508-675-5932 • www.fallriverchamber.com

March 28, 2014

Massachusetts Gaming Commission  
84 State Street, 10<sup>th</sup> Floor  
Boston, MA 02109



Dear Commissioners:

On behalf of the Fall River Area Chamber of Commerce and Industry, one of the larger and most active business organizations in New England, I would like to respectfully express our genuine concern that the Massachusetts Gaming Commission may inadvertently cloud the integrity of the Category 1 License process within Region C by extending the submission deadline. It is our understanding that the Commission has received a request to extend the deadline by the City of New Bedford. It is also our interpretation of recent public statements made by the Mayor of New Bedford that the Commission intends to release a rendering on the request in the near future. Please understand that an extension of the deadline by sixty days could seriously hinder Region C's efforts at catching up with Region's A and B.


Progress in Region C has already suffered substantial delay due to the Native American component of the Massachusetts Gaming Act. That impediment may be close to resolution, but a delay in the process only creates added ambiguity rather than needed certainty. Furthermore, the City of Fall River and Foxwoods Resort Casino have been working diligently to meet the established deadline. In doing so, they have built a project timeline around the Commission's previously published schedule, which was explicitly known to all interested parties in Region C.

The November 2014 license award date has acted as a key milestone in the overall project timeline. Delaying the submission deadline and corresponding award date would hinder the overall project timeline, which would be detrimental to Foxwoods and its project, but also to Region C, which is in great need of this economic development opportunity.

More importantly is that the established Commission timeline meets with the November election cycle. Pushing the process beyond November could be catastrophic to Region C. What protections are in place to prevent a new Governor's administration from initiating a one or two year pause in the Commission's licensure process in order to wait and see regarding the impacts of gaming on other regions? Again, Region C is already needless behind its counterpart regions.

As such, we respectfully request that the Massachusetts Gaming Commission maintain the July 23, 2014 Region C, Category 1 License application and not extend the same. Please contact the Chamber of Commerce with any questions, or comments, regarding our request. I would like to thank you in advance for your time and consideration of our real and tangible concerns to this matter.

Respectfully,

  
Robert A. Mellibon, Esq.  
President and CEO

Chamber Title Sponsor

**BayCoast**  
BANK





March 29, 2014

Stephen Crosby  
Chair  
Massachusetts Gaming Commission  
84 State Street, 10<sup>th</sup> Floor  
Boston, MA 02109

Dear Chairman Crosby and Members of the Commission:

In follow up to my meeting yesterday with Massachusetts Gaming Commission Ombudsman John Ziembra, it is my understanding that the Commissioners may be leaning towards granting an extension of time in Region C as requested by the City of New Bedford and KG Urban Enterprises and granting an additional request of New Bedford for a waiver to the requirement mandating that a RFA-2 Application contain a certificate showing that the applicant has a certified and binding vote on a ballot question of a host community in favor of a Class 1 Gaming License. As such, I would like to take this opportunity to once again go on record to oppose any such actions based upon the following reasons and rationale.

As you may be aware, the City of Fall River and the SouthCoast region has historically suffered from high unemployment rates despite the best efforts of various Governor's, Mayor's, State and local elected officials to diversify its economic base and create more jobs in the health care, distribution, entertainment and hospitality sectors. This region's historic dependence upon the apparel and textile manufacturing base and the flight of these jobs overseas has helped cripple the local economy and force thousands of hard working people to the unemployment line. As of today, Fall River's unemployment rate is the highest in the state at 14.5% which is more than double the state average of 6.5%.

Throughout the last twenty five years, the City of Fall River has been trying to accommodate and house gaming within the city and has favorably voted on measures to allow this type of activity to take place. Starting with River Boat gaming concepts in the late 1980's to a Class II gaming facility under Governor Weld and a most recent aborted attempt with Mashpee Indian tribe to place a resorts destination casino on 300 acres of land, the City of Fall River has always flirted with the idea of establishing gaming within our borders.

As a result of the Massachusetts Appeal Court making a 2011 determination that the Mashpee Tribe could not take an option of land where gaming was specifically prohibited by a property deed restriction deed, the City of Fall River stepped out of the casino process until we were contacted in November by Foxwoods CEO Scott Butera and casino developer David Nunes (hereinafter "the development team") who expressed an interest in siting a destination resort casino in Fall River after their failed Milford bid.

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[www.froed.org](http://www.froed.org)

Since this time, the development team, working closely with the City of Fall River, was able to secure an option to purchase on a 30 acre privately held parcel of land and intends to submit a completed application to the Gaming Commission by July 23, 2014 in anticipation of a Mass Gaming Commission Region C license award in November 2014. Presently, the development team and the City are working closely to finalize a Host Community Agreement which will be executed by both parties in early April and presented to the City Council with a request to schedule for a local referendum with a binding vote in early June. To the extent that said vote is favorable, the vote will be certified and submitted as part of the July 23 application package.

Unlike the City of New Bedford, Fall River is not seeking nor does it desire, an extension of the RFA-2 application deadline by sixty days or the granting of a variance to all Region C applicants from the requirement in 205 CMR 119.01(7) requiring that the referendum election required under G.L. c.23K s 15(13) take place prior to the submission of the RFA-2 Application.

I disagree with New Bedford's and KG Urban Enterprise's assertion that such action will help foster greater competition. In fact, in October 2013, KG Urban Enterprises had submitted a \$400,000 application fee for the securement of Region Class I License. Unfortunately it appears that the KG Urban Enterprises in its request to extend the application submission deadline is based upon the assertion of KG Urban principal Barry Gosin, according to published news reports, that the prospect of a tribal casino is causing hesitation and uncertainty among potential partners, limiting competition.

Let me clear, by stating, that the City of Fall River nor its development partners are concerned with the prospect of a tribal casino. While we respect the process that is before the Mashpee Tribe, please be advised that the certainty, or uncertainty, of the success of the Mashpee casino is not causing any financial uncertainty with regard to implementation of the proposed destination resort casino development. In fact, we recognize, and are fully aware, of the implications of the Mashpee Compact as it pertains to the overall casino development picture. The perceived uncertainty of the tribal casino is not going away soon so any further delay in the issuance of a Region C Class 1 License is unwarranted and Fall River should not be penalized because it has secured a proposed destination resort casino developer.

Ultimately a decision extending the application deadline and the award of a Region C Commercial License will delay the investment of millions of development dollars into the local and regional economy, delay the creation of the much needed union and non-union construction jobs and the projected 2500 to 3000 full time operational jobs delay the development of all indirect job opportunities and delay financial benefits to a city that is struggling to meet its public safety, educational and infrastructure responsibilities.

Additionally, I hope that the Commission will reject New Bedford's ill-advised variance request to waive the pre-application referendum election requirement prior to the submission of the RFA-2 Application. Unlike the isolate cases in Leominster and Revere, I disagree that denial of the waiver would cause substantial harm to New Bedford or the or to the other potential host communities and applicants. The Region C application process has been open since May 2013 and up until this time, there has been no sense of urgency to extend the application deadline or issue a waiver for to a binding vote prior to the submission of a final application.

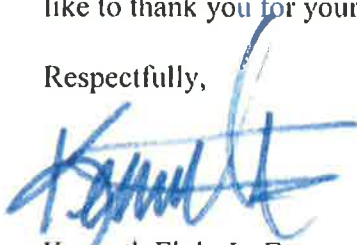
I firmly believe approval of this request, absent any special circumstances, would undermine the integrity of the application process as currently defined. It is my contention that when people go to the polls to vote on the issue of siting of a destination resort casino within their community they deserve to know who the development team is, the proposed location of the destination resort casino and the terms and conditions of a fully executed Host Community Agreement inclusive a concise summary which is to be made part of the referendum ballot so as to enable the public to clearly see the proposed employment benefits to the community as well as appropriate Advance and Annual Impact fees.

To do otherwise would undermine the integrity of the process as we know it to date and potentially mislead the public as to the overall economic and employment benefits of the project. The issue the siting of destination casino within the community is a decision that need to be fully transparent and the voting public deserves to know exactly what they are voting for.

It is with reason stated above, that I request that the Massachusetts Gaming Commission reject any, and all time extensions or waiver requests pertaining to the required pre-application referendum election. The City of Fall River stands prepared to meet the July 23, 2014 application submission deadline.

Please contact me with any questions or comments regarding my request or the project. I would like to thank you for your time and attention to this matter.

Respectfully,



Kenneth Fiola Jr. Esq.  
Executive Vice-President

CC: Commissioner Gayle Cameron  
Commissioner Enrique Zuniga  
Commissioner James F. McHugh  
Commissioner Bruce Stebbins  
Rick Day Executive Director

Email: [john.s.ziembra@state.ma.us](mailto:john.s.ziembra@state.ma.us)

# City of Fall River, In City Council



(Council President Joseph D. Camara)  
(Councilor Patricia Casey)  
(Councilor Jasiel Correia)  
(Councilor Paul DaSilva)  
(Councilor Michael Miozza)  
(Councilor Raymond A. Mitchell)  
(Councilor Leo Pelletier)  
(Councilor Daniel Rego)

WHEREAS, the City of Fall River is working expeditiously with Foxwoods Casino Resort to adhere to the time frame set forth by the Gaming Commission, now therefore

BE IT RESOLVED, that the Fall River City Council respectfully request that the Massachusetts Gaming Commission not extend the time frame for issuing a casino license in Region C, Southeastern Massachusetts.

In City Council, March 25, 2014  
Adopted, 8 yeas, 1 nay

A true copy. Attest:  
*Alison M. Bouchard*  
City Clerk



## MEMORANDUM

Date: April 14, 2014

To: Commissioners

From: Enrique Zuniga

Re: Discussion of Eligible Costs for Minimum Investment Amount – Region C

---

A potential applicant for the region C, has requested a waiver of certain costs presently excluded from the minimum investment calculation (per MGC's regulations), claiming among other things that the competitive landscape and uncertainty surrounding that region may not warrant such level of investment (which total investment is well in excess of the \$500 million statutory threshold, but less than \$500 million when excluding costs that are presently ineligible as part of the Commission's regulations).

### *M.G.L. c. 23K*

The Gaming Act contains the following relevant language:

Relative to the Category 1 license, M.G.L. c. 23K Section 10 (a) states:

"The Commission shall set a minimum capital investment of \$500,000,000... the Commission shall determine whether it will include the purchase or lease price of the land...or any infrastructure designed to support the site..."

Relative to the Category 2 license, M.G.L. c.23K section 11(a) states:

"The Commission shall set a minimum capital investment of \$125,000,000... the Commission shall determine whether it will include the purchase or lease price of the land...or any infrastructure designed to support the site...provided however that any infrastructure improvements necessary to increase visitor capacity and account for traffic mitigation shall not be considered part of the required capital investment..."



Massachusetts Gaming Commission

- The inclusion of the cost of land in the calculation of the minimum capital investment is at the discretion of the Commission for both the Category 1 and 2 licenses
- The inclusion of infrastructure costs designed to support the site is also at the discretion of the Commission, with the exception of traffic mitigation infrastructure for Category 2 only. Conceivably, the legislature anticipated additional infrastructure costs required in both category licensees, but only excluded those designed to mitigate traffic and increase visitor capacity to the category 2 facility

### *205 CMR 122.03 and 122.04*

The set of regulations that speak to minimum capital investment and in particular the costs that are to be included in the calculation of said minimum capital investment are specified in 205CMR 122.03 and 122.04.

In the drafting of these regulations, the Commission exercised its discretion and excluded two major categories of costs necessary for the construction of such projects: purchase or lease of land, and Infrastructure improvements outside the property boundaries.

Furthermore, the Commission excluded additional necessary costs from the calculation of minimum capital investment, when it clarified that infrastructure costs outside the property boundary was to be excluded “...whether or not those costs where the result of a host community agreement, surrounding community agreement, required by any regulatory body or as part of the permitting process...”

Lastly, said regulations also exclude certain costs that are generally not thought of as “capital investment” and they include licensing fees, legal fees, promotional costs, marketing costs and other costs usually regarded as necessary costs of operations.

The costs that were excluded by regulation from the minimum capital investment can be thought of as falling within the following categories:

1. Infrastructure Costs: Through its regulations, the Commission drew a line along property boundaries to determine whether certain infrastructure costs would be included. Several categories of costs that fall within this definition would inevitably be incurred *inside and outside* the property boundaries.



Massachusetts Gaming Commission

2. Land Costs: The statute gave the Commission discretion to include land acquisition or lease costs in the calculation of both Category 1 and Category 2 licenses. On the one hand, given that land is not a depreciable asset, an argument could be made that it does not represent capital investment. On the other hand, this is one category of cost that is essential for a project, and its recoupment can only be done through the life of the license.
3. “Carried Interest Costs & Other Associated Financing Costs:” This category of cost was excluded from the minimum capital investment, because in the private equity world and depending on the financing structure of an entity or entities, such costs while necessary can be structured in a way they essentially become a performance fee or even an entrepreneurial profit. 205 CMR 122.04 (2) reads: “Carried interest costs and other associated financing costs.”

However there may be other financing costs not associated with carried interest costs (i.e., interest cost eligible for capitalization). Such financing costs are from a GAAP and tax perspective, usually capitalized and then depreciated over the useful life of the asset. The Commission could clarify that “Carried Interest Costs” do not include interest or borrowing costs eligible for capitalization. Alternatively, the Commission could analyze the specific financing scheme of a proposal and decide whether certain interest costs should be counted as those excluded from the capital investment because they are not associated with carried interest costs. A third alternative in this category (but true for any category) is that the Commission could limit or cap the amount of costs that may be included in the calculation.

4. Fees & Other Expenditures: The Commission excluded all fees from the calculation of capital investment including licensing, regulatory, legal, community impact fees, etc. Similarly, the Commission excluded certain expenses usually associated with the cost of doing business (promotional, marketing, outreach, referendum-related, etc.), and usually not thought of as a capital investment.

The four categories of costs above can be useful in the discussion of the waiver request for this region.



### *Discussion Regarding Waiver Request and Region C*

An important question for the Commission, regarding the consideration of this waiver, is whether this region has characteristics that are different from the other regions.

Unlike Regions A and B, the potential bidders in region C face a unique situation: The potential for an eventual tribal operation rather nearby, which could represent a competitive threat for a commercial licensee.

The competitive threat comes into different forms:

- Under the compact signed with the Governor, the Mashpee would owe the Commonwealth \$0 of Gross Gaming Revenues if there was another Category 1 licensee in that region. This would afford the Mashpee a great degree of operational flexibility, as it could conceivably offer promotions and free play to acquire business from competitors
- The Mashpee do not have a minimum capital investment requirement, or other requirements regarding amenities (i.e., hotel) that also translate into capital investment dollars

The key financial inputs in the decision of any bidder in any region (or for that matter in any jurisdiction) are the tax rate, the market size and the minimum capital investment (or other capital requirements in terms of amenities). In the case of region C, the market around that region has the potential to be shared with another operation. While the time for such operation to come to fruition is uncertain, such operation would operate with a very different tax environment and with no minimum capital investment required. The uncertainty relative to this region will have to be assessed by the commercial bidders in that region.

As this Commission considers whether to grant a waiver for any of the costs categories as included in the regulations or as outlined in the categories above, I recommend that any waivers for categories of costs apply to any and all commercial license applicants on that region.



Massachusetts Gaming Commission



# Market Shares: Full Competition Scenarios Total GGR for State & Taxes With Blended GGR/Adult

Full Competition Scenario Summary (Low) Based on Blended Win/Adult*				
Total GGR Captured by Massachusetts & Neighbouring State Casinos from Market Area**	Category 1			Total State
	Boston	Springfield	Taunton	
<i>With Leominster/PPE- Full Competition</i>				
Massachusetts	\$119,510,529	\$274,640,684	\$311,122,413	\$1,305,634,704
Neighbouring States	\$13,614,054	\$153,828,061	\$84,730,110	\$390,817,296
GGR from Market Area	\$133,124,583	\$428,468,745	\$395,852,523	\$1,696,452,000
<i>With Plainville/Penn National - Full Competition</i>				
Massachusetts	\$447,577,406	\$606,907,125	\$299,034,005	\$286,192,670
Neighbouring States	\$10,866,000	\$142,334,334	\$153,828,061	\$84,730,110
GGR from Market Area	\$128,443,406	\$749,241,459	\$452,862,066	\$370,922,780
<i>With Raynham/PR - Full Competition</i>				
Massachusetts	\$128,480,531	\$600,167,829	\$297,368,430	\$275,904,499
Neighbouring States	\$0	\$142,334,334	\$153,828,061	\$84,730,110
GGR from Market Area	\$128,480,531	\$742,502,163	\$451,196,491	\$360,634,609

Source: HLT Advisory Inc. estimates.  
\* Based on \$375/adult in casino market areas, \$325/adult for adjacent casino market areas and \$275/adult for all other market areas.  
\*\* Does not include inflow.

Total State taxes generally range from \$415 million to \$430 million regardless of individual Category 2 casino.

Full Competition Scenario Summary (High) Based on Blended Win/Adult*				
Total GGR Captured by Massachusetts & Neighbouring State Casinos from Market Area**	Category 1			Total State
	Boston	Springfield	Taunton	
<i>With Leominster/PPE- Full Competition</i>				
Massachusetts	\$133,868,175	\$595,236,560	\$311,122,413	\$1,314,867,831
Neighbouring States	\$13,614,054	\$138,645,071	\$153,828,061	\$84,730,110
GGR from Market Area	\$147,482,229	\$733,881,631	\$428,468,745	\$395,852,523
<i>With Plainville/Penn National - Full Competition</i>				
Massachusetts	\$128,480,531	\$606,907,125	\$299,034,005	\$284,836,501
Neighbouring States	\$16,299,000	\$142,334,334	\$153,828,061	\$84,730,110
GGR from Market Area	\$143,126,614	\$749,241,459	\$452,862,066	\$369,566,611
<i>With Raynham/PR - Full Competition</i>				
Massachusetts	\$143,328,604	\$600,167,829	\$297,368,430	\$270,800,771
Neighbouring States	\$0	\$142,334,334	\$153,828,061	\$84,730,110
GGR from Market Area	\$143,328,604	\$742,502,163	\$451,196,491	\$355,530,881

Source: HLT Advisory Inc. estimates.  
\* Based on \$375/adult in casino market areas, \$325/adult for adjacent casino market areas and \$275/adult for all other market areas.  
\*\* Does not include inflow.

Tax to the State Under Full Competition Scenarios Based on Blended Win/Adult*						
	Category 2			Category 1		Total State
	Boston	Springfield	Taunton	Springfield	Taunton	
<i>With Leominster/PPE- Full Competition</i>						
Tax Rate	49%	25%	25%	25%	17%	
Low Scenario	\$65,231,045	\$184,751,538	\$107,117,186	\$107,117,186	\$67,294,929	\$424,394,698
High Scenario	\$72,266,292	\$183,470,408	\$107,117,186	\$107,117,186	\$67,294,929	\$430,148,815
<i>With Plainville/Penn National - Full Competition</i>						
Tax Rate	49%	25%	25%	25%	17%	
Low Scenario	\$62,937,269	\$187,310,365	\$113,215,517	\$113,215,517	\$63,056,873	\$426,520,023
High Scenario	\$70,132,041	\$187,310,365	\$113,215,517	\$113,215,517	\$62,826,324	\$433,484,246
<i>With Raynham/PR - Full Competition</i>						
Tax Rate	49%	25%	25%	25%	15%	
Low Scenario	\$62,955,460	\$185,625,541	\$112,799,123	\$112,799,123	\$54,095,191	\$415,475,315
High Scenario	\$70,231,016	\$185,625,541	\$112,799,123	\$112,799,123	\$53,329,632	\$421,985,311

Source: HLT Advisory Inc. estimates.  
\* Based on \$375/adult in casino market areas, \$325/adult for adjacent casino market areas and \$275/adult for all other market areas.



April 16, 2014

***By Hand***

Stephen Crosby, Chairman  
Massachusetts Gaming Commission  
84 State Street  
Boston, MA 02110

**Re: *Timing and Method of Award of License and Payment of Fees***

Dear Chairman Crosby:

In response to recent discussions regarding the payment of Chapter 23K licensing fees and timing of the "award" of license, Blue Tarp reDevelopment, LLC (MGM Springfield) submits the following proposal to mitigate the massive financial risk to Category 1 applicants due to the uncertainty caused by a ballot initiative that seeks to prohibit local casinos in the Commonwealth. As further set forth below, MGM Springfield urges the Massachusetts Gaming Commission (Commission) to utilize recently adopted regulations that provide for both the award of a gaming license at a future date and payment of a licensing installment in anticipation of such an award to mitigate this risk. Absent the flexibility in the timing of the award and payment of licensing fees, MGM Springfield will be at risk for approximately \$200M dollars in fees, payments and deposits due to the confiscatory nature of the ballot initiative if allowed to proceed to the November election and passed by voters. No corporation should be expected to subject itself to such risk - including MGM Springfield.

## **Background**

As part of the RFA-2 Application, the Commission requested that applicants for Category 1 licenses set forth "any post licensing actions by the Commission or the Commonwealth of Massachusetts that you believe will be essential for the success of the project you are proposing". In its RFA-2 response, MGM Springfield requested and conditioned its RFA-2 Application on the Commission and the Commonwealth of Massachusetts taking several specific actions determined to be essential to the Springfield project's success. See Blue Tarp reDevelopment RFA-2 Application for a Category 1 License, attachment 1-09-01. Paramount in the filing were concerns over the timing of an award of license while the petition to repeal certain portions of the Massachusetts Gaming Act (the "Anti-Gaming Petition") is pending. *Id.* Specifically, MGM Springfield identified the payment of the initial licensing fee, slot assessment, the Annual Assessment, and contribution to the Public Health Trust Fund as at risk while the ballot initiative remained fertile. *Id.* In addition, MGM Springfield also identified land acquisition obligations, the 10% construction deposit, construction schedule and construction costs as additional matters at risk while the ballot initiative is pending. To address these issues, MGM Springfield requested that the Commission develop an alternative to a direct "award" of the Category 1 license to avoid triggering payment and other costly obligations. In relation to the \$85 million licensing fee:

MGM Springfield requests that the Commission relieve any license awardees of their obligation to fund these licensing fees until a final judicial dismissal of the Anti-Gaming Petition or, if allowed to proceed, at its rejection in the November 2014 general statewide referendum vote (the "Final Resolution of the Anti-Gaming Petition"). To the extent that the Commission believes it does not have the discretion to defer such obligation, we would request that while the Anti-Gaming Petition process is pending, the Commission award licenses on a provisional basis, with final award occurring upon the Final Resolution of the Anti-Gaming Petition. MGM Springfield requests that such provisional awards

allow, but do not require, licensees to proceed with development of the project, and all related rights that would otherwise attach to such license awards.

Id. MGM Springfield also sought relief from the construction schedule and the 10% construction deposit requirement while the ballot initiative was pending.

Further, MGM Springfield made specific recommendations to the Commission to address these issues in comments filed on the Commission's "Form of License" on February 18, 2014. See February 18, 2014 Blue Tarp reDevelopment Comments on MGC Form of License. Here, MGM Springfield recommended specific amendments to the license to account for the ballot initiative:

The language in this section should be revised to address the potential impact of the pending ballot petition and litigation on the award of a license. Blue Tarp urges the Commission's review of its regulations to provide for maximum flexibility to both allow for a binding licensing process to continue while also protecting the applicants from unacceptable financial risk. Options may include a reasoned "decision of determination" of licensee selection, with the "issuance and award" deferred until a condition precedent occurs related to the final resolution of the repeal petition.

Id. MGM Springfield also provided specific language that would make the award of a license effective on the earlier of a favorable determination by the Supreme Judicial court or the rejection of the voters in November 2014.

### **Amendments to Commission Regulations**

Subsequent to raising these issues and potential solutions, the Commission has adopted certain procedures and changes to its regulations to address the realities of issuing licenses prior to resolution of the ballot initiative either through the Court or by the people. Responsive changes to the Commission regulations include:

- 205 CMR 118.06(1)(d): added an additional option for the Commission to take action on a license: "Issue a decision on the application for a gaming license that provides that a license shall be awarded effective as of a date to be determined by the commission."
- 205 CMR 121.01(1): "nonrefundable" removed from license fee payment section.
- 205 CMR 121.01(3): removed requirement that the slot fee, the MGC assessment and the Public Health Trust Fund assessment be paid with 30 days (these are now due at certain dates and in some cases apportioned for 2014).
- 205 CMR 121.02(1): new language added to allow for installment payments before the award of a license: "As a pre-condition of any award, the commission may provide that such license fees be paid on an installment basis before the award is made and the license issued."
- Use by the Commission of a "Determination of License" decision making process that requires an applicant to accept the conditions of a license prior to a license being awarded.

Collectively, these key regulations and processes provide the Commission with the authority and regulatory flexibility to ensure that the licensing process does not prematurely fall victim to the ballot initiative to repeal certain aspects of 23K while protecting applicants from unacceptable financial risk.

### **The Financial Risk to MGM Springfield**

The risk to MGM Springfield is substantial and real. Upon award of license both statutory fee and contractual obligations come due including but not limited to the \$85M licensing fee due within 30 days<sup>1</sup>, the construction deposit fee<sup>2</sup> of approximately \$50-60M<sup>3</sup> also (due within 30 days) as well as \$45 million in project site property payments that it will be contractually required to make within 30 to 90 days following license award. These amounts do not include other payments to the City of Springfield and other entities in addition to the almost \$40M invested by MGM Springfield to date in pursuit of a license in Massachusetts. Left unaddressed, approximately \$200M will be exposed to ballot initiative, that if successful, will result in a regulatory taking without commiserate provisions to compensate an applicant for the resulting losses. No corporation can be expected to subject itself to such risks. Moreover, award of the license without addressing the impact of the ballot initiative may require certain irreversible steps to adhere to the project's proposed construction schedule including the tearing down of certain existing structures in downtown Springfield.

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<sup>1</sup> By vote April 3, 2014, the Commission conditioned the granting of a variance in the licensing schedule to provide additional time for the filing of arbitration decisions on MGM Springfield's agreement to pay the \$85M licensing fee by June 30, 2014. Any such requirement to pay the licensing fee by June 30, 2014 must be contingent upon MGM's decision to accept conditions that will be associated with any license award, and in doing so, consummate an award for the purposes of Chapter 23K § 10(d) – i.e., a final award. See Transcript at p. 210. It is MGM Springfield's understanding that nothing included in the Commission's April 3, 2014 order will preclude or prejudice MGM Springfield in any way from raising an objection to any material condition that is unacceptable to MGM Springfield contained in the Commission's determination of issuance of a license or other finding or order prior to acceptance and finalization of the award by MGM Springfield, including without limitation conditions relating to the timing and structure of the licensing fee. Furthermore, notwithstanding any condition in connection with the arbitration extension, MGM Springfield respectfully retains its right to request alternative methods of award and payment of fees under applicable Commission rules and regulations in connection with the award of its license.

<sup>2</sup> The construction deposit fee is unique to category 1 licensees. There is no equivalent requirement for a category 2 licensee. See G.L.c. 23K sec. 10(a) and 10(b) respectively.

<sup>3</sup> This amount represents what we believe to be 10% of the total hard construction costs associated with the development as contained in the Company's RFA-2 filing (subject to further clarification with the Commission).

### **The Proposed Remedy**

Fortunately, the Commission has provided options to address the extraordinary circumstances facing an applicant such as MGM Springfield. Indeed many of these important regulatory tools were recently acknowledged by the Commission at its April 3, 2014 meeting:

COMMISSIONER MCHUGH: I think when we're considering the financial plan that we adopted a few months ago put in place a variety of alternatives that deal with the licensing fee and the ways to approach the licensing fee. We have a number of ways to do that.

And a lot of -- some of the others including the 10 percent investment deposit would be triggered by the way we handle the license award. So, we have, I think, the flexibility to deal with that. And insofar as the award triggering other obligations on the part of the applicant, we have the same flexibility as to how we award the license.

Transcript, Massachusetts Gaming Commission, Public Meeting #116, April 3, 2014 at p. 39

(Transcript). Building on the Commission's general understanding of the challenges to applicants posed by the pending ballot initiative, MGM Springfield proposes the following specific process for determination and award of a license and payment of fees.

First and foremost, the Commission need not deviate from its current schedule for review of MGM Springfield's license. The Commission can finalize its review and hold public hearings to ultimately vote to award the license to MGM Springfield. In making such a determination, however, MGM Springfield requests that the Commission utilize recent changes in Commission regulations to award the license at a future date and provide for installment payments.

### **Award of License**

Under the current licensing schedule for Region B, the Commission is scheduled to review MGM Springfield's RFA-2 Application with hearings and a determination as early as mid-June.

Under the Company's proposal, should the Commission make a determination that MGM Springfield should be awarded a license for Region B, the award would become effective upon acceptance of all conditions at a future date as provided in 205 CMR 118.06(1)(d). The future date would be the earlier of (a) a finding by the Supreme Judicial Court invalidating the ballot initiative at issue in Case No. SJ-2013-00356, *Abdow, et. al. v. Attorney General and Secretary of the Commonwealth* or (b) the rejection of the repeal petition in the November 6, 2014 general election. In connection with such a construct for the award of license, MGM Springfield would be prepared to pay all licensing fees owed within 5 business days after the future award date. To the extent that the ballot initiative litigation is resolved as outlined above prior to the close of the current state fiscal year, MGM Springfield will agree to make payment of the licensing fee prior to June 30, 2014, assuming no other materially adverse license conditions.

### **Payment of Fees**

In connection with an award of a license at a future date, MGM Springfield will pay installments on certain licensing fees pursuant to 205 CMR 121.02(1). Specifically, MGM Springfield will pay an amount equal to its proportional share of the annual slot assessment fee and Annual Assessment as set forth in 205 CMR 121.01(3)(a) and (b) prorated for 2 quarters (July through December) as an installment. Based on projected Gaming Commission Budget of \$14M and a total annual obligation of MGM Springfield of approximately \$5.46M<sup>4</sup> and further prorated for 2 quarters, MGM Springfield would pay the Commission approximately \$2.73M as an installment

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<sup>4</sup>The \$2.73 million is based on a projected Commission Operational Budget for FY15 of \$14M. Assuming Slot Assessment fees of \$4.6M, the Commission will need to assess an additional \$9.4M to reach its projected funding level. Under the Commission regulations, the Annual Assessment charged to a licensee in proportion to the number of gaming positions at that gaming establishment. See 205 CMR 121.01(3)(b). Assuming that MGM Springfield will account for approximately 39% of gaming positions in the Commonwealth, the Annual Assessment due from MGM for FY15 is approximately \$3.66M. When combined with the Slot Assessment, MGM's total is \$5.46 million. This total assessment prorated for the first 2 quarters of the fiscal year is \$2.73M.



payment after the determination of licensure but before the award is made and the license issued.<sup>5</sup> MGM Springfield will commit to pay this amount within 5 business days after a positive determination of its RFA-2 Application, assuming no additional materially adverse conditions.

**MGM Springfield Post Determination of License and Pre-award**

Under the proposal outlined above, MGM Springfield will take on an interim status between a positive determination and a final award. As a "determinee", MGM Springfield remains subject to the jurisdiction of the Commission as if they were licensed. Determinee status will also allow MGM Springfield to continue to lay the foundation for its Springfield development and preserve the multiple commitments it has made to the City of Springfield and many other organizations including the Massachusetts Convention Center Authority, multiple labor organizations, the Greater Springfield Convention and Visitor's Bureau, City Stage, Symphony Hall and others. MGM Springfield will remain bound by its commitments pending future award.

MGM Springfield appreciated the Commission's focus on the payment and award of license issues that, as Chairman Crosby recently noted, affects all of us - the Commission and applicants alike. Transcript at p. 37. By adopting a plan as outlined above, the Commission can ensure that the Commonwealth is in the best position to protect its process and ensure that potential Category 1 licensees are not subject to conditions that are untenable from a business prospective.

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<sup>5</sup> Under this proposal, MGM Springfield will reserve its rights to seek an adjustment of the prorated assessment for any changed circumstance. Further, MGM would also reserve any and all claims related to the return of the installment payment should the initiative petition be placed on the ballot in November and subsequently approved by the voters.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Michael C. Mathis". The signature is written in black ink and is positioned above the typed name.

Michael Mathis  
President of MGM Springfield



CITY OF SOMERVILLE, MASSACHUSETTS  
LAW DEPARTMENT

April 15, 2014

VIA E-MAIL TO JOHN ZIEMBA

Massachusetts Gaming Commission  
Attention: Stephen Crosby, Chairman  
84 State Street, 10<sup>th</sup> Floor  
Boston, MA 02109

RE: City of Somerville's Motion for a Variance of 205 CMR 125.01(6)(b) and (c)(3) so as to Extend the Time for the Parties to Negotiate a Surrounding Community Agreement

Dear Chairman Crosby and Commissioners:

Pursuant to 205 CMR 102.03(4)(a) and (c), the City of Somerville ("City") moves the Massachusetts Gaming Commission ("Commission") to grant a variance extending the time for the applicant ("Wynn") and the City to negotiate a surrounding community agreement. The time to negotiate a surrounding community agreement, pursuant to 205 CMR 125.01(6)(b) and (c)(3), shall be extended from thirty (30) days to sixty (60) days, or some other period deemed appropriate by the Commission.

In support thereof the City states, due to the proximity of the city to the proposed gaming establishment (76 feet +/-), the densely settled nature of Somerville (most densely settled community in New England; fifth most densely settled community in the United States) and the complexity of transportation, housing, public safety, public health, economic development and other issues anticipated when establishing a casino in such a densely settled major metropolitan region, both parties continue to provide the other with information relative to the impacts of the proposed gaming establishment. This motion seeks to allow the parties necessary time to respond to one another's requests for information and negotiate thereupon in order to allow the parties adequate time to achieve a mutually agreeable surrounding community agreement, so as not to be prematurely required to enter into arbitration.

Further, given the ongoing allowances of time granted to the City of Boston ("Boston") to address Boston's pending motions, there will neither be any prejudice to the applicant nor delay in this honorable commission's decision making.

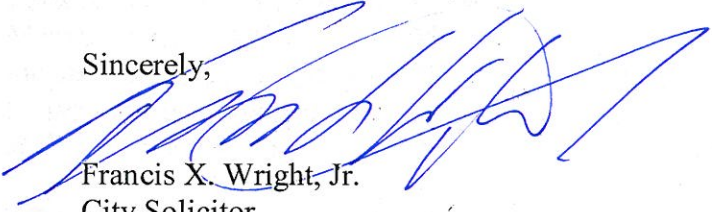
With this motion, the City respectfully requests that this Honorable Commission extend the time for the parties to negotiate a surrounding community agreement.

April 15, 2014  
Massachusetts Gaming Commission  
Page 2

Surely what is not lost on this Honorable Commission is the preponderance of preparation that casino operators inherently have as a result of being in the businesses they have been for as long and as in as many venues as they have been. We are confident of our research to date, but the additional time will allow our respective teams to continue to analyze assumptions and further search for information which is not as readily available to those outside of the industry. We believe the public's interest will be well served by an affirmative determination by the Gaming Commission on this request. Furthermore, we see no harm to the license applicant as a result of the Gaming Commission granting such extension.

In support hereof, I request the opportunity to address the Commission on behalf of the City to discuss this motion at a public meeting of the Commission. Thank you for your consideration in this matter.

Sincerely,



Francis X. Wright, Jr.  
City Solicitor

cc: Jacqui Krum, Wynn MA LLC  
John Ziemba, Ombudsman, Mass. Gaming Commission  
Catherine Blue, General Counsel, Mass. Gaming Commission

April 15, 2014

VIA E-MAIL [[MGCCOMMENTS@STATE.MA.US](mailto:MGCCOMMENTS@STATE.MA.US)]

Stephen Crosby, Chairman  
Commissioner Gayle Cameron  
Commissioner Enrique Zuniga  
Commissioner James F. McHugh  
Commissioner Bruce Stebbins  
MASSACHUSETTS GAMING COMMISSION  
84 State Street, 10th Floor  
Boston, MA 02109  
[mgccomments@state.ma.us](mailto:mgccomments@state.ma.us)

**Re: Wynn's Opposition to the City of Somerville's Request for Extension of the Surrounding Community Negotiation Period**

Dear Chairman Crosby, and Commissioners Cameron, Zuniga, McHugh and Stebbins:

In anticipation of Public Meeting #117, Agenda Item 3 (d): Region A Arbitration Deadline Requests, scheduled for determination by the Commission on April 17, 2014, Wynn respectfully submits the following comments.

Today, Wynn received an email from Francis Wright, City Solicitor of the City of Somerville, notifying Wynn of Somerville's intent to file a motion with the Gaming Commission requesting a 30-day extension of the Surrounding Community Agreement Negotiation period. Wynn opposes Somerville's motion for an extension of time for the Surrounding Community Agreement Negotiation period.

Wynn respectfully opposes any further delay of the Surrounding Community Arbitration process. The dates in the Surrounding Community Arbitration timeline have been set for several months. Wynn has worked diligently to negotiate with surrounding communities and meet all deadlines set forth by the Commission. In the event that Wynn is unable to come to a Surrounding Community agreement with any municipality by the end of the negotiation period, Wynn is prepared to proceed with arbitration as scheduled on April 29, 2014. Indeed, Wynn has contacted arbitrators and has reserved specific dates within the 20-day arbitration period. Wynn has incurred substantial costs to find and retain an arbitrator for specific dates within the Arbitration time period scheduled for April 29-May 19, 2014. A change in the Surrounding Community Arbitration schedule at this late date could result in loss of the retainer paid to reserve the arbitrator and potential risk of losing the arbitrator altogether, as arbitrators' schedules are booked several months in advance.

**Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.**

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Stephen Crosby, Chair  
Commissioners Cameron, Zuniga, McHugh and Stebbins  
MASSACHUSETTS GAMING COMMISSION  
April 15, 2014  
Page 2

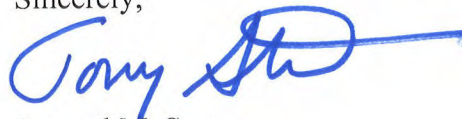
In addition, Wynn's attorneys, consultants and witnesses have all reserved time in their schedules for the Surrounding Community Arbitrations scheduled from April 29 – May 19, 2014. To delay the process at this late date would result in undue hardship on witnesses and consultants, and some consultants and witnesses may be unavailable to testify. For example, one of Wynn's consultants on an issue of critical importance to the surrounding community impact considerations will be traveling out of the country from May 15 -27 and would not be available to testify during that time period.

Wynn has been meeting with Somerville on a regular basis since last summer, and Wynn welcomes the opportunity to continue to exchange information and proposals. Even though the 30-day negotiation period formally ends on April 22, 2014, the process allows the parties to continue negotiations beyond that date. If Somerville and Wynn are unable to reach a Surrounding Community Agreement by April 22, Wynn will continue to work toward an agreement with Somerville. If, despite these good faith efforts, a Surrounding Community Agreement is not reached, then the currently scheduled arbitration process should proceed so that a Surrounding Community Agreement may be achieved. Maintaining the current schedule without further delay should encourage the parties to focus their efforts on achieving a mutually acceptable agreement to avoid the cost and risk associated with the arbitration process.

Wynn has worked diligently to meet all deadlines set forth by the Commission for the Surrounding Community Arbitration process. Wynn has incurred significant costs to reserve an arbitrator for the specific time period set for arbitration by the Commission. If necessary, Wynn is ready to proceed with arbitrations on April 29, 2014. It would be unfair and unduly prejudicial to Wynn to delay the process at this late date.

Accordingly, Wynn respectfully requests that the Commission deny the City of Somerville's motion for an extension of time for the Surrounding Community Agreement Negotiation period and confirm all dates set forth in the Surrounding Community Arbitration process.

Sincerely,



Samuel M. Starr

cc: John Ziemba, Massachusetts Gaming Commission  
Stephen P. Tocco, ML Strategies, LLC  
Jennifer Mather McCarthy, Esq., Mintz Levin



## CITY OF CHELSEA

Executive Office  
City Hall, Room #302, 500 Broadway  
Chelsea, Massachusetts 02150  
Telephone (617) 466-4100 / Fax (617) 466-4105  
Email: [jash@chelseama.gov](mailto:jash@chelseama.gov)



**Jay Ash**  
**City Manager**

April 16, 2014

VIA E-MAIL

Massachusetts Gaming Commission  
Attention: Stephen Crosby, Chairman  
84 State Street, 10<sup>th</sup> Floor  
Boston, MA 02109

Dear Chairman Crosby and Commissioners:

As the deadline approaches for the Binding Surrounding Community Arbitration Process, I write to respectfully request an extension of the upcoming April 23<sup>rd</sup> process initiation. Please be aware that the City of Chelsea is prepared to begin the process, however additional time to better refine our submission would allow us to undertake an even greater depth of research and provide our community with an enhanced perspective of the potential impacts and mitigations that will exist as they relate to the proposed Wynn casino in the City of Everett. As you know, that development is seeking the Region A license from the Massachusetts Gaming Commission. I do not believe a surrounding community agreement is likely to be arrived at with Wynn outside of the arbitration process. Thus, the arbitration process, and, therefore, being the best prepared possible, is paramount to our abilities to advocate for and secure the appropriate and required mitigation packages to offset the casino-related impacts we envision.

My request is made with the knowledge that the end date for a decision on the Region A license is being impacted by other actions the Gaming Commission is taking. Specifically, it has been acknowledged that the Gaming Commission's hearing of the City of Boston petition regarding its status as a host community is pushing back the timeline for the ultimate decision. Whether or not the Gaming Commission agrees with the City of Boston contention, I believe the Gaming Commission will then establish a timetable for Boston to engage in host or surrounding community negotiations and other actions that are a prerequisite to the Gaming Commission awarding of the license. With that extension of the timetable for a decision, an opportunity exists to provide Chelsea and other communities valuable and desired time to continue our review of local impacts and those studied and experienced elsewhere. To be clear, I have no desire to delay the process through this request for any reason other than to be as best prepared as possible to articulate and defend our position that a casino located seventh-tenths of a mile from our border will have.

I appreciate that an arbitration process is available to us to justify and, ultimately, be awarded an appropriate surrounding community agreement. Surely what is not lost on the Gaming Commission is the preponderance of preparation that casino operators inherently have as a result of being in the businesses they have been for as long and as in as many venues as they have been. Again, I am confident of our research to date, but the additional time will allow us to continue to analyze assumptions and further search for information which is not as readily available to those outside of the industry. I believe the public's interest will be well served by an affirmative determination of the Gaming Commission on this request. Furthermore, I see no harm to the license petitioner as a result of such a Gaming Commission action.

With the above in mind, I would ask that you extend the starting date of the Binding Community Arbitration Process for the Region A communities to June 2, 2014. I believe the subsequent sequencing of the process is reasonable and can remain intact. Thank you for your consideration of this request.

Sincerely,

  
Jay Ash  
City Manager

April 16, 2014

VIA E-MAIL [[MGCCOMMENTS@STATE.MA.US](mailto:MGCCOMMENTS@STATE.MA.US)]

Stephen Crosby, Chairman  
Commissioner Gayle Cameron  
Commissioner Enrique Zuniga  
Commissioner James F. McHugh  
Commissioner Bruce Stebbins  
MASSACHUSETTS GAMING COMMISSION  
84 State Street, 10th Floor  
Boston, MA 02109  
[mgccomments@state.ma.us](mailto:mgccomments@state.ma.us)

Re: **Wynn's Opposition to the City of Chelsea's Request to Extend the Start of the Surrounding Community Arbitration Process**

Dear Chairman Crosby, and Commissioners Cameron, Zuniga, McHugh and Stebbins:

In anticipation of Public Meeting #117, Agenda Item 3 (d): Region A Arbitration Deadline Requests, scheduled for determination by the Commission on April 17, 2014, Wynn respectfully submits the following comments.

Yesterday, Wynn received an email from Jay Ash, City Manager of the City of Chelsea, notifying Wynn that Chelsea may request the Gaming Commission to extend the start of the arbitration process beyond the scheduled start of April 23, 2014. Wynn opposes Chelsea's request to extend the start of the arbitration process.

Wynn respectfully opposes any further delay of the Surrounding Community Arbitration process. The dates in the Surrounding Community Arbitration timeline have been set for several months. Wynn has worked diligently to negotiate with surrounding communities and meet all deadlines set forth by the Commission. In the event that Wynn is unable to come to a Surrounding Community agreement with any municipality by the end of the negotiation period, Wynn is prepared to proceed with arbitration as scheduled on April 29, 2014. Indeed, Wynn has contacted arbitrators and has reserved specific dates within the 20-day arbitration period. Wynn has incurred substantial costs to find and retain an arbitrator for specific dates within the Arbitration time period scheduled for April 29-May 19, 2014. A change in the Surrounding Community Arbitration schedule at this late date could result in loss of the retainer paid to reserve the arbitrator and potential risk of losing the arbitrator altogether, as arbitrators' schedules are booked several months in advance.

**Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.**

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Stephen Crosby, Chair  
Commissioners Cameron, Zuniga, McHugh and Stebbins  
MASSACHUSETTS GAMING COMMISSION  
April 16, 2014  
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In addition, Wynn's attorneys, consultants and witnesses have all reserved time in their schedules for the Surrounding Community Arbitrations scheduled from April 29 – May 19, 2014. To delay the process at this late date would result in undue hardship on witnesses and consultants, and some consultants and witnesses may be unavailable to testify. For example, one of Wynn's consultants on an issue of critical importance to the surrounding community impact considerations will be traveling out of the country from May 15 -27 and would not be available to testify during that time period.

Wynn has had numerous meetings with Chelsea and has afforded Chelsea the opportunity to avail itself of Wynn's project studies and analysis. Wynn welcomes the opportunity to continue to exchange information and proposals. However, Mr. Ash has informed Wynn privately and has made public statements regarding his and Chelsea's support of the Mohegan Sun project. Mr. Ash's current proposal to Wynn does not reflect good faith negotiations, and Wynn and Chelsea are in agreement that the parties will need to go to arbitration. This determination was made, without acrimony, on the date that the surrounding community decisions were made, March 20, 2014. Therefore, no further time for negotiation is needed or appropriate.

If Chelsea and Wynn are unable to reach a Surrounding Community Agreement by April 22, Wynn will continue to work toward an agreement with Chelsea. If, despite these good faith efforts, a Surrounding Community Agreement is not reached, then the currently scheduled arbitration process should proceed so that a Surrounding Community Agreement may be achieved. Even though the 30-day negotiation period formally ends on April 22, 2014, the process allows the parties to continue negotiations beyond that date. Maintaining the current schedule without further delay should encourage the parties to focus their efforts on achieving a mutually acceptable agreement to avoid the cost and risk associated with the arbitration process.

Wynn has worked diligently to meet all deadlines set forth by the Commission for the Surrounding Community Arbitration process. Wynn has incurred significant costs to reserve an arbitrator for the specific time period set for arbitration by the Commission. If necessary, Wynn is ready to proceed with arbitrations on April 29, 2014. It would be unfair and unduly prejudicial to Wynn to delay the process at this late date.

Accordingly, Wynn respectfully requests that the Commission deny the City of Chelsea's request to extend the start of the Surrounding Community Arbitration process beyond April 23 and confirm all dates set forth in the Surrounding Community Arbitration process.

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

Stephen Crosby, Chair  
Commissioners Cameron, Zuniga, McHugh and Stebbins  
MASSACHUSETTS GAMING COMMISSION  
April 16, 2014  
Page 3

Sincerely,



Samuel M. Starr

cc: John Ziemba, Massachusetts Gaming Commission  
Stephen P. Tocco, ML Strategies, LLC  
Jennifer Mather McCarthy, Esq., Mintz Levin  
28953838v.1

Before the  
MASSACHUSETTS GAMING COMMISSION

In the Matter of

Request by Mohegan Sun Massachusetts, LLC & the  
Town of Winthrop for a Variance of 205 CMR  
125.01(6)(b) and 205 CMR 125.01(6)(c)

**Introduction**

Mohegan Sun Massachusetts, LLC (“Mohegan Sun”) and the Town of Winthrop (“Town”) hereby petition the Massachusetts Gaming Commission (the “Commission” or “MGC”), for a variance from the regulatory requirements of 205 CMR 125.01(6)(b) (“Section 125.01(6)(b)”) and 205 CMR 125.01(6)(c) (“Section 125.01(6)(c)”) in connection with Mohegan Sun’s RFA-2 gaming license application (the “RFA-2 Application”) for a gaming establishment to be located in Revere. The petition is made pursuant to the Commission’s broad authority to regulate gaming, M.G.L. c. 23K, § 1(10) and the Commission’s regulations regarding waivers of and variances from its regulations, 205 CMR 102.03(4). For the following reasons, the petition should be granted.

**1. Factual Background**

On December 31, 2013, Mohegan Sun submitted an RFA-2 Application to the Commission for a gaming establishment to be located in Revere. In response to Question 5-15 in its RFA-2 Application, Mohegan Sun’s designated the Town as a surrounding community in accordance with 205 CMR 125.01(1)(a). (See Mohegan Sun RFA-2 Application p. 196; See also

Mohegan Sun RFA-2 Response 5-15-04). The Commission issued formal surrounding community determination for the Town at an open meeting on March 20, 2014 and designated the Town as a surrounding community in accordance with 205 CMR 125.01(1)(a). The Commission's designation of the Town as a surrounding community marked the commencement of a 30 day negotiating period during which period Mohegan Sun and the Town must enter into a surrounding community agreement or, if they are unable to enter such an agreement, enter into binding arbitration in accordance with Section 125.01(6)(b) and Section 125.01(6)(c).

Mohegan Sun and the Town have been, and currently are, actively engaged in the negotiation of a surrounding community agreement.

**2. Variance Request**

Mohegan Sun and the Town respectfully request that the Commission grant a variance to the time constraints for negotiating a surrounding community agreement under Section 125.01(6)(b) and Section 125.01(6)(c) and allow Mohegan Sun and the Town to enter the Commission's binding arbitration process on May 1, 2014.

**3. Section 125.01(6)(b) & Section 125.01(6)(c) -- The Provisions as to Which a Variance is Requested**

Mohegan Sun and the Town request that the Commission grant a variance to the requirement of Section 125.01(6)(b), which provides as follows:

125.01(6): Negotiation of a Surrounding Community Agreement after the Applicant has Submitted an RFA-2 Application.

(b) Negotiated Agreement. Pursuant to M.G.L. c. 23K, § 17(a), the applicant shall negotiate a signed agreement with a community within 30 days from the surrounding community determination by the commission in accordance with 205 CMR 125.01(1)(a) or (2). In the event that the applicant and surrounding community cannot reach an agreement within the 30 day period they shall commence the binding arbitration procedure outlined in 205 CMR 125.01(6)(c)...

Additionally, Mohegan Sun and the Town request that the Commission grant a variance to the requirements of Section 125.01(6)(c), which provides as follows:

125.01(6)(c): Binding Arbitration Procedure.

1. The applicant and surrounding community may, by mutual agreement, engage in this binding arbitration procedure at any time after the date the surrounding community determination is made by the commission in accordance with 205 CMR 125.01(1)(a) or 125.01(2). Provided, however, the parties must engage in this binding arbitration procedure if no surrounding community agreement is filed with the commission within 30 days of the date the surrounding community designation is made by the commission in accordance with 205 CMR 125.01(1)(a) or (2).

2. The parties shall file with the commission a notice of intent to commence arbitration prior to selecting an arbitrator.

3. No later than five days after the passage of 30 days since the surrounding community designation is made by the commission in accordance with 125.01(1)(a) or 125.01(2) the parties shall select a neutral, independent arbitrator and submit their best and final offer for a surrounding community agreement pursuant to M.G.L. c. 23K, § 15(9) to the arbitrator and to the other party. If they cannot mutually select such single arbitrator, each party shall select one neutral, independent arbitrator who shall then mutually choose a third neutral, independent arbitrator. In the event that a third neutral, independent arbitrator is not selected within the five day period, the commission or its designee shall select the third neutral, independent arbitrator. The three arbitrators shall preside over the matter and resolve all issues, including the final decision, by majority vote.

4. In conjunction with the filing of its best and final offer submitted in accordance with 205 CMR 125.01(6)(c)3., the applicant shall submit a copy of the surrounding community agreements it has executed with other surrounding communities concerning the applicant's proposed gaming establishment. Either party may submit executed surrounding community agreements from other proposed gaming establishments in the commonwealth which the party considers relevant.

5. The reasonable fees and expenses of the single arbitrator shall be paid by the applicant. In the event that three arbitrators are engaged, two thirds of the reasonable fees and expenses shall be paid by the applicant and one third shall be paid by the surrounding community.

6. Within 20 days after receipt of the parties' submissions under 205 CMR 125.01(6)(c)3., the arbitrator(s) shall conduct any necessary proceedings and file with the commission, and issue to the parties, a report specifying the terms of the surrounding community agreement between the applicant and the community. In

reaching the final decision, the arbitrator(s) shall select the best and final offer of one of the parties and incorporate those terms into the report. The arbitrator(s) may make adjustments to the selected best and final offer only if necessary to ensure that the report is consistent with M.G.L. c. 23K.

7. No later than five days after the issuance of the report of the arbitrator(s) as provided in 205 CMR 125.01(6)(c)6, the parties shall sign a surrounding community agreement and file it with the commission in accordance with M.G.L. c. 23K, § 15(9) and 205 CMR 125.01(3) or the arbitrator's report shall be deemed to be the surrounding community agreement between the parties.

Section 125.01(b)(6) and Section 125.01(6)(c)(1)'s requirement that binding arbitration commence after the expiration of the 30 day negotiation period goes beyond the specific requirements of the Expanded Gaming Act. The statute establishes the 30 day negotiation period and grants the Commission the power to determine how an agreement will be reached after that period expires. M.G.L. c. 23K, § 17(a). The requirement that the applicant and surrounding community immediately enter arbitration is a "protocol and procedure for ensuring the conclusion of a fair and reasonable agreement" that was promulgated by the Commission in accordance with M.G.L. c. 23K, § 17(a). Id.

Similarly, the binding arbitration procedures set forth in Section 125.01(6)(c)(2) *et seq.* and the time constraints contained therein were also promulgated by the Commission to ensure the conclusion of a fair and reasonable surrounding community agreement. The binding arbitration procedures were promulgated by the Commission as part of its regulatory power and are not statutorily mandated procedures.

#### **4. The Requested Variance Meets the Commission's Established Variance Criteria**

The Commission has broad authority to regulate gaming, and its powers "shall be construed as broadly as necessary for the implementation, administration and enforcement of this chapter." M.G.L. c. 23K, § 1(10). The Commission's statutorily authorized regulations permit

the variance of Section 125.01(6)(b) and Section 125.01(6)(c) requested by Mohegan Sun and the Town. To grant the variance, the Commission must find that:

1. Granting the variance is consistent with the purposes of the Expanded Gaming Act;
2. Granting the variance will not interfere with the ability of the Commission or its Investigations and Enforcement Bureau (“IEB” or “Bureau”) to fulfill its duties;
3. Granting the variance will not adversely affect the public interest; and
4. Not granting the variance would cause a substantial hardship to the person requesting the variance.

205 CMR 102.03(4). Each of those conditions is met.

First, granting the variance is consistent with purposes of the Expanded Gaming Act, in particular the overall purpose of providing surrounding communities with the ability to enter into surrounding community agreements to mitigate the potential impacts from the development of a gaming establishment. Simultaneously, it furthers the principle of local control by allowing the Town to enter into a surrounding community agreement with Mohegan Sun outside of a binding arbitration process.

Second, granting the variance will not interfere with the ability of either the Commission or the IEB to fulfill its duties. The Bureau has already recommended to the Commission that Mohegan Sun be found suitable to hold a Massachusetts gaming license. The Commission has accepted that recommendation and found Mohegan Sun suitable. Under the requested variance the Commission can continue to review the Mohegan Sun RFA-2 Application, all in accordance with the Commission’s existing schedule. Furthermore, the Commission has yet to issue a decision on the City of Boston’s status as a host or surrounding community for the Mohegan Sun project and will consider that issue at a public meeting on May 1, 2014. After such hearing the Commission will issue a formal decision and Mohegan Sun will be required to abide by the

timing requirements for the negotiation of an agreement with the City of Boston. That Mohegan Sun and the Town will enter binding arbitration on May 1, 2014 instead of April 23, 2014 will not disrupt the Commission's ability to evaluate Mohegan Sun's RFA-2 Application.

Third, granting the variance will enhance, not adversely affect, the public interest. The public interest is served by allowing Mohegan Sun and the Town to negotiate a surrounding community agreement without entering binding arbitration, as discussed above.


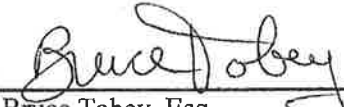
Finally, not granting the variance would cause substantial hardship to those requesting the variance, Mohegan Sun and the Town. Mohegan Sun and the Town have been engaged in thoughtful negotiations and are hopeful of reaching a mutually agreeable surrounding community agreement. Requiring Mohegan Sun and the Town to commence an adversarial binding arbitration process may derail the progress made in negotiations. Additionally, Mohegan Sun and the Town prefer to enter into a surrounding community agreement that they were able to negotiate amicably as opposed to entering into an agreement based upon an arbitrator's decision.

### **Conclusion**

For the reasons stated above, Mohegan Sun and the Town request that the Commission grant a variance to the time constraints of Section 125.01(6)(b) and Section 125.01(6)(c) and allow Mohegan Sun and the Town to continue to negotiate a surrounding community agreement outside of arbitration until May 1, 2014, at which time they agree to enter the Commission's binding arbitration process as provided for in 205 CMR 125.01(6)(c).



Respectfully submitted,

<p>MOHEGAN SUN MASSACHUSETTS, LLC,</p> <p>by its counsel,</p>  <hr/> <p>John A. Stefanini, Esq. DLA Piper LLP (US) 33 Arch Street, 26th Floor Boston MA 02210-1447 617.406.6007 (ph) 617.406.6107 (fax) John.Stefanini@dlapiper.com</p>	<p>THE TOWN OF WINTHROP,</p> <p>by its counsel,</p>  <hr/> <p>Bruce Tobey, Esq. Pannone Lopes Devereaux &amp; West LLC 75 Arlington Street, Suite 500 Boston, MA 02116 914.898.2400 (ph) 914.898.2401 (fax) BTobey@pldw.com</p>
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## MASSACHUSETTS GAMING COMMISSION

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### MEMORANDUM

**To:** Chairman Crosby, Commissioner Cameron, Commissioner McHugh,  
Commissioner Stebbins, Commissioner Zuniga,  
Executive Director Rick Day

**From:** John Ziemba  
Catherine Blue

**Date:** April 16, 2014

**Re:** Region A Arbitration Extension Requests

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The Commission has recently been contacted by several communities regarding the Commission's Region A non-Boston negotiation and arbitration schedule. For example, a joint request by the City of Winthrop and Mohegan Sun to continue a negotiation through May 1, 2014 and a request for a 30 day extension by the City of Somerville are included in the Commission's packet. Under the current non-Boston Region A schedule, the beginning of arbitration starts on April 23<sup>rd</sup>.

While the Commission may need to review the merits of each individual request, the Commission could also consider a more general approach designed to address negotiation and arbitration timing issues. The Commission could consider a variance to its arbitration regulation to provide more flexibility to the arbitration deadlines.

Under one approach, the Commission could determine that communities and applicants that agree an extension is needed could utilize a set number of days, perhaps fourteen (14) calendar days, to further negotiate or to address an arbitration timing constraint. Thus, if a community and an applicant (such as Winthrop and Mohegan Sun) believe that 10 calendar days of additional negotiation would be useful to avoid arbitration, they could use 10 of the 14 calendar days to negotiate. If arbitration is unfortunately still necessary, the parties would utilize the procedures (including the deadlines) in the Commission's regulation to arbitrate the disagreement starting after the 10 day stay period. If the parties encounter an unanticipated difficulty in meeting the Commission's arbitration deadlines, the parties would have the remaining 4 days to use to remedy the difficulty.

Under this more flexible approach, communities and applicants would have more leeway to address issues they may encounter in meeting the Commission's deadlines.



Massachusetts Gaming Commission

Communities and applicants could potentially use some or all of the 14 days to do the following:

1. Stay the Beginning of Arbitration. Applicants and communities are currently required to select an arbitrator or arbitrators and to submit best and final offers no later than 5 days after the passage of the 30 day statutory negotiation period. Under this approach, communities and applicants could extend this 5 day period by some or all of the flexible period of 14 calendar days. Thus, parties could continue to negotiate without having to finalize best and final offers and arbitrators.
2. Extend Arbitrations. Arbitrators are required to conduct arbitrations and issue a report within 20 days after the filing of best and final offers under the Commission's current regulations. Under the more flexible approach, the parties could provide arbitrators with some or all of the additional 14 calendar days to conduct the arbitration and issue the reports.
3. Extend the Post-Arbitration Period. After an arbitration report is finalized by the arbitrator or by the Commission (assuming a petition for fundamental inconsistency with MGL c. 23K), the parties have 5 days to reach a surrounding community agreement or the finalized arbitrator's report shall be deemed to be the surrounding community agreement between the parties. The parties could use some or all of the 14 calendar days to conduct post-arbitration negotiations longer than the 5 days allotted in the Commission's regulation.

In order to utilize the additional days, the requesting party or parties would be required to notify the Commission of the number of additional days no later than the following:

1. Stay the Beginning of Arbitration No later than the day prior to the date for the selection of an arbitrator or arbitrators and the filing of a best and final offer.
2. Extend Arbitrations – No later than 10 days after the selection of an arbitrator or arbitrators and filing of the best and final offer.



Massachusetts Gaming Commission

3. Extend the Post-Arbitration Period – No later than the day after the arbitrator’s report is finalized by the arbitrator or arbitrators or by the Commission.

All extension requests would need to be filed with the General Counsel and the Ombudsman’s Office, which jointly could oversee the coordination of such extensions.

In addition to mutually requested extensions, the Commission could also consider allowing either party an extension for a set number of days, even though the other party objects to such an extension. For example, if the Commission allows 14 days (two weeks) for mutual extensions, it could consider allowing either party to extend a deadline by 7 days (one week).

Under both a mutually requested extension and a non-mutual extension, the Commission could determine that the potential additional days would not be available to delay a Commission hearing or determination on a fundamental inconsistency petition.



Massachusetts Gaming Commission

**4(a) – No documents**



**Plainridge Racecourse**  
**301 Washington Street**  
**Plainville, MA 02762**  
**508.643.2500**

March 14, 2014

Jennifer Durenberger  
Director of Racing  
Commonwealth of Massachusetts  
Gaming Commission / Racing Division  
84 State St., Suite 720  
Boston, MA 02109

Dear Director Durenberger,

Plainridge Racecourse respectfully requests approval of the following key operating personnel and racing officials for 2014;

**KEY OPERATING PERSONNEL**

Stephen K. O'Toole ..... *General Manager*  
Domenic Longobardi ..... *Operations Manager*  
Paul J. Nolan ..... *Director of Security*  
Nancy Baccari ..... *Mutuel Manager*  
Lenny Calderone ..... *Simulcast Director*  
Paula Leuschner ..... *Money Room Manager*  
Brenda Paige ..... *Account Wagering Manager*  
Russel Paige ..... *Facilities Manager*

**RACING OFFICIALS**

Paul Verrette .....*Racing Secretary*

Anthony Salerno .....*Presiding Judge*

AnnMarie Mancini .....*Program / Clerk of Course*

Debra Hardy .....*Horsemen's Bookkeeper*

Frank Dubreuil.....*Paddock Judge / Identifier*

Gerald A. Rocco Jr. ....*Track Superintendent / Starting Car Driver*

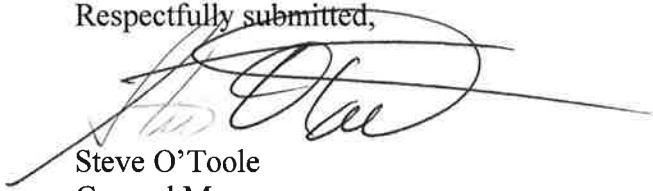
Richard Flanders.....*Starter / Patrol Judge*

Thomas Johnson .....*TV / Timing / Photo Finish*

Lenny Calderone.....*Announcer / PR Director*

Dr. Michael Duggan .....*Track Veterinarian*

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steve O'Toole", written over a light grey circular stamp or watermark.

Steve O'Toole  
General Manager



Plainridge Racecourse  
301 Washington Street  
Plainville, MA 02762  
508.643.2500

April 7, 2014

Jennifer Durenberger  
Director of Racing  
Commonwealth of Massachusetts  
Gaming Commission / Racing Division  
84 State St., Suite 720  
Boston, MA 02109

Dear Director Durenberger,

Plainridge Racecourse respectfully requests the removal of Frank Dubreuil from the previous racing officials request.

Plainridge Racecourse respectfully requests the approval of the following racing officials for 2014;

Gregory P. Brewster .....*Paddock Judge*  
10 Mustang Ave.  
Marlborough, MA 01752

Robert Lieberman. ....*Identifier*  
60 Neponset St.  
Norwood, MA 02062

Mr. Brewster and Mr. Lieberman hold USTA Paddock Judge licenses and are qualified to perform the duties of Paddock Judge and Identifier.

Respectfully submitted,

  
Steve O'Toole  
General Manager





*Division of Racing*

**To:** Commissioners

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

**Date:** 17 April, 2014

**Recommendation regarding split sample laboratories for 2014**

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As part of the Gaming Commission's new regulatory structure, 205 CMR 3.32(3) and 205 CMR 4.55(3) provide licensed trainers with the ability to send a split sample to a Commission-approved referee laboratory for testing in the event of an alleged medication violation.

The following four laboratories have agreed to work with the Commission to provide split sample testing services for the 2043 season. Each lab is both ISO-17025 accredited and either currently undergoing or already accredited by the Racing and Medication Testing Consortium's (RMTC) accreditation process:

- HFL Sport Science (Lexington, KY)
- Industrial Laboratories (Wheat Ridge, CO)
- Ohio Analytical Toxicology Laboratory (Reynoldsburg, OH)
- University of California-Davis Equine Analytical Chemistry Laboratory (Davis, CA)

**Recommendation:** That the Commission approve these four laboratories to provide split sample equine drug testing services for 2014.



Massachusetts Gaming Commission



*Division of Racing*

## *Horses first.* That's how our Racing Division staff is trained.

It sounds simple, but what starts as a simple premise goes to the core of our industry. Happy, healthy horses perform to the best of their ability. They run truer to form for our pari-mutuel customers, they maximize return on investment for their breeders and owners, they help create a safer training and racing environment for those who work around them, and they retire from the racetrack to productive second careers.

Ensuring the happiness and healthiness of our equine athletes is a big job, and it's where our knowledge about welfare and science intersects. The Racing Division's veterinary program is among the most comprehensive in the country. We use science and regulation to help us document and maintain the healthiness of our racehorses, and we're not afraid to step in if intervention becomes necessary. But that's not enough.

Equine welfare, by definition, addresses psychological as well as physiological well-being. Psychological well-being is dependent largely on housing, nutrition, health care, environment, and handling. While the Racing Division is committed to ensuring the happiness of our racehorses, we must rely heavily on their caregivers for this task.

The Racing Division of the Massachusetts Gaming Commission is proud to partner with our hard-working, dedicated horsemen and women and our racetrack operators for another successful year of live racing in the commonwealth. We take very seriously our shared role as stewards of our industry, and we know you do, too. Together, we must hold each other accountable for putting the horse first in everything we do.

Because when we do right by the horse, all the rest follows.



Massachusetts Gaming Commission

## **Appendix B**

### **Welfare Codes, Principles and Guidelines**

#### **International Group of Specialist Racing Veterinarians Welfare Guidelines**

#### **Standardbred Canada Horse Welfare Statement**

#### **International Federation of Horse Racing Authorities Welfare Principles**

#### **American Horse Council Welfare Code of Practice**

# **INTERNATIONAL GROUP OF SPECIALIST RACING VETERINARIANS (IGSRV)**

## ***WELFARE GUIDELINES FOR HORSERACING***

### **INTRODUCTION**

The *International Group of Specialist Racing Veterinarians (IGSRV)* encourages those involved in Horseracing to act responsibly towards horses engaged in the sport. At all times the welfare of the horse remains paramount and should never be subordinated to competitive or commercial influences.

These *Welfare Guidelines for Horseracing* have been produced by the IGSRV to assist individual racing jurisdictions.

These Guidelines may be modified from time to time and the views of anyone interested in horse welfare are welcomed. Particular attention will be paid to new research findings, and the IGSRV encourages further funding and support for welfare studies.

## **WELFARE GUIDELINES FOR HORSERACING**

- 1. At all stages during the preparation and presentation of horses for racing their welfare should take precedence over all other demands.**

### **Good horsemanship**

The housing, feeding and training of racehorses should be compatible with good horsemanship and must not compromise their welfare. Any practices which cause physical or mental suffering, whether in stables, training or racing, should not be tolerated.

### **Training methods**

Training methods which cause fear or impose undue restrictions on the normal behaviour of racehorses should not be used. Horses should only be given training schedules which match their physical capabilities and level of maturity. They should not be subjected to programmes for which they have not been properly prepared.

### **Shoeing**

Horse shoes should be designed and fitted to minimise the risk of injury.

### **Transport**

During transport to and from training grounds and racecourse, full attention should be paid to protecting horses against injuries and other health risks. Vehicles should be well ventilated and regularly maintained and disinfected.

### **Rest Periods**

Long journeys should be planned carefully and horses allowed regular rest periods and access to water. Respiratory problems can often be reduced if horses are able to lower their heads to floor level during rest periods.

## **WELFARE GUIDELINES FOR HORSERACING**

- 2. Horses should be in a fit and healthy condition before being allowed to compete.**

### **Veterinary inspections**

No horse showing symptoms of disease, lameness or other ailment should be raced when to do so would be against its best interests. Whenever there is any doubt, a veterinary inspection should be requested and this should be undertaken before the horse is allowed to race.

### **Immaturity**

Horses mature at widely different rates. Training and racing schedules should be carefully planned to minimise the risk of musculo-skeletal injuries.

### **Surgical procedures**

Any surgical procedures which threaten a horse's welfare, the safety of other horses and riders should not be allowed in racing.

### **Severe or Recurrent Clinical Conditions**

Horses with severe or recurrent clinical conditions, e.g. "bleeders" should, on veterinary advice, be temporarily or permanently excluded from racing.

### **Pregnant Mares**

Mares should not be raced beyond 120 days of pregnancy.

## **WELFARE GUIDELINES FOR HORSERACING**

### **3. Conditions at race meetings should not prejudice horse welfare.**

#### **Surface conditions**

Race tracks and racing surfaces should be designed and maintained to reduce risk factors which lead to injuries. Particular attention should be paid to crossings, uneven racing surfaces and extremes of surface quality.

#### **Steeplechasing and hurdling**

Participation in these races should be restricted to horses with demonstrated jumping ability. Weights to be carried, race distance, number, size and design of fences should all be carefully assessed when planning these races.

#### **Extreme weather**

Common sense should be used when racing in extreme weather. Provision should be made to cool horses quickly after racing in hot and/or humid conditions. Horses which have raced in cold weather should be moved inside as soon as possible.

#### **Misuse of the whip**

Abuse of the whip cannot be condoned, for example, to make a beaten horse run faster, or if a horse is unable to respond, or if a horse is clearly winning. Any post-race whip weals clearly indicate injury.

#### **Medication**

After any veterinary treatment, time should be allowed for full recovery before competition. The main purpose of rules controlling the use of drugs should be to protect the welfare of the horse and the safety of riders. Additionally, these rules should prevent unfair competition and the masking of defects which might be passed on at stud.

#### **Racecourse stabling**

Racecourse stabling should be safe, hygienic, comfortable and well-ventilated. Horses should be able to lie down in comfort without risk of injury. Fresh drinking water, and washing-down water should always be available.

#### **Starting gates/barriers**

Horses should be adequately prepared so as to be familiar with loading procedures. Barriers should be properly designed and safe. Aids to loading should be limited to encouraging a horse without causing alarm or fear.

## **WELFARE GUIDELINES FOR HORSERACING**

- 4. Every effort should be made to ensure that horses receive proper attention after they have raced, and that they are treated humanely when their racing careers are over.**

### **Veterinary treatment**

When a horse is injured during a race, jockeys should dismount and the horse should be collected by ambulance whenever necessary. Veterinary expertise should always be available on the racecourse. If required the horse should be transported to the nearest referral centre for further assessment and therapy. Injured horses should be given full supportive treatment before transport.

### **Racing injuries**

The incidence of injuries sustained in racing and training should be monitored. Track conditions, frequency of racing, immaturity, and any other risk factors, should be carefully examined to indicate ways to minimise severe injuries.

### **Euthanasia**

If injuries are sufficiently severe the horse may need to be destroyed on humane grounds. Euthanasia should be undertaken as soon as possible with the sole aim of minimising suffering.

### **Retirement**

Owners should make every effort to ensure that their horses are sympathetically and humanely treated when they leave racing. Racehorses should be permanently identified and registered, so that their welfare in retirement can be monitored.

Andrew Higgins (UK)  
Ron Jensen (USA)  
Peter Symons (Australia)  
Barry Williams (UK)





Published on Standardbred Canada (<http://www.standardbredcanada.ca>)

## Horse Welfare Statement

As a member of Standardbred Canada, it is your right and your responsibility to uphold the welfare, regardless of value, of horses you own or use or have in your care, and to ensure they are not subjected to abuse, neglect or mistreatment. STANDARDBRED CANADA is committed to:

- Upholding the welfare of horses, regardless of value, as a primary consideration in all activities.
- Requiring that horses be treated with kindness, respect and the compassion they deserve, and that they never be subjected to mistreatment.
- Ensuring that owners, trainers, drivers and their agents use responsible care in the handling, treatment and transportation of their horses, as well as horses placed in their care for any purpose.
- Providing for the continuous well-being of horses by encouraging routine inspection and consultation with health care professionals and competition/industry officials to achieve the highest possible standards of nutrition, health, comfort, sanitation and safety a matter of standard operating procedure.
- Continuing to support scientific studies on equine health and welfare.
- Increasing education in training and horsemanship practices.
- Requiring owners, trainers, drivers and grooms to know and follow their sanctioning organization's rules and to work within industry regulations in all equine activities and businesses.
- Reviewing, revising and developing rules and regulations that protect the welfare of horses.
- The standard by which conduct or treatment will be measured is that which a reasonable person, informed and experienced in generally accepted equine practices, would determine to be neither cruel, abusive nor inhumane.

## Animal Welfare & Standards

Standardbred Canada is dedicated to the humane treatment and welfare of horses. The cruel, abusive or inhumane treatment of a horse by any owner, trainer, driver, groom or other person must not be tolerated anywhere, under any circumstances.

- Cruelty can be defined as intentionally causing pain or unnecessary discomfort to a horse. The standard by which such conduct or treatment will be measured, is that which a reasonable person, informed and experienced in generally accepted training and racing procedures, would determine to be cruel, excessive or inhumane.
- Cruelty to a racehorse in competition must not be tolerated. Racetracks may consider further action such as prohibiting violators from further participation in racing. It is recommended every racetrack publish a statement in its program regarding its position on the abuse of horses and its commitment to the humane treatment and welfare of horses, with the penalties to be imposed for confirmed abuse of horses at the racetrack.

## Codes of Practice

Standardbred Canada endorses the Recommended Codes of Practice for the Care and Handling of Equines published by the National Farm Animal Care Council and can be accessed by clicking [here](#) or by visiting [www.nfacc.ca](http://www.nfacc.ca).

# International Federation of Horseracing Authorities

## INTERNATIONAL AGREEMENT ON BREEDING, RACING AND WAGERING

### RACE HORSE WELFARE

The IFHA, in its role to promote good regulation and best practices internationally across horseracing, recognises the central role played by the horse itself and so the importance of its welfare. The Federation, recognising the diversity of cultural, political and legislative and other perspectives that underpin approaches to animal welfare around the world, has therefore adopted a number of broad principles of racehorse welfare that would be implemented by the Federation's members into detailed local outputs to assure racehorse welfare :

#### **Principles :**

1. Cruelty to racehorses is not tolerated by Horseracing Authorities.
2. Horseracing Authorities by implementing, publishing, monitoring and enforcing appropriate policies, Rules and by other activities, in so far as this is in their direct or indirect control, should assure that the participants in horseracing themselves meet their responsibilities to provide suitable care for the racehorse before, during and also after racing.
3. Reasonable steps should be taken to prevent unnecessary pain and distress of racehorses by ensuring adequate care, a suitable diet, the ability to exhibit normal behaviour, appropriate housing, controlling practices and therapies used in racing and training, and by protection from injury and disease.
4. In the context of these responsibilities of participants in horseracing for racehorse care it is recognised that properly conducted euthanasia can be a humane option for racehorses ; for example for individual horses with severe acute or severe chronic injuries, or where care would be inadequate, and where therefore pain and distress is likely to be the result.
5. Whilst horseracing carries risks, reasonable steps should be taken to prevent avoidable risks and research ways of reducing the risks that are currently unavoidable, and to share this information between Horseracing Authorities and participants in horseracing.



## NATIONAL WELFARE CODE OF PRACTICE

### Welfare Code of Practice American Horse Council

#### Introduction

American society has grown away from its agrarian roots of only a few generations ago. The horse, which was once a staple of American agriculture and general transportation, is now used primarily for breeding, competition, sport, recreation and entertainment, although there are still many horses used for work on farms and ranches, and in urban areas and exhibitions.

The horse industry is committed to the safety, health, care and welfare of all horses and to always “Put the Horse First.”

We address equine welfare and responsible care (1) by supporting a uniform Code of Practice regarding the responsible breeding, training, competing, care, use, enjoyment, health, transportation, and retirement of horses; and (2) by initiating communication with the public, the media, federal and state officials and within the horse community regarding these issues.

#### Our Commitment to all Horses and the Horse Industry

*WE ARE COMMITTED* to the dignity, humane care, health, safety and welfare of horses in all our activities and care. These are our highest priorities. We are the stewards of our horses and must be firm in the standards and practices that guide us. Our first principle is:

The welfare, safety and stewardship of the horse is the guiding principle in the decision-making process for all segments for the horse industry.

*WE ARE COMMITTED* to promoting responsible breeding practices and to produce better horses, not just more horses.

*WE ARE COMMITTED* to responsible training techniques. All training should be done with the maturation and ability of the horse considered. Horses should be prepared for competition with proper training and conditioning methods. Excessive disciplining methods, whether in stables, training areas, or during competition, will not be tolerated.

*WE ARE COMMITTED* to educating owners, trainers, veterinarians, competitors, exhibitors and recreational riders to ensure that they know and respect their horse’s abilities and limits, and their own, so as to not push the horse or themselves beyond their ability level.

*WE ARE COMMITTED* to making all competitions fair and ensuring all competitors an equal opportunity to succeed. Performance-enhancing drugs, practices or equipment have no place in competitions or exhibitions. Effective drug testing by accredited laboratories is essential to the safety and welfare of our horses and the public support of competitions, with appropriate penalties levied for violations. The welfare of the horse must take precedence over the demands or expectations of owners, breeders, trainers, sellers, buyers, organizers, sponsors, officials, or spectators.

*WE ARE COMMITTED* to the welfare of the horse as paramount during competition. The horse industry should invest in the infrastructure, environment and facilities to provide a safe environment for all horses in all activities, whether breeding, competing, or simply riding. Any facilities that house horses should be committed to the appropriate care and treatment of all horses while in their facility, and should be designed with the environment and the intended use of the horse in mind.

*WE ARE COMMITTED* to minimizing injuries to horses during training, competition, use, or work. Whenever possible injury data should be collected, documented and reported to the governing body of the competition or any other injury database for analysis in order to ensure a safer environment.

*WE ARE COMMITTED* to the continual review, evaluation and improvement of all rules, regulations, policies and practices in all equine activities, based on science (where indicated). When warranted, they should be refined or changed. This includes existing practices to ensure they are not being perceived as acceptable, particularly if new research has called them into question.

*WE ARE COMMITTED* to providing continuing education on all activities involving horses and eliminate inhumane practices as well as strengthening sanctions for non-compliance.

*WE ARE COMMITTED* to educating all people who own or work with horses to ensure they are knowledgeable in the proper husbandry, care, and handling of horses. Each horse should be observed frequently to ensure that they are healthy. In consultation with a veterinarian, all such individuals should develop a sound health care program, appropriate to the facilities, environment and needs of the horses.

*WE ARE COMMITTED* to providing an environment in which anyone aware of equine cruelty or neglect is willing to report it to the proper local, state or federal authorities. Should an incident occur at an event it should be reported to judges, stewards, responsible authorities or the sanctioning organization.

*WE ARE COMMITTED* to improving the health and welfare of horses through scientific research, collaboration, advocacy and the development of appropriate rules. The industry should continue to support and work with the many individuals, universities, veterinarians and foundations doing and funding equine health and welfare research in order to reduce injuries and improve health.

*WE ARE COMMITTED* to horse owners and caretakers ensuring horses in their care are current on vaccinations and following best practices to minimize infection and disease. When a disease outbreak occurs horse owners and events must act quickly and responsibly, monitor the horses, report the outbreak to, and cooperate with, veterinarians, authorities, facility management and all stakeholders to bring a rapid resolution to the outbreak.

*WE ARE COMMITTED* to ensuring that our horses will have an opportunity to transition to additional careers, uses or activities as the need arises. When necessary, owners and veterinarians may have to consider end-of-life decisions. The welfare, safety and dignity of the horse must continue to be the guiding principle in deciding how and when to provide a humane death.

*WE ARE COMMITTED* to being transparent about our activities in order to ensure the public, the media, federal, state and local officials and the various segments of the horse community understand what we do, why we do it, and support it.



## National Welfare Code of Practice

Submitted by admin on Thu, 02/02/2012 - 17:54

In the summer of 2009, the AHC hosted the "The Welfare of the Horse" forum in Washington, DC. as part of the AHC's National Issues Forum. The Forum featured speakers from segments of the horse community as varied as competition, sport, work and entertainment. Speakers and panelists discussed the many welfare and safety initiatives that various segments of the horse industry have in place or are instituting.

Many associations have undertaken studies, reviews, and initiatives that indicate their commitment to the welfare of their horses. The Welfare Code of Practice is simply a continuation of that effort and is not intended to replace or pre-empt those activities or any rules and regulations specific to a particular segment of the industry.

### Background

The AHC drafted the [Welfare Code of Practice \(/sites/default/files/AHC%20Welfare%20Code%20of%20Practice.pdf\)](#) in fall of 2009. The Code outlines in generic terms what it means for an organization to be committed to the responsible breeding, training, care, use, enjoyment, transport and retirement of horses.

Organizations supporting the Code address equine welfare and responsible care: (1) by supporting a uniform Code of Practice regarding the responsible breeding, training, competing, care, use, enjoyment, health, transportation, and retirement of horses; and (2) by initiating communication with the public, the media, federal and state officials and within the horse community regarding these issues.

### National Endorsements of the Welfare Code of Practice

Currently, the [AHC's Welfare Code of Practice \(/sites/default/files/AHC%20Welfare%20Code%20of%20Practice.pdf\)](#) has been adopted by forty-eight (48) different national groups. They include:

- American Association of Equine Practitioners
- American Association of Professional Farriers
- American Competitive Trail Horse Association
- American Endurance Ride Conference
- American Paint Horse Association
- American Quarter Horse Association
- American Riding Instructors Association
- American Saddlebred Horse Association
- American Warmblood Registry
- Appaloosa Horse Club
- Arabian Horse Association
- California Professional Horsemen's Association
- Canadian Association of Professional Farriers
- Certified Horsemanship Association
- Equine Assisted Growth and Learning Association (EAGALA)
- EQUUS Foundation, Inc.
- Florida Thoroughbred Breeder's and Owner's Association
- Harness Horsemen International
- HorseSafetyUSA.com
- International Walking Horse Association
- Kansas Horse Council
- Kentucky Horse Council
- Kentucky Thoroughbred Association
- League of Agricultural and Equine Centers
- Maryland Horse Council
- Masters of Foxhounds Association
- Michigan Horse Council
- Minnesota Horse Council
- Missouri Quarter Horse Association
- National Cutting Horse Association
- National Reined Cow Horse Association
- National Thoroughbred Racing Association
- National Walking Horse Association
- North American Short Pony Registry
- North American Trail Ride Conference
- Pal-O-Mine Equestrian Center

- Pennsylvania Equine Council
- Professional Association of Therapeutic Horsemanship (PATH) International
- Pinto Horse Association of America
- The Pyramid Society
- Tennessee Walking Horse Breeders & Exhibitors Association
- Texas Quarter Horse Association
- Thoroughbred Owners and Breeders Association
- U.S. Dressage Federation
- U.S. Eventing Association
- U.S. Equestrian Drill Team
- U.S. Equestrian Federation
- U.S. Trotting Association

**AHC Position**

The AHC encourages all members of the equine industry to support and endorse the Welfare Code of Practice as yet another indication to the public, the media, federal and state officials and the horse community that the industry "Puts the Horse First."

[View AHC's National Welfare Code of Practice Here \(/sites/default/files/AHC%20Welfare%20Code%20of%20Practice.pdf\)](http://www.horsecouncil.org/sites/default/files/AHC%20Welfare%20Code%20of%20Practice.pdf)

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# Racing Regulatory Compact

## A Needed Reform



### Adapting to Change.

In September, 2009 a group of racing leaders formed a "Steering Committee" to develop a proposal to adapt the regulation of racing to the changes that have transformed racing in the United States from a highly localized sport based entirely on live racing into a borderless, digital, global industry.

The individuals involved with this process contributed different perspectives to the discussions: track management, horsemen, regulators, owners and breeders, thoroughbred and standardbred.

The reform proposal, developed with expert assistance from the Council of States Governments, is to create an interstate Racing Regulatory Compact (RRC) to provide a truly national approach to racing regulation.

This site is a resource of information about this proposal and effort.

[Background](#)



# Background

Over the past three decades, United States horseracing has evolved from a highly localized sport based entirely on live racing into a borderless, digital, global industry.

With pari-mutuel wagering as its economic underpinning, the racing segment of the United States horse industry generates \$26.1 billion in economic impacts to the U.S. economy on an annual basis. Eighty percent (\$20.8 billion) of those impacts derive from Thoroughbred horseracing.

Racing sustains 146,600 direct jobs, provides 383,800 total jobs and utilizes more than 800,000 horses.

Pari-mutuel wagering on horseracing generates more than \$200 million annually for state and local governments.

[Size and Scope of Horseracing](#)

[Gambling Policy on Pari-Mutuel Racing](#)

[Current Regulatory Environment](#)

## Size and Scope of Horseracing

Horse racing takes place at more than 400 tracks in the U.S., with Thoroughbreds, Quarter Horses and Standardbreds the primary racing breeds. Pari-mutuel wagering on horse racing is authorized at bricks-and-mortar facilities, several hundred off-track betting facilities (OTBs) nationwide and on the Internet as authorized by the Interstate Horseracing Act (IHA).

The horse racing industry distributes its races via closed-loop simulcasts to racetracks and OTBs and via network television. The industry's two primary television-based distribution platforms are TVG and HRTV. Racetracks themselves produce the majority of horse racing content and distribute it among their individual simulcasting networks – alliances of racetracks, OTBs and other sites that show live racing.

Since 2000, when Internet wagering on horse racing began, the racing industry has invested substantially in a technological infrastructure to support online wagering. TVG and TwinSpires are the two largest processors of online wagering in the U.S. The majority of these Advance Deposit Wagering (ADW) service providers are licensed and hubbed in the State of Oregon. Collectively, ADW accounts for approximately \$1.65 billion in annual pari-mutuel wagering (also called "handle") on all forms of horse racing, or about 14 percent of the \$12.2 billion wagered annually on horse racing as of 2009. Live racing accounts for about \$1.2 billion in handle with simulcasting accounting for the remainder.

With hundreds of daily races being run year-round from coast-to-coast, horseracing is a far-flung enterprise that depends on the interstate movement of hundreds of thousands of horses. Racing stables move from race meet to race meet and horses move between states via air and road transportation on a regular basis. Each horse has a unique pedigree and racing record, generating an enormous amount of digital data owned and shared by industry stakeholder groups and disseminated globally to horse racing's consumers.

Additionally, U.S. racing has tens of thousands of licensed trainers, jockeys, drivers, owners, veterinarians, track employees, racing officials and other professionals who move regularly between race meets and tracks. The domestic horse industry is augmented by an international contingent of horse men and women who buy, breed, train and race horses in the United States, ship horses to foreign countries for racing or breeding or import their foreign-based runners to the U.S. for racing or breeding. With racehorse buyers coming to the U.S. from more than 40 countries and exports of U.S. horses to many countries, the U.S. horse racing industry has a strong international component.

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## Gambling Policy on Pari-Mutuel Racing

In the United States, gambling law and policy are generally determined at the state level. In the vast majority of states, gambling is strictly prohibited except at specific, highly regulated locations and even then under strict limits as to hours of operation and occasionally even amount wagered. The oldest exception to the general prohibition against gambling is the right to conduct pari-mutuel wagering on horseracing.

Thirty-eight of the 50 states currently allow for pari-mutuel horseracing. Most of these states legalized and began taxing horseracing in the years immediately following the Great Depression as a way to fund government services. The state-by-state emergence of pari-mutuel horseracing and the autonomy that each state maintains over gambling within its borders explain why the U.S. lacks a central national authority to regulate horseracing. States generally regulate horseracing through state racing commissions, whose regulators are part of an industry trade association known as the Association of Racing Commissioners International (RCI).

A federal statute, the Interstate Horseracing Act (IHA) of 1978, grants to horseracing the unique right to conduct wagering between states via simulcasting as well as by "electronic" means such as the telephone and the Internet so long as pari-mutuel wagering is legal and regulated in both states involved. To assure a fair return to tracks and horsemen sending their live racing product in the simulcasting market, the IHA mandates that a number of consents be obtained in connection with all interstate wagers including the consent of: (1) the racetrack where the race is being run, (2) the horsemen racing at that racetrack, (3) the state regulator in the state where the race is being run, and (4) the state regulator in the state where the wager is placed.

The legal effect of these consents is the achievement of a high degree of protection for the intellectual property rights of the tracks and horsemen – no consent means not just a violation of important property rights but a violation of federal criminal law.

This legal right to conduct interstate wagering via electronic means currently does not extend to any other form of wagering. Sports betting is largely confined to Las Vegas; poker and other casino games are limited to state-licensed brick-and-mortar facilities; and lotteries are generally prohibited from sales online. Native American gaming is restricted to tribal lands. Thus, in the U.S., horseracing enjoys a unique right to conduct online and interstate wagering.

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## Current Regulatory Environment

Regulation of pari-mutuel horse racing is overseen by a racing commission (or similar state agency) in every state where authorized.

The Association of Racing Commissioners International (RCI) Model Rule Book contains rules that result from industry consensus; however, there is no mechanism to enact model rules quickly or simultaneously in every jurisdiction.

Coupled with the ability of tracks to enact "house rules" that pertain solely to races conducted at their facilities, the result is potentially different "rule books" at each race track in the United States.

These variations impact decisions by owners and trainers whether to race in a particular jurisdiction. They also impact public perceptions of horseracing, which is unfavorably compared to national league sports that operate under one rule book.

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# The Road to National Governance

## How Can Racing Achieve National Governance?

In the absence of a central authority such as sports league structure or a federal legislative apparatus, even an industry as decentralized, complex and interdependent as horseracing can effectively act as a single unit.

Article I, Section 10 of the United States Constitution recognizes that states may enter into legal agreements concerning the regulation of matters that transcend individual state boundaries. Such "interstate compacts" foster interstate cooperation through uniform legislation among the participating states while preserving each state's autonomy over local issues.

Interstate compacts are managed by a special government agency that is usually referred to as "the compact." This agency's responsibility is to further the goals of the interstate compact. Generally, each state entering into a compact will appoint representatives who will each have a single vote concerning the compact's activities. The compact's officers are chosen from among the representatives of each participating state.

Virtually every state participates in at least one compact and the compact concept has existed for decades. Interstate compacts exist to address issues ranging from waterway management to public safety, education and welfare. [[CSG Center for Interstate Compacts](#)]

One such compact is the [National Licensing Compact \(NLC\)](#), founded in 2000 to support uniform licensing requirements for participants in pari-mutuel racing. Fifteen states participate in the NLC directly, with nine states plus Ontario offering licensing reciprocity.

After a decade of operations, the NLC has demonstrated the value of regulatory harmonization for licensing and encouraged discussions about the use of a compact to make rules and regulations more consistent between pari-mutuel racing jurisdictions.

Racing Regulatory Compact  
Benefits

# Racing Regulatory Compact (RRC)

Supporters of a new regulatory compact for pari-mutuel racing have drafted and secured introduction of a model bill - [2011\\_02\\_10\\_Compact\\_Model\\_Bill\\_.pdf](#) - to establish a Racing Regulatory Compact (RRC).

The RRC's purpose is fourfold:

- 1) Provide a national structure for industry self governance;
- 2) Reduce states' regulatory burdens and costs;
- 3) Promote regulatory uniformity; and
- 4) Lessen administrative burdens and compliance costs for industry participants.

The RRC will use the existing powers of participating states to reorganize how certain regulatory decisions are made. RRC achieves a streamlined decision-making process without creating additional layers of bureaucracy within state racing commissions or the Association of Racing Commissioners International (RCI), the national organization for racing regulators.

The RRC is a centralized forum for regulators from participating states and industry stakeholders to propose, debate and modify racing rules with the ultimate goal of securing simultaneous adoption of the rules in participating states. The process is consensus-driven and designed to allow all horse racing industry groups to be involved in the rule-making process and to have their positions heard and considered. Only when there is a consensus among the state regulators and industry stakeholders to propose the same rule in all states does a rule undergo standard rule-making procedures in each state. Participation in the RRC is voluntary. A state need not participate and is not bound by any rule it does not vote to adopt. In addition, the individual state racing commissions will still follow the laws and enforce the rules within their respective states. RRC will not usurp legislative authority or create broad authority for any state racing commission.

Importantly, RRC respects industry protocols for recognizing and delegating rule-making authority among stakeholder groups. RRC will not allocate rule-making authority to new stakeholders with no standing, or re-allocate rule-making authority among existing industry stakeholders within the current regulatory mechanism.

A state racing commission may only adopt a rule through the RRC if it is already authorized to adopt a corresponding state rule. Said another way, the RRC does not create a "parallel universe" of rules that differ from those on a state's books. It is simply a mechanism to adopt rules. All of the state laws that currently define a state racing commission's scope of authority and all current statutory directives (e.g., race dates, types of wagers, license criteria) will continue to apply and govern the regulation of racing and wagering within each state.

In summary, the Racing Regulatory Compact:

- Creates a forum for regulators and industry stakeholders to reach consensus on rules;
- Provides a mechanism for rapid, concerted action when a consensus is reached; and
- Serves as a platform for uniform rules of racing.

# Benefits

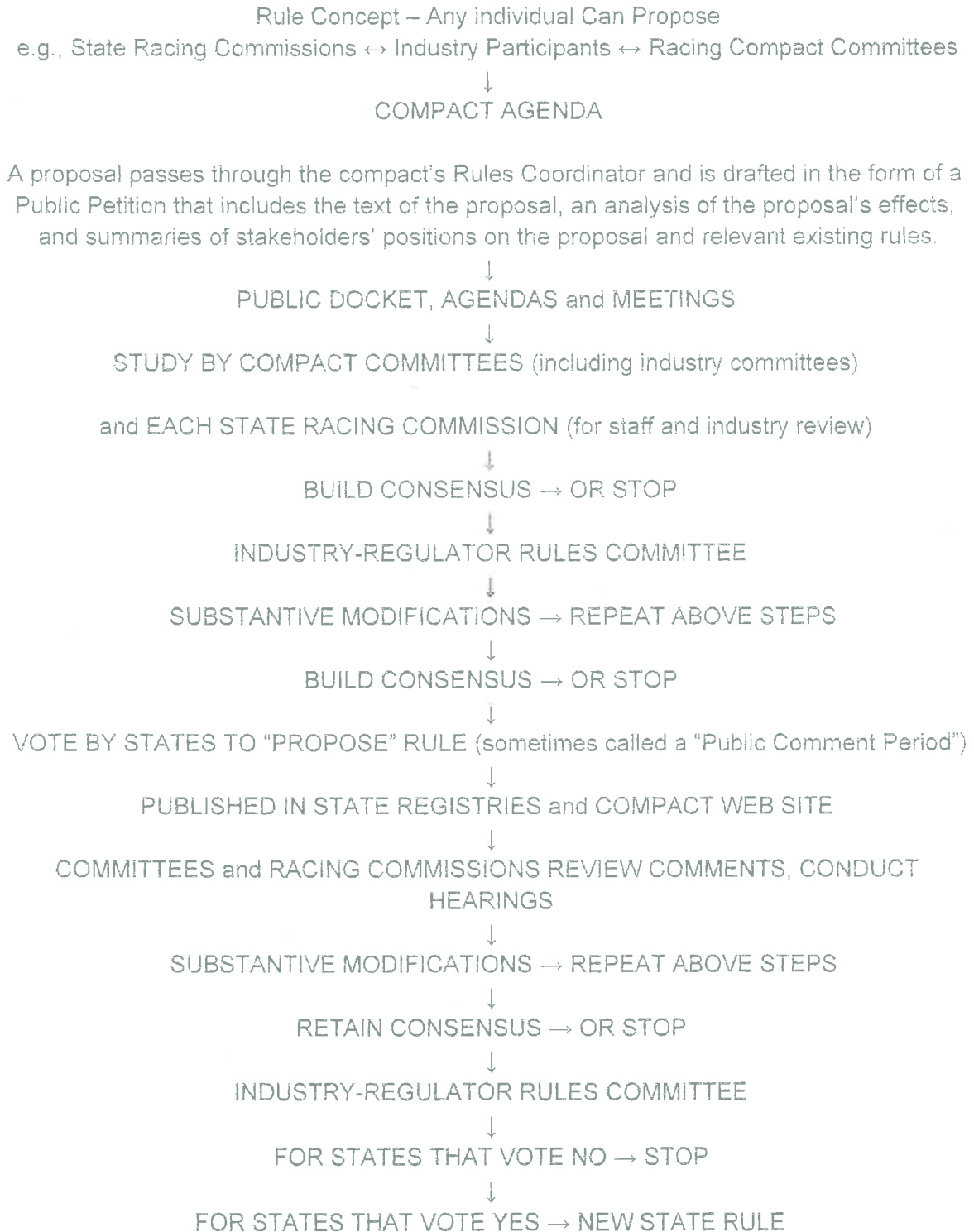
## Benefits of the Racing Regulatory Compact (RRC):

- RRC's rule-making process depends upon collaboration and consensus. Industry stakeholders have ample opportunities for input and deliberation.
- RRC requires a state's consent to a rule before it becomes applicable within that state's borders—each participating state's interests are protected.
- RRC will produce a more uniform regulatory landscape for pari-mutuel horseracing.
- Industry stakeholders and regulatory authorities continue to retain full control, authority, rights to participate and/or established protections to engage and influence the rule-making and rule-adoption process.
- RRC facilitates timely, simultaneous implementation of rules across jurisdictions.
- RRC creates opportunities for pooling and strategic deployment of resources by racing's regulatory authorities, leading to economies of scale and streamlining of regulatory processes.

[BACK](#)



# Rulemaking Flow Chart



# Model Legislation for a National Racing Regulatory Entity.

## New Interstate Compact to Facilitate State Regulation of Racing and Wagering.

A Project of Racing Commissioners International  
in conjunction with the  
Council of State Governments  
and an  
Advisory Steering Committee  
comprised of representatives from  
The National Thoroughbred Racing Association,  
The Jockey Club,  
The National Horseman's Protection and Benevolent Association,  
United States Trotting Association, and  
Keeneland.

### **Compact Project Leader:**

Rick Goodell, Esq  
Assistant Counsel,  
New York State Racing and Wagering Board

**Modified: February 10, 2011**

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## **Interstate Racing and Wagering Compact**

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### **Article I**

#### **Purpose**

The purposes of this compact are:

- A. To enable member states to act jointly and cooperatively to create more uniform, effective, and efficient practices, programs, rules and regulations relating to live pari-mutuel horse or greyhound racing and to pari-mutuel wagering activities, both on-track and off-track, that occur in or affect a member state;
- B. To facilitate the health and growth of the industry by simplifying the process of participating in live horse and greyhound racing and pari-mutuel wagering, improving the quality and integrity of racing and wagering, more effectively regulating simulcast and wagering systems and activities, and through cooperative action reducing the costs incurred by each member state or participant;
- C. To authorize the state racing commission to participate in this compact;
- D. To permit officials from the member states to participate in this compact and, through the compact commission established by this compact, to enter into contracts with governmental agencies and other persons to carry out the purposes of this compact; and
- E. To establish the compact commission created by this compact as an interstate governmental entity duly authorized to request and to receive criminal history record information from the Federal Bureau of Investigation and from state, local, and foreign law enforcement agencies.

**Article II**  
**Definitions**

For the purposes of this article, the following terms shall have the following meaning:

- A. "Commissioner" means the chairperson of the member state racing commission, or such person's designee, who represents the member state as a voting member of the compact commission and anyone who is serving as such person's alternate;
- B. "Compact commission" means the organization of officials from the member states that is authorized and empowered by this compact to carry out the purposes of this compact;
- C. "Compact rule" means a rule or regulation adopted by a member state through the compact to govern, for two or more member states, any part of live pari-mutuel horse and greyhound racing or pari-mutuel wagering activities, whether on-track or off-track, that occur in or affect such states;
- D. "Live racing" means live horse or greyhound racing with pari-mutuel wagering;
- E. "Member state" means each state that has enacted this compact;
- F. "National industry stakeholder" means a non-governmental organization that the compact commission determines from a national perspective significantly represents one or more categories of participants in live racing and pari-mutuel wagering;
- G. "Participants in live racing and pari-mutuel wagering" means all persons who participate in, operate, provide industry services for, or are involved with live racing and pari-mutuel wagering;

- H. "State" means each of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and each territory or possession of the United States; and
- I. "State racing commission" means the state racing commission, or its equivalent, in each member state. Where a member state has more than one, it shall mean all such racing commissions, or their equivalents.

### **Article III**

#### **Composition and Meetings of Compact Commission**

The member states shall create and participate in a compact commission as follows:

- A. This compact shall come into force when enacted by any six eligible states, and shall thereafter become effective as to any other member state that enacts this compact. Any state that has adopted or authorized pari-mutuel wagering or live horse or greyhound racing shall be eligible to become a party to this compact. A compact rule, fee, practice, or program shall not become effective in a new member state based merely upon it entering the compact.
- B. The member states hereby create the racing and wagering commission, a body corporate and an interstate governmental entity of the member states, to coordinate the decision-making and actions of each member state racing commission through a compact commission.
- C. The compact commission shall consist of one commissioner, the chairperson of the state racing commission or such person's designee, from each member state. When a commissioner is not present to perform any duty in the compact commission, a

designated alternate may serve instead. The person who represents a member state in the compact commission shall serve and perform such duties without compensation or remuneration; provided that, subject to the availability of budgeted funds, each may be reimbursed for ordinary and necessary costs and expenses. The designation of a commissioner, including the alternate, shall be effective when written notice has been provided to the compact commission. The commissioner, including the alternate, must be a member or employee of the state racing commission.

- D. The compact commissioner from each state shall participate as an agent of the state racing commission. Each commissioner shall have the assistance of the state racing commission in regard to all decision making and actions of the state in and through the compact commission.
- E. Each member state, by its commissioner, shall be entitled to one vote in the compact commission. A majority vote of the total number of commissioners shall be required to issue or renew a license, to receive and distribute any funds, and to adopt, amend, or rescind the by-laws. A compact rule, fee, practice, or program shall take effect in and for each member state whose commissioner votes affirmatively to adopt it. Other compact actions shall require a majority vote of the commissioners who are meeting.
- F. Meetings and votes of the compact commission may be conducted in person or by telephone or other electronic communication. Meetings may be called by the chairperson of the compact commission or by any two commissioners. Reasonable notice of each meeting shall be provided to all commissioners serving in the compact commission.
- G. No action may be taken at a compact commission meeting unless there is a quorum, which is either a majority of the commissioners in the compact commission or, where applicable, all the commissioners from any member states who propose or are voting affirmatively to adopt a compact rule, fee, practice, or program.

H. Once effective, the compact shall continue in force and remain binding according to its terms upon each member state; provided that, a member state may withdraw from the compact by repealing the statute that enacted the compact into law. The racing commission of a withdrawing state shall give written notice of such withdrawal to the compact chairperson, who shall notify the member state racing commissions. A withdrawing state shall remain responsible for any unfulfilled obligations and liabilities. The effective date of withdrawal from the compact shall be the effective date of the repeal.

#### **Article IV**

##### **Operation of Compact Commission**

The compact commission is hereby granted, so that it may be an effective means to pursue and achieve the purposes of each member state in this compact, the power and duty:

- A. To adopt, amend, and rescind by-laws to govern its conduct, as may be necessary or appropriate to carry out the purposes of the compact; to publish them in a convenient form; and to file a copy of them with the state racing commission of each member state;
- B. To elect annually from among the commissioners (including alternates) a chairperson, vice-chairperson, and treasurer with such authority and duties as may be specified in the by-laws;
- C. to establish and appoint committees which it deems necessary for the carrying out of its functions, including advisory committees which shall be comprised of national industry stakeholders and organizations, and such other persons as may be designated in accordance with the by-laws, to obtain their timely and meaningful input into the



- compact rule, fee, practice, and program making processes;
- D. To establish an executive committee, with membership established in the by-laws, which shall oversee the day-to-day activities of compact administration and management by the executive director and staff; hire and fire as may be necessary after consultation with the compact commission; administer and enforce compliance with the provisions, by-laws, rules, fees, practices, and programs of the compact; and perform such other duties as the by-laws may establish;
- E. To create, appoint, and abolish all those offices, employments, and positions, including an executive director, useful to fulfill its purposes; to hire persons for them; to prescribe their powers, duties, and qualifications; and to provide for their term, tenure, removal, compensation, fringe and retirement benefits, and other conditions of employment;
- F. To delegate day-to-day management and administration of its duties, as needed, to an executive director and support staff, such as the Association of Racing Commissioners International, Inc. or its successor;
- G. To adopt an annual budget sufficient to provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities. The budget shall be fully funded by means established by the compact commission. A member state may choose to participate in funding by means other than a compact fee or fees, in which case the compact commission shall make a finding of how much the member state, including its racing and wagering, may benefit from budget items (less program costs funded by user fees); and the member state may provide such funding by its own means. Indivisible benefits to live racing shall be allocated by proportion of annual purses. Nothing in this provision shall prevent the compact commission from paying obligations accrued in a prior year or from revising its finding of the benefit to a member state from the preceding year; and

- H. to provide a mediation and a binding dispute resolution service for member states who decide to use them to resolve a compact dispute among each other; provided, that the design and implementation of each program shall be established by compact rule making.

## **Article V**

### **General Powers and Duties**

To allow each member state, as and when it chooses, to achieve the purposes of this compact through joint and cooperative action, the member states are hereby granted the power and duty, by and through the compact commission:

- A. To act jointly and cooperatively to create a more equitable and uniform pari-mutuel racing and wagering interstate regulatory framework, including but not limited to the adoption of standardized rules of racing and equine drug regulations, closing inequalities in how regulatory standards and statutory requirements apply to industry participants, improving wagering monitoring and integrity, and making industry and participant information more available to government officials;
- B. To collaborate with national industry stakeholders and industry organizations, such as the Racing Medication and Testing Consortium, in the design and implementation of compact rules, fees, practices, and programs in a manner that serves the best interests of racing;
- C. To create more uniform, effective, or efficient practices and programs, with the consent of each member state that shall participate in them, relating to any part of live pari-mutuel horse or greyhound racing or pari-mutuel wagering activities, whether on-track or off-track, that occur in or affect a member state;

- D. To adopt compact rules, which shall have the force and effect of state rules or regulations in the member states who vote to adopt them, to govern all or any part of live pari-mutuel horse and greyhound racing or pari-mutuel wagering activities;
- E. To charge and collect a fee for services provided by the compact, including licensure and renewal of each license applicant, and for defraying the actual cost of compact commission administration, procedures, activities and programs; and
- F. To issue and renew licenses for participants in live racing and pari-mutuel wagering who are found by the compact commission to have met its licensure or renewal requirements in categories it chooses to license. It shall establish the term for each category, and the license criteria and weight given to character and integrity information that in its judgment meet the most restrictive requirements of the member states. The compact commission shall not have the power or authority to deny a license. If it determines that an applicant will not be eligible, it shall notify the applicant that it will not be able to process the application any further, which shall not constitute and shall not be considered to be the denial of a license. Although an applicant shall have the right to present further evidence and to be heard, the final decision on issuance or renewal of a license shall be made by the compact commission pursuant to its established requirements. The compact commission shall have the power and duty to investigate license applicants and, as permitted by federal and state law, to gather information, including criminal history records from the Federal Bureau of Investigation and from state, local, and foreign country law enforcement agencies (including the Royal Canadian Mounted Police), necessary to decide whether an applicant meets its license requirements. Such criminal history record information may be received and reviewed only by the officials on, and employees of, the compact commission, and that information may be used only for the purposes of this compact. No such official or employee may disclose or disseminate such criminal history record information to any person or entity other than another official on,

or employee of, the compact commission. The compact commission, its employees, or its designee shall take the fingerprints of each license applicant and, pursuant to Public Law 92-544 or Public Law 100-413, forward the fingerprints to a state identification bureau, the Association of Racing Commissioners International (an association of state officials regulating pari-mutuel wagering, designated by the Attorney General of the United States), or another entity with an equivalent designation, for submission to the Federal Bureau of Investigation or other receiving law enforcement agency. The compact commission shall cooperate with the Interstate Compact on Licensure of Participants in Live Racing with Pari-Mutuel Wagering and, if requested by that entity, assume all of its licensing and employer duties and responsibilities with the authority of and pursuant to all of the licensing standards, laws, rules and regulations applicable to that entity.

## **Article VI**

### **Other Powers and Duties**

The compact commission may exercise such incidental powers and duties as may be necessary and proper for it to function in a useful manner, including but not limited to the power and duty:

- A. To enter into contracts and agreements with governmental agencies and other persons, including officers and employees of a member state, to provide personal services for its activities and such other services as may be necessary;
- B. To borrow, accept, and contract for the services of personnel from any state, federal, or other governmental agency, or from any other person or entity;
- C. To receive information from and to provide information to each member state racing commission, including its officers and staff, on such terms and conditions as may be established in the by-laws;

- D. To acquire, hold, and dispose of any real or personal property by gift, grant, purchase, lease, license, and similar means and to receive additional funds through gifts, grants, and appropriations;
- E. To purchase and maintain insurance and bonds, and to require others to do so;
- F. When authorized by a compact rule, to conduct hearings, issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence, and render decisions and orders;
- G. To establish in the by-laws the requirements that shall describe and govern its duties to conduct open or public meetings and to provide public access to compact records and information, which shall include the exceptions established by law in one or more member states and shield any confidential submissions made in connection with license applications; and
- H. To enforce compliance with the provisions, by-laws, rules, fees, practices, and programs of the compact using such means as may be consistent with this compact.

## **Article VII**

### **Compact Rule-Making**

In the exercise of its rule making authority, the compact commission shall:

- A. Engage in formal rule making pursuant to a process that substantially conforms to the Model State Administrative Procedure Act of 1981 as amended, as may be appropriate to the actions and operations of the compact commission;

- B. Gather information and engage in discussions with advisory committees, national industry stakeholders, and others to foster and conduct a collaborative approach in the design and advancement of compact rules in a manner that serves the best interests of racing and as established in the by-laws;
- C. Not publish a proposed compact rule in a member state over its objection. The affirmative vote of a member state for a proposed compact rule shall be necessary and sufficient to adopt, amend, or rescind a compact rule as applicable to that member state; and
- D. Have a standing committee that reviews at least quarterly the participation in and value of compact rules and, when it determines that a revision is appropriate or when requested to by any member state, submits a revising proposed compact rule. To the extent a revision would only add or remove a member state or states from where a compact rule has been adopted, the vote required by this article shall be required of only such state or states.

### **Article VIII**

#### **Compact Fees**

- A. The compact commission may charge and collect a fee for services provided by the compact, including licensure and renewal of each license applicant, and for defraying the actual cost of compact commission administration, procedures, activities, and programs; provided that such latter fee or fees shall not create a disproportionate cost for any member state.
- B. Compact fees must relate to participation in live horse or greyhound racing and pari-mutuel wagering activities, whether on-track and off-track, that occur in or affect a

member state. No fee shall be adopted except after consultation with relevant advisory committees and interested national industry stakeholders.

- C. The establishment of a compact fee may include a requirement that a participant in live horse or greyhound racing with pari-mutuel wagering, as a condition of continued participation, collect, hold, and remit to the compact commission funds that belong to a third party, with which it conducts related transactions, that is obliged to pay the compact fee.
- D. The compact commission may require fee payments to occur on a periodic basis, accompanied by a sworn report attesting to accuracy and completeness, and may provide that it shall have the power to examine the books and records of any persons required to pay or remit it, for the purpose of ascertaining whether the proper amounts are being paid. Such books and records shall not thereby be made available for public inspection.
- E. No fee shall be adopted before the completion of a period of public notice and participation substantially conforming, as may be appropriate to the actions and operations of the compact commission, for making rules under the Model State Administrative Procedure Act of 1981 as amended.

## **Article IX**

### **Status and Relationship to Member States**

- A. The compact commission, as an interstate governmental entity, shall be exempt from all taxation in and by the member states.
- B. The compact commission shall not pledge the credit of any member state except by and with the appropriate legal authority of that state.

- C. The compact commission shall adopt an annual budget that is sufficient to provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities, and by which member states shall fully fund the compact commission by the means set forth in this compact.
- D. Each member state shall reimburse or otherwise pay the expenses of its commissioner, including any alternate, in the compact commission.
- E. No member state, except as provided in section twelve hundred twelve of this article, shall be held liable for the debts or other financial obligations incurred by the compact commission.
- F. No member state shall have, while it participates in the compact commission, any claim to or ownership of any property held by or vested in the compact commission or to any compact commission funds held pursuant to this compact except for state license or other fees or monies collected by the compact commission as its agent.
- G. The compact dissolves upon the date of the withdrawal of the member state that reduces membership in the compact to one state. Upon dissolution, the compact becomes null and void and shall be of no further force or effect, although rules and programs adopted through this compact shall remain rules and programs in each member state that had adopted or consented to them, and the business and affairs of the racing and wagering compact shall be concluded and any surplus funds shall be distributed to the former member states in accordance with the by-laws.

## **Article X**

### **Rights and Responsibilities of Member States**



- A. Each member state in the compact shall accept the decisions, duly applicable to it, of the compact commission in regard to compact rules, fees, practices, and programs and the issuance or renewal of licenses;
- B. When the compact commission determines that an application shall not be processed further, the member states shall not treat this as the denial of a license or otherwise penalize the applicant because of such action by the compact commission;
- C. Each member state in the compact shall have and exercise the right:
- (1) to charge a fee for the use of a compact license within that member state equal to the fee charged for a comparable state license;
  - (2) to apply its own standards and procedures to determine whether the use of a compact commission license should be suspended or revoked in its jurisdiction;
  - (3) to apply its own standards for licensure or renewal of state applicants who do not meet the licensure requirements of the compact commission, who are within a category of participants in racing and wagering that the compact commission does not license, or who apply to the member state for a state license; and
  - (4) to apply its own standards and procedures, except as may be provided by rule, to determine whether a participant in live racing or pari-mutuel wagering has violated any rule or regulation in its jurisdiction and to impose an appropriate penalty;
- D. Each member state racing commission shall promptly notify the compact commission, or its designee, whenever the member state has adjudged a violation of any state or compact rule and imposed a suspension or revocation upon a compact commission licensee;

- E. All departments, agencies, bodies, officers, and employees of each member state and its political subdivisions are authorized to cooperate with the compact commission and shall take all necessary and appropriate action, such as to publish proposed and adopted rules in state registries and administrative codes, to effectuate and in furtherance of compact duties or actions that may affect the state; and
  
- F. This statute shall not be construed to diminish or limit the powers and responsibilities of the member state racing commission, or to invalidate any action it has previously taken, except to the extent it has, by its compact commissioner, expressed its consent to a specific rule or other action of the compact commission. The compact commissioner from each state shall serve as the agent of the state racing commission and shall possess substantial racing and wagering knowledge and experience as a regulator or participant in the racing and wagering industry in order to participate effectively in compact rule making.

## **Article XI**

### **Enforcement of Compact**

- A. Any member state in the compact and the compact commission may initiate legal action in the United States District Court, in any federal district where the compact commission has an office, to enforce compliance by any member state or the compact commission with the compact provisions, by-laws, fees, findings, practices, and programs.
  
- B. Any member state in the compact and the compact commission may initiate legal action, in any state or federal court, to enforce the compact provisions, fees, practices, and programs against any person, including a non-member state or political subdivision. Member states that benefit from the compact commission, its employees, or one of its

provisions, by-laws, fees, findings, practices, or programs shall provide or share in the cost of legal services to defend or uphold them.

- C. The compact commission shall have standing to intervene in any legal action that pertains to the subject matter of the compact and might affect its powers, duties, or actions.
- D. The courts and executive in each member state shall enforce the compact and take all actions necessary and appropriate to effectuate its purposes and intent. Compact provisions, by-laws, and rules shall be received by all judges, departments, agencies, bodies, and officers of each member state and its political subdivisions as evidence of them.
- E. The compact commission may require, from the date a compact fee was required to be paid, interest not to exceed the rate of one percent per month and a penalty not to exceed five percent. The compact commission may, if it determines that any fees received by it were paid in error, and provided that an application for it is filed with the compact commission within one year from the time the erroneous payment is made, correct the error by a refund, without interest, including from other collected fees.
- F. The compact commission, if it determines that a payment or report is in error, may make a finding that fixes the correct amount of the fee. It must issue the finding within three years from when a fee or report was due or filed. The finding shall be final and conclusive unless an application for a hearing is filed by the subject within thirty days. The action of the compact commission in making a final finding, after a hearing, shall be reviewable in state court as provided in this compact.

## **Article XII**

### **Legal Actions Against Compact**

- A. Any person may commence a claim, action, or proceeding against the compact commission in state court for damages or to challenge a compact rule, fee, practice, or program that is duly applicable to that state. The compact commission shall have the benefit of the same limits of liability, defenses, rights to indemnity and defense by the state, and other legal rights and defenses for non-compact matters of the state racing commission in the state. All legal rights and defenses that arise from this compact shall also be available to the compact commission.
- B. A compact commissioner, alternate, or other member or employee of a state racing commission who undertakes compact activities or duties does so in the course of business of their state racing commission, and shall have the benefit of the same limits of liability, defenses, rights to indemnity and defense by the state, and other legal rights and defenses for non-compact matters of state employees in their state. The executive director and other employees of the compact commission shall have the benefit of these same legal rights and defenses of state employees in the member state in which they are primarily employed. All legal rights and defenses that arise from this compact shall also be available to them.
- C. Each member state shall be liable for and pay judgments filed against the compact commission to the extent related to its participation in the compact. Where liability arises from action undertaken jointly with other member states, the liability shall be divided equally among the states for whom the applicable rule, fee, practice, program, or action or omission of the executive director or other employees of the compact commission was undertaken; and no member state shall contribute to or pay, or be jointly or severally or otherwise liable for, any part of any judgment beyond its share as determined in accordance with this article.

### **Article XIII**

#### **Restrictions on Authority**

- A. Notwithstanding anything to the contrary herein, the compact commission shall not adopt any practice, program or rule that may change state requirements governing the amount and distribution of the takeout, retention, or breakages on intrastate wagers or that imposes licensure requirements for non-racing or non-wagering employees of any racetrack or off-site wagering facility operating wholly within the state.
- B. State laws applicable to pari-mutuel racing and wagering shall remain in full force and effect.
- C. Notwithstanding anything to the contrary herein, no fee except for services provided by the compact commission shall be adopted by the compact commission in a state without the prior consent of any horsemen (as expressed by their recognized horsemen's organization) licensed by the state racing commission who, or any franchised or state racing commission licensed racing corporation that, would be obliged to pay the fee.

### **Article XIV**

#### **Construction, Saving and Severability**

- A. This compact shall be liberally construed so as to effectuate its purposes. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the Constitution of the United States or of any member state, or the applicability of this compact to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and its applicability to any government, agency, person or circumstance shall not be affected. If all or some portion of this compact is held to be contrary to the constitution of any

member state, the compact shall remain in full force and effect as to the remaining member states and in full force and effect as to the state affected as to all severable matters.

- B. In the event of any allegation, finding, or ruling against the compact or its procedures or actions, provided that a member state has followed the compact's stated procedures, any rule it purported to adopt using the procedures of this statute shall constitute a duly adopted and valid state rule, and any program that it purported to create or agree to using the procedures of this statute shall constitute a duly made and valid state program and multilateral agreement with the other consenting member states.



*Division of Racing*

**To:** Stephen Crosby, Chairman  
Gayle Cameron, Commissioner  
Jim McHugh, Commissioner  
Bruce Stebbins, Commissioner  
Enrique Zuniga, Commissioner

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

**Date:** 17 April, 2014

**Re:** **Horses First.**

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Commissioners:

Immediately after taking the reins from its predecessor State Racing Commission, this Commission engaged a consultant to review the existing state of the commonwealth's live racing and simulcast operations. The resultant report ("Review of Massachusetts State Racing Commission and Industry," dated July 12, 2012) and the recommendations it contained were used as a roadmap for many of the major changes made to our racing regulatory structure in 2013. Change can sometimes prove difficult, particularly for an industry with a proud 78-year tradition and history. Insulated cultures – and make no mistake that horse racing is an insulated culture – which evolve over the course of decades sometimes fail to appreciate the need for change in the absence of a significant precipitating event or catalyst. Sweeping reform often proves even more challenging.

Starting in the late 2000s, the horse racing industry in North America began to make great strides in the area of uniform medication regulation. This important reform initiative had not yet reached the shores of the Bay State when this Commission was charged with industry oversight, a fact which was reflected front and center in the consultant's 2012 report.



Massachusetts Gaming Commission

The Racing Division approached the 2013 live racing season with an eye toward phased-in, incremental change designed to maximize stakeholder buy-in and participation and minimize disruption to operations, while at the same time establishing a solid foundation of effective regulation that reflects the reality of today's racing business model. And the reality of today's racing business model is that change is imperative.

I'd like to first recap for the Commission the changes we introduced in 2013. While incremental, I think you will agree that these reforms were far from insignificant.

They included:

- **The Commission's resolution in support of the Mid-Atlantic and Northeast regional uniform medication initiative;**
- **The Commission's adoption of a comprehensive set of uniform model rules governing medication, veterinary practices, and safety standards;**
- **Elimination of the administration of raceday phenylbutazone (the last state to do so), thereby removing an important asterisk from the national industry;**
- **Providing manuals for trainers and veterinary practitioners outlining our significant medication changes and offering guidelines for compliance;**
- **Contracting with an accredited drug testing laboratory;**
- **Drug testing of all horses working to get off the veterinarians' list;**
- **Collecting and reviewing treatment sheets from private practitioners;**
- **Submitting all horses which died on licensed facility grounds to Tufts Veterinary Hospital for necropsy and other testing;**
- **Enhancing the professional resume of Racing Division staff; and**
- **Posting of stewards' minutes on the Suffolk Downs website.**

But our work was far from done. Following last year's live racing season, the Commission adopted the Association of Racing Commissioners International ("RCI") Controlled Therapeutic Substance Schedule and Multiple Medication Violation model rules, two additional key pieces of the national uniform medication initiative.



Massachusetts Gaming Commission



Racing Division staff has been assembling the next phase of model rule change recommendations, which will address key sections on the duties of licensees – both occupational licensees and racetrack operators – and their obligation to contribute to the safety and welfare of racing’s participants and the integrity of the betting product.

For the 2014 live racing season, Racing Division staff will be implementing the following operational changes:

- **Commencement of Commission-controlled furosemide administration;**
- **Implementation of a blood gas testing (TCO<sub>2</sub>) program;**
- **Posting of TCO<sub>2</sub> and non-steroidal anti-inflammatory (NSAID) test results levels on the MGC website;**
- **Posting of stewards’ and judges’ rulings and daily reports on the MGC website;**
- **Forming a catastrophic injury review committee;**
- **Hosting educational forums for occupational licensees throughout the year; and**
- **Launching the Racing Division’s “Horses First” commitment to the safety and welfare of our equine athletes.**

The “Horses First” initiative is a guiding principle and letter to stakeholders affirming the Racing Division’s commitment to protecting the safety and welfare of our equine athletes. While its tenets were discussed verbally at new employee orientations and meetings with racing officials last year, this year we put it in writing. The document labeled “Appendix A” appears in our 2014 seasonal employee training manuals, in the 2014 manuals we provide to occupational licensees, and is posted and available in our racetrack commission offices. Commissioners, it is with great pride I tell you that, while the adoption of uniform medication regulations were extremely well received by our stakeholders, *no single action we’ve undertaken has been the target of more compliments* than the sharing of this document with our occupational licensees.

But we’d like to do more.



Massachusetts Gaming Commission

The Racing Division is confident that the Commission’s veterinary programs, as evidenced above, are among the most comprehensive in the country. The Chairman of the Jockey Club recently applauded Massachusetts as a state at the forefront of medication reform. We use science and regulation to help us document and maintain the healthiness of our racehorses, and we’re not afraid to step in if intervention becomes necessary. But that’s not enough. **We believe we should also be at the forefront of the movement to demonstrate, through actions and through words, our understanding of the important role we play as stewards of our industry.**

The Racing Division asks the Commission’s help on this important initiative. We ask that the Commission:

- 1) consider passing a resolution in support of welfare guidelines to be applied to racing in the commonwealth;
- 2) consider the inclusion of an affirmative duty on all licensees to report welfare concerns in our next round of rulemaking (this would be a companion rule to the existing prohibitions of conduct detrimental to welfare found in 205 CMR 3.11(25) and 4.13(29); and
- 3) consider whether support of the Racing Regulatory Compact is appropriate.

### *Welfare Guidelines*

When it comes to squarely addressing welfare issues in horse racing, there is no doubt that the rest of the world far outpaces the United States. Governing bodies as diverse as the British Horseracing Authority, Trotting South Africa, the Australian Racing Board, the Swedish Trotting Association, the Asian Racing Federation, and Standardbred Canada all subscribe to, endorse, or support a code of welfare or publish welfare guidelines. The majority of these are some close variant of the guidelines established by the International Group of Racing Specialist Veterinarians (“IGSRV”), although Standardbred Canada has taken a slightly different approach. The International Federation of Horseracing Authorities (“IFHA”) has established a set of welfare principles in its International Agreement on Breeding, Racing and Wagering. Though not technically regulatory bodies, domestically, the National Thoroughbred Racing Association, U.S. Trotting Association and Thoroughbred Owners Association have all



Massachusetts Gaming Commission

endorsed the American Horse Council's Welfare Code of Practice. All four of these documents are reproduced for your review in Appendix B.

**Recommendation:** That the Commission consider the endorsement of a set of welfare guidelines following a public comment period. The Racing Division will post all four approaches to the notice and request comment on 1) whether the Commission should endorse a set of guidelines, and if so, 2) what the content of those guidelines should be.

### *Affirmative Duty*

The Racing Division will be presenting a package of licensing regulations based in large part on the RCI Model Rules to the Commission this summer. As part of that package, we will be including a regulation placing an affirmative duty on all racing licensees to report suspected instances of mistreatment. This would be a companion to our existing rules 205 CMR 3.11(25) and 4.13(29) which read:

No licensee or other person under the jurisdiction of the Commission shall subject or permit any animal under his or her control, custody or supervision to be subjected to or to incur any form of cruelty, mistreatment, neglect or abuse or abandon, injure, maim or kill or administer any noxious substance to or deprive any animal of necessary care or sustenance, shelter or veterinary care.

Existing 205 CMR 3.18(8) and 4.30(8) place an affirmative duty on racing officials and their assistants to report "all observed violations" of our regulations.

While the Model Rules extend that affirmative duty to *all* licensees to report "any knowledge he/she has that a violation of these rules has occurred or may occur," [ARCI 008-010 AA(2)] the Racing Division plans to specifically highlight that duty in conjunction with the prohibition on such conduct.

**Recommendation:** That the Commission support a specific regulation placing an affirmative duty on all racing licensees to report suspected instances of mistreatment of horses as part of the forthcoming regular rulemaking process.



Massachusetts Gaming Commission

### *Racing Regulatory Compact*

As noted early in this memo, the reality of today's racing business model is that change is imperative. Enabling statutes and their foundation regulations have their roots in a time where the business of racing took place locally and attendance and on-track handle were the only metrics in town. Today, over 90% of wagering occurs through channels of interstate commerce via the broadcast simulcasting of races and through the internet. In addition to the logistical and political difficulties that come with trying to regulate a sport governed by 38 different statutes and in-force rule books, the revenue structure affecting the various stakeholders differs dramatically when that revenue is attributable to an on-track vs. a simulcast wager. The ability of local law and regulation to keep pace with that change has been, of course, largely resource-driven.

In 2009, the Association of Racing Commissioners International undertook a project to explore the idea of an interstate compact designed to facilitate a streamlined, centralized rule-making process for the industry in order to encourage participation and simultaneous adoption and enforcement of those rules. By effectively pooling administrative resources, no member state would be charged with the Herculean task of trying to reform a \$12 billion dollar national business model at the local level, while maintaining state sovereignty over the regulation of wagering and without usurping that member's regular rulemaking process. The project was undertaken with the assistance of the Council on State Governments. Its steering committee consisted of representatives from several commissions and various industry stakeholders. The result was a model document entitled "A New Interstate Compact to Facilitate State Regulation of Racing and Wagering." It is my understanding that, to date, three states have passed legislation adopting the compact. Six are needed for the compact to take effect. Additional information is available in Appendix C.

**Recommendation:** If the Commission is interested in exploring this issue in more depth, the Racing Division is happy to invite members of the steering committee and/or RCI to provide additional information or address the Commission in person. This is one of the more complex issues we've brought before you and the purpose of its introduction here is to gauge interest before devoting additional resources to the topic.



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You may be wondering how a proposal to consider this compact fits into our welfare strategy. I leave you with this thought: there are a number of significant challenges facing racing today: a regulatory structure that has not kept pace with a changing business model, sagging customer confidence in both the integrity of the product and the safety and welfare of racing's participants, and too many race days asking too much of a declining horse population. **If we fail to respond to these challenges, as an industry, then we will have no industry to regulate.** Beyond operations, the Racing Division views its role as helping this Commission to develop its understanding of the context for and the practical realities of those challenges and providing you with a creative menu of potential solutions. We stand ready to do whatever we can do to help facilitate these goals.



Massachusetts Gaming Commission



April 14, 2014

*Division of Racing*

## **MEDICATION ADVISORY**

The Board of Directors of the Association of Racing Commissioners International (RCI) recently approved several modifications to the Controlled Therapeutic Substance schedule. **This schedule has been adopted by reference as regulation 205 CMR 3.29(3)(a)(2) and 205 CMR 4.52(3)(a)(2), and so take effect.**

Those changes include the following:

- Replacement of the words “Restricted Administration Time” with “Recommended Withdrawal Time.” This change was considered after a request from the United States Trotting Association, American Association of Equine Practitioners, and the Racing Medication and Testing Consortium (RMTC).
- Reduction of the current regulatory threshold for ketoprofen from 10 ng/mL of plasma or serum to 2ng/mL. Note that the reduction in threshold does NOT affect the recommended withdrawal time of 24 hours.
- **Modification of the recommended withdrawal time for flunixin (Banamine®) from 24 hours to 32 hours.** The threshold level remains the unchanged.

RCI also voted to make the following additions to the Controlled Therapeutic Substance schedule:

- Isoflupredone. Isoflupredone acetate is a corticosteroid that can be used for the treatment of allergic, musculoskeletal, and inflammatory processes in the horse. It can be administered via intra-articular, intravenous, and intra-muscular/subcutaneous routes. RCI approved a threshold of 100 pg/mL in plasma based upon the subcutaneous (10 mg) and intra-articular (20 mg) doses. The recommended withdrawal time is 7 days.
- Albuterol. Albuterol is indicated for the relief of bronchospasm and bronchoconstriction in horses with reversible airway obstruction and is effective for up to 7 hour as a bronchodilator. Albuterol is administered either as an intra-nasal aerosol (either via intra-nasal apparatus or mask, depending upon which delivery method is available) or orally. The oral preparations are subject to very high first-pass metabolism and poor systemic bioavailability. Oral products have not been extensively studied and should be used with caution. The RMTC has indicated that Albuterol administered by inhalation at a total dose of 360 mcg resulted in a 70% increase in pulmonary function within 5 minutes of administration. While a 360 mcg dose is sufficient to cause this change, the researchers determined that, if using a mask system (such as an Aero Mask™), a 720 mcg dose should be used as much of the medication does not reach the target tissue. Based upon the RMTC’s Scientific Advisory Committee’s review of existing research and pharmacokinetic data available from studies in Europe and the United States, the RCI adopted the RMTC recommended interim threshold of 1 ng/mL of urine with a 72-hour withdrawal guideline.



Massachusetts Gaming Commission

**From:** Frank Donaghue [<mailto:Frank.Donaghue@pngaming.com>]  
**Sent:** Wednesday, April 16, 2014 2:32 PM  
**To:** Day, Rick (MGC)  
**Subject:** RE: Project monitoring reg

Rick, following up on your email and our discussion. A few thoughts:

135.02 (2) (a). Please consider changing “all stages of design and construction...” to “all significant or major stages of design and construction...” The way it is written now does not give any idea as to the amount of detail required in the schedule. We believe that only major milestones should be on the schedule which is also implied by the rest of the paragraph which specifies certain major milestones that should be included.

135.02(4). This is a good recommendation as it now builds in a materiality standard.

135.02 (5)(e). This has some overlap with the proposed “Diversity Plan for the Design and Construction Phase of Plainridge Park Casino.” With regard to the final clause in subsection (e), please considering deleting the clause after the word “established”, and inserting “the licensee shall submit within 20 days of a request by the commission a response as to why the goals have not been achieved and indentify any good faith efforts that have been undertaken to achieve those goals.”

135.03 Design and review process. While Penn does not have any objection with providing information to the Commission at the Commission’s request, there is a concern about the approval process outlined within 135.03. This proposed regulation could have the unintended consequence of slowing down construction given the very dynamic nature of this large scale project. More particularly, with regard to sections 135.03 (4) and (5), there is a concern that this review and approval process could dramatically delay construction packages being put out for bid. Our project is being built using the “design-build” method which means the actual construction process begins prior to the whole project’s design being completed. For example, we have already completed the site work and foundations design, we have bid the work out, we have accepted a bid and will begin construction of these elements on April 21st even while later portions of the project (e.g. HVAC , interior design, etc) are still being designed. As you are aware, these construction project timelines are extremely reliant upon the precise execution of various stages of the project and a delay in just one significant bid submission could dramatically affect the entire delivery dates. The potential requirement in these proposed regulations for prior Commission approval of bid packages and discrete design elements causes the Company concern regarding the overall construction timetable and a potential delay in our anticipated opening. Thank you for your consideration.

Frank T. Donaghue  
Penn National Gaming, Inc.



205 CMR: MASSACHUSETTS GAMING COMMISSION

205 CMR 135.00: ~~COMPLIANCE WITH APPROVED SCHEDULE FOR CONSTRUCTION OF GAMING ESTABLISHMENTS AND RELATED INFRASTRUCTURE MONITORING OF PROJECT CONSTRUCTION AND LICENSEE REQUIREMENTS~~

Section

135.01: Definitions

135.02: ~~Construction-Project~~ Schedules and Reporting

135.03: Inspection of ~~Construction-Project~~ and Related Records

135.04: Certification of Final Stage of Construction: Category 1 Gaming Establishments

135.05: Determination that Gaming Establishment May Open for Business

135.01: Definitions

(1) Minority Business Enterprise: (MBE) a minority owned business that has been certified by either the Massachusetts Supplier Diversity Office, the Greater New England Minority Supplier Development Council, or both.

(2) Women's Business Enterprise: (WBE) a women-owned business that has been certified by either the Massachusetts Supplier Diversity Office, the Women's Business Enterprise National Council or both.

(3) Veteran's Business Enterprise: (VBE) A Veteran Owned business shall have the same meaning as the term "small business concern owned and controlled by veteran(s)" as defined by the US Dept. of Veterans Affairs (38 CFR 74), whose status can be verified by Vendor Information Pages Verification Program located at [www.VetBiz.gov](http://www.VetBiz.gov) or the successor vendor information and verification system established by or in contract with the federal government or by the Licensing Division of the MA Gaming Commission ~~through submissions of "Key Qualifier's" DD2-14 form~~. The definition is inclusive of the **Service-disabled veteran-owned business** as defined in 15 USC §632.

(4) Small Business: A Small Business shall be defined as an entity, including all of its affiliates combined that,

- (a) Has its principal place of business in Massachusetts;
- (b) Employs a combined total at all locations of 50 or fewer full-time employees;
- (c) Has been in business at least one year; and
- (d) Has gross revenues of \$15 million or less based on a three year average, and meets all legal obligations for tax status and required registration in the Commonwealth.

(5) Project: The gaming establishment as approved by the commission and defined in the gaming license awarded by the commission. For purposes of this 205 CMR 135,



Project may also include such off site infrastructure necessary for the operation of the gaming establishment as required by the commission.

135.02: Project Schedules and Reporting

(1) The commission may create guidelines under this 205 CMR 135 to aid the commission in its review and monitoring of the project. Such guidelines will be shared with the licensee and may be amended as necessary by the commission.

(2) The commission shall, in accordance with M.G.L. c. 23K, §§ 10 and 11 approve for each gaming licensee, a project schedule for the gaming licensee's capital investment in its gaming establishment and related infrastructure which includes:

(a) all stages of design and construction; including all permitting and approvals, design deliverables, site preparation, foundation, structure, plumbing, electrical, mechanical, exterior finish and fenestration, long lead items, insulation, interior finish and furnishings and landscaping, building commissioning and commissioning of gaming equipment and information technology systems.

(b) For a category 1 gaming establishment, a timeline for commencement of the final stage of construction pursuant to M.G.L. c. 23K, § 10(a); and

(c) a timeline for the stage of construction at which the gaming licensee shall be approved to open for business or operate a slot machine pursuant to M.G.L. c. 23K, §§ 10(c) and 11(a).

(3) Within the time frame provided in the award of the gaming license, the licensee shall provide to the commission for commission approval an affirmative action program of equal opportunity whereby the licensee establishes specific goals for the utilization of minorities, women and veterans on construction jobs and for contracting with minority, women or veteran owned businesses during either design or construction; provided, however that such goals shall be equal to or greater than the goals contained in executive office of administration and finance administration Bulletin Number 14.

(4) If unforeseen and/or changed circumstances necessitate a change to a project schedule approved pursuant to 205 CMR 135.02(2) which will impact the completion date or requires a major change in the method or progress of construction, the gaming licensee may submit to the commission for its approval a revised project schedule, with a detailed statement of the unforeseen changed circumstances which justify the revised project schedule. If the commission approves such revised project schedule, it shall substitute and supersede the previously approved project schedule.

(5) To ensure adherence to the project schedule approved pursuant to 205 CMR 135.02(2) or (4), the gaming licensee shall submit to the commission in a media, format and level of detail acceptable to the commission, quarterly a status report including:

(a) the total estimated cost of construction of the gaming establishment project and related infrastructure improvements, including a sworn certification regarding costs incurred pursuant to 205 CMR 122.03: Costs Included in the Calculation of Capital Investment, and separately identifying detailed costs for design, land acquisition, site preparation and construction and off-site improvements;

(b) a sworn certification regarding the capitalization of the gaming licensee, sufficient for the commission to determine, pursuant to M.G.L. c. 23K, §§ 10(e) or 11(c), that the gaming licensee has adequate funds to complete the gaming establishment and related infrastructure improvements;

(c) a copy of all design and construction contracts executed within the prior quarter by the gaming licensee to design and construct the gaming establishment and related infrastructure improvements;

(d) a status report reflecting the progress of construction and certifying compliance with the approved project schedule for stages of construction. In the event that the progress of construction does not comply with the project schedule approved pursuant to 205 CMR 135.02, the licensee shall submit a detailed plan to bring the progress of construction into compliance with the approved project schedule or submit a request for a revised project schedule pursuant to 205 CMR 135.02(4); and

(e) a detailed statistical report pursuant to M.G.L. c. 23K, § 21(a) (23) on the number, gender and race, and veteran status of individuals by job classifications hired to perform labor as part of the construction of the gaming establishment and related infrastructure, and a comparison of this report with the goals established by the gaming licensee and commission pursuant to M.G.L. c. 23K, § 21(a) (22). In the event the hiring of the aforementioned persons does not comply with the goals established, the licensee shall submit within 20 days of a request by the commission a plan to bring the hiring into compliance with the goals.

(f) a report describing the number of contracts, total dollar amounts contracted with and actually paid to minority business enterprises, women business enterprises and veteran business enterprises for design and construction of the gaming establishment and related infrastructure, and the total number and value of all subcontracts awarded to a minority, women and veteran owned business, and a comparison of these reports with the goals established by the gaming licensee and commission pursuant to M.G.L. c. 23K, § 21(a)(21). In the event the licensee's hiring of the aforementioned entities does not comply with the goals established the licensee shall submit a detailed plan to bring the dollar amount contracted and spent into compliance with the goals.

(6) The licensee shall have a continuing obligation, pursuant to 205 CMR 120.01 (2) to timely provide to the commission an updated permits chart and all documents and information listed in 205 CMR 120.01, as well as any updates to the MEPA process such

that the commission is continuously apprised of all material developments with respect to all permits and approvals required for the gaming establishment. Pursuant to 205 CMR 120.01 (h) the licensee shall provide to the commission copies of any appeal within 20 days of filing, whether to a municipal or state entity or for judicial review, filed with respect to any permit of approval listed in 205 CMR 120.01(1) along with a copy of the docket sheet and each decision on any appeal.

~~(7) — Pursuant to M.G.L. c. 23K, § 21(a)(24), the gaming licensee shall report to the commission quarterly or more frequently upon the commission's request the number of contracts, total dollar amounts contracted with and actually paid to minority business enterprises, women business enterprises and veteran business enterprises for design and construction of the gaming establishment and related infrastructure, and the total number and value of all subcontracts awarded to a minority, women and veteran owned business, and a comparison of these reports with the goals established by the gaming licensee and commission pursuant to M.G.L. c. 23K, § 21(a)(21).~~

(7) In furtherance of specific goals for the utilization of minorities, women and veterans on construction jobs, the licensee shall send and provide a copy to the commission, to each labor union or representative of workers with which the licensee has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers representative of the licensee's commitments pursuant to M.G.L. c. 23K § (15) and §§21 a (21) and (22).

(8) Prior to the gaming establishment opening for business, in furtherance of specific goals for the utilization of minority business enterprises, women business enterprises and veteran business enterprises as vendors in the provision of goods and services to the gaming establishment, the licensee shall provide to the commission an affirmative marketing plan in which the licensee identifies specific goals, expressed as an overall program goal applicable to the total dollar value of contracts entered into, for the utilization of minority business enterprises, women business enterprises and veteran business enterprises to participate as vendors in the provision of goods and services procured by the gaming establishment and any businesses operated as part of the gaming establishment; provided, however, that the specific goals for the utilization of such minority business enterprises, women business enterprises and veteran business enterprises shall be based on the availability of such minority business enterprises, women business enterprises and veteran business enterprises engaged in the type of work to be contracted by the gaming licensee.

### 135.03: Design Review Process

(1) The commission or its representative may participate in the design review process for the design of the project. This process may run in parallel to the local, state and federal review process and may include all elements of the project, including but not limited to the gaming establishment and any amenities approved by the commission, whether constructed together or in phases, as well as any off-site improvements. The commission may participate in the following key milestones of the design review process:

- (a) development of initial concept;
- (b) development of the schematic design;
- (c) completion of the final site plan and architectural design; and
- (d) development of the construction design package.

(2) As part of the development of the initial concept, the commission may request a narrative describing the project. The narrative should include a pictorial representation of the project design concept and a narrative description of the project.

(3) When the licensee has completed the schematic design phase, the commission may request that the licensee submit the schematic design to the commission or its representative for review. Such schematic design may include descriptions of the external façade of any structures that are part of the project, all the major systems, a floor plan and any off site infrastructure improvements planned by licensee. The commission or its representative may request, where available, examples of materials to be used in the building façade.

(4) The commission or its representative may request for review and approval the final site plan and architectural design package. Such final design package shall be in the form ready for licensee's use in creating construction bid packages. Where available, the commission or its representative may request examples of materials to be used on the exterior or in the interior of the project as well as examples of the furniture and fixtures to be used in the project.

(5) The commission's representative may request construction packages for review prior to putting such construction packages out for bid.

#### 135.04: Inspection of Construction and Related Records

(1) At all times the commission or its representative may physically inspect the progress of construction, subject to reasonable construction site safety rules, to determine the gaming licensee's compliance with the approved design, project schedule, the terms and conditions of the license, G.L. c. 23K, or 205 CMR.

(2) ~~The gaming licensee shall provide~~ commission may request or have access to, at any time, relevant plans, specifications, submittals, contracts, financing documents or other records concerning the construction of the gaming establishment project or related infrastructure. The licensee shall provide the requested materials to the commission or its representative within ten days of the commission's request for such documents.

(3) Following an inspection of construction pursuant to 205 CMR 135.04(1) or review of records pursuant to 205 CMR 135.04(2), the commission or its representative shall may notify the gaming licensee of any non-compliance with the terms of the license, including non-compliance with an approved design or project schedule pursuant to 205 CMR 135.02(2) or (4). Upon receipt of such notification, the gaming licensee shall

~~promptly undertake and proceed diligently to cure any such non-compliance present a plan to the commission to address such non-compliance~~ to the satisfaction of the commission.

#### 135.05: Certification of Final Stage of Construction: Category 1 Gaming Establishments

- (1) Pursuant to G.L. c. 23K, § 10(a), the gaming licensee shall certify to the commission that it has reached the final stage of construction as described in the approved project schedule pursuant to 205 CMR 135.02(2), or an approved revised project schedule pursuant to 205 CMR 135.02(4).
- (2) Upon receipt of such certification, the commission or its representative may inspect the construction pursuant to 205 CMR 135.04(1), and request relevant plans, contracts, financing documents or additional records pursuant to 205 CMR 135.04(2).
- (3) If the commission approves the gaming licensee's certification pursuant to 205 CMR 135.05(1) that the gaming licensee has reached the final stage of construction, it shall return to the gaming licensee the deposit or release the deposit bond described in M.G.L. c. 23K, § 10(a), and permit the gaming licensee to apply the deposit to the cost of the final stage of construction.
- (4) If the commission disapproves the gaming licensee's certification pursuant to 205 CMR 135.05(1), the commission will notify the gaming licensee of the reasons for such disapproval, and the gaming licensee shall proceed diligently to cure the reasons for the disapproval.

#### 135.06 Determination that Gaming Establishment May Open for Business

(1) The commission may not approve a category 2 gaming establishment to open for business, begin gaming operations or operate a slot machine at a gaming establishment until the commission has:

(a) determined that the gaming licensee has complied with the conditions in 205 CMR 135.00

(b) had an adequate opportunity to physically inspect the completed gaming establishment and related infrastructure, as well as relevant plans, contracts, or other records, to determine that the completed gaming establishment and related infrastructure comply with:

1. the terms of the license;
2. G.L. c. 23K, and 205 CMR;
3. host and surrounding community agreements pursuant to G.L. c. 23K, §§ 15 and 17;
4. impacted live entertainment venue agreements pursuant to G.L. c. 23K, § 17; and

5. certificates of occupancy permits and approvals issued in connection with the gaming establishment.

(c) issued an operations certificate for the gaming establishment pursuant to G.L. c. 23K, § 25.

(2) Pursuant to M.G.L. c. 23K, § 10(c), the commission shall not make a determination that a category 1 gaming establishment is approved to open for business until the commission has:

(a) determined that the gaming licensee has complied with the conditions in 205 CMR 135.00;

(b) determined that the gaming licensee has completed the permanent gaming area and other ancillary entertainment services and non-gaming amenities;

(c) determined that the gaming licensee has completed all infrastructure improvements on and off site and around the vicinity of the gaming establishment, including projects to account for traffic mitigation required by the gaming license or any other approval obtained by the gaming licensee in connection with the gaming establishment.

(d) had an adequate opportunity to physically inspect or have the commission's representative inspect the completed gaming establishment and related infrastructure, as well as relevant plans, contracts, or other records, to determine that the completed gaming establishment and related infrastructure comply with:

1. the terms of the license;

2. G.L. c. 23K, and 205 CMR;

3. host and surrounding community agreements pursuant to G.L. c. 23K, §§ 15 and 17;

4. impacted live entertainment venue agreements pursuant to G.L. c. 23K, § 17; and

5. certificates of occupancy permits and approvals issued in connection with the gaming establishment.

(e) issued an operations certificate for the gaming establishment pursuant to G.L. c. 23K, § 25.

(3) Pursuant to G.L. c. 23K, § 10(b), a category 1 gaming licensee who fails to receive approval from the commission to open its gaming establishment for business within one year after the date specified in its approved project schedule pursuant to 205 CMR 135.02(2) or its revised, approved design and project schedule pursuant to 205 CMR 135.02(4) shall be subject to suspension or revocation of its gaming license by the

commission and may, if the commission determines that the gaming licensee acted in bad faith in its application, be assessed a fine of \$50,000,000 or less.

(4) The commission may find that a category 1 or category 2 gaming licensee who fails to comply with an approved design or construction project schedule pursuant to 205 CMR 135.02(2) or (4):

(a) has breached a condition of licensure pursuant to G.L. c. 23K, § 23(b) (iii);

(b) is no longer capable of maintaining operations at a gaming establishment pursuant to G.L. c. 23K, § 23(b) (v);

(c) or is maintaining a business practice that is injurious to the policy objectives of G.L. c. 23K pursuant to G.L. c. 23K, § 23(b) (vi).

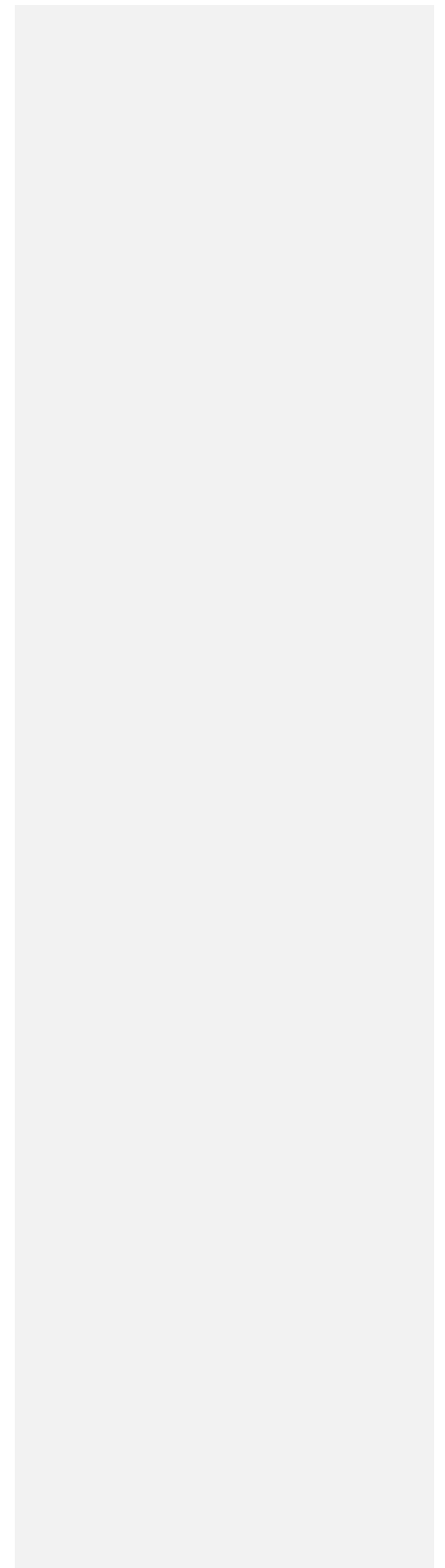
(5) The commission may condition, suspend or revoke a gaming license upon making a finding pursuant to 205 CMR 135.05(4), 205 CMR 135.06 (3) or (4) or G.L. c. 23K, § 23(b).

#### REGULATORY AUTHORITY

205 CMR 135: M.G.L. c. 23K, §§ 4, 5 10, 11, 15, 17, 18, 21, 23, and 25.



**Diversity Plan for the Design and Construction Phase  
of  
Plainridge Park Casino**

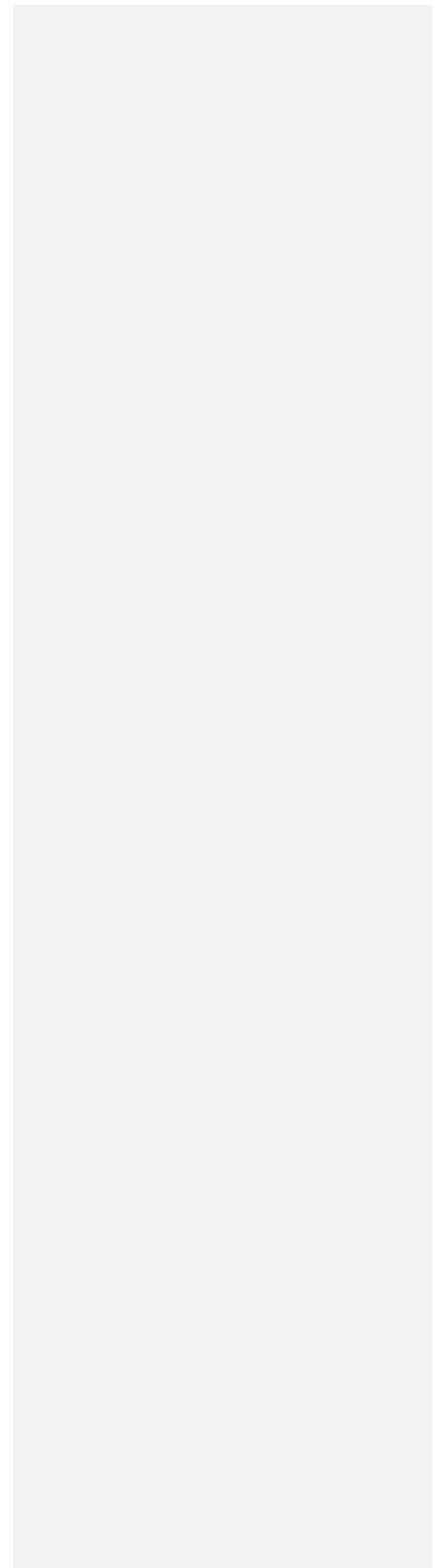




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## INTRODUCTION

Penn National Gaming Inc. (Penn) and its construction management firm, Turner Construction Company (Turner), have developed this comprehensive Diversity Plan for the design and construction phase of the proposed Plainridge Park Casino in Plainville, Massachusetts. The plan is designed not only to provide equal opportunity to traditionally disadvantaged groups for design and construction vendors and suppliers, but to also outline our program to promote a diverse design and construction workforce that is reflective of the local region.

While the Plan refers frequently to Minority Business Enterprise (“MBE”), Women Business Enterprise (“WBE”) and Veteran Business Enterprise (“VBE”) companies, the inclusive diversity philosophy of Plainridge Park Casino is intended to be more far reaching than simply the inclusion of minorities, women and veterans. We will have an equal focus on the use of small businesses, disadvantaged businesses, local businesses and workforce assets from our host community of Plainville as well as from our surrounding communities, and the region as a whole.

The goals set forth in this plan were determined based on the following research and existing programs in the Commonwealth:

- The Commonwealth of Massachusetts’ baseline participation goals for public projects;
- Publicly available information on participation rates of similarly sized projects in the region.
- Baseline participation goals of our host and/or surrounding communities;
- Current availability of businesses and workforce participants in the region that meet these designations; and
- The 2010 disparity study titled, “Race, Sex and Business Enterprise: Evidence from the Commonwealth of Massachusetts: Volume II,” prepared for the Division of Capital Asset Management.

As a result of this research, and taking into account the current demographics of Plainville and its surrounding communities, we have set the following participation goals for this project:

Design and Construction subcontractors: 11% minority and/or women-owned businesses, with an aspirational goal of 3% veteran owned business

Design and Construction workforce: 16% minority, 7% female and a priority placed on opportunities for veterans<sup>1</sup>

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\* Massachusetts has not yet established baseline veteran participation goals. However, we will seek to maximize opportunities for veterans as described herein and establish realistic goals in partnership with Massachusetts-based veterans services groups and proactive outreach efforts.

These diversity goals will enable this project to be reflective of the community and either meet or exceed those set forth by the Executive Office of Administration and finance administration Bulletin Number 14.

We recognize that the state's goal for design phase awards is set at 17.9%. We feel that we will not be able to achieve the 17.9% goal established by the state due to the unique circumstances of our project timeline. We assumed the ownership stake in Plainridge Racecourse and the Plainridge Park Casino proposal with the design phase already in progress. Changing design professionals involved in the design phase of this project (such as engineering, architectural, etc.) would cause significant delays in the start and completion of the construction project and thus delay the opening of the facility. With that said, we are working with our current design phase professionals to identify and engage potential minority, women and veteran owned businesses as part of their remaining responsibilities on this project.

Timely, effective and continuing outreach efforts are critical to the success of our program. As a result, Penn and Turner have already begun their outreach efforts, including:

- Attending their first meeting with the Massachusetts Gaming Commission's (MGC) Vendor Advisory Team on March 24, 2014;
- Outreach to and ongoing communications with the Massachusetts Supplier Diversity Office (SDO) and the Greater New England Supplier Development Council both of who Turner partners with, to alert their member subcontractors to the specific opportunities;
- Outreach to the Massachusetts Small Business Development Center Network Southeast Regional Office;
- Hosting a subcontractor opportunity event on March 25, 2014 and regular dialogue with the MGC's Director of Workforce, Supplier and Diversity Development;
- Communication with the Veterans Business Owners Initiative in both Bedford and Worcester.
- Development of a Job Referral Program in conjunction with the Massachusetts Building Trades Council

## EXECUTIVE SUMMARY

### Purpose

This Plan describes Plainridge Park Casino's strong commitment to ensure diversity in the design and construction, and fit-out of the property. The Plan outlines specific procedures aimed at ensuring equal opportunity, and diversity in procurement, contracting, and workforce. The Plan emphasizes our commitment to diversity as it relates to our vendors, our business partners and our community. In sum, we appreciate and respect diversity in all aspects of our business operations and we look forward to supporting and participating in the local community as we build a regional engine of economic growth.

### Diversity Committee

Penn and its project development team, along with Turner, will establish a diversity committee for the purposes of this plan's implementation. The diversity committee will include, but not be limited to, the following:

- John R. Rauen (Vice President, Project Development, Penn),
- Michael McGrew (Vice President, Construction, Penn)
- Alison Stanton (Regional Director of Community Affairs, Turner)
- Philip Coleman (Project Executive, Turner)
- Emil Giordano (Plainridge Park Casino Project Manager of Quality and Compliance, Turner)
- Dr. Fred McKinney, Ph.D (President, Greater New England Minority Supplier Diversity Council)
- Reginald A. Nunnally (Executive Director, Massachusetts Supplier Diversity Office)\*

Designated members of this committee will also be the liaison to the MGC's Vendor Advisory Committee and the primary contact for the MGC's Director of Workforce, Supplier and Diversity Development will be John R. Rauen (Penn). Members of the committee will also participate in the meetings of the MGC's Vendor Advisory Committee on a regular basis.

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\* This member is currently invited and we are communicating with his office to confirm his participation.

### **Turner Experience and Expertise**

The implementation and success of this plan will rely heavily on Turner's experience and expertise. Turner has been building in this regional market for numerous years and has extensive experience with subcontractors, suppliers and organized labor.

Turner's Project Manager of Quality and Compliance, Emil Giordano, will serve as the chief diversity officer for Turner for this project. He will work directly with Turner's Director of Community Affairs throughout the course of the project. This diversity team has played a key role in the development of this plan, based on their experience and knowledge of our marketplace and will work in tandem with the Penn project development team in the oversight and implementation of the plan.

### **Reporting Schedule**

As required pursuant to 205 CMR 135.00, Penn will provide reports to the MGC on a quarterly basis during the design and construction phase of this project. Such reports will track progress with the goals established in this plan. In addition, Penn is happy to provide more frequent and detailed updates to MGC staff and their construction monitor/OPM upon request.

### **Communications Strategy**

The project will use multiple avenues of communications to advertise subcontractor, vendor and workforce opportunities. We will use a combination of traditional paid media, earned media, social media and partner organizations to advertise workforce, subcontractor and vendor opportunities throughout the course of the design and construction period. To date we have already purchased advertising in print publications in our region, communicated through partner organizations (such as The Massachusetts Supplier Diversity Office, The Greater New England Minority Supplier Development Council, the local office of Minority Business Development Agency Center, the local office of the United States Small Business Administration, the Veteran Business Owner's Initiative, the Town of Plainville and MGC Vendor Advisory Team members) to advertise our March 25<sup>th</sup> event, posted project specs and pre-qualifications documents on our website, promoted events on social media sites, provided contact information of union halls for prospective construction workers on our website and social media sites. We will also host a pre-job conference in April with all union officials to communicate the goals for the workforce.

## DEFINITIONS

Diversity refers to the variety of backgrounds and characteristics found in society today; thus it embraces all aspects of human similarities and differences. While we support diversity as an inclusion concept, reality compels us to focus considerable attention on addressing issues related to those individuals and groups that have historically been adversely affected. For purposes of the Plan, diversity specifically focuses on differences among people with respect to age, sex, culture, race, ethnicity religion, color, disability, national origin, ancestry, sexual orientation and veteran status.

### **Definition of Participation Plan**

An obligation imposed by a licensed entity as part of its contract with a contractor that requires the contractor to perform the contract through the utilization of veteran, minority or women owned business enterprises and on site project workforce. This participation plan and those required of contractors performing work on the job are in response to requirements outlined in Chapter 23K, Section 16 of the Massachusetts Gaming Act.

### **Definition of Minority**

A minority is an individual who is a member of the following ethnic groups: African American, Asian American, Hispanic American, and Native American.

### **Definition of Women**

Persons who are identified or identifies as the female gender. Participation goals are set for all women, regardless of race or ethnicity.

### **Definition of Veteran**

Veterans are anyone who has served in the United States Armed Forces and has been honorably discharged.

### **Definition of Minority Business Enterprise (“MBE”)**

“Minority business enterprise” or “MBE”, for the purpose of receipt of services from SDO, means a business enterprise that is owned and controlled by one or more socially or economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons include, but are not limited to, African Americans, Cape Verdeans, Western Hemisphere Hispanics, Asians, American Indians, Eskimos, and Aleuts. For purposes of section 61 and of section 40N of chapter 7, the term “minority owned business” shall have the same meaning as “minority

business enterprise”\* and as defined by the certifying agencies listed on page nine of this document.

**Definition of Women Business Enterprise (“WBE”)**

“Women business enterprise” or “WBE”, for the purpose of receipt of services from SDO means a business enterprise that is both owned and controlled, by one or more women who have invested in an ongoing business free of conversion rights. For purposes of section 61 and of section 40N of chapter 7, the term “women owned business” shall have the same meaning as “women business enterprise”\* and as defined by the certifying agencies listed on page nine of this document.

**Definition of Veteran Business Enterprise (“VBE”)**

“Veteran business enterprise” or “VBE”, a business enterprise that is both owned and controlled by 1 or more veterans, as defined in section 7 of chapter 4, who has invested in an ongoing business free of conversion rights.\*

**Qualified Spend**

The total amount of contracts for the design and construction of the gaming facility less the value of design and construction costs included therein for which there is no M/W/VBE or workforce market available, in addition to any work performed or contracts entered into prior to Penn’s assumption of the Plainridge Park Casino development agreement.

**Definition of Subcontractor**

Is a person or business that has a contract with a contractor to provide some portion of the work or services on a project that the contractor has agreed to perform. Subcontractors to this design and construction project refer to those contracted in the design and construction trades such as but not limited to plumbing, electrical, roofing, cement work, plastering, drywall, roofing, glaziers, carpentry, etc.

**Definition of Vendor**

A vendor is an individual or business that provides goods and services to the project but are not considered design and construction trades. These goods and services include but are not limited to, couriers, printers, waste management, office and janitorial supplies, janitorial services, food and beverage services, etc.

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\* As defined in the Commonwealth of Massachusetts General Laws, Part I, Title II, Chapter 7, Section 58. <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter7/Section58>

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\* As defined in the Commonwealth of Massachusetts General Laws, Part I, Title II, Chapter 7, Section 58. <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter7/Section58>

**Certifying Agencies**

This project will recognize and accept certifications from the following certifying bodies:

- Massachusetts Supplier Diversity Office (SDO);
- Greater New England Minority Supplier Development Council (GNEMSDC);
- Women’s Business Enterprise National Council (WBENC);
- Vendor Information Pages Verification Program located at [www.VetBiz.gov](http://www.VetBiz.gov)
- And, as verified by the MGC’s Division of Licensing



## DESIGN AND CONSTRUCTION

### **Design and Construction Mission**

Inclusion of minority businesses and other diverse groups on bids for major design and construction projects is an important issue for the local minority community and for Plainridge Park Casino. We will use a proactive approach to address minority participation during the initial casino build to ensure the inclusion of minority; women and veteran owned vendors, subcontractors and maintain a diverse construction workforce.

Penn and Turner are dedicated to operating in a manner that creates a positive impact on the communities in which they build. On **every** major project Turner's Community Affairs team works to develop a Project Specific Community Outreach Plan that will help to further strengthen the local communities. This plan includes strategies that seek to develop a diverse local workforce on the project and provide for opportunities for Minority Owned, Women Owned and Veteran Owned Business Enterprises. For this project, Turner will assign a project specific Manager of Compliance who will work with Turner's Director of Community Affairs to ensure that the Community Outreach Plan is communicated effectively and that the project goals are met.

### **Design and Construction Goal**

Our goal is to establish a comprehensive plan for diversity that builds upon Penn's successful record in including minority, female and veteran contractors in all of its design and construction projects across the country. Plainridge Park Casino and Penn will work to ensure that the project reflects state and local minority, female and veteran participation goals and that these goals reflect the diversity of the region.

The design and construction plan is broken out into two sections: The first (A) is our subcontracting plan, which focuses on our strategy to include M/W/VBE contractors. M/W/VBE vendors will also be included as part of this section of the plan. The second portion (B) of this plan outlines the inclusion of minority members in the design and construction workforce.

#### **A. M/W/VBE Subcontracting Plan**

Proactive communication early on in the preconstruction process is the most effective way to ensure opportunities for a diverse group of businesses.

#### **Early Preconstruction**

1. Penn and Turner met early on to align strategies and outreach in order to meet the 11% M & WBE and 3% **aspirational** VBE goals of the project [for construction subcontractors](#).

2. Turner offers opportunity to M/W/VBE and small firms on all of its projects and has developed a database of companies along with their certifications and qualifications. As the bid packages are developed, the M/W/VBE database is utilized to identify prime subcontractors that would qualify for the bidders list. The database is also used to identify companies that could perform work on the project in a lower tier capacity or as vendors. This becomes the base for our subcontracting plan.
3. As this subcontracting plan develops we look for further opportunities for M/W/VBEs but we also give great focus to the areas in which we see gaps where we have not been able to identify an ample number of qualified M/W/VBE firms for a specific trade. This triggers our plan for external outreach that involves partner organizations.
  - a. Turner has strong relationships with the Massachusetts Supplier Diversity Office, the Greater New England Minority Supplier Development Council, the Minority Business Development Agency Center, the local office of the Small Business Administration and several others. We reach out to these partners to make them aware of the opportunities and the gaps that we see in our subcontracting plan. We also ensure that they are aware of the timing of the bid process. Together we will add qualified members of these organizations to the bidders list.
  - b. In conjunction with our partner organizations we will host an Access and Opportunity Event for M/W/VBEs, to introduce the project and educate the local market on project specifics. This event will help to share information, develop interest, and provide an opportunity for firms to introduce their capabilities in the bidding/design/construction of the project. Qualified event attendees will be added to the bidders list and subcontracting plan.
  - c. Partner Organizations will also be invited to attend this event as they could serve as great resources to M/W/VBEs who are not yet certified. Introductions will be made at this event to help facilitate the certification process.
  - d. Work with prime tier subcontractors to designate portions of their lower tier subcontracts to capitalize on M/W/VBE capabilities.
  - e. Develop mentoring programs where subcontractors mentor smaller M/W/VBEs in the same field. The relationship will help to further develop the capacity of the mentee while opening the door for future collaboration.
4. We will alert all Prime Subcontractors during the bid phase of the project to the M/W/VBE goals which will be included as part of their contract. Prime Subcontractors will be required to submit M/W/VBE strategies with their bid so that we can confirm that they will be able to successfully meet the goals [before an award takes place](#).

5. We will work with the local certifying agencies, when possible, to help facilitate certification for legitimate M/W/VBE companies that meet the needs of the project but have not yet applied for a recognized certification.
6. We will address cash flow needs of M/W/VBE as needed through expedited payment plans.

#### Subcontractor Bid / Award Period

1. By the time we reach the actual Bid / Award Period of this project we will have created a clear strategy per trade on the commitments necessary to reach the 11% M/WBE and aspirational 3% VBE goals.
2. Turner and Penn will work together during the Award Period to document M/W/VBE commitments and ensure overall Project Goals can be achieved.
  - a. The M/W/VBE goals are included in the Additional Provisions of the Subcontractors contract.
  - b. A M/W/VBE Utilization Plan Document is sent out with the contract. Each awarded subcontractor must document their commitments to lower tier M/W/VBE firms. This form is returned with the signed contract and is shared with the entire project team for future tracking purposes.

#### Construction Phase

1. Prior the start of the subcontractor's work onsite, a meeting is held to discuss their M/W/VBE commitments. The actual awards to their lower tiers will be tracked on a regular basis by staff in the field. They will also verify that the M/W/VBE is performing the scope that was specified.
2. As part of the requisition process, subcontractors will be required to provide proof of payment to lower tier M/W/VBE subcontractors.
3. The project team will provide a monthly report of initial commitments, current contracts and payments to date to verify that the subcontractors follow through with contractual commitments. This process also allows the team to address any discrepancies that arise early on. Penn and Turner will meet with any subcontractor that is not living up to their original commitments. The MGC will be included as a part of this meeting when necessary.
4. Turner has developed several mentoring and training programs for M/W/V/DBEs, one of these being the Turner School of Construction Management. This free series of classes is designed to further enhance the technical, managerial, and administrative skills of the owners enrolled while helping them to develop new strategic business networks and

Karen Bailey 4/14/14 7:30 AM

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alliances. Turner has partnered with the Massachusetts Supplier Diversity Office on this program in the past and we would look to implement something similar on this project

## **B. Diversity and Opportunity within the Workforce**

Opportunities for minorities, females and veterans on the project will be communicated early on and often to both the unions and subcontractors.

### Preconstruction

1. The project team hosts a Pre Job Conference with union officials in regards to the project. A priority of this meeting will be to ensure that the union representatives are well aware of the 16% minority and 7% female goals for the workforce on this project, as well as our goal to provide opportunities for veterans.
2. Inform all subcontractors bidding work on the project that the 16% minority and 7% female goals for their labor force will be included as a part of their contract. Opportunities for veterans will be a priority as well.
3. We will review each subcontractor's history of minority and female participation on their labor force on projects in and around the City of Boston. Though this work was performed in a different part of the state it can still alert the team to any previous compliance issues. This data will be shared with the subcontractor and if the percentages are low then they will be asked to develop a written plan to meet the goals in moving forward.
4. The following will be included in each awarded subcontract;
  - a. The Additional Provisions will state the 16% minority and 7% female goals for the workforce.
  - b. A M/WBE Utilization Plan Document will also be included. The workforce goals are stated as a part of this document and the subcontractor must sign off in agreement.

### Construction

1. Prior the start of a subcontractor's work onsite, a meeting is held where the workforce goals and previous subcontractor performance will be discussed. If during the bid process it was noted that the awarded subcontractor had a history of noncompliance, the subcontractor will have submitted a written plan for working towards goals on this project. This plan will be revisited and updated if needed at this meeting.

2. A verification process will be implemented to ensure that all subcontractors are working towards the 16% minority and 7% female goals included in their contracts.
  - a. Subcontractors will be required to submit their payrolls to the project team on a weekly basis. This will enable the team to track the females and minorities that are working on the project as the work is taking place.
  - b. All workers are required to attend a safety orientation and a copy of their identification will be made at this meeting to back up to what is being submitted. Veteran status will be documented during this process as well.
  - c. The payrolls and back up information will be compiled into weekly and monthly reports both of which will be utilized to proactively work towards the goals.
3. Any subcontractor who is not reporting in a timely fashion or whose numbers are falling short of the goals will be required to attend a corrective action meeting with the Project Team. Non-compliant subcontractors will submit a written corrective action plan with steps they will take to improve their percentages moving [forward. The MGC will be included as a part of this meeting when necessary](#)
4. Turner has several partnerships in place with organizations that offer training and assistance to individuals interested in a career with a union. We will look to partner with these organizations and introduce them to the subcontractors performing work on this project.
5. Penn and Turner will also host an event, specifically for residents of Plainville, interested in applying for work in both the design/construction and operations on this project. Representatives from Penn, Turner and the building trades will be present to facilitate this conversation and process.

### **Exhibits**

Attached to this document we have provided copies of four forms to be utilized in the implementation of this plan. They are:

1. Subcontracting Plan – Initial commitment from subcontractors on lower tier M/WBE
2. Participation Form – tracking actual contracts and payments to M/WBEs
3. Weekly Tracker – Spreadsheet to assist with tracking of payrolls for workers
4. Waiver – copy of lower tier lien waiver, which is proof of payment to lower tiers

## **COMMITMENT**

Plainridge Park Casino and Penn are committed to developing a high performance, inclusive work environment that reflects the diversity of our community. We will strive to create a company culture where all ideas and all contributions are valued no matter how or from whom they may originate. We will actively seek out contractors and vendors from traditionally disadvantaged groups to build and supply the facility. Our commitment to making inclusiveness the foundation for our culture is driven not only from our desire to enhance our community, but also because such commitment supports a sound business strategy.



Coastal Construction  
& Management

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Jill Lacey Griffin  
Director of Workforce, Supplier and Diversity development  
Massachusetts gaming commission  
84 State street 10<sup>th</sup> Floor  
Boston, Ma 02109

Re: Comments

Ms. Griffin,

To improve cash flow for small business and increase MBE/WBE, Veteran Mass Gaming Commission Should encourage "Quick Pay" by paying the small business in 14 days. That would help to hire the labors faster to increase production, pay suppliers for materials delivered at the job. The small business will get faster stronger in financial footing.

If you have any questions, please contact me at (617) 990.6507.

Sincerely,

  
Lucner Charles  
President

205 CMR: MASSACHUSETTS GAMING COMMISSION  
205 CMR 141.00: GAMING SCHOOLS

Section

- 141.01: Certification of School
- 141.02: Curriculum
- 141.03: Consumer protection
- 141.04: Instructors
- 141.05: Discipline
- 141.06 Annual report

141.01: Certification of school

(1) No person shall offer a course of instruction designed to prepare an individual for employment at a gaming establishment as a dealer, slot machine technician, or surveillance personnel, without first obtaining certification as a gaming school from the commission in accordance with 205 CMR 141.00. Training provided by a gaming licensee to its employees shall be exempt from 205 CMR 141.00. Further, 205 CMR 141.00 shall not be construed so as to preclude a vendor to the gaming licensee from providing a demonstration of its equipment or training for the use of its equipment to a gaming licensee or the licensee's employees.

(2) The commission shall maintain a list of all certified gaming schools on its website.

(3) To become a certified gaming school a person shall submit an application to the Division of Licensing on a form provided by the commission that contains at least the following information:

- a) Name of applicant;
- b) Location where course(s) is to be offered;
- c) Name and contact information for responsible individual;
- d) The titles of all courses to be offered;
- e) Proof of licensure by the Division of Professional Licensure in accordance with G.L. c.122, § 263 and 230 CMR or proof of approval by either the **Massachusetts Department of Labor and Workforce Development, in order to receive state and federal training dollars administered by the Commonwealth**, or the Massachusetts Department of Elementary and Secondary Education;
- f) The curriculum outlining the particulars of all courses to be offered as approved by the entity referenced in 205 CMR 141.01(3)(e);
- g) **An itemized list of all gaming equipment in accordance with 205 CMR 141.05;**
- h) **A description or documentation of a system designed to document successful placement of students with employers in the commonwealth;**
- i) Attestation that the applicant has reviewed and understands 940 CMR 3.10;
- j) Statement signed under the pains and penalties of perjury as to the truthfulness of the contents of the application including any attachments; and



k) A \$100 certification fee.

(4) Applications shall be submitted to the Division of Licensing. The Division of Licensing shall issue a certification to the applicant upon a finding that the application is administratively complete in accordance with 205 CMR 141.01(3). In the event that the Division of Licensing deems an application to be administratively incomplete it shall notify the applicant in writing and specify the deficiency. The applicant may either remedy the issue or appeal the finding to the commission in writing. The commission shall then conduct an adjudicatory hearing on the matter in accordance with 205 CMR 101.00. Any person aggrieved by a decision of the Commission may appeal such decision in conformance with M.G.L. c. 30A, §14.

(5) A certification issued in accordance with 205 CMR 141.00 shall be coterminous with the underlying licensure or approval issued by the Division of Professional Licensure or Department of Education, as applicable.

(6) A gaming school that is certified in accordance with 205 CMR 141.00 shall be subject to the requirements of 205 CMR 112 and shall have an ongoing duty to provide updated information to the commission relative to its application. The commission, or its designee, may inspect the premises, attend a course, or review the records of a gaming school at any time.

#### 141.02: Curriculum

The following contents are provided for purposes of outlining a model curriculum and should be included in a gaming school curriculum and, where applicable, in a gaming establishment training program curriculum. If approved by the applicable licensing or approval body referenced in 205 CMR 141.01(3)(e) these model contents may be varied in order to achieve the best possible curriculum. The commission shall be notified in writing of any changes made to the curriculum submitted to the commission in accordance with 205 CMR 141.01(3)(f) prior to implementation of the change.

(1) The curriculum should generally include the following contents:

- (a) a brief description of each course;
- (b) a total number of instructional hours in each course consistent with the minimum requirements set forth in 205 CMR 141.02(c);
- (c) the tuition charged for each program and course;
- (d) the minimum entrance requirements;
- (e) a description of the clinical off-campus training experiences and the number of clinical off-campus training hours required in each program and course;
- (f) a list of occupations for which each program will prepare students; and
- (g) the estimated number of students anticipated to be enrolled in each course.
- (h) The number of work stations in the shop or laboratory, including the number and type of gaming tables and equipment to be used.
- (i) The nature of the skill and knowledge students are expected to have upon completion of the course or program and the testing program to be used to test the students' competency levels.

- (j) The student-teacher, student-table, and table-teacher ratios for each course or program.
- (k) A copy of all written material to be utilized in the course or program.
- (l) A description of the method and frequency by which the course will be evaluated in relation to its goals and objectives.

(2) In addition to the information referenced in 205 CMR 141.02(1), the following additional information should be provided depending upon the nature of the course.

(A) Table games. A curriculum for a course of instruction for a table game **should** include instruction in the following:

- (a) Rules and techniques of the game;
- (b) Basic industry standards for opening and closing tables for gaming, including the proper security procedures regarding table chip inventories.;
- (c) Basic industry standards for distributing and removing gaming chips and plaques from gaming tables;
- (d) The proper use, control and shuffling of playing cards for authorized games that involve the use of cards;
- (e) The proper use and control of dice for authorized games that involve the use of dice;
- (f) The proper use and control of tiles for authorized games that involve the use of tiles;
- (g) Basic industry standards for accepting cash at gaming tables;
- (h) Basic industry standards for the acceptance of tips and gratuities from patrons;
- (i) Basic industry standards for shift changes at gaming tables;
- (j) Basic industry standards for the proper placement of wagers by patrons and the proper collection of losing wagers and payment of winning wagers;
- (k) Training in recognizing problem gamblers and procedures for informing supervisory personnel;
- (l) Training in cardio pulmonary resuscitation (CPR).

(B) Slot machine repair and maintenance A curriculum for course of instruction in slot machine repair and maintenance **should** include the following:

**CONTENT FROM ATLANTIC CAPE CURRICULUM**

(C) Surveillance A curriculum for course of instruction in security **should** at a minimum include the following:

- (a) Role of the Security Officer in the Casino Industry
- (b) Security Officer Procedures in the Casino Industry
- (c) Emergency Procedures in the Casino Industry
- (d) Casino Security Principals and State Regulations
- (e) Casino operations, employee actions, and surveillance
- (f) Casino Customer Service procedures and protocols
- (g) Business and Security Ethics and Legal Concepts
- (h) Effective Communication with in the Casino Staff
- (i) Evaluating Information to Determine Compliance with Standards
- (j) Identifying Objects, Actions, and Events

- (k) Managing Emergency situations
- (l) • Documenting/Recording Information
- (m) • Decisions Making and Solving Problems

(3) Recommended training hours Curriculum **should** provide the following minimum number of hours of training prior to completion of a course:

- (1) 200 hours to deal craps.
- (2) 150 hours to deal roulette.
- (3) 130 hours to deal blackjack.
- (4) 80 hours to deal baccarat.
- (5) 200 hours to deal poker.
- (6) 150 hours in slot machine maintenance or repair.
- (7) For any course or program not listed 205 CMR 141.02(3), the required minimum hours of training and instruction may be **determined by the applicable licensing or approval body referenced in 205 CMR 141.01(3)(e)** on a case-by-case basis. The required minimum hours should be based on the number of hours the necessary to ensure the student will possess the level of skill, experience, and knowledge necessary to perform the job.

(4) For a student being trained to deal a second or subsequent game, curriculum **should** provide for the following number of hours of training prior to completion of a course:

- (1) 120 hours to deal craps.
- (2) 90 hours to deal roulette.
- (3) 80 hours to deal blackjack.
- (4) 50 hours to deal baccarat.
- (5) 120 hours to deal poker.
- (6) For any course or program not listed 205 CMR 141.02(43), the required minimum hours of training and instruction may be determined by the applicable licensing or approval body referenced in 205 CMR 141.01(3)(e) on a case-by-case basis. The required minimum hours should be based on the number of hours the necessary to ensure the student will possess the level of skill, experience, and knowledge necessary to perform the job.

140.03: Consumer protection:

(1) All gaming schools certified in accordance with 205 CMR 141.00 shall be subject to the applicable provisions of 940 CMR 3.10.

(2) Prior to enrollment, a gaming school shall engage in an intake with each prospective student that includes the following:

- (a) an explanation of the commission's application process contained in 205 CMR 134.00 including specific mention of the automatic disqualifying convictions described in 205 CMR 134.10(3)(a) and M.G.L. c.23K, §16(b); and
- (b) explicit notice that successful completion of the course of instruction does not assure an individual that they will be licensed by the commission as a gaming employee or that they will be hired by a gaming licensee; and
- (c) each prospective student shall be provided a written outline of each program offered by the school. The outline shall contain:
  - (1) course descriptions;
  - (2) entrance requirements;
  - (3) the total number of instructional hours required to obtain a certificate or diploma;
  - (4) the earliest possible completion date;
  - (5) a list of occupations for which each program will prepare students; and
  - (6) the costs of the courses and program;

#### 141.04: Instructors

All course instructors shall be approved by either the Division of Professional Licensure in accordance with 230 CMR 14.00 or in accordance with Department of Higher Education policy. All instructors must have at least 5 years of practical experience in the area they seek to instruct.

#### 140.05: Equipment

- (1) Gaming equipment used for training purposes in an approved school shall conform to the requirements set forth in 205 CMR.
- (2) An approved training school shall keep an itemized list of all gaming equipment including dealing shoes, card shufflers, gaming tables, roulette wheels, electronic gaming equipment, and slot machines. Slot machines must be transported in accordance with 205 CMR 140.00. The school or applicant shall submit its itemized list of equipment to the commission as part of its application. The itemized list shall be updated within 10 days of a change in the inventory of gaming equipment. If any of the equipment is sold or no longer used, the school shall advise the Division of Licensing, in writing, that the equipment is no longer used and what happened to the equipment. The itemized list shall have additions and omissions made as they occur.
- (3) An approved school shall use chips and tokens that are distinctly dissimilar to chips and tokens used by gaming licensees.
- (4) The school must have its name permanently imprinted or affixed to gaming equipment.

#### 141.06: Discipline

(1) Concurrent obligations Any school approved in accordance with 205 CMR 141.00 shall continue to be subject to all applicable laws and regulations enforced by its governing agency including the Division of Professional Licensure and Department of Higher Education.

(2) Notice of Action Any school approved in accordance with 205 CMR 141.00 must report any disciplinary action commenced by its governing agency, the Office of the Attorney General, or any other law enforcement agency to the commission within 10 days of such notice being received and shall have an affirmative obligation to advise the commission as to the outcome promptly upon determination.

(3) Any approval issued in accordance with 205 CMR 141.00 may be suspended or revoked, or the school reprimanded, for any of the following reasons:

- a. failure to abide by any provision of 205 CMR 141.00;
- b. failure to provide updated information relative to its application in accordance with 205 CMR 141.01(6);
- c. disciplinary action has been taken or pursued against the school by its governing agency, the Office of the Attorney General, or any other law enforcement agency;
- d. the school is unable to provide the proper education required to prepare individuals for employment at a gaming establishment as a dealer, slot machine technician, or surveillance personnel or is otherwise unsuitable in accordance with M.G.L. c.23K, §12;

(4) Complaints. Any person may file a complaint against any school approved in accordance with 205 CMR 141.00. All complaints must be in writing on a form provided by the commission. All complaints must be received by the commission within one year of the date of the alleged wrongdoing. The commission or Bureau may itself initiate a complaint at any time notwithstanding the date of the alleged wrongdoing.

(5) Basis of Complaint. A complaint must allege wrongdoing by the school in the form of a violation of 205 CMR 141.06(3) and/or M.G.L. c. 23K.

(6) Review and Investigation of Complaints. Every complaint filed shall be reviewed by the Division of Licensing. A hearing may be convened, the complaint may be forwarded to the Bureau, or the complaint may be dismissed in the discretion of the Division of Licensing. Failure of a complainant to cooperate in the investigation may be grounds for dismissal of a complaint.

(7) Notice of Hearing. If the Division of Licensing determines that a hearing shall be held to resolve a complaint, reasonable notice shall be provided to the complainant and the school. Mailing of notice to the address on record with the Commission, or emailing the notice to the address provided by the school on their application for licensure or registration, shall be deemed

satisfactory notice. The notice of hearing shall contain:

- a. The name of the complainant;
- b. The date, time and place of said hearing;
- c. A description, including the location, of the incident giving rise to the complaint.

(8) Hearing. Hearings convened pursuant to 205 CMR 141.00 shall be conducted pursuant to 801 CMR 1.02: *Informal/Fair Hearing Rules* and M.G.L. c. 30A. Any party may be represented by legal counsel. All parties shall be permitted to present an opening statement, testify on their own behalf, cross-examine all witnesses, present any relevant witness testimony, present any relevant documentary evidence, and offer a closing argument. The Division of Licensing may question any witness and include any records kept by the commission as exhibits. The Division of Licensing may conclude the hearing at any time and issue a decision based on the evidence presented.

If a school does not appear for the hearing, the Division of Licensing may conduct a hearing in its absence and render a decision based upon the evidence presented, but only after making a finding that the school was provided notice as required by 205 CMR 141.06(7).

The Division of Licensing may designate a hearing officer to convene a hearing and either make a recommendation or issue a decision on its behalf.

(9) Subpoenas. The Division of Licensing may issue a subpoena in accordance with M.G.L. c. 30A, § 12 requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence or documents, relating to any matter in question in the proceeding.

(10) Decisions and Discipline of License and Registration Holders. The Division of Licensing shall issue a written decision after the hearing. Decisions shall be issued in a reasonably prompt manner. The Division of Licensing may suspend the approval of a school for a fixed period of time, revoke an approval permanently, or issue a reprimand to the school. In conjunction with or in *lieu* of these disciplinary measures, the Division of Licensing may assess a fine pursuant to M.G.L. c. 23K, § 4(15), and recoup the costs of investigation. A school that has its approval revoked may apply in writing to the commission for reinstatement no sooner than five years from the date of the revocation.

(11) Appeals.

(a) Any person aggrieved by a decision of the Division of Licensing may, in writing, request review of said decision by the commission. The filing of such a petition shall not serve to stay any disciplinary action taken by the Division of Licensing.

(b) The commission may review such decision at its discretion. Such review is an administrative review that shall be based solely on the administrative record and is not to be construed as a second hearing on the same complaint(s). After review, the commission may either deny the petition or remand the matter to the Division of Licensing for further proceedings as directed. The filing of an appeal with the commission shall serve to toll the timing provisions of M.G.L. c. 30A, § 14 until such time as a final decision is rendered by the commission.

(c) Any person aggrieved by a decision of the Division of Licensing or the commission may appeal such decision in conformance with M.G.L. c. 30A, § 14.

#### 141.06 Annual report

A school certified as a gaming school in accordance with 205 CMR 141 shall submit a report to the commission detailing its enrollment rate, course completion rate, and job placement rate. The first report shall be submitted no later than one year after the date of initial certification by the commission and on an annual basis thereafter.

#### REGULATORY AUTHORITY

205 CMR 141: M.G.L. c. 23K, §5(a)(11)

205 CMR: MASSACHUSETTS GAMING COMMISSION  
205 CMR 138.00: GAMING DEVICES AND ELECTRONIC GAMING EQUIPMENT

Section

- 138.01: Standards for Gaming Devices
- 138.02: Progressive Gaming Devices
- 138.03: On-Line Monitoring and Control Systems (MCS) and Validation System
- 138.04: Cashless Systems
- 138.05: Bonusing Systems
- 138.06: Promotional Systems
- 138.07: Kiosks
- 138.08: Client-Server Systems
- 138.09: Electronic Table Game Systems
- 138.10: Dealer Controlled Electronic Table Games [RESERVED]
- 138.11: Wireless Gaming Systems [RESERVED]
- 138.12: Network Security
- 138.13: Player User Interface Systems
- 138.14: Card Shufflers and Dealer Shoes [RESERVED]
- 138.15: Electronic Raffle Systems [RESERVED]
- 138.16: Communications Protocols

138.01: Standards for gaming devices

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-11: Gaming Devices in Casinos, version 2.1, released Aug 25, 2011, subject to the following amendments:

- (a) Delete section 1.1.1.
- (b) Delete section 1.1.2.
- (c) Delete section 1.2.
- (d) Replace in section 3.4.1 “seventy-five percent (75%)” with “eighty percent (80%)”.
- (e) Add the following after the first paragraph of section 3.4.1: The calculation of minimum payout percentage excludes the cash equivalent value of any merchandise or other thing of value that cannot be converted into cash by the gaming establishment but may include the acquisition cost to the gaming licensee of the merchandise or other thing of value.
- (f) Replace in section 3.4.1(b) “75%” with “80%”.



(g) Replace in section 3.10.1(f) “seventy-five percent (75%)” with “eighty percent (80%)”

(2) For purposes of M.G.L. c.23K and 205 CMR the term slot machine as defined by M.G.L. c.23K, §2 shall not include automatic amusement devices as defined by G.L. c 140, § 177A(2).

(3) For purposes of M.G.L. c.23K and 205 CMR each gaming position, as defined by M.G.L. c.23K, §2, at a slot machine shall be considered a separate slot machine.

(4) A gaming licensee shall provide the commission with a real-time stream of data, other than personally identifiable information, in the communication format specified by the commission in 205 CMR 138.16 directly from each slot machine. Such data shall be provided for purposes of computing and reconciling daily tax obligations as provided in 205 CMR 135.XX, for purposes of investigating patron disputes filed in accordance with 205 CMR 134.19, and for purposes of maintaining general oversight of a gaming establishment. The commission is not obligated to monitor or review the data on an ongoing basis. If communications between the slot machine and the commission’s system fails, the slot machine shall continue to record all required data for the most recent seven days of operation and send the data directly to the commission as soon as the connection is reestablished. If the connection is not reestablished within 24 hours due to a problem stemming from the gaming establishment’s systems, then any slot machine affected shall cease operation until the connection is reestablished.

#### 138.02: Progressive Gaming Devices

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-12: Progressive Gaming Devices in Casinos, version 2.1, released Sept 6, 2011, subject to the following amendments:

(a) Delete section 1.1.

(b) Delete section 1.2.

#### 138.03: On-Line Monitoring and Control Systems (MCS) and Validation System

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-13: On-Line Monitoring and Control Systems (MCS) and Validation Systems in Casinos, version 2.1, released Sept 6, 2011, subject to the following amendments:

(a) Delete section 1.1.

(b) Delete section 1.3.

#### 138.04: Cashless Systems

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-16: Cashless Systems in Casinos, version 2.1, released Sept 6, 2011, subject to the following amendments:

(a) Delete section 1.2.

(2) No slot machine at a gaming establishment shall accept debit cards or credit cards, or government-issued electronic benefits transfer cards as a form of payment.

138.05: Bonusing Systems

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-17: Bonusing Systems in Casinos, version 1.3, released Sept 6, 2011, subject to the following amendments:

(a) Delete section 1.2.

138.06: Promotional Systems

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-18: Promotional Systems in Casinos, version 2.1, released Sept 6, 2011, subject to the following amendments:

(a) Delete section 1.2.

138.07: Kiosks

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-20: Kiosks, version 1.5, released Sept 6, 2011, subject to the following amendments:

(a) Delete section 1.1.3.

138.08: Client-Server Systems

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-21: Client-Server Systems, version 2.2, released Sept 6, 2011, subject to the following amendments:

(a) Delete section 1.1.

(b) Delete section 1.2.

138.09: Electronic Table Game Systems

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-24: Electronic Table Game Systems, version 1.3, released Sept 6, 2011, subject to the following amendments:

(a) Delete section 1.1.

(2) An electronic table game shall be considered a slot machine in accordance with M.G.L. c. 23K, § 2 unless the simulation requires the intervention of a gaming employee prior to the final determination of winnings.

138.10: Dealer Controlled Electronic Table Games [RESERVED]

138.11: Wireless Gaming Systems [RESERVED]

138.12: Network Security

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-27: Network Security Best Practices, version 1.1, released Jan 21, 2013, subject to the following amendments:

(a) Delete section 1.1.

(b) Delete section 1.2.

138.13: Player User Interface Systems

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-28: Player User Interface Systems, version 1.0, released Feb 14, 2011, subject to the following amendments:

(a) Delete section 1.1.

138.14: Card Shufflers and Dealer Shoes [RESERVED]

138.15: Electronic Raffle Systems [RESERVED]

138.16: Communications Protocols

(1) A gaming licensee shall not operate any slot machine in a gaming establishment after January 1, 2017 unless that slot machine is compatible with the Gaming Standards Association G2S protocol. Provided however, any slot machine that is registered and operating in a gaming

establishment prior to January 1, 2017 is not required to comply with the G2S protocol. A gaming licensee shall not operate any slot machine in a gaming establishment unless the slot machine:

- (a) is able to bi-directionally communicate with the commission's central control system;
- (b) transmits, on a per bet basis, data relative to amounts wagered, amounts won, cash in, cash out, and similar financial information necessary for tax collection and auditing;
- (c) allows remote verification of gaming device software using a SHA-1 or similar hashing system;
- (d) allows remotely activating and disabling slot machines; and
- (e) transmits data relative to any restarts, shutdowns, resets, game changes, door open, and other maintenance events;

REGULATORY AUTHORITY

205 CMR 138: M.G.L. c. 23K, §§x

205 CMR: MASSACHUSETTS GAMING COMMISSION  
205 CMR 139.00: APPROVAL OF SLOT MACHINES AND ELECTRONIC GAMING  
EQUIPMENT AND TESTING LABORATORIES

Section

- 139.01: Required Permits and Registration
- 139.02: Permitting of Gaming Device Prototypes
- 139.03: Registration of Gaming Device Inventory
- 139.04: Required Testing by Independent Testing Laboratories
- 139.05: Fees for Testing, Permitting, and Registration of Gaming Devices
- 139.06: Independent Testing Laboratory Certification and Auditing

139.01: Required Permits and Registration

- (1) No new or modified gaming device listed in 205 CMR 139.01(2) shall be:
  - (a) sold by a gaming vendor unless a prototype of the gaming device has received a permit from the commission in accordance with 205 CMR 139.02;
  - (b) operated by a gaming licensee in a gaming establishment unless the gaming device is registered with the commission in accordance with 205 CMR 139.03.
- (2) The following gaming devices require permitting and registration by the commission:
  - (a) Slot machines;
  - (b) Electronic table games;
  - (c) Kiosks;
  - (d) Wireless wagering devices;
  - (e) Money counters;
  - (f) Chip sorters;
  - (g) Devices used in conjunction with table games such as gaming chips, dice, cards, Pai Gow tiles, card readers, dealer shoes, automated shuffling machines, dice shakers, and roulette wheels; and
  - (h) Tables for conducting table games such as roulette, blackjack, poker, craps, baccarat, big six, and Pai Gow.
  - (i) Slot machine games;

- (j) Multiplayer systems;
- (k) Server supported slot systems;
- (l) Slot machine bonus systems;
- (m) Table game bonus systems;
- (n) Progressive systems;
- (o) Account based wagering systems;
- (p) Slot monitoring systems and casino management systems;
- (q) Gaming voucher systems;
- (r) Devices used in conjunction with a slot monitoring system or casino management system, unless the devices provide read-only functionality;
- (s) Devices used in conjunction with gaming devices such as bill acceptors, printers, and coin acceptors that are not integrated into and tested as part of another gaming device;

#### 139.02: Permitting of Gaming Device Prototypes

(1) In order to receive a permit for a gaming device, a gaming vendor, at its own expense, must submit the gaming device for scientific testing and technical evaluation in accordance with 205 CMR 139.04 by a commission certified independent testing laboratory certified pursuant to 205 CMR 139.06 to determine compliance with M.G.L. c. 23K and 205 CMR 138. The gaming vendor must provide the certified independent testing laboratory with all documentation and other materials necessary to conduct testing and evaluate compliance.

(2) Upon completion of testing by a certified independent testing laboratory, a gaming vendor may submit an application for permitting of the gaming device to the commission's gaming technology laboratory. The commission may reject any gaming device permit application that is deemed administratively incomplete. The application for a gaming device permit shall be in the form prescribed by the commission and contain:

- (a) the gaming vendor's name;
- (b) the gaming vendor's license number pursuant to 205 CMR 134;
- (c) a unique name and version number for the gaming device for which the registration is sought;
- (d) a copy of the commission certified independent testing laboratory report for the gaming device in accordance with 205 CMR 139.04;

(e) a list of all jurisdictions in which the gaming device has been granted or denied licensure, registration, or similar; and

(f) the application fee in accordance with 205 CMR 139.05.

(3) Upon receipt of the gaming device permit application, the commission's gaming technology lab may require that the gaming vendor provide to the commission's gaming technology lab, at the gaming vendor's expense, a functioning prototype of the gaming device as well as all documentation and other materials necessary to conduct testing and evaluate compliance.

(4) The gaming vendor shall promptly notify the commission of any negative action taken in another jurisdiction or if it becomes aware of an issue that may negatively impact the reporting of revenue, game outcome, or the integrity of a device that has been submitted to the commission for permitting or has been permitted.

(5) Prior to issuing a permit and after completing a review of a proposed gaming device that has not been available for public use in other jurisdictions for at least 45 days, the commission may require a trial period of up to 45 days to test the gaming device in a gaming establishment. During the trial period, minor changes in the operation or design of the gaming device may be made with prior approval of the commission.

(6) Upon reviewing a gaming device permit application and conducting any additional testing or trials that the commission requires, the commission shall issue a gaming device permit if the device meets the requirements of 205 CMR 139.02(7). If a gaming device does not meet the requirements of 205 CMR 139.02(7), the commission may deny the permit or issue the permit subject to conditions necessary for the gaming device to meet the requirements of 205 CMR 139.02(7). If the commission denies or conditions the gaming device permit, the commission shall provide a written notification containing the reason for the denial or condition. The gaming device permit shall not expire, but shall be subject to any future conditions imposed in accordance with 205 CMR 139.02(8).

(7) Prior to permitting, a gaming device must:

(a) meet the applicable requirements of G.L. c. 23K and 205 CMR 138; and

(b) not endanger, compromise, or weaken the credibility or integrity of gaming in the Commonwealth.

(8) The commission, or its designee, may add, modify or remove conditions following the initial permitting of a gaming device as necessary to ensure the integrity of the gaming device or the effective administration of 205 CMR.

(9) A gaming vendor may appeal a permit denial, permit revocation, or imposition of any condition on a permit by filing a petition on a form prescribed by the commission. Upon receipt

of a petition, the gaming technology lab shall schedule a hearing to be conducted in accordance with 205 CMR 139.02(10) and provide the gaming vendor with reasonable notice containing the date, time, and location of the hearing.

(10) Hearings convened pursuant to 205 CMR 139.02(9) shall be conducted in accordance with 801 CMR 1.02: *Informal/Fair Hearing Rules* and M.G.L. c. 30A. Given the sensitive nature of gaming device operations, the hearing will not be open to the public. Any party may be represented by legal counsel. All parties shall be permitted to present an opening statement, testify on their own behalf, cross-examine all witnesses, present any relevant witness testimony, present any relevant documentary evidence, and offer a closing argument. The gaming technology lab may question any witness and include any records kept by the commission as exhibits. The commission's executive director shall designate a hearing officer to preside over the hearing. The decision of the hearing officer will be final. Any person aggrieved by a decision of the hearings officer may appeal such decision in conformance with M.G.L. c. 30A, § 14.

### 139.03: Registration of Gaming Device Inventory

(1) In order to register a gaming device for use in a gaming establishment, a gaming licensee must submit a gaming device registration application with the commission's gaming technology laboratory. The commission may reject any gaming device registration application that is deemed administratively incomplete. The application for a gaming device registration shall be in the form prescribed by the commission and contain:

- (a) the gaming licensee's name;
- (b) the gaming device number issued by the commission for the permitted prototype on which the gaming device is based;
- (c) in the case of a physical gaming device, the unique serial number and the date of manufacture for each copy of the gaming device that the gaming licensee intends to use in the gaming establishment;
- (d) in the case of a software gaming device, the maximum number of instances of the software that the gaming licensee intends to use at any one time in the gaming establishment;

(2) Upon reviewing a gaming device registration application, the commission shall register the gaming device if the gaming device registration application is in compliance with the requirements and conditions of the gaming device permit on which the device is based. The gaming device registration shall not expire, but shall be subject to any future conditions imposed in accordance with 205 CMR 139.03(4).

(3) A registered gaming device must:



(a) be identical in all mechanical, electrical, electronic or other material aspects to the prototype permitted in accordance with 205 CMR 139.02 on which the gaming device is based;

(b) comply with any conditions of the permitted prototype on which the gaming device is based; and

(c) not endanger, compromise, or weaken the credibility or integrity of gaming in the Commonwealth.

(4) The gaming licensee must ensure that the registered gaming device is and remains in compliance with 205 CMR 139.03(3) at all times. The commission may at any time inspect any registered gaming device and revoke or condition the registration if that device fails to comply with section 205 CMR 139.03(3). Prior to revoking or conditioning the registration of a gaming device currently in use in a gaming establishment, the commission shall allow the gaming licensee a reasonable amount of time to bring the device into compliance.

(5) A gaming licensee may appeal a registration denial, registration revocation, or imposition of any condition on registration by filing a petition on a form prescribed by the commission. Upon receipt of a petition, the gaming technology lab shall schedule a hearing to be conducted in accordance with 205 CMR 139.03(6) and provide the gaming licensee with reasonable notice containing the date, time, and location of the hearing.

(6) Hearings convened pursuant to 205 CMR 139.03(5) shall be conducted in accordance with 801 CMR 1.02: *Informal/Fair Hearing Rules* and M.G.L. c. 30A. Given the sensitive nature of gaming device operations, the hearing will not be open to the public. Any party may be represented by legal counsel. All parties shall be permitted to present an opening statement, testify on their own behalf, cross-examine all witnesses, present any relevant witness testimony, present any relevant documentary evidence, and offer a closing argument. The gaming technology lab may question any witness and include any records kept by the commission as exhibits. The commission's executive director shall designate a hearing officer to preside over the hearing. The decision of the hearing officer will be final. Any person aggrieved by a decision of the hearings officer may appeal such decision in conformance with M.G.L. c. 30A, § 14.

(7) A gaming licensee shall inform the commission's gaming technology laboratory of any registered gaming device that the gaming licensee no longer possesses no later than the second Monday of the month following termination of possession.

#### 139.04: Required Testing by Independent Testing Laboratories

(1) Any testing by a commission certified independent testing laboratory for the purposes of permitting a gaming device shall be conducted in compliance with M.G.L. c. 23K and 205 CMR 138 and 139.

(2) The independent testing laboratory shall issue a report of the testing results to the gaming vendor. Such report shall contain:

- (a) the part and version numbers of the gaming device tested;
- (b) attachments containing documents sufficient to describe the functionality and operation of all material components of the gaming device;
- (c) a description of all tests conducted and the results of such tests;
- (d) a statement as to whether each of the components within the gaming device, each interaction between components, and the device as a whole is compliant with the latest version of M.G.L. c. 23K and 205 CMR 138 as of the start date of testing;
- (e) an attachment listing all known methods of breaching the security of the gaming device;
- (f) the date the gaming device was submitted for testing;
- (g) the start and end dates of the gaming device testing;
- (h) the location of the facility used to perform the testing; and
- (i) a statement, signed under penalty of perjury, that all information provided in the report is accurate and complete.

(3) The independent testing laboratory's report shall not contain any information in its body that if publically released may harm the integrity of the gaming device, but such information may be disclosed in an attachment.

(4) The independent testing laboratory may communicate with the applicant to request additional documentation or to discuss potentially non-compliant components. The independent testing laboratory shall log any communication between itself and the applicant and be able to provide to the commission copies of all documents transmitted to or from the applicant for at least seven years following the issuance of the report.

(5) The independent testing laboratory may only rely on testing conducted and data collected from a third party or from its own testing for another jurisdiction if the testing was performed during the past six years by an independent party with no apparent interest in the result. An independent testing laboratory relying on such external testing or data must clearly identify in its report all such reliance and independently verify the validity of such data or testing by:

- (a) finding that the methods described in the earlier test are reliable and there is no indication that the data are incorrect; or

(b) showing that the gaming device has been implemented for public use for at least 6 months in other jurisdictions and has performed in conformance with the data;

(6) An independent testing laboratory may rely on any data or results of testing conducted by a commission certified independent testing laboratory during the past six years when such testing was conducted for purposes of permitting a gaming device in the Commonwealth. Any reliance pursuant to 205 CMR 139.04(5) or (6) must be clearly identified in the report.

#### 139.05: Fees for Testing, Permitting, and Registration of Gaming Devices

(1) A gaming vendor seeking a gaming device permit shall remit appropriate fees to the commission along with the gaming device permit application. The application fee for submitting a new gaming device for permitting or for modification of a currently permitted gaming device is \$500.

(2) A gaming vendor seeking a gaming device permit or update to a gaming device permit shall, in addition to the application fee, pay to the commission all costs incurred by the commission in the testing process.

(3) A gaming vendor requesting that a commission certified independent testing laboratory conduct testing shall pay all costs of the testing directly to the independent testing laboratory.

(4) There is no fee for registering a gaming device based on a permitted prototype of the same device.

#### 139.06: Independent Testing Laboratory Certification and Auditing

(1) Certification Process. In order to provide testing services of gaming devices in Massachusetts, a person must be certified as an independent testing laboratory in accordance with 205 CMR 139.06. The certification process will take place as follows:

(a) The commission may issue yearly a request for applications from applicants interested in being certified as independent testing laboratories.

(b) Upon receipt of an application in the form prescribed in 205 CMR 139.06(5) the gaming technology laboratory and the bureau shall conduct any investigation they deem reasonable, including any visit, review or inspection of each independent testing laboratory seeking certification to evaluate the laboratory's qualifications and capabilities pursuant to 205 CMR 139.06(3).

(c) The applicant is required to pay any and all costs associated with the investigation, including site visits, inspections, and background investigations, of the applicant during the certification evaluation period.

(d) Upon the conclusion of evaluation and upon full payment of any costs associated with the certification process, the gaming technology laboratory, with the input of the bureau, shall issue a written report to the commission and to the applicant. The commission shall determine whether to initiate a process for a public hearing or adjudicatory proceeding. The commission may utilize the public hearing process if the bureau has not raised any complex concerns relative to suitability in the report.

(e) If the commission determines that an adjudicatory proceeding will be held, the commission shall conduct an adjudicatory proceeding in accordance with 801 CMR 1.02: *Informal/Fair Hearing Rules* and M.G.L. c. 30A on the gaming technology laboratory's report under 205 CMR 139.06(1)(d) concerning the applicant. Any party may be represented by legal counsel. All parties shall be permitted to present an opening statement, testify on their own behalf, cross-examine all witnesses, present any relevant witness testimony, present any relevant documentary evidence, and offer a closing argument. The commission will issue a public notice in advance of the adjudicatory proceeding stating the date, time and place of the hearing. The commission shall issue a final decision granting or denying the certification within 30 days of the hearing.

(f) If the commission determines that a public hearing should be held, the commission shall review the gaming technology laboratory's report and make a final decision granting or denying the certification at a public hearing. The commission will issue a notice in advance of the public hearing stating the date, time and place of the hearing.

(g) Certification as an independent testing lab shall be valid for one year and shall automatically renew annually thereafter upon payment of a renewal and audit fee of \$2,000. The commission may audit the compliance of the certified independent testing laboratory with commission requirements annually or more often if needed. The commission may revoke the registration of a certified independent testing laboratory if the testing laboratory no longer meets the requirements of G.L. c. 23K and 205 CMR.

(h) The commission shall maintain a list of certified independent testing laboratories along with the categories of gaming device that each independent testing laboratory may test.

(2) Categories of Certification. Each independent testing laboratory must be certified for each category of testing for which the laboratory seeks to provide results. The categories of testing include:

- (a) Games and game variations;
- (b) Gaming devices and gaming device modifications;
- (c) Gaming associated equipment and gaming associated equipment modifications;

- (d) Cashless wagering systems and cashless wagering system modifications;
- (e) Inter-casino linked systems and inter-casino linked system modifications;
- (f) Mobile gaming systems and mobile gaming system modifications;
- (g) Interactive gaming systems and interactive gaming system modifications; and
- (h) Any other category of testing that the commission may deem appropriate.

(3) Standards for Certification. To qualify for certification, the independent testing laboratory, must:

- (a) Be independent pursuant to 205 CMR 139.06(4)
- (b) Be accredited in accordance with ISO/IEC 17025 by an accreditation body that is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Agreement, unless the independent testing laboratory is only seeking certification for the testing of games and game variations;
- (c) Demonstrate suitability in accordance with G.L. c. 23K, §§ 12 and 16 by clear and convincing evidence after considering reciprocity from other jurisdictions;
- (d) Demonstrate that it is technically competent in testing the category of game, device, or system in which it is seeking certification; and
- (e) Demonstrate that it is technically competent to test compliance with the applicable Massachusetts statutes, regulations, standards and policies.

(4) Independence. An independent testing laboratory must be independent at all times while certified by the commission.

- (a) To be considered independent from a manufacturer, distributor, or operator pursuant to 205 CMR 139.06(3)(b), the independent testing laboratory, including its employees, management, directors, owners, compliance committee members and gaming regulatory advisors, with the exception of the independent testing laboratory's external accountants and attorneys:

1. Must not have a financial or other interest, direct or otherwise, in a manufacturer, distributor, or operator of any game, gaming device, associated equipment, cashless wagering system, inter-casino linked system, mobile gaming system or interactive gaming system, or any component thereof or modification thereto, regardless of whether or not the person or entity is licensed, registered, or otherwise does business in Massachusetts;

2. Must not participate, consult, or otherwise be involved in the design, development, programming, or manufacture of any game, gaming device, associated equipment, cashless wagering system, inter-casino linked system, mobile gaming system or interactive gaming system, or any component thereof or modification thereto;

3. Must not have any other interest in or involvement with a manufacturer, distributor, or operator that could cause the independent testing laboratory to act in a manner that is not impartial; and

4. Such individuals shall not serve in any capacity with a manufacturer, distributor, or operator beyond the scope of the independent testing laboratory's engagement pursuant to these regulations.

(b) The restrictions in 205 CMR 139.06(4)(a) shall not be interpreted to limit an independent testing laboratory, or the above listed individuals, from providing consulting services to a manufacturer, distributor, or operator, provided that such services do not directly or indirectly indicate, suggest, or imply how to design, develop, program or manufacture a game, gaming device, associated equipment, cashless wagering system, inter-casino linked system, mobile gaming system or interactive gaming system, or any components thereof or modification thereto.

(c) The restrictions in 205 CMR 139.06(4)(a) shall not be interpreted to limit its ability to accept fees from a gaming device vendor in accordance with 205 CMR 139.05.

(5) Form of Application. An application for certification as an independent testing laboratory shall be in the form prescribed by the commission and contain:

(a) A completed business entity disclosure form as set forth in 205 CMR 134.07(6) for the applicant entity;

(b) Completed multi-jurisdictional personal history disclosure forms as set forth in 205 CMR 134.07(1) for each person who would be a gaming vendor qualifier pursuant to 205 CMR 134.04(4) if the applicant were a gaming vendor;

(c) Copies of all ISO/IEC 17025 certification and accreditation materials except if the independent testing laboratory is only seeking registration for the testing of games and game variations;

(d) All ISO required internal controls, policies and procedures, except if the independent laboratory is only seeking registration for the testing of games and game variations;

(e) Detailed description of the testing facilities;

(f) Detailed description of available testing staff and staff qualifications, including education, training, experience and skill levels;

(g) Detailed description of available testing equipment;

(h) Copies of documented policies, systems, programs, procedures and instructions to assure the quality of test results;

(i) Copies of all test scripts to be used for testing against the applicable Massachusetts statutes, regulations, standards, and policies.

(j) A statement subscribed by the applicant that:

1. The information being provided to the commission is accurate and complete;

2. The applicant agrees to cooperate with all requests, inquiries, or investigations of the commission;

3. The applicant acknowledges that the commission shall retain jurisdiction over the independent testing laboratory in any matter involving a gaming device;

4. The applicant acknowledges that it will comply with G.L. c. 23K, § 13(b) and (c) and update the commission in accordance with 205 CMR 139.06(6);

5. The applicant agrees to indemnify and hold harmless the Commonwealth of Massachusetts and the commission, and each of their members, agents, and employees in their individual and representative capacities against any and all claims, suits and actions, brought against the persons named in this section by reason of any inspections or certifications performed by the applicant as a certified independent testing laboratory, and all other matters relating thereto, and against any and all expenses, damages, charges and costs, including court costs and attorney fees, which may be sustained by the persons and entities named in this subsection as a result of said claims, suits and actions; and

(k) any additional information that the commission may require.

(6) Notification Requirements. Certified independent testing laboratories shall:

(a) notify the commission of any change in ownership of the certified independent testing laboratory, any change in directors, executives, or key management or employees of the independent testing laboratory, and any other material changes to the information included in its application for registration or the information submitted in conjunction with or subsequent to its application within 30 days of such change;

(b) no later than by the 15th day of each January, inform the commission in writing of any changes to the information that was contained on the registered independent testing laboratory's application for registration or submitted in conjunction with or subsequent to its application, or that no changes have occurred since the last reporting date;

(c) maintain copies of the results of any ISO/IEC 17025 audits or reviews and notify the commission in writing of the availability of the results within 15 days of when they become available to the registered independent testing laboratory and provide copies to the commission upon request.

(d) notify the commission immediately of any material issues concerning any gaming device that it tested for use in Massachusetts;

(e) notify the commission immediately of any attempts by a manufacturer, distributor, or operator to improperly influence the certified independent testing laboratory, or any of its employees, managers, or owners, in or in connection with any testing of gaming devices for use in Massachusetts; and

(f) timely provide the commission with such other information as the commission may request or require.

(7) Continued Obligations. Certified independent testing laboratories shall abide by the following requirements while certified:

(a) In the interest of preserving a competitive gaming industry, a certified independent testing laboratory shall not implement or maintain any procedure or policy or take any action that would inhibit or prevent a manufacturer, distributor or operator that has otherwise been deemed suitable for doing business in Massachusetts by the commission from submitting a game, gaming device, associated equipment, cashless wagering system, inter-casino linked system, mobile gaming system or interactive gaming system, or any component thereof or modification thereto, for testing for use in Massachusetts, or that would call into question or tend to erode the independence of the certified independent laboratory from any clients that utilize its services.

(b) All testing shall be performed by a person directly employed by the certified independent testing laboratory. The certified independent testing laboratory shall not assign, delegate, subcontract, or otherwise engage any person not directly employed by the certified independent testing laboratory for any testing for which the laboratory has been certified. The certified independent testing laboratory shall provide the commission each month with a list and description of all amounts paid by or invoiced to licensed gaming vendors for costs of gaming device testing or otherwise.

(c) A certified independent testing laboratory shall implement and maintain a hiring and background check process that ensures, at a minimum, that no person is hired in a



position involving testing relating to Massachusetts, or in a position overseeing or managing an employee in such a position, who has:

1. failed to disclose or misstated information or otherwise attempted to mislead the commission with respect to any information the person has provided to the commission;
2. been convicted of a felony or other crime involving embezzlement, theft, fraud or perjury;
3. committed prior acts which have not been prosecuted or in which the person was not convicted but form a pattern of misconduct that makes the person unsuitable;
4. Been identified in the published reports of any federal or state legislative or executive body as being a member or associate of organized crime, or as being of notorious and unsavory reputation;
5. Been placed and remains in the constructive custody of any federal, state or municipal law enforcement authority; or
6. Had any gaming license, registration or other like credential revoked or committed any act which is a ground for the revocation of a gaming license, registration or other professional credential held by the person or would have been a ground for the revocation of a gaming license, registration or other professional credential had the person held such license, registration, or credential.

(d) A certified independent testing laboratory shall handle all information and data prepared or obtained as part of the testing process as confidential.

(e) A certified independent testing laboratory shall implement and maintain security and access control systems designed to secure and protect the confidentiality of all equipment, software, and other information entrusted to it as part of the testing process.

(f) The commission may, as appropriate, periodically provide further guidance as to what is required of a certified independent testing laboratory through industry notices or other written communications.

(g) If a certified independent testing laboratory hires an individual who was previously employed by, or performed any work for, a manufacturer, distributor or operator within one year prior to the individual's date of employment with the independent testing laboratory, the certified independent testing laboratory shall not permit that person to test any gaming device for use in Massachusetts, for which the person had any involvement

with, whatsoever, while he or she was employed by the manufacturer, distributor or operator for a period of one year from the individual's date of employment with the independent testing laboratory.

REGULATORY AUTHORITY

205 CMR 139: M.G.L. c. 23K, §§x

DRAFT

205 CMR: MASSACHUSETTS GAMING COMMISSION  
205 CMR 140.00: POSSESSION OF SLOT MACHINES

Section

140.01: Possession of Slot Machines

140.02: Transportation of Slot Machines

140.01: Possession of Slot Machines

(1) The following persons and any employee or agent acting on their behalf may, subject to any terms and conditions imposed by the commission, possess slot machines in the commonwealth for the purposes provided herein, and such possession is not restricted by G.L. c. 271, § 5A, provided that the machines are kept only in such locations as may be specifically approved in writing by the commission and that any machines located outside of a gaming establishment not be used for gaming activity:

(a) A holder of:

1. A gaming license at the gaming establishment;
2. A gaming vendor license, for the purpose of distributing, repairing or servicing slot machines;

(b) An employee or agent of the commission, for the purpose of fulfilling official duties or responsibilities;

(c) A common carrier, for the purpose of transporting such slot machines;

(d) A trade school approved by the commission to possess slot machines for educational purposes; or

(e) Any other person the commission may approve after finding that possession of slot machines by such person in this state is necessary and appropriate to fulfill the goals and objectives of M.G.L. c. 23K and 205 CMR.

(2) Each gaming licensee shall file, prior to the commencement of gaming and every thirty days thereafter with the commission a comprehensive lists of:

(a) The slot machines and bill validators and/or bill changers not integrated into a slot machine on its gaming floor (the "Slot Machine Master List");

(b) The slot machines possessed by the licensee in restricted areas off the gaming floor but on the premises of its gaming establishment;

(c) The slot machines possessed by the licensee at locations in this state but off the premises of its gaming establishment.

(3) At a minimum, each list of slot machines required by paragraph (2) of this rule shall contain the following information, as applicable, for each slot machine and any accompanying bill validator and/or bill changer on the "Slot Machine Master List," in consecutive order by location number:

(a) The date on which the list was prepared;

(b) A description of each slot machine by:

1. Slot machine model and serial number;
2. Computer program number;
3. Denomination;
4. Manufacturer and machine type; and
5. Whether the slot machine has an electronic funds transfer (EFT) feature.

(c) A cross reference for each slot machine by zone and serial number;

(d) The restricted area within the gaming establishment where the slot machine is located for each slot machine included on the list required by paragraph (2)(b) of this rule;

(e) The address of the slot machine storage facility where the slot machine is located for each slot machine included on the list required by paragraph (2)(c) of this rule; and

(f) Such other information as the commission may require.

(4) Any building located outside of a casino facility where slot machines will be kept shall meet, at a minimum, the following requirements:

(a) All access doors and windows must be locked and alarmed;

(b) Access is restricted to those individuals permitted to maintain slot machines pursuant to this regulation; and

(c) Any other requirements as deemed appropriate by the commission.

#### 140.02: Transportation of Slot Machines

(1) Pursuant to St. 2011, c. 194, §§ 101 and 102, any transportation of a slot machine in accordance with 205 CMR 140.02 shall be exempt from the provisions of chapter 1194, 64 Stat. 1134, 15 U.S.C. 1171 to 1178.

(2) Prior to the transport or movement of any slot machine into the Commonwealth; from one authorized location to another authorized location within the Commonwealth unless both locations are operated and controlled by the same gaming licensee; or out of the Commonwealth, the person causing such slot machine to be transported or moved shall first notify the commission in writing giving the following information:

- (a) The full name and address of the person shipping or moving the machine;
- (b) The full name and address of the person who owns the machine, including the name of any new owner in the event ownership is being changed in conjunction with the shipment or movement;
- (c) The method of shipment or movement and the name of the carrier or carriers;
- (d) The full name and address of the person to whom the machine is being sent and the destination of the machine if different from such address;
- (e) The quantity of machines being shipped or moved and the manufacturer's serial number of each machine;
- (f) The expected date and time of delivery to or removal from any authorized location in the Commonwealth;
- (g) The port of entry, or exit, if any, of the machine if the origin or destination of the machine is outside the continental United States; and
- (h) The reason for transporting the machine.

(3) The person shipping or moving any slot machine shall provide to the shipper a document, at least one copy of which shall be kept with the slot machine at all times during the shipping process, that contains the following information, at a minimum:

- (a) The manufacturer's serial number of the slot machine being transported;
- (b) The full name and address of the person from whom the machine was obtained;
- (c) The full name and address of the person to whom the machine is being sent; and
- (d) The dates of shipment.

(4) Any person, company, or school receiving a slot machine shipment from outside of the Commonwealth shall, within three business days of receipt, provide the commission with the information enumerated in (b) above.

(5) All movements of slot machines shall be recorded in a log that shall be maintained in accordance with the record retention requirements contained in 205 CMR 135.XX and include the following:

- (a) The manufacturer's serial number;
- (b) The casino operator's equipment number, if applicable;
- (c) An indication as to whether the equipment is equipped for tokenization, and if so, the denomination;
- (d) The date and time of movement of the equipment;
- (e) The location from which the equipment was moved;
- (f) The location to which the equipment was moved; and
- (g) The printed name(s) and signature(s) of the person(s) involved in moving the equipment.

REGULATORY AUTHORITY  
205 CMR 140: M.G.L. c. 23K, §§x

205 CMR: MASSACHUSETTS GAMING COMMISSION  
205 CMR 138.00: GAMING DEVICES AND ELECTRONIC GAMING EQUIPMENT

Section

- 138.01: Standards for Gaming Devices
- 138.02: Progressive Gaming Devices
- 138.03: On-Line Monitoring and Control Systems (MCS) and Validation System
- 138.04: Cashless Systems
- 138.05: Bonusing Systems
- 138.06: Promotional Systems
- 138.07: Kiosks
- 138.08: Client-Server Systems
- 138.09: Electronic Table Game Systems
- 138.10: Dealer Controlled Electronic Table Games [RESERVED]
- 138.11: Wireless Gaming Systems [RESERVED]
- 138.12: Network Security
- 138.13: Player User Interface Systems
- 138.14: Card Shufflers and Dealer Shoes [RESERVED]
- 138.15: Electronic Raffle Systems [RESERVED]
- 138.16: Communications Protocols

138.01: Standards for gaming devices

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-11: Gaming Devices in Casinos, version 2.1, released Aug 25, 2011, subject to the following amendments:

- (a) Delete section 1.1.1.
- (b) Delete section 1.1.2.
- (c) Delete section 1.2.
- (d) ~~Add the following after the first sentence of the introductory paragraph in section 3.2.4: “Each game cycle time must be at least 2.5 seconds.”~~ Replace in section 3.4.1 “seventy-five percent (75%)” with “eighty percent (80%)”.
- (e) ~~Replace in section 3.4.1 “seventy-five percent (75%)” with “eighty-five percent (85%)”.~~
- (f) Add the following after the first paragraph of section 3.4.1: The calculation of minimum payout percentage excludes the cash equivalent value of any merchandise or

other thing of value that cannot be converted into cash by the gaming establishment but may include the acquisition cost to the gaming licensee of the merchandise or other thing of value.

~~(f) Replace in section 3.4.1(b) “75%” with “80%”.~~

~~(g) Replace in section 3.4.1(b) “75%” with “85%”.~~

~~(h) Replace in section 3.4.3 “50,000,000 to 1” with “50,000,000 to 1”.~~

~~(i) Replace in section 3.10.1(f) “seventy-five percent (75%)” with “eighty-five percent (85%)”~~

~~(j) Insert as 3.2.2(i) the following text: The current time and player session duration.~~

(2) For purposes of M.G.L. c.23K and 205 CMR the term slot machine as defined by M.G.L. c.23K, §2 shall not include automatic amusement devices as defined by G.L. c 140, § 177A(2).

(3) For purposes of M.G.L. c.23K and 205 CMR each gaming position, as defined by M.G.L. c.23K, §2, at a slot machine shall be considered a separate slot machine.

~~(4) The rules of the game and operating instructions for any gaming device offered for use by patrons of the licensee’s gaming establishment shall be conspicuously displayed. The rules of the game must contain at a minimum a clear and not unnecessarily complicated description of the mechanics of the game as well as pay tables sufficient to calculate the minimum return to player. The rules of the game must include all information related to bonusing, progressive, and persistent state systems implemented in the game. The operating instructions must contain clear and concise guidance on how to use the gaming device. All rules of the game and operating instructions must unambiguously identify the game or gaming device to which they relate.~~

~~(5) A gaming licensee shall provide the commission with a real-time stream of data, other than personally identifiable information, in the communication format specified by the commission in 205 CMR 138.16 directly from each slot machine. Such data shall be provided for purposes of computing and reconciling daily tax obligations as provided in 205 CMR 135.XX, for purposes of investigating patron disputes filed in accordance with 205 CMR 134.19, and for purposes of maintaining general oversight of a gaming establishment. The commission is not obligated to monitor or review the data on an ongoing basis. If communications between the slot machine and the commission’s system fails, the slot machine shall continue to record all required data for the most recent seven days of operation and send the data directly to the commission as soon as the connection is reestablished. If the connection is not reestablished within 24 hours due to a problem stemming from the gaming establishment’s systems, then any slot machine affected shall cease operation until the connection is reestablished.~~

#### 138.02: Progressive Gaming Devices



(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-12: Progressive Gaming Devices in Casinos, version 2.1, released Sept 6, 2011, subject to the following amendments:

- (a) Delete section 1.1.
- (b) Delete section 1.2.

#### 138.03: On-Line Monitoring and Control Systems (MCS) and Validation System

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-13: On-Line Monitoring and Control Systems (MCS) and Validation Systems in Casinos, version 2.1, released Sept 6, 2011, subject to the following amendments:

- (a) Delete section 1.1.
- (b) Delete section 1.3.

#### 138.04: Cashless Systems

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-16: Cashless Systems in Casinos, version 2.1, released Sept 6, 2011, subject to the following amendments:

- (a) Delete section 1.2.

(2) No slot machine at a gaming establishment shall accept ~~coins, tokens, bills,~~ debit cards, or credit ~~cards, or government-issued electronic benefits transfer~~ cards as a form of payment.

~~(3) A gaming device shall allow individuals to monitor and impose betting limits on their cashless wagering. The gaming establishment shall allow individuals to set betting limits on their cashless wagering including, but not limited to, per bet limits, hourly limits, daily limits, weekly limits and monthly limits. An individual may lower limits and increase limits; provided, however, that the individual shall not increase betting limits more than once in a 24-hour period. The gaming establishment shall issue to each patron who has been issued a rewards card or who participates in a cashless wagering system by the gaming establishment a monthly statement, mailed to the patron at the patron's physical mailing address, which shall include the patron's total bets, wins and losses; provided, however, that a patron shall be given the opportunity to decline receiving a monthly statement at the time the rewards card is issued or during initial participation in a cashless wagering system; provided further, that a patron may later opt out of receiving monthly statements by providing a written request to cease monthly statements to the gaming establishment. A gaming licensee who has implemented such a program or system shall~~

~~annually report to the commission the amount of money spent and lost by patrons who have been issued a rewards card or who participated in a cashless wagering system, aggregated by zip code. Individuals on the list of excluded persons shall not be permitted to participate in a cashless wagering system.~~

#### 138.05: Bonusing Systems

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-17: Bonusing Systems in Casinos, version 1.3, released Sept 6, 2011, subject to the following amendments:

- (a) Delete section 1.2.

#### 138.06: Promotional Systems

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-18: Promotional Systems in Casinos, version 2.1, released Sept 6, 2011, subject to the following amendments:

- (a) Delete section 1.2.

#### 138.07: Kiosks

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-20: Kiosks, version 1.5, released Sept 6, 2011, subject to the following amendments:

- (a) Delete section 1.1.3.

#### 138.08: Client-Server Systems

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-21: Client-Server Systems, version 2.2, released Sept 6, 2011, subject to the following amendments:

- (a) Delete section 1.1.
- (b) Delete section 1.2.

#### 138.09: Electronic Table Game Systems

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-24:

Electronic Table Game Systems, version 1.3, released Sept 6, 2011, subject to the following amendments:

(a) Delete section 1.1.

(2) An electronic table game shall be considered a slot machine in accordance with M.G.L. c. 23K, § 2 unless the simulation requires the intervention of a gaming employee prior to the final determination of winnings.

138.10: Dealer Controlled Electronic Table Games [RESERVED]

138.11: Wireless Gaming Systems [RESERVED]

138.12: Network Security

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-27: Network Security Best Practices, version 1.1, released Jan 21, 2013, subject to the following amendments:

(a) Delete section 1.1.

(b) Delete section 1.2.

138.13: Player User Interface Systems

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-28: Player User Interface Systems, version 1.0, released Feb 14, 2011, subject to the following amendments:

(a) Delete section 1.1.

138.14: Card Shufflers and Dealer Shoes [RESERVED]

138.15: Electronic Raffle Systems [RESERVED]

138.16: Communications Protocols

(1) A gaming licensee shall not operate any slot machine in a gaming establishment after January 1, 2017 unless that slot machine is compatible with the Gaming Standards Association Standard G2S v2-G2S protocol. Provided however, any slot machine that is registered and operating in a gaming establishment prior to January 1-Certification Requirements: EGM Release 1, released April 20, 2012., 2017 is not required to comply with the G2S protocol. A gaming licensee shall not operate any slot machine in a gaming establishment unless the slot machine:

- (a) is able to bi-directionally communicate with the commission's central control system;
- (b) transmits, on a per bet basis, data relative to amounts wagered, amounts won, cash in, cash out, and similar financial information necessary for tax collection and auditing;
- (c) allows remote verification of gaming device software using a SHA-1 or similar hashing system;
- (d) allows remotely activating and disabling slot machines; and
- (e) transmits data relative to any restarts, shutdowns, resets, game changes, door open, and other maintenance events;

REGULATORY AUTHORITY  
205 CMR 138: M.G.L. c. 23K, §§x

DRAFT

205 CMR: MASSACHUSETTS GAMING COMMISSION  
205 CMR 139.00: APPROVAL OF SLOT MACHINES AND ELECTRONIC GAMING  
EQUIPMENT AND TESTING LABORATORIES

Section

- 139.01: Required Permits and Registration
- 139.02: Permitting of Gaming Device ~~Permitting Prototypes~~
- 139.03: Registration of Gaming Device ~~Registration Inventory~~
- 139.04: Required Testing by Independent Testing Laboratories
- 139.05: Fees for Testing, Permitting, and Registration of Gaming Devices
- ~~139.06: Duration of Gaming Device Permitting and Registration~~
- ~~139.07: Independent Testing Laboratory Certification and Auditing~~

139.01: Required Permits and Registration

~~(1) Each~~No new or modified gaming device ~~shall require a permit from the commission and each subsequent copy of a permitted gaming device listed in 205 CMR 139.01(2) shall be registered with the commission prior to use in a gaming establishment.;~~

~~(2) No gaming device shall be used in a gaming establishment unless:~~

- ~~(a) sold by a gaming vendor unless~~ a prototype of the gaming device has received a permit from the commission, in accordance with 205 CMR 139.02;
- ~~(b) the~~operated by a gaming ~~device used~~licensee in ~~the~~a gaming establishment unless the gaming device is registered with the commission, ~~and~~
- ~~(c) the gaming device is identical in all mechanical, electrical, electronic or other aspects to the permitted prototype~~in accordance with 205 CMR 139.03.

(2) The following gaming devices require permitting and registration by the commission ~~prior to initial use or following any modification:~~

- (a) Slot machines;
- (b) Electronic table games;
- (c) Kiosks;
- (d) Wireless wagering devices;
- (e) Money counters;
- (f) Chip sorters;

(g) Devices used in conjunction with table games such as gaming chips, dice, cards, Pai Gow tiles, card readers, dealer shoes, automated shuffling machines, dice shakers, and roulette wheels; and

(h) Tables for conducting table games such as roulette, blackjack, poker, craps, baccarat, big six, and Pai Gow.

~~(4) The following gaming device components require permitting by the commission prior to their use in connection with a gaming device or within a gaming establishment:~~

~~(a)-(i) Slot machine games;~~

(j) Multiplayer systems;

(k) Server supported slot systems;

(l) Slot machine bonus systems;

(m) Table game bonus systems;

(n) Progressive systems;

(o) Account based wagering systems;

(p) Slot monitoring systems; and casino management systems;

(q) Gaming voucher systems;

(r) Devices used in conjunction with a slot monitoring system or casino management system, unless the devices provide read-only functionality;

(s) Devices used in conjunction with gaming devices such as bill acceptors, printers, and coin acceptors that are not integrated into and tested as part of another gaming device;

139.02: Permitting of Gaming Device ~~Permitting~~ Prototypes

~~(1) A gaming vendor shall not provide~~In order to receive a new or modified gaming device or gaming device component permit for use in a gaming establishment unless it has received~~device,~~  
a gaming ~~device permit for the gaming device or component.~~

~~(2) The applicant vendor,~~ at its own expense, must submit the gaming device ~~or gaming device component~~ for scientific testing and technical evaluation in accordance with 205 CMR 139.04 by a commission certified independent testing laboratory ~~licensed~~certified pursuant to 205 CMR ~~139.07~~139.06 to determine compliance with M.G.L. c. 23K and 205 CMR ~~141~~138. The ~~applicant gaming vendor~~ must provide the certified independent testing laboratory with all documentation and other materials necessary to conduct testing and evaluate compliance.

(2) Upon completion of testing by a certified independent testing laboratory, ~~an applicant~~ gaming vendor may submit an application for permitting of the gaming device ~~or component~~ to the commission's gaming technology laboratory. The commission may reject any gaming device permit application that is deemed administratively incomplete. The application for a gaming device permit shall be in the form prescribed by the commission and contain:

- (a) the ~~applicant's~~ gaming vendor's name;
- (b) the ~~applicant's~~ gaming vendor's license number ~~or gaming vendor applicant number~~ pursuant to 205 CMR 134;
- (c) a unique name and version number for the gaming device ~~or component~~ for which the registration is sought;
- (d) a copy of the commission certified independent testing laboratory report for the gaming device ~~or component~~ in accordance with 205 CMR 139.04;
- (e) a list of all jurisdictions in which the gaming device ~~or component is currently being used, including the duration of use~~ has been granted or denied licensure, registration, or similar; and
- (f) the application fee in accordance with 205 CMR 139.05.

(3) Upon receipt of the gaming device permit application, the ~~commission~~ commission's gaming technology lab may require that the ~~applicant~~ gaming vendor provide to the ~~commission~~ commission's gaming technology lab, at the ~~applicant's~~ gaming vendor's expense, a functioning prototype of the gaming device ~~or gaming device component~~ as well as all documentation and other materials necessary to conduct testing and evaluate compliance.

(4) The ~~applicant~~ gaming vendor shall ~~immediately~~ promptly notify the commission of any negative action taken in another jurisdiction or if it becomes aware of an issue that may negatively impact the reporting of revenue, game outcome, or the integrity of a ~~product~~ device that has been submitted to the commission for permitting or has been permitted.

~~(5) Each gaming vendor that has a commission issued permit for a gaming device or gaming device component is required to immediately notify the commission of any issue that may impact the integrity of the permitted gaming device or gaming device component.~~

~~(7) Prior to issuing a permit and after completing a review of a proposed gaming device or gaming device component that has not been available for public use in other jurisdictions for at least one year~~ 45 days, the commission may require a trial period of up to ~~180~~ 45 days to test the gaming device ~~or gaming device component~~ in a gaming ~~facility~~ establishment. During the trial period, minor changes in the operation or design of the gaming device ~~or gaming device component~~ may be made with prior approval of the commission. ~~During the trial period, any~~

~~gaming revenue generated by the gaming device or gaming device component shall be remitted to the commission. At the conclusion of the trial period, the commission shall issue a permit, deny a permit, or extend the duration of the trial period.~~

~~(6) Upon completion of gaming device or component testing by the independent testing laboratory and any additional testing that the commission may conduct, the commission shall issue a letter describing whether or not the gaming device or gaming device component is approved, including any conditions for its use. Nothing shall prohibit the commission from adding, modifying or removing conditions following the initial approval as necessary to ensure the integrity of the gaming device or gaming device component.~~

~~(9) The commission may disapprove reviewing a gaming device permit application and conducting any additional testing or trials that the commission requires, the commission shall issue a gaming device permit if the device meets the requirements of 205 CMR 139.02(7). If a gaming device does not meet the requirements in G.L. c. 23K and of 205 CMR, 139.02(7), the commission may deny the permit or if issue the permit subject to conditions necessary for the gaming device threatens the credibility or integrity of gaming from the point of view of the player, to meet the public, or the gaming establishment requirements of 205 CMR 139.02(7). If the commission does not approve denies or conditions the gaming device or component permit, the commission shall provide a written notification containing the reason for the denial.~~

~~(10) All initial determinations of gaming device or component permitting will be made by the commission's gaming technology laboratory. An applicant may appeal any determination made by the gaming technology laboratory or condition. The gaming device permit shall not expire, but shall be subject to any future conditions imposed in accordance with 205 CMR 134.04(3)139.02(8).~~

~~(7) Prior to the commission permitting, a gaming device must:~~

~~(a) meet the applicable requirements of G.L. c. 23K and 205 CMR 138; and~~

~~(b) not endanger, compromise, or weaken the credibility or integrity of gaming in the Commonwealth.~~

~~(8) The commission, or its designee, may add, modify or remove conditions following the initial permitting of a gaming device as necessary to ensure the integrity of the gaming device or the effective administration of 205 CMR.~~

~~(9) A gaming vendor may appeal a permit denial, permit revocation, or imposition of any condition on a permit by filing a petition on a form prescribed by the commission. The commission shall decide the appeal at a public hearing. Upon receipt of a petition, the gaming technology lab shall schedule a hearing on the matter at which it may allow representatives to be conducted in accordance with 205 CMR 139.02(10) and provide the gaming vendor with reasonable notice~~



containing the date, time, and location of the petitioner and gaming technology laboratory to testifyhearing.

(10) Hearings convened pursuant to 205 CMR 139.02(9) shall be conducted in accordance with 801 CMR 1.02: Informal/Fair Hearing Rules and M.G.L. c. 30A. Given the sensitive nature of gaming device operations, the hearing will not be open to the public. Any party may be represented by legal counsel. All parties shall be permitted to present an opening statement, testify on their own behalf, cross-examine all witnesses, present any relevant witness testimony, present any relevant documentary evidence, and offer a closing argument. The gaming technology lab may question any witness and include any records kept by the commission as exhibits. The commission's executive director shall designate a hearing officer to preside over the hearing. The decision of the hearing officer will be final. Any person aggrieved by a decision of the hearings officer may appeal such decision in conformance with M.G.L. c. 30A, § 14.

### 139.03: Registration of Gaming Device ~~Registration~~Inventory

(1) Any gaming licensee proposingIn order to utilizeregister a new or modified gaming device or gaming device componentfor use in itsa gaming establishment-shall, a gaming licensee must submit a gaming device registration application with the commission's gaming technology laboratory. The commission may reject any gaming device registration application that is deemed administratively incomplete. The application for a gaming device registration shall be in the form prescribed by the commission and contain:

- (a) the applicant'sgaming licensee's name;
- (b) the gaming device number issued by the commission ~~offor~~ the permitted prototype on which the gaming device ~~or component~~ is based;
- (c) in the case of a physical gaming device-or component, the unique serial number and the date of manufacture for each copy of the gaming device ~~or component~~ that the applicantgaming licensee intends to use in the gaming establishment;
- (d) in the case of a software gaming device-component, the totalmaximum number of ~~copiesinstances~~ of the software that the gaming establishmentlicensee intends to use at any one time in the gaming establishment;

(2) Upon ~~completion of review of~~ reviewing a gaming device registration application, the commission shall register the gaming device if the gaming device registration application is in compliance with the requirements and conditions of the gaming device permit, on which the ~~commission shall either grant or deny the~~device is based. The gaming device ~~or component~~ registration- shall not expire, but shall be subject to any future conditions imposed in accordance with 205 CMR 139.03(4).

~~(3) The gaming establishment must ensure that the~~A registered gaming device ~~or component is and remains~~must:

(a) be identical in all mechanical, electrical, electronic or other material aspects to the prototype permitted ~~prototype in accordance with 205 CMR 139.02~~ on which the gaming device ~~or component~~ is based;

(b) comply with any conditions of the permitted prototype on which the gaming device is based; and

(c) not endanger, compromise, or weaken the credibility or integrity of gaming in the Commonwealth.

(4) The gaming licensee must ensure that the registered gaming device is and remains in compliance with 205 CMR 139.03(3) at all times. The commission may at any time inspect any registered gaming device ~~or component to ensure that it is materially identical to the permitted device~~and revoke or condition the registration if that device fails to comply with section 205 CMR 139.03(3). Prior to revoking or conditioning the registration of a gaming device currently in use in a gaming establishment, the commission shall allow the gaming licensee a reasonable amount of time to bring the device into compliance.

~~(5) All initial determinations of gaming device or component registration will be made by the commission's gaming technology laboratory. An applicant may appeal any determination made by the gaming technology laboratory in accordance with 205 CMR 134.04(3) to the commission.~~A gaming licensee may appeal a registration denial, registration revocation, or imposition of any condition on registration by filing a petition on a form prescribed by the commission. Upon receipt of a petition, the gaming technology lab shall decide the appeal at a public schedule a hearing on the matter at which it may allow representatives of the petitioner to be conducted in accordance with 205 CMR 139.03(6) and gaming technology laboratory to testify provide the gaming licensee with reasonable notice containing the date, time, and location of the hearing.

~~(6) A gaming licensee that is no longer in possession of a registered gaming device or component)~~Hearings convened pursuant to 205 CMR 139.03(5) shall be conducted in accordance with 801 CMR 1.02: Informal/Fair Hearing Rules and M.G.L. c. 30A. Given the sensitive nature of gaming device operations, the hearing will not be open to the public. Any party may be represented by legal counsel. All parties shall be permitted to present an opening statement, testify on their own behalf, cross-examine all witnesses, present any relevant witness testimony, present any relevant documentary evidence, and offer a closing argument. The gaming technology lab may question any witness and include any records kept by the commission as exhibits. The commission's executive director shall designate a hearing officer to preside over the hearing. The decision of the hearing officer will be final. Any person aggrieved by a decision of the hearings officer may appeal such decision in conformance with M.G.L. c. 30A, § 14.

~~(7) A gaming licensee shall inform the commission's gaming technology laboratory within 31 days of any registered gaming device that the gaming licensee no longer possesses no later than the second Monday of the month following termination of possession.~~

139.04: Required Testing by Independent Testing Laboratories

~~(1) Any testing by a commission certified independent testing laboratory shall test all gaming devices submitted to it by an applicant for for the purposes of permitting a gaming device permitting to ensure shall be conducted in compliance with M.G.L. c. 23K and 205 CMR 141138 and 139.~~

~~(2) The independent testing laboratory shall issue a report of the findings to the applicant and a duplicate report to the commission testing results to the gaming vendor. Such report shall contain:~~

- ~~(a) the part and version numbers of the gaming device or components tested;~~
- ~~(b) attachments containing documents sufficient to describe the functionality and operation of all material components of the gaming device;~~
- ~~(c) attachments containing all documents relied on in conducting the testing;~~
- ~~(d) a description of all tests conducted and the results of such tests;~~
- ~~(d) a statement as to whether each of the components within the gaming device and, each interaction between components, and the device as a whole is, compliant with respect to the latest version of M.G.L. c. 23K and 205 CMR 139:~~
  - ~~(i) fully compliant,~~
  - ~~(ii) partially compliant and partially not compliant,~~
  - ~~(iii) compliant but may be noncompliant subject to interpretation of the laws or regulations,~~
  - ~~(iv) compliant but nevertheless makes the device unfair, deceptive, or improper for use in a gaming establishment, or~~
  - ~~(v) not compliant;~~
- ~~(f) a list and description 138 as of all issues encountered in the start date of testing the gaming device or component;~~
- ~~(e) a list and description of all amounts invoiced by the independent testing laboratory to the applicant for costs of the testing; and~~

- (h) an attachment listing all known methods of breaching the security of the gaming device;
  - (f) the date the gaming device ~~or component~~ was submitted for testing;
  - (g) the start and end dates of the gaming device ~~or component~~ testing;
  - (h) the location of the facility used to perform the testing; and
  - ~~(i) the names of all individuals participating in the testing;~~
  - ~~(m)~~ a statement, signed under penalty of perjury, that all information provided in the report is accurate and complete.
- (3) The independent testing laboratory's ~~report shall not contain an overall determination of suitability of the gaming device. The~~ report shall not contain any information in its body that if publically released may harm the integrity of the gaming device, but such information may be disclosed in an attachment.
- (4) The independent testing laboratory may communicate with the applicant to request additional documentation or to discuss potentially non-compliant components. The independent testing laboratory shall log any communication between itself and the applicant and be able to provide to the commission copies of all documents transmitted to or from the applicant for at least seven years following the issuance of the report.
- (5) The independent testing laboratory may only rely on testing conducted and data collected from a third party or from its own testing for another jurisdiction if the testing was performed during the past six years by an independent party with no apparent interest in the result. An independent testing laboratory relying on such external testing or data must clearly identify in its report all such reliance and independently verify the validity of such data or testing by:
- (a) finding that the methods described in the earlier test are reliable and there is no indication that the data are incorrect; or
  - (b) showing that the gaming device ~~or component~~ has been implemented for public use for at least ~~two years~~6 months in other jurisdictions and has performed in conformance with the data;
- (6) An independent testing laboratory may rely on any data or results of testing conducted by a commission certified independent testing laboratory during the past six years when such testing was conducted for purposes of permitting a gaming device in the Commonwealth. Any ~~such~~ reliance pursuant to 205 CMR 139.04(5) or (6) must be clearly identified in ~~itsthe~~ report.

139.05: Fees for Testing, Permitting, and Registration of Gaming Devices

- (1) ~~An applicant~~A gaming vendor seeking a gaming device permit shall remit appropriate fees to the commission along with the gaming device permit application. The application fee for submitting a new gaming device for permitting or for modification of a currently permitted gaming device is \$500.
- (2) ~~An applicant~~A gaming vendor seeking a gaming device permit or update to a gaming device permit shall, in addition to the application fee, pay to the commission all costs incurred by the commission in the testing process.
- (3) ~~An applicant~~A gaming vendor requesting that a commission certified independent testing laboratory conduct testing shall pay all costs of the testing directly to the independent testing laboratory.
- (4) There is no fee for registering a gaming device based on a permitted prototype of the same device.

139.06: Duration of Gaming Device Permit and Registration

- ~~(1) A gaming device permit shall expire 6 years from the initial issuance of the permit. An update or modification to a permitted gaming device or component does not extend the duration of the permit.~~
- ~~(2) A gaming device registration shall expire at the same time as the gaming device permit on which the registration is based.~~
- ~~(3) Upon the expiration of a gaming device permit, all gaming establishments with a gaming device or component registered pursuant to the expired permit shall immediately cease operation of those gaming devices or components.~~

139.07: Independent Testing Laboratory Certification and Auditing

- (1) Certification Process. In order to provide testing services of gaming devices ~~and components~~ in Massachusetts, a person must be certified as an independent testing laboratory in accordance with 205 CMR 139.06. The certification process will take place as follows:
  - (a) The commission ~~shall~~may issue yearly a request for applications from applicants interested in being certified as independent testing laboratories.
  - (b) Upon receipt of an application in the form prescribed in 205 CMR 139.06(5) the ~~commission~~gaming technology laboratory and the bureau shall conduct any investigation ~~it deems~~they deem reasonable, including any visit, review or inspection of each independent testing laboratory seeking certification to evaluate ~~it~~the laboratory's qualifications and capabilities pursuant to 205 CMR 139.06(3).

(c) The applicant is required to pay any and all costs associated with the investigation, including site visits ~~and~~, inspections, and background investigations, of the applicant during the certification evaluation period.

(d) Upon the conclusion of ~~a favorable~~ evaluation and upon full payment of any costs associated with the certification process, the gaming technology laboratory, with the input of the bureau, shall issue a written report to the commission shall hold and to the applicant. The commission shall determine whether to initiate a process for a public hearing or adjudicatory proceeding. The commission may utilize the public hearing process if the bureau has not raised any complex concerns relative to suitability in the report.

(e) If the commission determines that an adjudicatory proceeding will be held, the commission shall conduct an adjudicatory proceeding in accordance with \_\_\_\_\_ to consider the certification as an independent testing laboratory 801 CMR 1.02: Informal/Fair Hearing Rules and M.G.L. c. 30A on the gaming technology laboratory's report under 205 CMR 139.06(1)(d) concerning the applicant. Any party may be represented by legal counsel. All parties shall be permitted to present an opening statement, testify on their own behalf, cross-examine all witnesses, present any relevant witness testimony, present any relevant documentary evidence, and offer a closing argument. The commission will issue a public notice in advance of the adjudicatory proceeding stating the date, time and place of the hearing. The commission shall issue a final decision granting or denying the certification within 30 days of the hearing.

(f) If the commission determines that a public hearing should be held, the commission shall review the gaming technology laboratory's report and make a final decision granting or denying the certification at a public hearing. The commission will issue a notice in advance of the public hearing stating the date, time and place of the hearing.

(g) Certification as an independent testing lab shall be valid for ~~three years~~ one year and shall automatically renew annually thereafter upon ~~expiration~~ payment of a renewal and audit fee of \$2,000. The commission may audit the compliance of the certified independent testing laboratory with ~~its~~ commission requirements annually or more often if needed. The commission may revoke the registration of a certified independent testing laboratory if the testing laboratory ~~it~~ no longer meets the requirements of G.L. c. 23K and 205 CMR.

(h) The commission shall maintain a list of certified independent testing laboratories along with the categories of gaming device ~~that each independent testing laboratory~~ may test.

(2) Categories of Certification. Each independent testing laboratory must be certified for each category of testing for which the laboratory seeks to provide results. The categories of testing include:

- (a) Games and game variations;
- (b) Gaming devices and gaming device modifications;
- (c) Gaming associated equipment and gaming associated equipment modifications;
- (d) Cashless wagering systems and cashless wagering system modifications;
- (e) Inter-casino linked systems and inter-casino linked system modifications;
- (f) Mobile gaming systems and mobile gaming system modifications;
- (g) Interactive gaming systems and interactive gaming system modifications; and
- (h) Any other category of testing that the commission may deem appropriate.

(3) Standards for Certification. To qualify for certification, the independent testing laboratory, must:

- (a) ~~Submit an application for certification as an independent testing laboratory;~~
- ~~(b) Be independent pursuant to 205 CMR 139.06(4)~~
- (b) Be accredited in accordance with ISO/IEC 17025 by an accreditation body that is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Agreement, unless the independent testing laboratory is only seeking certification for the testing of games and game variations;
- (c) Demonstrate suitability in accordance with G.L. c. 23K, §§ 12 and 16 by clear and convincing evidence after considering reciprocity from other jurisdictions;  
~~to the same extent as required of a gaming vendor primary pursuant to 205 CMR 134;~~
- (d) Demonstrate that it is technically competent in testing the category of game, device, or system in which it is seeking registration certification; and
- (e) Demonstrate that it is technically competent to test compliance with the applicable Massachusetts statutes, regulations, standards and policies.

(4) Independence. An independent testing laboratory must be independent at all times while certified by the commission.

- (a) To be considered independent from a manufacturer, distributor, or operator pursuant to 205 CMR 139.06(3)(b), the independent testing laboratory, including its employees, management, directors, owners, compliance committee members and gaming



regulatory advisors, with the exception of the independent testing laboratory's external accountants and attorneys:

1. Must not have a financial or other interest, direct or otherwise, in a manufacturer, distributor, or operator of any game, gaming device, associated equipment, cashless wagering system, inter-casino linked system, mobile gaming system or interactive gaming system, or any component thereof or modification thereto, regardless of whether or not the person or entity is licensed, registered, or otherwise does business in Massachusetts;
2. Must not participate, consult, or otherwise be involved in the design, development, programming, or manufacture of any game, gaming device, associated equipment, cashless wagering system, inter-casino linked system, mobile gaming system or interactive gaming system, or any component thereof or modification thereto;
3. Must not have any other interest in or involvement with a manufacturer, distributor, or operator that could cause the independent testing laboratory to act in a manner that is not impartial; and
4. Such individuals shall not serve in any capacity with a manufacturer, distributor, or operator beyond the scope of the independent testing laboratory's engagement pursuant to these regulations.

(b) The restrictions in [205 CMR 139.06\(4\)\(a\)](#) shall not be interpreted to limit an independent testing laboratory, or the above listed individuals, from providing consulting services to a manufacturer, distributor, or operator, provided that such services do not directly or indirectly indicate, suggest, or imply how to design, develop, program or manufacture a game, gaming device, associated equipment, cashless wagering system, inter-casino linked system, mobile gaming system or interactive gaming system, or any components thereof or modification thereto.

(c) The restrictions in [205 CMR 139.06\(4\)\(a\)](#) shall not be interpreted to limit its ability to accept fees from a gaming device vendor in accordance with 205 CMR ~~139.139.05~~.

(5) **Form of Application.** An application for certification as an independent testing laboratory shall be in the form prescribed by the commission and contain:

- (a) A completed business entity disclosure form as set forth in 205 CMR 134.07(6) for the applicant entity;
- (b) Completed multi-jurisdictional personal history disclosure forms as set forth in 205 CMR 134.07(1) for each person who would be a gaming vendor qualifier pursuant to 205 CMR 134.04(4) if the applicant were a gaming vendor;



- (c) Copies of all ISO/IEC 17025 certification and accreditation materials except if the independent testing laboratory is only seeking registration for the testing of games and game variations;
- (d) All ISO required internal controls, policies and procedures, except if the independent laboratory is only seeking registration for the testing of games and game variations;
- (e) Detailed description of the testing facilities;
- (f) Detailed description of available testing staff and staff qualifications, including education, training, experience and skill levels;
- (g) Detailed description of available testing equipment;
- (h) Copies of documented policies, systems, programs, procedures and instructions to assure the quality of test results;
- (i) Copies of all test scripts to be used for testing against the applicable Massachusetts statutes, regulations, standards, and policies.
- (j) A statement subscribed by the applicant that:
  - 1. The information being provided to the commission is accurate and complete;
  - 2. The applicant agrees to cooperate with all requests, inquiries, or investigations of the commission;
  - 3. The applicant acknowledges that the commission shall retain jurisdiction over the independent testing laboratory in any matter involving a gaming device ~~or gaming device component~~;
  - 4. The applicant acknowledges that it will comply with G.L. c. 23K, § 13(b) and (c) and update the commission in accordance with 205 CMR 139.06(6);
  - 5. The applicant agrees to indemnify and hold harmless the Commonwealth of Massachusetts and the commission, and each of their members, agents, and employees in their individual and representative capacities against any and all claims, suits and actions, brought against the persons named in this section by reason of any inspections or certifications performed by the applicant as a certified independent testing laboratory, and all other matters relating thereto, and against any and all expenses, damages, charges and costs, including court costs and attorney fees, which may be sustained by the persons and entities named in this subsection as a result of said claims, suits and actions; and

(k) any additional information that the commission may require.

(6) Notification Requirements. Certified independent testing laboratories shall:

(a) notify the commission of any change in ownership of the certified independent testing laboratory, any change in directors, executives, or key management or employees of the independent testing laboratory, and any other material changes to the information included in its application for registration or the information submitted in conjunction with or subsequent to its application within 30 days of such change;

(b) no later than by the 15th day of each January, inform the commission in writing of any changes to the information that was contained on the registered independent testing laboratory's application for registration or submitted in conjunction with or subsequent to its application, or that no changes have occurred since the last reporting date;

(c) maintain copies of the results of any ISO/IEC 17025 audits or reviews and notify the commission in writing of the availability of the results within 15 days of when they become available to the registered independent testing laboratory and provide copies to the commission upon request.

(d) notify the commission immediately of any material issues concerning any gaming device ~~or component~~ that it tested for use in Massachusetts;

(e) notify the commission immediately of any attempts by a manufacturer, distributor, or operator to improperly influence the certified independent testing laboratory, or any of its employees, managers, or owners, in or in connection with any testing of gaming devices ~~or components~~ for use in Massachusetts; and

(f) timely provide the commission with such other information as the commission may request or require.

(7) Continued Obligations. Certified independent testing laboratories shall abide by the following requirements while certified:

(a) In the interest of preserving a competitive gaming industry, a certified independent testing laboratory shall not implement or maintain any procedure or policy or take any action that would inhibit or prevent a manufacturer, distributor or operator that has otherwise been deemed suitable for doing business in Massachusetts by the commission from submitting a game, gaming device, associated equipment, cashless wagering system, inter-casino linked system, mobile gaming system or interactive gaming system, or any component thereof or modification thereto, for testing for use in Massachusetts, or that would call into question or tend to erode the independence of the certified independent laboratory from any clients that utilize its services.

(b) All testing shall be performed by a person directly employed by the certified independent testing laboratory. The certified independent testing laboratory shall not assign, delegate, subcontract, or otherwise engage any person not directly employed by the certified independent testing laboratory for any testing for which the laboratory has been certified. The certified independent testing laboratory shall provide the commission each month with a list and description of all amounts paid by or invoiced to licensed gaming vendors for costs of gaming device testing or otherwise.

(c) A certified independent testing laboratory shall implement and maintain a hiring and background check process that ensures, at a minimum, that no person is hired in a position involving testing relating to Massachusetts, or in a position overseeing or managing an employee in such a position, who has:

1. failed to disclose or misstated information or otherwise attempted to mislead the commission with respect to any information the person has provided to the commission;
2. been convicted of a felony or other crime involving embezzlement, theft, fraud or perjury;
3. committed prior acts which have not been prosecuted or in which the person was not convicted but form a pattern of misconduct that makes the person unsuitable;
4. Been identified in the published reports of any federal or state legislative or executive body as being a member or associate of organized crime, or as being of notorious and unsavory reputation;
5. Been placed and remains in the constructive custody of any federal, state or municipal law enforcement authority; or
6. Had any gaming license, registration or other like credential revoked or committed any act which is a ground for the revocation of a gaming license, registration or other professional credential held by the person or would have been a ground for the revocation of a gaming license, registration or other professional credential had the person held such license, registration, or credential.

(d) A certified independent testing laboratory shall handle all information and data prepared or obtained as part of the testing process as confidential.

(e) A certified independent testing laboratory shall implement and maintain security and access control systems designed to secure and protect the confidentiality of all equipment, software, and other information entrusted to it as part of the testing process.

(f) The commission may, as appropriate, periodically provide further guidance as to what is required of a certified independent testing laboratory through industry notices or other written communications.

(g) If a certified independent testing laboratory hires an individual who was previously employed by, or performed any work for, a manufacturer, distributor or operator within one year prior to the individual's date of employment with the independent testing laboratory, the certified independent testing laboratory shall not permit that person to test any gaming device ~~or component~~ for use in Massachusetts, for which the person had any involvement with, whatsoever, while he or she was employed by the manufacturer, distributor or operator for a period of one year from the individual's date of employment with the independent testing laboratory.

REGULATORY AUTHORITY

205 CMR 139: M.G.L. c. 23K, §§x

DRAFT

205 CMR: MASSACHUSETTS GAMING COMMISSION  
205 CMR 140.00: POSSESSION OF SLOT MACHINES

Section

140.01: Possession of Slot Machines

140.02: Transportation of Slot Machines

140.01: Possession of Slot Machines

(1) The following persons and any employee or agent acting on their behalf may, subject to any terms and conditions imposed by the commission, possess slot machines in the commonwealth for the purposes provided herein, and such possession is not restricted by G.L. c. 271, § 5A, provided that the machines are kept only in such locations as may be specifically approved in writing by the commission and that any machines located outside of a gaming establishment not be used for gaming activity:

(a) A holder of:

1. A gaming license at the gaming establishment;
2. A gaming vendor license, for the purpose of distributing, repairing or servicing slot machines;

(b) An employee or agent of the commission, for the purpose of fulfilling official duties or responsibilities;

(c) A common carrier, for the purpose of transporting such slot machines;

(d) A trade school approved by the commission to possess slot machines for educational purposes; or

(e) Any other person the commission may approve after finding that possession of slot machines by such person in this state is necessary and appropriate to fulfill the goals and objectives of M.G.L. c. 23K and 205 CMR.

(2) Each gaming licensee shall file, prior to the commencement of gaming and every thirty days thereafter with the commission a comprehensive lists of:

(a) The slot machines and bill validators and/or bill changers not integrated into a slot machine on its gaming floor (the "Slot Machine Master List");

(b) The slot machines possessed by the licensee in restricted areas off the gaming floor but on the premises of its gaming establishment;

(c) The slot machines possessed by the licensee at locations in this state but off the premises of its gaming establishment.

(3) At a minimum, each list of slot machines required by paragraph (2) of this rule shall contain the following information, as applicable, for each slot machine and any accompanying bill validator and/or bill changer on the "Slot Machine Master List," in consecutive order by location number:

(a) The date on which the list was prepared;

(b) A description of each slot machine by:

1. Slot machine model and serial number;

2. Computer program number;

3. Denomination;

4. Manufacturer and machine type; and

5. Whether the slot machine has an electronic funds transfer (EFT) feature, ~~voucher feature, or progressive system.~~

(c) A cross reference for each slot machine by zone and serial number;

(d) The restricted area within the gaming establishment where the slot machine is located for each slot machine included on the list required by paragraph (2)(b) of this rule;

(e) The address of the slot machine storage facility where the slot machine is located for each slot machine included on the list required by paragraph (2)(c) of this rule; and

(f) Such other information as the commission may require.

(4) Any building located outside of a casino facility where slot machines will be kept shall meet, at a minimum, the following requirements:

(a) All access doors and windows must be locked and alarmed;

(b) Access is restricted to those individuals permitted to maintain slot machines pursuant to this regulation; and

(c) Any other requirements as deemed appropriate by the commission.

#### 140.02: Transportation of Slot Machines

(1) Pursuant to St. 2011, c. 194, §§ 101 and 102, any transportation of a slot machine in accordance with 205 CMR 140.02 shall be exempt from the provisions of chapter 1194, 64 Stat. 1134, 15 U.S.C. 1171 to 1178.

(2) Prior to the transport or movement of any slot machine into the Commonwealth; from one authorized location to another authorized location within the Commonwealth unless both locations are operated and controlled by the same gaming licensee; or out of the Commonwealth, the person causing such slot machine to be transported or moved shall first notify the commission in writing giving the following information:

- (a) The full name and address of the person shipping or moving the machine;
- (b) The full name and address of the person who owns the machine, including the name of any new owner in the event ownership is being changed in conjunction with the shipment or movement;
- (c) The method of shipment or movement and the name of the carrier or carriers;
- (d) The full name and address of the person to whom the machine is being sent and the destination of the machine if different from such address;
- (e) The quantity of machines being shipped or moved and the manufacturer's serial number of each machine;
- (f) The expected date and time of delivery to or removal from any authorized location in the Commonwealth;
- (g) The port of entry, or exit, if any, of the machine if the origin or destination of the machine is outside the continental United States; and
- (h) The reason for transporting the machine.

(3) The person shipping or moving any slot machine shall provide to the shipper a document, at least one copy of which shall be kept with the slot machine at all times during the shipping process, that contains the following information, at a minimum:

- (a) The manufacturer's serial number of the slot machine being transported;
- (b) The full name and address of the person from whom the machine was obtained;
- (c) The full name and address of the person to whom the machine is being sent; and
- (d) The dates of shipment.

(4) Any person, company, or school receiving a slot machine shipment from outside of the Commonwealth shall, within three business days of receipt, provide the commission with the information enumerated in (b) above.

(5) All movements of slot machines shall be recorded in a log that shall be maintained in accordance with the record retention requirements contained in 205 CMR 135.XX and include the following:

- (a) The manufacturer's serial number;
- (b) The casino operator's equipment number, if applicable;
- (c) An indication as to whether the equipment is equipped for tokenization, and if so, the denomination;
- (d) The date and time of movement of the equipment;
- (e) The location from which the equipment was moved;
- (f) The location to which the equipment was moved; and
- (g) The printed name(s) and signature(s) of the person(s) involved in moving the equipment.

REGULATORY AUTHORITY  
205 CMR 140: M.G.L. c. 23K, §§x





**Gaming Lab Operating Model Roles**  
4/17/2014

