



MASSACHUSETTS GAMING COMMISSION MEETING

Thursday, April 3, 2014

10:30 a.m.

John B. Hynes Veterans Memorial Convention Center

900 Boylston Street, Room 200

Boston, MA



Massachusetts Gaming Commission

2(a) — No documents

3(a) — No documents



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

Table of Contents

Introduction	3
Executive Summary	5
Definitions	7
Design and Construction	9
Commitment	15
Subcontractor Forms	Exhibits 1-4

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% M/WBE, 3% VBE

Design and Construction workforce: 16% minority, 7% female and a priority placed on opportunities for veterans*

* 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.

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 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)

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).

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 25th 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”.*

* 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>

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.”*

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.

* 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>

* 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
- 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% VBE goals of the project.
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 award 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.
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 3% VBE goals, as well as to maximize opportunities for veterans.
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.
3. 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 alliances. We would look to implement this type of program on this project.

Design and Construction Phase

1. Prior the start of their 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 monthly 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.

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.
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.

**Turner Construction
Plainridge Park Casino
M/W/VBE Utilization Plan and EEO Agreement**

- A. In accordance with the Massachusetts Gaming Commission's requirements all Subcontractors shall be obligated to offer opportunity to **Minority and Woman Owned Businesses (M/WBEs) for a minimum of 11% of the value of the subcontract and to Veteran Owned Businesses (VBEs) for a minimum of 3% of the value of the subcontract.** M/W/VBEs shall be given meaningful opportunity to participate in all contracts and services let in connection with the Subcontract. This participation may include qualified M/W/VBE Trade Contractors, Suppliers, and Vendors. All efforts to provide this opportunity shall be documented on this form and submitted to Turner as part of your bid.
- B. The overall labor participation for this subcontract will consist of 16% for minorities and 7% for females on a trade by trade basis as required by the license.**

Project: _____ Scope Of Work: _____
 Subcontractor: _____ Contract Amount: _____

MBE, WBE, VBE or any Combination M/W/VBE Subcontracting Plan

<u>Name of Subcontractor/Vendor/Supplier</u>	<u>Scope</u>	<u>Certified MBE,WBE or VBE</u>	<u>Contract Value</u>

TOTAL MBE, WBE, VBE or Combination M/W/VBE PARTICIPATION

MBE\$ _____ WBE \$ _____ VBE \$ _____
 MBE% _____ WBE % _____ VBE % _____

By: _____
 Signature of Authorized Owner or Representative Title

It is hereby certified that I agree to the requirements that are a condition of this subcontract and that all information contained above is complete and accurate

**Turner Construction
Plainridge Park Casino
M/W/VBE Utilization Plan and EEO Agreement**

TURNER CONSTRUCTION PRECONSTRUCTION PLAN

SCOPE OF WORK: _____

SUBCONTRACTOR: _____

UTILIZATION PLAN AND COMMUNICATION _____

Turner Representative Date

**TURNER CONSTRUCTION PLAINRIDGE PARK CASINO
M/W/VBE PARTICIPATION REPORT**

PROJECT NAME: _____

WORK START DATE: _____

SUBCONTRACTOR: _____

ANTICIPATED COMPLETION DATE: _____

SUBCONTRACTOR ADDRESS: _____

THIS APPLICATION MONTH: _____

CONTRACT AMOUNT: _____

MBE CONTRACT COMMITMENT: _____

WBE CONTRACT COMMITMENT: _____

VBE CONTRACT COMMITMENT: _____

SUBCONTRACTOR'S/ VENDOR'S/SUPPLIER'S INFORMATION	MBE (Y/N)	WBE (Y/N)	VBE (Y/N)	CERTIFYING AGENCY	TYPE OF WORK SERVICES/SUPPLIES	CONTRACT AMOUNT		ACTUAL AMOUNT
						%	VALUE	PAID THIS PERIOD
NAME: ADDRESS: PHONE NO.								
NAME: ADDRESS: PHONE NO.								
NAME: ADDRESS: PHONE NO.								
NAME: ADDRESS: PHONE NO.								

IT IS HEREBY CERTIFIED THAT THE ABOVE LISTED FIRMS HAVE BEEN UTILIZED BY OUR COMPANY IN THE AMOUNTS REPRESENTED ABOVE AND THAT THE INFORMATION CONTAINED HEREIN IS COMPLETE AND ACCURATE.

By: _____

Title: _____

WEEKLY HOURS AND PERCENTAGES ~ PLAINRIDGE PARK CASINO SUBCONTRACTORS

SUBCONTRACTOR	MINORITY HOURS	Minority %	Last week Minority %	FEMALE HOURS	Female %	Last Week Female %	VETERAN HOURS	Veteran %	Last Week Veteran %	TOTAL HOURS	Last Weeks Hour	Week Ending
Sub 1	0.0	%	%	0.0	%	%	0.0	%	%	0.0	0.0	1/29/2012
Sub 2	0.0	%	%	0.0	%	%	0.0	%	%	0.0	0.0	1/29/2012
Sub 3	0.0	%	%	0.0	%	%	0.0	%	%	0.0	0.0	1/29/2012
Sub 4	0.0	%	%	0.0	%	%	0.0	%	%	0.0	0.0	1/29/2012
Sub 5	0.0	%	%	0.0	%	%	0.0	%	%	0.0	0.0	1/29/2012
Sub 6	0.0	%	%	0.0	%	%	0.0	%	%	0.0	0.0	1/29/2012
Sub 7	0.0	%	%	0.0	%	%	0.0	%	%	0.0	0.0	1/29/2012
Sub 8	0.0	%	%	0.0	%	%	0.0	%	%	0.0	0.0	1/29/2012
Sub 9	0.0	%	%	0.0	%	%	0.0	%	%	0.0	0.0	1/29/2012
TOTAL HOURS FOR THE WEEK	0.0			0.0			0.0			0.0		
TOTAL % FOR THE WEEK	%			%			%					

**SUB-SUBCONTRACTOR/SUPPLIER AFFIDAVIT AND PARTIAL
RELEASE OF CLAIMS AND LIEN WAIVER**

THE STATE OF _____)
) ss.
 COUNTY OF _____)

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be a credible person and officer of _____ (“Sub-Sub/Supplier”) and who, being duly sworn, upon his oath declares and acknowledges as follows:

1. I am the duly authorized agent for Sub-Sub/Supplier, which has authorized me to make this affidavit, to enter into the agreements and to grant the waivers herein set forth, on its behalf. All the statements in this Affidavit are true and correct.

2. In connection with an agreement dated _____, 20__ between _____, (“Owner”) and Turner Construction Co., and pursuant to an agreement or purchase order dated _____, 20__ (the “Subcontract”) between Sub-Subcontractor/Supplier and Turner or _____ [insert name of entity with which Sub-Sub/Supplier has contracted], a subcontractor to Turner (“Subcontractor”), Sub-Sub/Supplier has supplied labor and/or materials in connection with the construction of improvements upon certain real property located in the State of _____, in connection with a construction project known as _____ and located at _____ (the “Project”).

- 3. (a) Original Sub-Subcontract value was: \$ _____
- (b) Total value of approved change orders to date: \$ _____
- (c) Amount paid to Sub-Sub/Supplier through last pay period: \$ _____
- (d) Amount of Sub-Sub/Supplier’s current payment application: \$ _____
- (e) Sub-Sub/Supplier’s pending change claims total: \$ _____

4. Sub-Sub/Supplier hereby acknowledges having received the amount set forth in 3(c) for all materials supplied and labor performed by or on behalf of Sub-Sub/Supplier in connection with the Project through _____, 20__ [insert date of end of prior progress payment period]. Accordingly, Sub-Sub/Supplier waives and releases any and all liens, claims, causes of action, suits, demands, rights and interests (whether choate or inchoate and including, without limitation, all mechanic’s and materialmen’s liens under the Constitution and statutes of the State/Commonwealth of _____) owned, claimed, or held by Sub-Sub/Supplier against the Subcontractor, Turner, Turner’s sureties, the Owner, Owner’s lenders and guarantors, and/or Project or any part thereof by reason of materials supplied or labor performed in connection with the Project or for any other reason through such date, excepting only the pending change claims listed immediately hereafter, and with respect to those listed, if

any, Sub-Sub/Supplier represents and warrants that these are the only pending claims it has through the date hereof with respect to the Project [describe pending claims in detail with dollar values claims, or insert "none," as applicable:

5. In consideration of and conditioned upon the payment by Turner or Subcontractor of the sum of _____ Dollars (\$_____) [insert amount of current payment], the sufficiency of which is hereby acknowledged, Sub-Sub/Supplier hereby waives and releases any and all liens, claims, causes of action, suits, demands, rights and interests (whether choate or inchoate and including, without limitation, all mechanic's and materialman's liens under federal law or the statutes of the State of _____) owned, claimed or held by Sub-Sub/Supplier against the Subcontractor, Turner, Turner's sureties, lenders and guarantors, and/or Project or any part thereof by reason of materials supplied or labor performed or for any other reason through _____, 200__ [insert date covered by present application for payment], excepting only those pending change claims, if any, listed in paragraph 4.

6. Sub-Sub/Supplier warrants that all costs incurred and bills owed by Sub-Sub/Supplier to others for materials supplied in connection with the Project through _____ [date of end of prior progress payment period] have been fully paid and satisfied. Sub-Sub/Supplier does further warrant that should any claim or lien be filed for materials supplied or labor performed by virtue of Sub-Sub/Supplier's participation in the Project, Sub-Sub/Supplier will immediately furnish a bond for the release of each such claim or lien, obtain settlement of any such claim or lien and furnish Turner and Owner a written full release of such claim or lien. Should Sub-Sub/Supplier be unable to obtain such release, Sub-Sub/Supplier agrees to fully indemnify and hold harmless Turner and the Owner. (and its lenders and guarantors) for any and all costs, including but not limited to attorneys' fees, any of them may incur by reason of such claim or lien.

EXECUTED this _____ day of _____, 20____.

SUB-SUB/SUPPLIER

By: _____

Title: _____

SUBSCRIBED AND SWORN TO before me the said Sub-Sub/Supplier Affidavit and Partial Waiver of Claims and Liens, this ____ day of _____, 20____, to certify which witness my hand and seal of office.

NOTARY PUBLIC in and for

_____ County, _____

My Commission Expires:

Massachusetts Gaming Commission

MEMORANDUM

Date: April 1, 2014

To: Commissioners Gayle Cameron, James McHugh, Bruce Stebbins, Enrique Zuniga

From: Steve Crosby, Chair

Re: Proposed Legislative Changes

As you know, both the MGM and Wynn proposals were accompanied by a number of issues the bidders say need to be resolved before they can operate successfully in Massachusetts. These (and sometimes other) issues have been raised in other venues as well. (It has not been made clear whether either MGM or Wynn would refuse to proceed with the license award without amendment to one or more of these issues.) Consistent with our decision on the Category 2 license, my assumption is that if we pick a winner for Regions A and B of Category 1, that we will offer the award contingent upon compliance with the law as it exists at the time. Nevertheless, I do think that we need to consider these issues as a Commission, both to prepare ourselves for possible license negotiations and to inform the Legislature of our judgment on these matters.

In addition, there have been certain issues raised by other constituents that might require legislative change, which we may want to consider.

It is particularly time sensitive that we deal with all of the issues related to the present \$600 threshold for income tax withholding (found in Chapter 62B, Section 2, and previously addressed by the Commission), since the Legislature is awaiting our advice on these issues before it undertakes its own analysis.

Similarly, we need to distinguish those issues that can be handled through our regulatory authority alone from those which might require legislative action.

With the help of Artem and Todd on the legal staff, and reaching out to certain agencies (such as the Department of Revenue) and organizations (such as the American Gaming Association), I have come up with this first pass tentative analysis of these issues. In no case is my mind fully made up on any of these

issues (except for those on which the Commissioners previously agreed), but I am ready to lead a conversation with Commissioners and staff about them. For further background, see Artem's presentation of the Wynn and MGM arguments in **Attachment A**.

1. Pending Repeal Referendum.

Both MGM and Wynn have expressed concern about their considerable financial exposure in the case of a license award which is followed by repeal of the gaming legislation (should the SJC permit the ballot question to go forward, and should it be successful in the November election). There are 2 categories of financial issues that will be triggered by the license award and/or a delay caused by awaiting the outcome of the repeal initiative:

A. Costs under the control of the Gaming Commission.

The Gaming Commission has four different fees it is authorized to assess upon the award of the gaming license, and a fifth category of costs associated with construction:

- \$85M one time licensing fee
- Slot machine fee of \$600 per unit
- Gaming assessment fee to cover operating costs
- Public Health Trust Fund fee
- Project construction and costs, schedule penalties, 10% investment deposit, and site acquisition requirements

In previous discussions, the Commission has provided itself flexibility to make license awards provisional or contingent, in a manner that would enable it to compromise on the date of assessing these fees, and modify construction constraints, if the Commission believes it is appropriate to do so. While we have expressed our opinion that legislative action promising to return the \$85M license fee in the event of a subsequent repeal would be a reasonable action, I do not believe that we require legislative action to provide relief for these five costs.

B. Costs not within the control of the Commission.

There are at least three costs which the Commission cannot control:

- Project site payments contingent upon license award
- Certain project construction costs
- Costs due to delays under Host Community Agreements and Surrounding Community Agreements.

MGM acknowledges that there may be little direct relief the Commission can provide for these potential costs, and requests that the Commission provide "guidance" for an appropriate form of relief. I've not yet pursued what, if any,

guidance we could provide here, but I do not think that legislative action would be required or appropriate in helping to deal with these issues.

2. Chapter 23K, Section 18: On-site child daycare program.

Section 18. *In determining whether an applicant shall receive a gaming license, the commission shall evaluate and issue a statement of findings of how each applicant proposes to advance the following objectives: (9) establishing, funding and maintaining human resource hiring and training practices that promote the development of a skilled and diverse workforce and access to promotion opportunities through a workforce training program that: (iii) establishes an on-site child day-care program.*

Both Wynn (calling for a repeal) and MGM (calling for amendment permitting a facility in proximity to the site) find this requirement unacceptable. However, on close reading of Section 18 (9)(iii), it is clear that providing a facility is not a requirement, but rather something the Commission should consider in determining whether an applicant shall receive a gaming license. I believe the Commission can address this issue through its regulatory authority, and it will not require legislative action.

3. Chapter 23K, Section 55(a): Tax Rates.

Section 55 (a) *A category 1 licensee shall pay a daily tax of 25 per cent on gross gaming revenues.*

Both Wynn and MGM call for assurances that the present 25% tax rate on gross gaming revenues will not be changed during the licensing period (for 15 years). The Commission does not have any authority relative to setting the tax rate. As a general matter, it is unlikely that the present Legislature can or would bind a future Legislature vis a vis guaranteeing the present tax rate. Thus, no legislative action is required for this issue. I have checked with other jurisdictions, and except for rare circumstances (like an underlying contract in Kansas), all tax rates are subject to Legislative change.

4. License Parameters.

MGM expresses concern that the Legislature might allow a Category 2 license to offer table games, and that such a change would create an unfair competitive environment for the Category 1 license holders by changing the landscape, and accordingly the economics, on which they have relied in crafting their present project. If this change were to occur, MGM asks that the Commission consider a variety of types of relief, including reducing the Category 1 table game tax rate.

The Commission does not have any authority relative to setting the tax rate or reducing the Category 1 table game tax rate. Further, as a general matter, it is unlikely that the present Legislature can or would bind a future Legislature vis a vis prohibiting such a change (as adding table games to Category 2) in the future. Accordingly, I don't believe that either Commission or

legislative action is called for on this issue at this point, although it might be advisable for the Commission to consider establishing a position in favor of no changes to key licensing parameters during the 15 year license period.

5. Chapter 23K, Section 21(A)(4): Capital Expenditures.

Section 21 (a) *The commission shall prescribe the form of the gaming license, which shall include, but not be limited to, the following license conditions for each licensee. The licensee shall: (4) make, or cause to be made, capital expenditures to its gaming establishment in a minimum aggregate amount equal to 3.5 per cent of the net gaming revenues derived from the establishment; provided, however, that a gaming licensee may make capital expenditures in an amount less than 3.5 per cent per year as part of a multi-year capital expenditure plan approved by the commission*

Both Wynn and MGM interpret this section to require a minimum 3.5% *annual* investment of “net gaming revenues derived from the establishment” in renewing the capital infrastructure of the facility. Wynn calls for replacing the 3.5% with a qualitative standard, and MGM calls for repeal.

I believe that Wynn and MGM have applied an overly narrow reading to this section: notably, the first part of Section 21(a)(4) does not use the word “annual” (though it could be imputed given the context). In the second section, the Commission is granted authority to approve expenditures of a lesser amount than 3.5% per year as part of a multi-year capital expenditure plan. I believe that the Commission can handle this issue in its regulations, and there is no need for legislative action.

6. Chapter 23K, Sections 9(A)(8) and 21(A)(16): On-site space for mental health treatments.

Section 9 (a) *The commission shall prescribe the form of the application for gaming licenses which shall require, but not be limited to: (8) an agreement that the applicant shall mitigate the potential negative public health consequences associated with gambling and the operation of a gaming establishment, including: (ii) providing complimentary on-site space for an independent substance abuse and mental health counseling service to be selected by the commission.*

Section 21. (a) *The commission shall prescribe the form of the gaming license, which shall include, but not be limited to, the following license conditions for each licensee. The licensee shall: (16) provide complimentary on-site space for an independent substance abuse, compulsive gambling and mental health counseling service and establish a program to train gaming employees in the identification of and intervention with customers exhibiting problem gaming behavior.*

Wynn expresses concern that these sections require the licensees to provide comprehensive substance abuse, compulsive gambling and mental health counseling/treatment services. I believe that the statute only requires that the licensee provide “complimentary on-site space” and that what services, if any, go in the space is determined by the Commission. I believe that

this issue can be managed within the Commission's regulatory authority, and does not require legislative action.

7. Chapter 23K, Section 25(G): Gratuities

Section 25 (g) *A dealer may accept tips or gratuities from a patron at the table game where such dealer is conducting play; provided, however, that such tips or gratuities shall be placed in a pool for distribution among other dealers. The commission shall determine how tips and gratuities shall be set aside for the dealer pool as well as the manner of distribution among dealers. No key gaming employee or any other gaming official who serves in a supervisory position shall solicit or accept a tip or gratuity from a player or patron in the gaming establishment where the employee is employed.*

Several unions testified at the Region A surrounding community hearing against any modification of this law. It was not clear to me exactly what practice or practices they wish to prohibit, except that they clearly oppose transfer of tips to supervisors or managers. And Wynn proposes that the section be changed to permit the license to determine how tips are pooled and distributed (though excluding participation of "the employers"). There are two issues: one can be handled by way of regulation, one would require legislative action. First, it was suggested that it should be left to the gaming licensee (and any labor organization where applicable) to determine the manner in which tips should be distributed. The Commission is authorized to determine the manner in which tips and gratuities shall be set aside and distributed among *dealers*. As such, it could, if it so chose, authorize by regulation the licensee and labor organization to resolve the issue amongst themselves. Secondly, it was suggested that there are certain employees who may assist dealers, but who are not in fact dealers and who are not in a managerial or supervisory position who should be allowed a cut, though not a full dealer share, of the tips. This second issue would require legislative action. We await further clarification on what exactly the unions are concerned about.

8. Chapter 23K, Section 28(B) and (C): Reports of complimentary services.

Section 28 (b) *Gaming licensees shall submit quarterly reports to the commission covering all complimentary services offered or engaged in by the gaming licensee during the immediately preceding quarter. The reports shall identify regulated complimentary services and the costs of those services, the number of people who received each service or item and such other information as the commission may require. The report shall also document any services or items valued in excess of \$2,000 that were provided to patrons, including detailed reasons as to why they were provided. (c) Complimentary services or items shall be valued in an amount based upon the retail price normally charged by the gaming licensee for the service or item. The value of a complimentary service or item not normally offered for sale by a gaming licensee or provided by a third party on behalf of a gaming licensee shall be the cost to the gaming licensee of providing the service or item, as determined under rules adopted by the commission.*

Both Wynn and MGM call for repeal of these sections as administratively burdensome,

incompatible with other jurisdictions, and an invasion of their customers' privacy. From Artem's research, this requirement looks very similar to that of New Jersey. We've asked Wynn to look into its content and application in New Jersey, and we may want to ask Michael & Carroll for advice.

9. Chapter 23K, Section 29: Cashless wagering.

Section 29 *A gaming establishment offering a cashless wagering system 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. Activity under this section shall be monitored by the commission. Individuals on the list of excluded persons shall not be permitted to participate in a cashless wagering system.*

Both Wynn and MGM call for repeal of this section as administratively burdensome, ultimately counterproductive and an invasion of privacy. I think they are misinterpreting this section, but Todd is doing further research on what exactly the applicants are objecting to and how "cashless wagering" would operate. If applicants object to even "allowing" the use of such a system or to the "monthly" report option, it would require legislative action.

10. Chapter 23K, Section 51: Past-due child support or tax liability constraint on disbursement of cash in excess of \$600.

Section 51 (a) *Prior to disbursement of cash or a prize in excess of \$600, a gaming licensee shall review information made available by the IV-D agency, as set forth in chapter 119A and by the department of revenue to ascertain whether the winner of the cash or prize owes past-due child support to the commonwealth or to an individual to whom the IV-D agency is providing services and to ascertain whether the winner of the cash or prize owes any past-due tax liability to the commonwealth. (b) If the winner of the cash or prize owes past-due child support or has a past-due tax liability, the gaming licensee shall notify the IV-D agency or the commonwealth, respectively, of the winner's name, address and social security number. Subsequent to statutory state and federal tax withholding, the gaming licensee shall first disburse to the IV-D agency the*

full amount of the cash or prize or such portion of the cash or prize that satisfies the winner's past-due child support obligation. (c) If funds remain available after the disbursement to the IV-D agency or if no such obligation to the IV-D agency is owed, the gaming licensee shall disburse to the department of revenue the full amount of the cash or prize or such portion of the cash prize that satisfies the winner's past-due tax liability. The licensee shall disburse to the holder only that portion of the prize, if any, remaining after the holder's past-due child support obligation and the holder's past-due tax liability have been satisfied.

Both Wynn and MGM urge repeal of this section. The \$600 threshold is obviously tied to the withholding tax threshold found in Chapter 62B, Section 2. As presently drafted it would apply to table game and slot machine winnings. And I believe common sense and logistical practicalities require that all the \$600 thresholds in the statute should be raised to the IRS \$1200 level. It is not clear, however, if this is a practical or feasible option at any threshold level. We are collectively researching what mechanisms other jurisdictions use to satisfy this requirement and when DOR will be capable of offering similar systems. It is not yet clear what legislative action is required.

11. Chapter 23K, Section 52: Reports of winnings in excess of \$600.

Section 52 *Gaming licensees shall, on a monthly basis, transmit to the department of transitional assistance and to the IV-D agency, as set forth in chapter 119A, a list of all persons who were awarded cash winnings or a prize in excess of \$600 in the prior month. The information shall be provided in a format which is compatible with the automated data processing systems of the department and the IV-D agency to ensure the immediate identification of persons who may be receiving public assistance benefits. The information provided shall include the name, address and social security number of the person who was awarded the cash or prize valued in excess of \$600.*

Wynn and MGM call for repeal of this section as administratively burdensome, inconsistent with other gaming jurisdictions, and of questionable public policy wisdom.

This threshold also fits with the \$600 withholding threshold, but raises other issues as well. As presently drafted it would apply to table game and slot machine winnings. It does appear that this section would require legislative action.

12. Chapter 23K, Section 56(C)(D) and (E): Commission costs and Public Health Trust Fund.

Section 56 (c) *Any remaining costs of the commission necessary to maintain regulatory control over gaming establishments that are not covered by: (i) the fees set forth in subsections (a) and (b); (ii) any other fees assessed under this chapter; or (iii) any other designated sources of funding, shall be assessed annually on gaming licensees under this chapter in proportion to the number of gaming positions at each gaming establishment. Each gaming licensee shall pay the amount assessed against it within 30 days after the date of the notice of assessment from the commission. (d) If the fees collected in subsections (a) and (b) exceed the cost required to*

maintain regulatory control, the surplus funds shall be credited in proportional shares against each gaming licensee's next assessment. (e) In addition to the fees collected under this section and any additional costs of the commission, the commission shall assess an annual fee of not less than \$5,000,000 in proportional shares against each gaming licensee in proportion to the number of gaming positions at each gaming establishment for the costs of service and public health programs dedicated to addressing problems associated with compulsive gambling or other addiction services. Such assessed fees shall be deposited into the Public Health Trust Fund established in section 58.

Generally these sections refer to the authority given to the Commission to assess its operating costs (not covered by the \$600 slot license fee and investigatory fees) by a proportional assessment on the licensees, as well as the assessment of an annual fee of not less than \$5M for the Public Health Trust Fund. MGM and Wynn find the uncertainty as to the potentially limitless amounts associated with each to be unsettling and recommend deleting the authority to assess remaining operating costs on the licensees; replacing the open ended assessment with a fixed fee; and freezing the Public Health Fund assessment at \$5M. The Commission has already indicated its intent to involve the licensees in oversight of the Commission's operating costs, and has expressed no expectations of assessing a Public Health Trust Fund fee higher than \$5M. Furthermore, the Commission is taking the position that this kind of funding mechanism for regulatory and public health costs is one of the strengths of the expanded gaming legislation, and we would not recommend that it be revisited by the Legislature.

13. Chapter 62B, Section 2: Withholding of taxes on winnings of \$600 or greater.

The Commission has already approved a proposal to the Legislature on this issue.

14. Parity of tax rate.

Both Wynn and MGM express concern that a tribal casino could be authorized in Massachusetts, and operate at a tax rate significantly below the tax rate on the Massachusetts license holders. In various ways, they each call for matching the tax rate of commercial casinos to the tax rate of tribal casinos and reserve their rights of lobbying accordingly for such changes.

The Commission in its discussions to date clearly understands the potential challenges posed by a Tribal casino operating under the presently approved Compact. We will continue to discuss this issue in public, and will wrestle with the reconciliation of these competing interests with the same transparency we have approached our other work. However, there are potentially insurmountable conundrums with the range of Tribal options. Certainly changing the tax rate would require legislative approval. At this point, I don't see any action that the Commission should take other than to continue judiciously with the commercial process, and wait out the Tribal process.

15. Chapter 23K, Section 20, Section 27(B): Lengths of credit

[awaiting more information from Todd on what MGM is getting at with this issue]

16. CORI modifications.

As you know, a number of groups have expressed concern that CORI standards in the expanded gaming law (specifically the “automatic disqualifiers” identified in G.L. c.23K, §16) will preclude many people in the targeted groups for employment, and that they are unnecessarily rigid in protecting the integrity of the gaming process. At this point, we are awaiting a recommendation from Jill Griffin and Commissioner Stebbins as to whether or not the Commission should take a position on legislative standards relative to CORI standards. Any change though would require legislative action. For background on this issue, Jill solicited the opinion from Michael & Carroll found in **Attachment B**.

PENDING ANTI-GAMING LEGISLATION

Wynn	MGM	Other Jurisdictions
------	-----	---------------------

Based upon what MGM Springfield understands to be the procedural status of the pending Anti-Gaming Petition (as defined below), we believe there may be significant timing issues related to the resolution of the matter by the courts, and potentially the voters of Massachusetts.

Massachusetts

Nevada

On September 4, 2013, the Massachusetts Attorney General (MAAG) refused to certify an initiative petition under Article 48 of the Massachusetts Constitution seeking voter approval of a law that would make commercial gaming in Massachusetts illegal ("Anti Gaming Petition"). On September 10, 2013, the petitioners filed a complaint with the Supreme Judicial Court (SJC) seeking to overturn the MAAG's denial of certification. The Court granted a preliminary injunction to allow the petitioners to collect the necessary signatures while the appeal is pending. On December 9, 2013 the Secretary of State notified the petitioners that they have obtained the requisite 68,911 certified signatures. Our understanding is that the appeal of the denial of certification will likely be argued before the SJC sometime as late as April or May and decided by the Court as late as June or July of 2014. Accordingly, if MGM Springfield was fortunate enough to win the Western Massachusetts gaming license, award of which is projected in March or April of 2014, our company (and all other category 1 and category 2 awardees) would be in the untenable situation of likely having to incur tremendous costs and liabilities related to commencement of construction, essential to the timely completion of our project (such that we would not incur potential penalties under G.L.C. 23K Section 10(b)). The financial risk to applicants is greatly increased if the SJC were to overturn the MAAG's denial of certification, and the petition was permitted to proceed to a November 2014 vote.

New Jersey

Pennsylvania

Mississippi

There are a number of significant costs, risks and liabilities incurred by a licensee that result from the award of a license prior to the resolution of the Anti-Gaming Petition. To be clear, we are not advocating for a delay in the Commission's awarding of the licenses as this would create the similar exposure, costs and liabilities to applicants. Furthermore, it also would result in other costs and adverse impacts to the Commonwealth, including potentially allowing competing states and their operators to develop a marketing advantage.

Finally, municipalities across the Commonwealth have undertaken a long process in which they have in accordance with the gaming law, selected development partners and entered into Host Community Agreements. These agreements call for implementation upon the award of a license from the MGC in accordance with the gaming law. Municipalities would therefore be adversely impacted were the Anti-Gaming Petition to move forward.

We believe the obligations of applicants impacted by the Anti-Gaming Petition include, but are not limited to, the following:

1. Licensing Fees

- a. **\$85 million Licensing Fee.** The \$85 million licensing fee for Category 1 (and \$25 million licensing fee for Category 2 licensees) due thirty (30) days after license award pursuant to Chapter 23K, Section 10(d). Under the Commission's regulations, this fee is nonrefundable. 205 CMR 121.01(1).
- b. **Slot Machine Fee.** Within 30 days after the award of the license by the Commission, a license fee, as provided by M.G.L. c. 23K, § 56(a), of \$600 is due for each slot machine to be used at the licensed facility.
- c. **Gaming Assessment Fee.** Within 30 days after the award of the license by the Commission, a license fee, as provided by M.G.L. c. 23K, § 56(c), to be determined by the Commission upon issuance of the license, to cover costs of the Commission necessary to maintain control over gaming establishments, in proportion to the number of gaming positions projected for the gaming establishment; provided, however, that such assessment may be adjusted by the Commission at any time after payment is made where required to reflect a licensee's actual share, and accordingly, the license may be required to remit additional funds or a credit may be issued towards the payment the following year.
- d. **Public Trust Health Fund Fee.** Within 30 days after the award of the license by the Commission, a license fee, as provided by M.G.L. c. 23K, § 56(e), to be determined by the Commission upon issuance of the license, reflecting the applicant's share of \$5,000,000 to be deposited into the Public Health Trust Fund in proportion to the number of gaming positions projected for the gaming establishment; provided, however, that such assessment may be adjusted by the Commission at any time after payment is made where required to reflect a licensee's actual share, and accordingly, the license may be required to remit

additional funds or a credit may be issued towards the payment the following year.

REQUESTED RELIEF: 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.

2. **Project Site Payments.** MGM Springfield has approximately \$40 million in project site property payments that it will be contractually required to make within 30 to 90 days following license award. Delaying the award of the license may not be possible as many of the land owners, with whom MGM Springfield has executed a number of extensions, have indicated that they will not grant further extensions beyond this spring. These purchase prices are based on the potential gaming resort land use and would be far less valuable post-licensing if such use was prohibited or significantly delayed.

REQUESTED RELIEF: We recognize that the legislation in its current form does not provide a readily apparent remedy and therefore we seek the Commission's guidance for an appropriate form of redress.

3. **Project Construction Schedule and Costs.** To maintain the construction schedule we have provided in this RFA-II Application, MGM Springfield intended to immediately clear the site of its existing structures and uses (other than those that will be incorporated into the project). MGM Springfield and other similarly situated licensees will be forced into the Hobson's Choice of clearing the site at significant cost and disruption to the existing occupants in order to maintain its construction schedule, or delaying the construction of its development while the Anti-Gaming Petition (and potential referendum) is pending, also at significant direct cost (including costs related to carrying the land and debt). Furthermore, we would incur competitive opportunity costs related to our late entry into the market.

REQUESTED RELIEF: That the Commission grant licensees a day-for-day extension to their construction schedule commitments, for each day following license award that the Anti-Gaming Petition is not resolved, to the extent that the licensees choose to delay the material commencement of construction while such matter remains unresolved. Consistent with that relief, licensees would be relieved of any liability for delayed opening under Chapter 23K, Section 10(d). Furthermore, MGM Springfield also requests that the 10% investment deposit due by licensees upon license award under Chapter 23K, Section 10(a), and that its land/project site acquisition obligations under Section 15(2), be deferred until Final Resolution of the Anti-Gaming Petition, either by the SJC or by voters.

4. **Opening Delays under Host Community Agreements.** MGM Springfield has entered into contractual commitments with the City of Springfield, which expose us to significant damages if we do not complete construction by dates certain.

REQUESTED RELIEF: We recognize that the legislation in its current form does not contemplate protections for operators under host community agreements. Because operators may be exposing themselves to significant damages by not commencing construction following license award, we seek the Commission's guidance on this matter.

SECTION 18; ON-SITE CHILD DAY-CARE PROGRAM

Wynn	MGM	Other Jurisdictions
<p>Establishment of an on-site child daycare program.</p> <p>Explanation: This requirement is not common practice. We have offered to work with third party providers to assist employees with childcare.</p> <p>Corrective Action: Section 18 of chapter 23K of the General Laws should be repealed.</p>	<p><i>Establishment of an on-site child day-care program.</i></p> <p>We believe that the child day-care program could be located within close proximity to the site, but we have learned by experience that employees prefer that it not be located “on-site” but would rather it be nearby.</p> <p>Requested Amendment: Section 18 of chapter 23K of the General Laws, as so appearing, is hereby amended by inserting in sub-section (9), after the words “and (iii) establishes an on-site”, the following words: "or a location within close proximity to the site, as approved by the Massachusetts Gaming Commission."</p>	<p>Massachusetts The Commission will evaluate an applicant’s plan to establish an on-site child day-care program.</p> <p>Nevada No requirement in statutes or regulations.</p> <p>New Jersey No requirement in statutes or regulations.</p> <p>Pennsylvania The Control Board considers how the applicant addresses the degree to which the project increases the demand for child care.</p> <p>Mississippi An on-site child care facility is not required, but a licensee must obtain appropriate licenses in order to operate one.</p>

SECTION 19(B); SECTION 21; TAX RATE.

Wynn	MGM	Other Jurisdictions
<p>Explanation: The 25% tax rate on gross gaming revenue is acceptable and will encourage the level of capital investment desired by the Commonwealth. Assurance should be given that the rate will not be increased during the term of exclusivity (15 years).</p> <p>Corrective Action: The Commission should be empowered to issue licenses including the terms and conditions to which they are subject, including assurance on the tax rate during the exclusivity period.</p>	<p>Gaming tax rates are linked directly to the level of a gaming operator's investment – high tax rates limit investment and lower tax rates encourage it. Our current proposed investment in MGM Springfield is premised on the current tax rate remaining unchanged during the term of our license.</p>	<p>Massachusetts A category 1 licensee must pay a <u>daily</u> tax of 25% on gross gaming revenues.</p> <p>Nevada A licensee must pay a <u>monthly</u> tax based upon gross revenue: - 3.5% of gross revenue which does not exceed \$50,000 per month - 4.5% of gross revenue which does not exceed \$134,000 per month - 6.75% of gross revenue which exceeds \$134,000 per month.</p> <p>A licensee must pay a <u>quarterly</u> fee of \$20 per slot machine operated in the establishment.</p> <p>A licensee must pay a <u>quarterly</u> fee based upon the number of games operated. For example, for each game up to 16 games, the sum of \$500.</p> <p>A licensee must pay an <u>annual</u> fee based upon the number of slot machines operated. For example, for establishments operating more than 16 games, the licensee must pay a sum of \$1,000 for each game up to 16 games.</p> <p>A licensee must pay an <u>annual</u> excise tax of \$250 upon each slot machine operated.</p> <p>New Jersey A licensee must pay an <u>annual</u> tax of 8% on casino gaming gross revenue and 15% on Internet gaming gross revenue. A licensee must also pay investment alternative taxes in the amount of 2.5% on casino gaming revenue, and 5% on Internet gaming revenue. The tax may be payable weekly or monthly.</p> <p>Pennsylvania A licensee must pay a tax of 12-14% of its daily gross table game revenue. A licensee must pay a tax of 34% of its daily gross electronic table game revenue. The tax is due to the Department of Revenue <u>weekly</u>. In addition, a licensee must pay a tax of 34% of its daily slot machine revenue.</p> <p>Mississippi A licensee must pay a <u>monthly</u> fee based on gross revenues to the Chairman of the State Tax Commission: -4% of gross revenue which does not exceed \$50,000 per month -6% of gross revenue which does not exceed \$134,000 per month -8% of gross revenue which exceeds \$134,000 per month.</p>

LICENSING STRUCTURE

Wynn	MGM	Other Jurisdictions
	<p>The potential for the Legislature to allow category 2 licensees to offer table games sometime in the future poses a serious threat to the long-term stability and viability of the industry in Massachusetts. The Commission should be aware that all three category 2 Applicants operate in markets in which they were originally granted "slots-only" licenses and, after successful lobbying efforts, were subsequently approved for table games at a lower tax rate.</p> <p>REQUESTED RELIEF. We respectfully request the Commission consider some or all of the following forms of potential relief.</p> <p>In the event that the Category 2 license is awarded the right to operate table games, consider reducing the Category 1 table games tax rate, consistent with anti-competitive terms of similar arrangements in other jurisdictions (such as Florida and Connecticut) and, indeed, Massachusetts itself (as permitted under the contract with the Mashpee Wampanoag Tribe).</p> <p>The Commission may wish to consider the adoption of a "marketing credit" to help us better compete with the new competition.</p> <p>The Commission may wish to consider other actions to "protect the new gaming industry from any adverse impacts due to expanded gaming," consistent with its responsibilities to the Commonwealth's Lottery industry.</p>	<p>Massachusetts</p> <p>Nevada</p> <p>New Jersey</p> <p>Pennsylvania</p> <p>Mississippi</p>

SECTION 21(A)4; CAPITAL EXPENDITURES**Wynn**

The gaming licensee is required to make, or cause to be made, capital expenditures to its gaming establishment in a minimum annual aggregate amount equal to 3.5% of its net gaming revenues derived from the establishment.

Explanation: We understand and agree with the legislature’s concern for the quality of the product offered in the Commonwealth and are supportive of an operating standard such as “good operating condition consistent with the original approved project” or “first class operating condition,” but actual annual capital improvement expenditures in a property as complex as a \$1.5 billion casino resort is inadvisable as actual capital expenditures will vary widely over time.

For example, at Wynn, rooms are renovated every five years. This investment at Wynn Las Vegas approaches \$100 million, but room renovations are every five years. Our individual practice is to continue innovation and investment, always tinkering with product to assure that our repeat guests are dazzled anew with each visit. We acknowledge that some of our competitors are not as conscientious as we are, so we understand the concern, but managing capital expenditures should be within the purview of a responsible operator.

Corrective Action: Replace the 3.5% of annual revenue requirement with a qualitative standard. The Commission would retain oversight, but allow the operator to exercise discretion in the operation and maintenance of its facility. If the operator fails to fulfill the articulated standard, enforcement action should be allowed.

MGM

The gaming licensee is required to make, or cause to be made, capital expenditures to its gaming establishment in a minimum aggregate amount equal to 3.5% of its net gaming revenues derived from the establishment. MGM Springfield anticipates making capital expenditures that are commensurate with the business needs of the facility, which will be dictated by the property’s physical needs, general economic conditions (for example, economic downturns will need to be managed) and our own brand standards (MGM is an international brand and a failure to reinvest in any of our properties, including MGM Springfield, would have negative consequences for MGM Resorts and our brands internationally).

We believe that this requirement is excessively intrusive to how we manage our business. Further, no such requirement is made of any other business in the Commonwealth, whether privileged license or not. Given that we share the Commonwealth’s goal of maximizing revenues, we do not believe that such a prescriptive requirement is necessary.

Requested Amendment: Section 21(a)4 of chapter 23K of the General Laws, as so appearing, is hereby repealed.

Other Jurisdictions**Massachusetts**

A licensee must spend at least 3.5% of net gaming revenues on capital expenditures to its gaming establishment.

Nevada

No requirement in statutes or regulations.

New Jersey

A licensee must maintain financial stability, one factor of which is the ability to make capital and maintenance expenditures of 5% of net revenues annually, measured over a period of 5 years.

Pennsylvania

No requirement in statutes or regulations.

Mississippi

No requirement in statutes or regulations.

SECTIONS 9(A)(8) AND 21(A)(16), ON-SITE SPACE FOR INDEPENDENT SUBSTANCE ABUSE

Wynn

A gaming licensee is required to provide complimentary on-site space for an independent substance abuse, compulsive gambling and mental health counseling service.

Explanation: The Massachusetts legislation provides for unequalled resources for the treatment of problem gaming. These resources should be applied by the Commonwealth to fund an appropriate public health response. The appropriate place for treatment is not inside a casino. Licensees are required to have an approved problem gaming policy that includes signage, referrals and self-exclusion. The licensee should not be required to become a treatment provider as this is better accomplished by experts in the field.

Corrective Actions: Chapter 23K of the General Laws should be amended to eliminate the requirement of an on-site space for an independent substance abuse, compulsive gambling and mental health counseling service.

MGM

Other Jurisdictions

Massachusetts

A licensee must agree to provide a complimentary on-site space for an independent substance abuse, compulsive gambling, and mental health counseling service to be selected by the Commission.

Nevada

No on-site service required.

A licensee must post written materials in conspicuous places with contact information for an approved entity that provides information and referral services for problem gamblers.

New Jersey

No on-site service required.

All advertising must contain the words "If you or someone you know has a gambling problem and wants help, call 1-800-GAMBLER" or some comparable language.

Pennsylvania

No on-site service required. An applicant must submit a compulsive and problem gambling plan that includes procedures for providing information to individuals regarding community, public and private treatment services and addiction therapy programs. The plan must include printed material to provide to patrons regarding problem gambling. Each licensee must post signs in conspicuous places giving contact information for problem gambling services.

Mississippi

No on-site service required.

A licensee must post written materials in conspicuous places concerning problem gambling, including the toll free number for an approved entity that provides information and referral services for problem gamblers.

SECTION 25(G); TIPS OR GRATUITIES**Wynn**

A dealer may accept tips or gratuities from a patron at the table game where such dealer is conducting play; provided that such tips or gratuities shall be placed in a pool for distribution among other dealers. The commission shall determine how tips and gratuities shall be set aside for the dealer pool as well as the manner of distribution among dealers. No key gaming employee or any other gaming official who serves in a supervisory position shall solicit or accept a tip or gratuity from a player or patron in the gaming establishment.

Explanation: We appreciate that the legislature understood the need in the industry for tip pooling among dealers. The element of the law requiring the Commission to determine the characteristics of the tip pool should be modified. The Commission should retain supervisory authority in the event problems develop, but this policy, like other human resources policies and procedures, should be resolved by licensed management.

Corrective Action: Section 25(g) of chapter 23K of the General Laws should be amended to permit the gaming licensee to determine how tips and gratuities are pooled, the participants in the pool and the manner of distribution. The employer should not be permitted to take any portion of tip proceeds for its own benefit.

MGM**Other Jurisdictions****Massachusetts**

A dealer's tips or gratuities must be placed in a pool for distribution among dealers. The Commission must determine the manner of distribution. A key gaming employee or any other supervisor may not solicit or accept a tip or gratuity.

Nevada

No requirement in statutes or regulations.

New Jersey

No casino employee at any level may solicit a tip or gratuity. Casino key employees or other supervisory employees may not accept any tip or gratuity. Tips or gratuities for dealers other than poker dealers must be placed in a pool for distribution pro rata among dealers. Licensees may permit poker dealers to keep their own tips or gratuities, or establish a separate common pool or distribution among poker dealers.

Pennsylvania

A dealer's tips or gratuities must be placed in a pool for distribution pro rata among dealers. However, a poker dealer may keep his or her own tips or gratuities. A key gaming employee or any other supervisor may not solicit or accept a tip or gratuity.

Mississippi

Regulations regarding deposit of tips or gratuities, but no statutes or regulations regarding pooling.

SECTION 28(B) AND (C), REPORTS OF COMPLIMENTARY SERVICES

Wynn

Gaming licensees shall submit quarterly reports to the Commission covering all complimentary services offered or engaged in by the gaming licensee during the immediately preceding quarter. The reports shall identify regulated complimentary services and the costs of those services, the number of people who received each service or item and such other information as the Commission may require. The report shall also document any services or items valued in excess of \$2,000 that were provided to patrons, including detailed reasons as to why they were provided.

Explanation: This level of reporting is unprecedented and impossible to implement in a high-end casino including table games. This requirement invades the privacy of our guests and exceeds records customarily kept.

Corrective Action: Sections 28(b) and (c) of chapter 23K of the General Laws should be repealed.

MGM

Gaming licensees shall submit quarterly reports to the commission covering all complimentary services offered or engaged in by the gaming licensee during the immediately preceding quarter. The reports shall identify regulated complimentary services and the costs of those services, the number of people who received each service or item and such other information as the commission may require. The report shall also document any services or items valued in excess of \$2,000 that were provided to patrons, including detailed reasons as to why they were provided.

This requirement would be administratively burdensome and is not required in neighboring state gaming jurisdictions.

Requested Amendment: Sections 28(b) and (c) of chapter 23K of the General Laws, as so appearing, are hereby repealed.

Other Jurisdictions

Massachusetts

A licensee must submit a quarterly report regarding the complimentary services offered during the immediately preceding quarter. The report must identify regulated complimentary services and the costs of those services, the number of people who received each service, and any services or items valued in excess of \$2,000 that were provided to patrons, including detailed reasons as to why they were provided.

Nevada

No requirement in gaming statutes or regulations.

New Jersey

A licensee must submit a quarterly report covering the complimentary services or items offered during the immediately preceding quarter. The report must identify the regulated complimentary services or items and costs, and the number of people who received them. A licensee must keep records of any complimentary gift valued at \$2,000 or more, including the reason the gift was provided, and generate a report if the Division requests.

Pennsylvania

A licensee must record the cost of complimentary services or items. If a licensee provides gifts valued at more than \$10,000 in 5 consecutive days, the licensee must record why the gifts were provided, and make the records available for inspection. A licensee must submit a report listing each patron who received gifts worth at least \$10,000, and file the report the next month.

Mississippi

A licensee must retain records of complimentary services, items or accommodations for a five-year period and make the records available for inspection.

SECTION 29, WAGERING**Wynn**

(1) A gaming establishment offering a cashless wagering system shall allow individuals to monitor and impose betting limits on their cashless wagering including, but not limited to, per bet limits, hourly limits, weekly limits and monthly limits.

(2) A monthly statement shall be mailed to each patron participating in a rewards program or participating in cashless wagering which shall include total bets, wins and losses and the gaming licensee is required to report annually to the Commission the amount of money spent and lost by such patrons.

Explanation: We are not sure what “cashless wagering system” refers to and how it applies to a full service destination resort. Additionally, sending reports to reward card owners detailing total bets, wins and losses and reporting to the Commission wins and losses of individual players is an invasion of the privacy of our players and is unprecedented and unacceptable. It would be as if movie theater owners and retail operators in the Commonwealth were required to report the movies that residents view or retail purchases that they make. This requirement will discourage players from gaming in the Commonwealth and will subvert the goal of repatriating the gambling dollars spent by Massachusetts residents in neighboring states. This level of intrusion is wholly unacceptable to international players. Additionally, as a practical matter, we do not track play bet by bet. This requirement would be impossible to implement while conducting a table games operation in the traditional manner.

Corrective Action: Section 29 of chapter 23K of the General Laws should be repealed.

MGM

A gaming establishment offering a cashless wagering system shall allow individuals to monitor and impose betting limits on their cashless wagering including, but not limited to, per bet limits, hourly limits, weekly limits and monthly limits. A monthly statement shall be mailed to each patron participating in a rewards program or participating in cashless wagering which shall include total bets, wins and losses and the gaming licensee is required to report annually to the commission the amount of money spent and lost by such patrons.

More important than being administratively burdensome, academic studies have also shown many such policies to be counter-productive, causing patrons to engage in behaviors that are not responsible. We will implement a Responsible Gaming program including, but not limited to, education about best practices for managing customers’ gaming behavior. We commit to continuing to work with accredited associations or agencies in Massachusetts and around North America to continue to pursue and refine responsible gaming best practices. We will provide for a self-limit program to permit customers from excluding themselves from marketing efforts as well as any benefits associated with our loyalty program. We would also be amenable to being required to provide quarterly statements to customers, at their request.

Requested Amendment: Section 29 of chapter 23K of the General Laws, as so appearing, is hereby repealed.

Other Jurisdictions**Massachusetts**

A gaming establishment offering a cashless wagering system must allow individuals to impose wagering limits, including bet limits and hourly, daily, weekly, and monthly limits. Each patron issued a rewards card or who participates in a cashless wagering system must receive a monthly statement that includes the patron's total bets, wins and losses. A licensee must annually report the amount of money spent and lost by patrons who have been issued a rewards card or who participated in a cashless wagering system.

Nevada

General self exclusion rules, but no requirement in statutes or regulations regarding self-imposed betting limits. Self-imposed betting limits are applicable to interactive gaming only.

New Jersey

General self exclusion rules, but no requirement in statutes or regulations regarding self-imposed betting limits. Self-imposed betting limits are applicable to Internet gaming only.

Pennsylvania

General self exclusion rules, but no requirement in statutes or regulations regarding self-imposed betting limits.

Mississippi

General self exclusion rules, but no requirement in statutes or regulations regarding self-imposed betting limits.

SECTION 51; DISBURSEMENT OF CASH IN EXCESS OF \$600**Wynn**

Requires a gaming licensee to review information made available by the IV-D agency, as set forth in chapter 119A and by the Department of Revenue to ascertain whether the winner of the cash or prize owes past-due child support to the Commonwealth or to an individual to whom the IV-D agency is providing services and to ascertain whether the winner of the cash or prize owes any past-due tax liability to the Commonwealth prior to disbursement of cash or a prize in excess of \$600. If the winner of the cash or prize owes past-due child support or a past-due tax liability, the gaming licensee shall notify the IV-D agency or the Commonwealth, respectively, of the winner's name, address and social security number. Subsequent to statutory state and federal tax withholding, the gaming licensee shall first disburse to the IV-D agency the full amount of the cash or prize or such portion of the cash or prize that satisfies the winner's past-due child support obligation.

Explanation: While the idea of garnishing money from one who has avoided his or her legal obligation is laudable, it is, again, impractical for a gaming operator to be the policing force. In the interest of identifying one such person, thousands of guests are treated like deadbeats, wholly eviscerating the guest experience. The negative experience for guests would discourage customers from playing in casinos in the Commonwealth and will be damaging to the health of the enterprise. This well-intentioned requirement will degrade the customer experience to a level unacceptable in a Wynn facility.

From a practical standpoint, implementation in a table games context is impossible. This requirement would require intervention in a game (in which other players are playing) prior to paying a winning bet. Like the withholding requirement discussed below, this requirement is simply impossible to satisfy. Perhaps the drafters were thinking of a lottery or racing pay-off in which each winning claim must be presented to a cashier. This is just not the case in a full casino.

Corrective Action: Section 51 of chapter 23K of the General Laws should be repealed.

MGM

Requires a gaming licensee to review information made available by the IV-D agency, as set forth in chapter 119A and by the department of revenue to ascertain whether the winner of the cash or prize owes past-due child support to the commonwealth or to an individual to whom the IV-D agency is providing services and to ascertain whether the winner of the cash or prize owes any past-due tax liability to the commonwealth prior to disbursement of cash or a prize in excess of \$600. If the winner of the cash or prize owes past-due child support or a past-due tax liability, the gaming licensee shall notify the IV-D agency or the Commonwealth, respectively, of the winner's name, address and social security number. Subsequent to statutory state and federal tax withholding, the gaming licensee shall first disburse to the IV-D agency the full amount of the cash or prize or such portion of the cash or prize that satisfies the winner's past-due child support obligation.

In addition to the anti-competitive nature of this statutory requirement, it represents a massive administrative burden to the gaming licensee, which is inconsistent with existing gaming regulations in other U.S. gaming jurisdictions. We would be happy to provide comparisons with other leading jurisdictions upon request.

Requested Amendment: Section 51 of chapter 23K of the General Laws, as so appearing, is hereby repealed.

Other Jurisdictions**Massachusetts**

For a prize in excess of \$600, a licensee must first ascertain whether the winner owes past-due child support or a tax liability. If so, the licensee must notify the agency or commonwealth of the winner's name, address and social security number. Subsequent to statutory state and federal tax withholding, the licensee must disburse the portion of the prize that satisfies the obligation to the agency or commonwealth.

Nevada

No requirement in gaming statutes or regulations.

New Jersey

A licensee that awards an annuity jackpot must provide notice to the Division. The Division will forward the winner's information to the Office of Information Technology in the Department of the Treasury. If the winner is in arrears of a child support order or has certain other debts, the licensee must withhold that amount from the jackpot payments.

Pennsylvania

No requirement in gaming statutes or regulations.

Mississippi

No requirement in gaming statutes or regulations.

SECTION 52; REPORTS OF WINNINGS IN EXCESS OF \$600

Wynn

Gaming licensees shall, on a monthly basis, transmit to the department of transitional assistance and to the IV-D agency, as set forth in chapter 119A, a list of all persons who were awarded cash winnings or a prize in excess of \$600 in the prior month.

Explanation: Please see explanation above.

Corrective Action: Section 52 of chapter 23K of the General Laws should be repealed.

MGM

Gaming licensees shall, on a monthly basis, transmit to the department of transitional assistance and to the IV-D agency, as set forth in chapter 119A, a list of all persons who were awarded cash winnings or a prize in excess of \$600 in the prior month.

In addition to the anti-competitive nature of this statutory requirement, it represents a massive administrative burden to the gaming licensee, which is inconsistent with existing gaming regulations in other U.S. gaming jurisdictions. We would be happy to provide comparisons with other leading jurisdictions upon request.

Requested Amendment: Section 52 of chapter 23K of the General Laws, as so appearing, is hereby repealed.

Other Jurisdictions

Massachusetts

On a monthly basis, a licensee must transmit to the Department of Transitional Assistance and to the IV-D agency a list of all persons who won prizes in excess of \$600 the prior month to identify individuals receiving public assistance benefits.

Nevada

No requirement in gaming statutes or regulations.

New Jersey

No requirement in gaming statutes or regulations.

Pennsylvania

No requirement in gaming statutes or regulations.

Mississippi

No requirement in gaming statutes or regulations.

SECTION 56(C),(D) AND (E) FEES TO COMMISSION

Wynn	MGM	Other Jurisdictions
<p>Any remaining costs of the Commission necessary to maintain regulatory control over gaming establishments that are not covered by: (i) the fees set forth in subsections (a) and (b); (ii) any other fees assessed under this chapter; or (iii) any other designated sources of funding, shall be assessed annually on gaming licensees under this chapter in proportion to the number of gaming positions at each gaming establishment. In addition, the Commission shall assess an annual fee of not less than \$5,000,000 in proportional share against each gaming licensee for the Public Health Trust Fund.</p>	<p>Any remaining costs of the commission necessary to maintain regulatory control over gaming establishments that are not covered by: (i) the fees set forth in subsections (a) and (b); (ii) any other fees assessed under this chapter; or (iii) any other designated sources of funding, shall be assessed annually on gaming licensees under this chapter in proportion to the number of gaming positions at each gaming establishment.</p> <p>This section of the Gaming Act requires Applicants to agree to fund without limit all excess costs incurred by a government agency. Thus far, MGM Resorts has incurred extremely high fees with respect to the RFA-1 process undertaken by the Massachusetts Gaming Commission - probably double what is typical in other similar jurisdictions. While we are advocates for strong regulation, government agencies should be required to responsibly manage budgets. This section of the Gaming Act effectively allows the MGC to pass on all its costs to the industry. We understand that costs associated with specific investigations or other similar extraordinary costs would be borne by the specific licensee. However, we believe that the ordinary day-to-day costs of the MGC should be borne out of existing statutory fixed funding provisions and other appropriate Commonwealth funds, thereby ensuring that the MGC is held accountable like any other government agency.</p>	<p>Massachusetts The Commission’s costs necessary to maintain regulatory control over gaming, not covered by fees or funding, are assessed annually on licensees in proportion to the number of gaming positions at each establishment. Each licensee must pay the amount assessed within 30 days of receiving notice. If the Commission has a surplus of funds, this amount is credited against the next assessments. In addition, the Commission must assess an annual fee of at least \$5,000,000 in proportional shares against each licensee in proportion to the number of gaming positions at each establishment that is dedicated to addiction services and deposited into the Public Health Trust Fund.</p>
<p>Explanation: The 25% tax rate is a healthy tax rate and will generate tremendous revenue for the Commonwealth. To charge for specific investigations is understood and common practice, but to burden operators with an open-ended commitment to pay for all operating costs of the regulatory agency is unique and creates an open-ended and uncapped liability for an operator.</p>	<p>Requested Amendment: Section 56(c) of chapter 23K of the General Laws, as so appearing, is hereby repealed. Please note that our request to repeal is solely related to the potentially unlimited funding we are being asked to provide, and not regarding the principle of paying a fixed fee. Furthermore, we respectfully request an individual operator cap to ensure that no single licensee is disproportionately burdened, in the event that there are only very few licenses awarded.</p> <p>The commission shall assess an annual fee of not less than \$5,000,000 in proportional share against each gaming licensee for the Public Health Trust Fund.</p> <p>We appreciate the importance of the Public Health Trust Fund, however section 59 of chapter 23K of the General Laws already provides for 5% of revenue received from category 1 licensees to be allocated to the Public Health Trust Fund. Furthermore, we respectfully question language that requires us to provide incremental funding to the Public Health Trust Fund that is effectively unlimited in nature ("not less than \$5,000,000"). We therefore respectfully request that such additional funds to be assessed on category 1 licensees for the Public Health Trust Fund be capped. Because the amount is to be determined by the Commission, we respectfully request that the Commission identify in its early regulations that this amount will be fixed at an amount that will be "no more than \$5 million".</p>	<p>Nevada No requirement in gaming statutes or regulations. The Control Board may refund fees or taxes paid in excess of the amount required. The Control Board may conduct an audit, and may require additional fees or taxes from the individual licensee. In addition, the Commission must deposit quarterly in the Revolving Account to Support Programs for the Prevention and Treatment of Problem Gambling \$2 for each slot machine that is subject to a license fee.</p>
<p>Corrective Action: Section 56(c), (d) and (e) of chapter 23K of the General Laws should be amended to provide for advancement by licensees/operators of costs associated with particular investigations (as was done in the suitability phase of this process), but deleting the obligation to fund the entire cost of the Commission.</p>	<p>Requested Amendment: Commission to promulgate regulations that fix the annual fee number at \$5,000,000, or amend the statute as follows: Section 56(e) of chapter 23K of the General Laws, as so appearing, of the General Laws, as so appearing, is hereby amended by replacing the words “not less than \$5,000,000” with “not more than \$5,000,000”. Furthermore, we respectfully request an individual operator cap, at an amount of, say, \$2 million, to protect us in the event there are only very few licenses awarded.</p>	<p>New Jersey The Division and the Commission are financed exclusively from fees charged to applicants, licensees, and registrants. Generally, fees are divided into two categories: those pertaining to casino licensees and those pertaining to all other licensees and registrants. Individual employees, casino service industry enterprises, and registrants cannot always be expected to cover the full amount expended. There will be an unpredictable amount of the annual combined budgets of the agencies which will not be recoverable through specified fees for particular services. The obligation to supply additional funds necessary to recover the otherwise uncollected expenditures of the agencies will be allocated among the licensed casino facilities. Any surplus will be returned to the casino licensees based on a percentage of fees paid.</p> <p>Pennsylvania No requirement in gaming statutes or regulations.</p> <p>Mississippi No requirement in gaming statutes or regulations. The Commission uses the funds in the Mississippi Gaming Commission Fund to carry out its duties.</p>

SECTION 2 OF CHAPTER 62B, WITHHOLDING OF TAXES ON WAGES AND OTHER PAYMENTS

Wynn	MGM	Other Jurisdictions
<p>Payers of gambling winnings are required to withhold 5% on winnings.</p>	<p>Payers of gambling winnings are required to withhold 5% on payments of winnings of \$600 or greater.</p>	<p>Massachusetts A licensee must withhold 5% of gambling winnings that are over \$600.</p>
<p>Explanation: Unlike lottery and racing play in which winning bets are paid individually by a cashier, play in a casino (both slots and tables) involves multiple bets by any given player, with hundreds of winning and losing outcomes. What is fundamentally true is that the house advantage creates an uneven contract; one that mathematically predicts that, over time, the house will win. While a player will have winning and losing hands or pulls on a slot machine, the ultimate outcome over the long term will be that the casino is the winner. To impose a 5% penalty whenever there is a winning bet would make any serious gambler abstain from playing in the Commonwealth. Additionally, implementing this requirement is impossible. Play cannot be interrupted during a game while withholding is done on a particular winning bet.</p>	<p>This obligation to withhold Massachusetts state tax is tremendously anti-competitive and is inconsistent with all neighboring gaming jurisdictions (Connecticut and New York). The primary objectives of the Gaming Act include repatriating exported winnings and importing new winnings from neighboring states. If the licensee is required to withhold Massachusetts state tax on individual "single visit" winnings (without any ability to aggregate losses over a series of visits), this will significantly deter Massachusetts and other out-of-state customers from using Massachusetts casinos in favor of competing facilities in neighboring states. Its application will certainly result in lower gaming revenue and lower taxes to the Commonwealth.</p>	<p>Nevada No requirement in gaming statutes or regulations.</p> <p>New Jersey A licensee must withhold New Jersey gross income tax on winnings at a rate of 3% in all instances where the licensee is required to withhold federal income tax.</p> <p>Pennsylvania No requirement in gaming statutes or regulations.</p>
<p>Federal law imposes withholding on slot jackpots over a certain threshold. This is physically possible on slot jackpots because the play is between a single player and a machine. At a common blackjack table, six players are playing simultaneously. In each hand (and we expect 7-8 hands per minute), there are winners and losers. It is functionally impossible to interrupt play after each hand to administer reporting or withholding of winnings from that particular hand. The legislation, which can be applied to racing and lotteries (where each winning bet is settled between the player and the operator at a cage), is wholly impractical and non-productive in the context of a live casino operation.</p>	<p>Furthermore, this represents a massive administrative burden that is inconsistent with the existing federal requirements in this area and the regulations of all other U.S. gaming jurisdictions. We would be happy to provide comparisons with other leading jurisdictions upon request.</p>	<p>Mississippi A licensee must withhold income tax on winnings at a rate of 3%.</p>
<p>Corrective Action: The seventh paragraph of section 2 of chapter 62B of the General Laws should be repealed.</p>	<p>Requested Amendment: The seventh paragraph of section 2 of chapter 62B of the General Laws, as so appearing, is hereby repealed.</p>	

PARITY OF TAX RATE

Wynn	MGM	Other Jurisdictions
<p>By way of background, the enabling legislation created three zones in the Commonwealth. It anticipates no more than one Class 1 full casino in each region, with two additional slot parlors. The Class 1 casinos are levied a 25% tax on gross gaming revenue, the slot parlors 49%. From the outset, all Massachusetts facilities will operate at a competitive disadvantage to the tribal operators in Connecticut who pay 25% on slot revenue only. Table games revenue is wholly untaxed, resulting in a blended rate of approximately 18%. Every point of differentiation in applicable tax is hugely significant in ultimate profitability. Applicants made the decision to compete for licenses in Massachusetts in early 2013 understanding the potential advantage held by the Connecticut tribes.</p>	<p>That the Commonwealth resist any changes to the tax rates levied on winning Applicants for tax and other assessments to ensure that these rates remain fixed at the levels provided in Section 55 of the Gaming Act for the duration of the license.</p>	Massachusetts
<p>The recent compact negotiated by the Commonwealth with the Mashpee Wampanoags for a casino in zone 2 creates an even greater disparity within the Commonwealth. The highest tax rate payable under the Wampanoag contract is 21% and that is only if their casino is the sole casino operating in the Commonwealth. It is possible, if a Class 1 casino is licensed in zone 2, that the Wampanoags would pay zero tax on gaming revenue.</p>	<p>In order to provide a level competitive environment to all of its licensees, we would request that the Legislature consider equalizing tax rates for all Category 1 casinos to the tax rate granted to any Native American tribe with a substantially similar license, to the extent such rates are further reduced.</p>	Nevada
<p>It is absolutely probable that they will pay a maximum of 17% since there is likely to be another commercial casino in the Commonwealth. A Wampanoag casino in Taunton would be a mere 40 miles from our proposed investment in Everett and a real alternative for our patrons. While the zero tax scenario may be unlikely (and is within the discretion of the Commission), the terms of the compact create a significant inequity in any event. The costs to the zone 1 licensee may be 50% greater than an adjacent enterprise due to the differentiation in tax rates.</p>	<p>...</p>	New Jersey
<p>There is nothing preventing the Mashpees (with their management and financing partner, Genting), from applying for a commercial license in zone 2. But why would they, with the prospect of this operating advantage before them? We do not believe that the legislature intended to unfairly advantage the non-tribal Genting, but that would be the result if the project moves forward under the current compact terms. Additionally, we note that Genting has not yet submitted to any suitability investigation.</p>	<p>To the extent that any licensee (Category 1 or 2) or Native American tribe, other than MGM Springfield, is relieved either directly or indirectly of any obligations, restrictions, requirements, conditions, or commitments imposed by the Legislature or the Commission following MGM Springfield’s submission of our RFA-2 Application, whether listed herein or other such requirements, we reserve the right to avail ourselves of such revised or repealed requirements and to modify our Application, project proposal and program accordingly. We believe we should have this right during construction, post-opening, and during the term of any license MGM Springfield may be awarded from the Commission. Further, MGM Springfield reserves the right to seek legislative and regulatory changes, modifications, and clarifications following the submission of our Application, and nothing contained in MGM Springfield’s proposal herein should be deemed to waive such right to create a conflict with such potential future changes. We believe parity and transparency have been a critical aspect of the licensing process in Massachusetts to date and we request that the Commission maintain that same parity and transparency throughout this process, including following license award.</p>	Pennsylvania
<p>Corrective Action: All Class 1 casinos should operate pursuant to the same economic terms with the same tax rate applied to all operators of the same type of facility. The tax rate applicable to Class 1 non-tribal casinos should adjust to match the tribal rate in effect from time to time.</p>		Mississippi

SECTION 27(E); ISSUANCE OF CREDIT

Wynn	MGM	Other Jurisdictions
	<p><i>Only gaming licensees are permitted to issue credit to a patron in a gaming establishment.</i></p> <p>This section appears to require the gaming licensee to be the only entity able to issue credit to patrons. This could therefore restrict credit card/ ATM managers from offering services within the gaming establishment, if such services are deemed to be the issuance of credit.</p> <p>Requested Amendment: Section 27(e) of chapter 23K of the General Laws, as so appearing, is hereby amended by inserting after the words “gaming licensee”, the following words:- "or licensed gaming vendor." Massachusetts General Laws Chapter 121A and Massachusetts Regulations 760 CMR 25.00 (collectively, “Chapter 121A”) authorize the creation of singlepurpose, project-specific, for-profit companies for undertaking commercial projects in areas which are considered to be decadent, substandard or blighted.</p> <p>Chapter 121A sets forth the procedures for negotiating an alternative tax payment which benefits a municipality by: (i) creating agreed-upon tax payments for a period of years; (ii) eliminating the uncertainty and expense associated with the property tax assessment process; (iii) allowing the municipality to use the full amount of the tax payments without regard to possible abatement claims by the taxpayer which would require the escrow of a portion of the tax payments until such claims are resolved; and (iv) allowing the municipality to receive advance tax payments on dates certain during development and construction of the Project. The Massachusetts Department of Housing and Community Development (“DHCD”) is responsible for administering Chapter 121A programs for municipalities other than the City of Boston. Chapter 121A requires that a private developer enter into an agreement with the municipality as described in Section 6A (“Section 6A”) of Chapter 121A (a “Section 6A Agreement”) and a regulatory agreement with DHCD as described under Section 18 of Chapter 121A. Section 6A Agreements set forth the formula for calculating the annual tax payments to be made by the private developer, the duration of the agreement and any special conditions agreed to by the private developer and the municipality. The City has entered into numerous Section 6A Agreements with private developers.</p> <p>It will be essential for MGM Springfield and the City of Springfield to have its Chapter 121A payments approved by all appropriate Massachusetts agencies.</p>	<p>Massachusetts</p> <p>Nevada</p> <p>New Jersey</p> <p>Pennsylvania</p> <p>Mississippi</p>



MICHAEL & CARROLL

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

501 BROADWAY, SUITE 201
POINT PLEASANT, NEW JERSEY 08742
TELEPHONE: (732) 714-8500
TELEFAX: (732) 714-8404

1125 ATLANTIC AVENUE, SUITE 619
ATLANTIC CITY, NEW JERSEY 08401
TELEPHONE: 809-441-9292
TELEFAX: 809-441-9110

MEMORANDUM

REPLY TO: POINT PLEASANT OFFICE
ATLANTIC CITY OFFICE

TO: Stephen Crosby, Chairman
FROM: Michael & Carroll
SUBJECT: Gaming Service Employee Licensing Standards
DATE: March 27, 2014

You have asked us to review the present standards established under M.G.L. Chapter 23K ("Act"). You have further requested that we compare those standards to those utilized in other jurisdictions and then provide you with our suggestions about whether it might be useful to revise them in order to better achieve the aims of the Gaming law.

For the reasons that follow, we do recommend that the Commission suggest legislative changes that would provide the agency with greater discretion in determining the qualification of applicants for gaming service employee registration.¹

1. Present Statutory Standards

Section 30(c) of the Act provides that:

¹ We have taken the information contained here from the applicable statutes and regulations. It is our experience that sometimes gaming agencies will promulgate informal policies beyond the words of the published rules. These policies are also often changed. We cannot speak definitively regarding every state's informal practice. We have tried to make this review as comprehensive as possible, but we note this caveat.

All other employees in a gaming establishment who are not considered to be gaming employees, key gaming employees or who have restricted access to an area of the gaming establishment or knowledge of security procedures, shall be required to register with the bureau as a gaming service employee and shall produce such information as the bureau may require to become registered under this chapter.

Thus, "gaming service employees" are those persons whose work at the gaming establishment is the least sensitive in terms of the integrity of operations. When determining the qualifications of these persons for permission to work in these positions, Section 16(b) of the Act, in part, requires the Commission to deny registration if the applicant:

. has been convicted of a felony or other crime involving embezzlement, theft, fraud or perjury; provided, however, that for convictions which occurred before the 10-year period immediately preceding application for licensure, an applicant may demonstrate, and the commission shall consider, the applicant's rehabilitation and whether such conviction should not be an automatic disqualification under this section
.....

Accordingly, under this scheme, reading these two statutory provisions together, the Commission is now required to deny permission to persons who want to assume the least sensitive jobs in a casino if those persons have felony or other theft or fraud convictions within ten years of their application. This rule should be analyzed in the context of one of the principle, enunciated purposes of casino legalization in the Commonwealth. Section 1((5) of the Act establishes that:

the Commonwealth must provide for new employment opportunities in all sectors of the economy, particularly opportunities for the unemployed

It is our view that the mandatory disqualification of gaming service employees who have convictions of the type described in Section 16(b) works at cross -purposes with the Legislature's policy declaration at Section 1(5). We also believe that, given the nature of the non-gaming functions served by casino service employees, the restrictions of Section 16(b) are not necessary in order to maintain the appropriate degree of honesty and efficiency in in a casino.

We buttress these opinions with a survey of the standards now utilized by other jurisdictions. In the following section, we will explain those standards.

2. Survey of Other Jurisdictions

We do not offer the comparisons below as an exhaustive list. To do so would be unnecessary and duplicative. We have chosen what we consider the major gaming jurisdictions in the United States. Should you want additional jurisdictional comparisons, please let us know.

New Jersey

Historically, New Jersey licensed all facility employees, including those working solely within the hotel. Gradually, New Jersey lowered those standards. First, the state reduced the standard to registration only. Recently, all pre-approval requirements were dropped. At present, employees who work in non-gaming capacities (analogous to casino service employees in the Commonwealth) are not licensed or registered at all.

In fact, the present licensing system in New Jersey does not even require the licensing of casino employees (defined in New Jersey as those, generally who perform services in the gaming areas, including dealers, et al). This category of employees is only registered and their registration standards include rehabilitation without any mandatory disqualifications.

Nevada

Nevada registers only its "gaming employees" This category is defined to include those positions traditionally associated with direct involvement in gaming activity. It expressly excludes "barbacks or bartenders whose duties do not involve gaming activities, cocktail servers or other persons engaged exclusively in preparing or serving food or beverages." The standard for registration of these employees is discretionary. The Board is not required to deny any applicant. The regulations establish standards within which the Board "may" deny a registration. Approval of persons who work at the gaming facility but are not "gaming employees" are not handled by the Board. Some are required to obtain only Sheriff's work cards.

Ohio

Many years after the New Jersey initial experience, Ohio commenced its operations by licensing only key employees and casino gaming employees. In its definition of "casino gaming employee," the legislation expressly exempts, "an individual whose duties are related solely to non-gaming activities such as entertainment, hotel operations, maintenance, or preparing or serving food and beverage." This description would apply to Massachusetts' "gaming service

employees.” Therefore, Ohio does not require pre-approval of “casino service employees”, let alone require any mandatory disqualification for this category.

Pennsylvania

Pennsylvania issues permits to those persons considered non-gaming employees. Under the controlling legislation, this category includes, “bartenders, cocktail servers or other persons engaged solely in preparing or serving food or beverages, clerical or secretarial personnel, parking attendants, janitorial, stage, sound and light technicians and other nongaming personnel as determined by the board.” These employees would be considered “casino service employees” in Massachusetts.

Applicants for these permits are addressed under a discretionary standard otherwise applicable to all applicants. The governing regulation states in its introduction to the disqualification criteria that:

An application for issuance or renewal of a license, permit, certification or registration may be denied; or a license, permit, certification or registration may be suspended or revoked if”

Accordingly, Pennsylvania provides for no automatic mandatory disapproval of persons who would, under Massachusetts parlance, be considered “casino service employees.”

Mississippi

The Mississippi system requires that those considered “gaming employees” obtain licenses. For this category of employee, the law does contain mandatory disqualification for a wide variety of criminal conduct. However, the definition of “gaming employee” to whom these standards would apply states that, “gaming employee does not include bartenders, cocktail waitresses or other persons engaged in preparing or serving food or beverages unless acting in some other capacity.” There are no pre-qualification requirements for those persons exempted from the “gaming employee” category. Thus, here, too, those who would be considered “gaming service employees” in Massachusetts would have no mandatory disqualifications applied to them.

Missouri

Missouri does contain a mandatory disqualification standard for employees. The State divides employees into two Categories. Category Level I are those who would be considered key employees. Level II includes those who would clearly be considered gaming-related persons, but it also is broad enough to potentially include, at the discretion of the Gaming Commission, some employees who might be considered "gaming service employees" in Massachusetts. The mandatory disqualification applies to both Level I and Level II employees. However, it is temporally more limited than the mandatory terms of the Commonwealth.

Level I and Level II employee applications may be denied for, among other things, any criminal record. However, those applications must be denied for convictions **within 5 years** for convictions for offenses involving generally gambling, theft, fraud or dishonesty. Thus, while Missouri, like Massachusetts, includes a mandatory disqualification requirement for persons who may be similar to "casino service employees", that standard applies only to those within 5 years of application, not 10 years as in the Commonwealth.

Iowa

Iowa is somewhat like Missouri. All persons working on the riverboat casinos must be licensed. There is also a mandatory disqualification requirement for convictions for felonies; theft or fraudulent practices in excess of \$500; using an alias for fraud; illegal bookmaking; and for certain serious or repeated misdemeanors. . However, like Missouri, the mandatory criteria apply only for convictions within 5 years. If the conviction is more than 5 years old, then a showing of rehabilitation is available.

Michigan

Michigan establishes three levels of employee licensure. Level III, the lowest level, includes persons who directly effect gaming but do not come in contact with gaming. Examples include beverage servers, wait staff, maintenance staff and housekeeping personnel, but only those with access to the areas where gaming is conducted. On this basis alone, the Michigan licensing scheme does not include persons who would be "casino service employees" in Massachusetts. However, the system does allow the Board to designate others for licensing in this category at its discretion.

The standards for licensing employees of all Levels are the same and they DO include mandatory disqualification. The rules prevent issuance of a license to any applicant with a felony conviction or with misdemeanor convictions for gambling, theft, or fraud.² Therefore, Michigan could be said to be similar in its treatment of "casino service employees", but only in the case of the Board reaching out specially for one of those persons and including them as a special Level III licensee. In the main, Michigan does not provide an automatic disqualification for persons who would be "casino service employees".

Indiana

Indiana is the only state on our list that does provide for automatic disqualification of persons who would be "casino service employees" in Massachusetts. Like Michigan, Indiana has three levels of employee license. Level 3 is the lowest level. Unlike Michigan, however, the category of Level 3 is much broader. Not only can the regulators designate anyone to require Level 3 scrutiny, but the Level 3 designation applies to "any employee of a riverboat gambling operation whose duties are performed on the riverboat . . ." Accordingly, this would apply to many, if not all, "casino service employees."

In addition, the standard applied to all Levels of employee, including Level 3, contains a mandatory denial for any felony conviction. There is no rehabilitation available and there is no time limit.

3. Conclusion

Based on our experience, and on the above analysis of other jurisdictions, we believe that the present statutory standard for the issuance of casino service employee registration is too harsh. We say this with a full appreciation for the need to strictly control casino operations and the people who staff them. However, we come to this conclusion for three basic reasons:

1. The type of work that will be undertaken by casino service employees will not directly impact on the integrity of casino operations. The focus of gaming control should be on the conduct of gaming. Casino service employees will not be involved in that activity.

² There is also a provision in the Michigan statute that seems to contradict the mandatory standard. It provides only that the Board "may" deny applicants on the basis of these convictions. We have used here the most restrictive interpretation.

2. It is an important stated policy of the Act to foster new employment opportunities for the disadvantaged and the unemployed. Often, sadly, those within this demographic will be more likely to have had some involvement with law enforcement in their past. It is, therefore, counter-productive to render the job possibilities created by the Act to be unavailable to the people who need them most.
3. The experience of other jurisdictions has illustrated that rigid licensing standards for the casino service employee category are not necessary for effective gaming regulation. Most major jurisdictions either don't license this type of employee at all or do so with discretionary standards. We point especially to the experience of New Jersey where the level of scrutiny of this type of employee has continually lessened. It has gone from full licensing to now, no pre-qualification whatsoever.

4. Recommendation

Based on all of the above, we would recommend two potential changes to the Act as it applies to the standards for casino service employees.

Our first recommendation is, we recognize, likely too extreme at this time. It is common at the outset of gaming in any jurisdiction that stricter standards are more popular. It takes a period of successful experience before those standards can be loosened. However, if feasible, we would recommend that the requirement for registration of casino service employees be removed in its entirety. To do so would not interfere with the integrity of gaming. In fact, it could conceivably improve it by allowing the Commission to focus its attention on more sensitive matters.

Our second recommendation would be to make a less radical revision to the present language. We suggest the following:

"Section 16(b) The commission shall deny an application for a *gaming* license [or registration, other than a gaming license] or a license for a key gaming employee under this chapter if the applicant: has been convicted of a felony or other crime involving embezzlement, theft, fraud or perjury; provided, however, that (a) for *an applicant for a casino employee license*, convictions which occurred before the 10-year period immediately preceding application for licensure, and (b) for *applicants for casino service employee registrations*, convictions which occurred at any time, an applicant may demonstrate [remainder remain unchanged] "

MICHAEL & CARROLL
A PROFESSIONAL CORPORATION

We hope this information is helpful to you. We are, of course available to discuss this with you at your convenience. Thank you.



MEMORANDUM

TO: Massachusetts Gaming Commission
FROM: Catherine Blue- General Counsel
Todd Grossman- Deputy General Counsel
RE: Determining a gaming establishment
DATE: April 3, 2014

The following proposed procedure can be implemented to resolve the issue presently before the Commission:

1. Withdraw the notice of adjudicatory hearing dated March 21, 2014 and cancel the adjudicatory proceeding. Upon reflection and given the City of Boston's broad ranging claims and assertions, the hearing format and process set out below is more appropriate than the formalized adjudicatory proceeding the Commission initially believed would be the most appropriate way to resolve the City's claimed host community status.
2. Place the two items below on the **May 1, 2014** MGC public meeting agenda for determination by Commission:
 - "Determine the premises of the *gaming establishment* for which Mohegan Sun Massachusetts, LLC seeks approval in its RFA-2 application"
 - "Determine the premises of the *gaming establishment* for which Wynn MA, LLC seeks approval in its RFA-2 application"

The threshold issue is what the *gaming establishment* is. Once the gaming establishment is defined a determination as to which municipality or municipalities are a host community flows organically from there. The reason being, the term *gaming establishment* is contained within the definition of *host community*. Accordingly, no host community determination can be made until the gaming establishment is first delineated. The definitions are contained in G.L. c.23K, §2 as follows:

"Host community", a municipality in which a gaming establishment is located or in which an applicant has proposed locating a gaming establishment.

"Gaming establishment", the premises approved under a gaming license which includes a gaming area and any other nongaming structure related to the gaming area and may include, but shall not be limited to, hotels, restaurants or other amenities.



Massachusetts Gaming Commission

3. In anticipation of the May 1, 2014 discussion by the Commission, public comment should be solicited by way of www.massgaming.com, social media, and otherwise essentially in the form of legal briefs relative to each of the two agenda items. The briefs should be prepared so as to assist the Commission in its discussion of the agenda items. Any individual or group may submit a brief relative to one or both of the items. The briefs should state the reasons for the position(s) taken, identify supporting legal authorities, and include any sworn affidavits, authenticated documents, and other relevant evidence not otherwise included in an RFA-2 application. Briefs shall be limited to 15 pages exclusive of attachments.
4. Initial briefs will be due by **April 17, 2014 at 5 p.m.** All briefs, including any affidavits and other documents submitted with the briefs, will be posted on www.massgaming.com the day after the due date.
5. Any individual or group may submit a reply brief by **April 24, 2014 at 5 p.m.** An individual need not have submitted an initial brief to submit a reply brief. A reply brief, however, may only address specific issues that were addressed in a brief submitted by another individual or group. Reply briefs shall be limited to 10 pages exclusive of attachments. All reply briefs, including any affidavits and other documents submitted with the reply briefs, will be posted on www.massgaming.com the day after the due date.
6. A brief or reply brief may be submitted by way of mail or hand delivery to the Commission's office or via email at XX@state.ma.us. No briefs or reply briefs will be accepted or considered if received by the Commission after the submission deadline.
7. At any time before conclusion of the May 1, 2014, hearing, the Commission may request the City or the applicants or any other person or group to provide the Commission with documents the Commission believes would be helpful in determining the location of the proposed gaming establishment.
8. Any person or group that has timely submitted a compliant brief or reply brief will be invited to offer an oral presentation to the Commission at the public meeting on **May 1, 2014**. No person or group that has not submitted a brief will be permitted to address the Commission relative to the agenda items. Oral presentations should be confined to the subject areas contained in the brief submitted by the individual or group.
9. Speakers representing a municipality or applicant should be allotted 30 minutes for oral presentation. All other speakers should be allotted 15 minutes. The Commission should allow a speaker more time if helpful to clarify an issue. A group may split its allotted speaking time amongst multiple speakers.
10. In reviewing the issues before it, the Commission may ask any question(s) of any individual and review and consider any document or other source of information. For purposes of the record of the meeting, the Commission will take notice of the contents of the RFA-2 applications submitted by Mohegan Sun Massachusetts, LLC and Wynn MA, LLC.
11. After the hearing concludes, the Commission will issue findings that describe the respective gaming establishments for the projects the applicants have proposed. Based on those findings, the Commission will announce its conclusion as to whether the City of Boston is a host or surrounding community for each of the two proposals.



SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this small business impact statement in accordance with G.L. c.30A, §2 relative to the proposed new regulation amendments to 205 CMR 118.6 and 121.00, notice of which was filed this day with the Secretary of the Commonwealth. These proposals were developed as part of the process of promulgating regulations governing the operation of gaming establishments in the Commonwealth. These specific draft regulations give guidance to the gaming applicants and the gaming licensee regarding the payment of license fees and assessments. The amendments also give the Commission necessary flexibility in awarding a license and determining its effective date. These regulations are largely governed by M.G.L. 23K, §§5, 21, and 56.

These regulations apply exclusively to the recipients of a gaming license; thus, the Commission does not foresee any impact on small businesses. Accordingly, there are no projected reporting or recordkeeping requirements associated with these regulations that would affect small businesses, there are no design or performance standards established by the regulations, there are no conflicting regulations in 205 CMR and the Commission is unaware of any conflicting or duplicating regulations of any other agency or department of the Commonwealth.

G.L. c.23K was enacted to create a new industry in the Commonwealth and to promote and grow local small businesses and the tourism industry, including the development of new small businesses and tourism amenities such as lodging, dining, retail and cultural and social facilities. The proposed regulations, as a part of the overall process, are designed to effectuate those intentions and growth.

Massachusetts Gaming Commission
By:



Massachusetts Gaming Commission



SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this small business impact statement in accordance with G.L. c.30A, §2 relative to the proposed new regulation amendments to 205 CMR 125.01(6)(c), notice of which was filed this day with the Secretary of the Commonwealth. These proposals were developed as part of the process of promulgating regulations governing the operation of gaming establishments in the Commonwealth. These specific draft regulations govern the procedure and timeline for the arbitration process available between the gaming applicants and surrounding communities if they are unable to form a surrounding community agreement. These regulations are largely governed by M.G.L. 23K, §5 and §15(9).

These regulations apply solely to the applicants for a gaming license and the municipalities that qualify as a surrounding community; thus, the Commission does not foresee any impact on small businesses. Accordingly, there are no projected reporting or recordkeeping requirements associated with these regulations that would affect small businesses, there are no design or performance standards established by the regulations, there are no conflicting regulations in 205 CMR, and the Commission is unaware of any conflicting or duplicating regulations of any other agency or department of the Commonwealth.

G.L. c.23K was enacted to create a new industry in the Commonwealth and to promote and grow local small businesses and the tourism industry, including the development of new small businesses and tourism amenities such as lodging, dining, retail and cultural and social facilities. The proposed regulations, as a part of the overall process, are designed to effectuate those intentions and growth.

Massachusetts Gaming Commission
By:



Massachusetts Gaming Commission



SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this small business impact statement in accordance with G.L. c.30A, §2 relative to the proposed new regulations to 205 CMR 133.00, notice of which was filed this day with the Secretary of the Commonwealth. These proposals were developed as part of the process of promulgating regulations governing the operation of gaming establishments in the Commonwealth. These specific draft regulations govern the procedure and protocol relative to the list of self-excluded persons from entering a gaming area of a gaming establishment. Placement of one’s name on the voluntary exclusion list is intended to offer individuals one means of help to address problem gambling behavior or deter an individual with family, religious, or other personal concerns from entering the gaming area of a gaming establishment. These regulations are largely governed by M.G.L. 23K, §5 and §45.

These regulations apply solely to the recipients of a gaming license and the individual patrons who choose to put their name on the self-exclusion list; thus, the Commission does not foresee any impact on small businesses. Accordingly, there are no projected reporting or recordkeeping requirements associated with these regulations that would affect small businesses, there are no design or performance standards established by the regulations, there are no conflicting regulations in 205 CMR and the Commission is unaware of any conflicting or duplicating regulations of any other agency or department of the Commonwealth.

G.L. c.23K was enacted to create a new industry in the Commonwealth and to promote and grow local small businesses and the tourism industry, including the development of new small businesses and tourism amenities such as lodging, dining, retail and cultural and social facilities. The proposed regulations, as a part of the overall process, are designed to effectuate those intentions and growth.

Massachusetts Gaming Commission
By:



Massachusetts Gaming Commission



MASSACHUSETTS GAMING COMMISSION

MEMORANDUM

To: Chairman Crosby, Commissioners Cameron, McHugh, Stebbins & Zuniga
From: Catherine Blue
CC:
Date: April 3, 2014
Re: Process for Responding to Public Records Requests

The purpose of this memo is to outline the Legal Department's process for responding to public records requests. This memo is a companion to the public records policy outlined in the Commission's employee handbook.

Public records requests come into the Commission in 3 main ways: through the Commission's website via MGC Comments; through the Communications Department and by letter or email directly to Commissioners or commission staff. All public records requests are forwarded to the Legal Department where they are logged in. If they come in letter form, they are scanned into an electronic folder in the Legal shared drive. Pursuant to the Public Records Law, M.G.L c. 66 §10, the Commission is required to provide existing documents. The Commission is not required to create documents or to provide written answers to questions.

The request is reviewed to determine the type of information requested and a general determination is made as to the type of search necessary and the amount of time required to gather and review the information. If the request is very specific and/or requires little search and review, the material will be provided within the 10 day period and often sooner. If the request is broad, requests a great deal of material or requires significant search time, a letter goes out to the applicant within the 10 day period advising them that a detailed search will be necessary. The Legal Department will request commissioners and staff to search their files and provide the records to the Legal Department. The Legal Department will review the records and if necessary require additional searches be performed. Legal will advise the holder of the records regarding what will be released and when the release will occur.

Prior to release of the records, a second letter will go out to the requestor detailing the approximate search time required; an estimate of the cost to conduct the search and review of the documents and the time frame for completion of the search. Currently, in accordance



Massachusetts Gaming Commission

with the public records law, requestors are charged \$25 per hour of search time (the lowest available hourly rate of a person capable of doing the search), \$.05 per page for copying and \$1 per CD if the material can be loaded onto a disc; however, if the search and review is large enough to require outside legal or IT support, those costs will be reviewed. The requestor will be advised of those costs and given the opportunity to narrow its search before incurring those costs.

If the requestor does not narrow the search, the requestor will be advised that the documents will be provided within the time frame outlined in the letter after the estimated costs have been received. Requestors are usually given the option of picking up the documents or having the documents mailed to them once they are gathered and reviewed.

All documents requested are reviewed by the Legal Department to determine whether any of the exemptions under the Public Records Law are involved, such as the privacy, investigatory, intra-agency policy making exemption or the exemption for competitively sensitive information under c.23K. Redactions to the documents are made as necessary in accordance with those exemptions.

Requestors who do not agree with the response they receive may appeal the response to the Supervisor of Public Records in the Office of the Secretary of the Commonwealth. We work closely with the Supervisor of Public Records to provide any information that they request and to resolve matters efficiently.



Massachusetts Gaming Commission

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 Schedules and Reporting

135.03: Inspection of Construction 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 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.

135.02: Construction Schedules and Reporting

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

(a) a timeline for 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. A preliminary schedule shall be submitted within 30 days of license award and shall be prepared using Primavera v7 or higher or equal. The schedule shall be cost and resource loaded and shall include all key milestones, including substantial completion and final completion of construction. A full schedule shall be submitted within 60 days of the award of the license with update reports to be submitted on a monthly basis thereafter.

(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).

(2) Prior to the commencement of construction 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.

(3) If unforeseen and/or changed circumstances make necessitate a change to a schedule approved pursuant to 205 CMR 135.042(1) infeasible 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 schedule, with a detailed statement of the unforeseen changed circumstances which justify the revised schedule. If the commission approves such revised schedule, it shall substitute and supersede the previously approved schedule.

(4) To ensure adherence to the schedule approved pursuant to 205 CMR 135.042(1) or (3), the gaming licensee shall submit to the commission in a media, format and level of

detail acceptable to the commission, quarterly or more frequently upon the commission's request a status report including:

(a) the total estimated entire cost of construction of the gaming establishment 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 schedule for stages of construction. In the event that the progress of construction does not comply with the schedule approved pursuant to 205 CMR 135.01, the licensee shall submit a detailed plan to bring the progress of construction into compliance with the approved schedule or submit a request for a revised schedule pursuant to 205 CMR 135.01(3).; 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 or submit a request with appropriate supporting documentation for a waiver from the goals.

(5) 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.

(6) Pursuant to M.G.L. c. 23K, § 21(a)(24), the gaming licensee shall submit a 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). 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. The licensee shall also require any contractor who has a contract with a contractor of any tier with whom the licensee has a contract for professional services to report on any contract such contractor executes with minority, women and veteran business enterprises related to the development of the gaming establishment; the licensee shall also require any contractor who has a contract with a contractor of any tier with whom the licensee has a contract for construction services to report on any contract such contractor executes with minority, women and veterans business enterprises related to the construction of the gaming establishment.

(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: Inspection of Construction and Related Records

(1) At all times ~~prior to the commission's determination that the gaming licensee may open the gaming establishment for business or operate a slot machine,~~ 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 schedule, the terms and conditions of the license, G.L. c. 23K, or 205 CMR.

(2) The gaming licensee shall provide relevant plans, specifications, submittals contracts, financing documents or other records concerning the construction of the gaming establishment or related infrastructure within ten days of the commission's request for such documents.

(3) Following an inspection of construction pursuant to 205 CMR 135.03(1) or review of records pursuant to 205 CMR 135.03(2), the commission or its representative shall notify the gaming licensee of any non-compliance with the terms of the license, including non-compliance with an approved schedule pursuant to 205 CMR 135.02(1) and (3). Upon receipt of such notification, the gaming licensee shall promptly undertake and proceed diligently to cure any such non-compliance to the satisfaction of the commission.

(4) The licensee shall submit a variance request to the commission if at any time the licensee wishes to make a change that would be inconsistent with the documentation submitted by the licensee prior to award of the license including but not limited to the RFA 2 application, written clarifications and presentations at public meetings or which is inconsistent with 205 CMR 135.02. The variance request shall be submitted in a format established by the commission. A change implemented without the commission's prior approval may be subject to action by the commission pursuant to 205 CMR 135.05 (4) and 205 CMR 135.05 (5).

(5) Within 60 days of the award of the gaming license the commission and the licensee shall establish a list of specific items to be constructed as part of the gaming establishment that require commission review and approval. The list is for the purpose of assisting the commission or its representative in monitoring the design and construction of the gaming establishment. The list shall not be considered to be all inclusive and the commission may request additions or deletions to the list at any time during the design and construction of the gaming establishment.

135.04: 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 schedule pursuant to 205 CMR 135.02(1), or an approved revised schedule pursuant to 205 CMR 135.02(3).
- (2) Upon receipt of such certification, the commission or its representative may inspect the construction pursuant to 205 CMR 135.03(1), and request relevant plans, contracts, financing documents or additional records pursuant to 205 CMR 135.03(3).
- (3) If the commission approves the gaming licensee's certification pursuant to 205 CMR 135.04(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 135.04(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.

135.05 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) 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.
 - (b) 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 gaming licensee has:

(a) determined that the gaming licensee has complied with the conditions in 205 CMR 1345.04(1);

(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 athe 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 schedule pursuant to 205 CMR 135.02(1) or its revised, approved schedule pursuant to 205 CMR 135.02(3) 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 construction schedule pursuant to 205 CMR 135.02(1) and (3):

(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 135.04(4), [205 CMR 135.05](#) 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.

DRAFT

**COMMENT LETTERS
SUMMARY OF ISSUES**

Date	Comment Letter Received	Timeline Variance	Other
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 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.”	<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 September 22, 2014;...”</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 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.”</p>
3/17/14	New Bedford City Councillors: 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 October 23, 2014”	

**COMMENT LETTERS
SUMMARY OF ISSUES**

Date	Comment Letter Received	Timeline Variance	Other
3/20/14	Kenneth Fiola, Jr. Esq. Executive Vice President Fall River Office of Economic Development	<p>"...the city of Fall River's opposition to extension of the Region C July 23 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."</p>	
3/29/14 (supplementing comments from 3/20/14)	Kenneth Fiola Jr., Esq., Executive Vice-President Fall River Office of Economic Development	<p>"...Fall River is not seeking nor does it desire, an extension of the RFA-2 application deadline by sixty days..."</p> <p>"...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."</p>	<p>"...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."</p> <p>"...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."</p> <p>"...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."</p>
3/27/14	William A. Flanagan, Mayor of Fall River	<p>"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."</p>	<p>"...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."</p>
3/27/14	Alan Silvia, State Representative 7th Bristol District	<p>"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"</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."</p>	<p>"... The finalized Host Community Agreement will be executed by both parties by April 3, 2014 with a referendum vote taking place in early June."</p>

**COMMENT LETTERS
SUMMARY OF ISSUES**

Date	Comment Letter Received	Timeline Variance	Other
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 2014."</p>	
3/28/14	Robert A. Meillon, 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>	

March 14, 2014

Massachusetts Gaming Commission
84 State Street, 10th 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.¹

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.

¹ 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



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

101 Arch Street
Boston, MA 02110
T: 617.556.0007
F: 617.654.1735
www.k-plaw.com

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.¹ 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.² 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.

¹ 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.

² 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



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, 10th 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

Brian K. Gomes

Brian K. Gomes, Councillor at Large

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



Barry M. Gosin
Principal

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

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

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".

Barry M. Gosin

Thurlow, Mary (MGC)

From: Ziemba, John S (MGC)
Sent: Monday, March 31, 2014 2:33 PM
To: Thurlow, Mary (MGC)
Subject: FW: Region C Schedule

John S. Ziemba

Ombudsman

Massachusetts Gaming Commission
84 State Street 10th Floor
Boston, MA 02109
TEL 617-979-8423 | FAX 617-725-0258
www.massgaming.com

follow us on



From: Kenfiolajr [<mailto:kenfiolajr@aol.com>]
Sent: Thursday, March 20, 2014 8:23 AM
To: Day, Rick (MGC)
Cc: Ziemba, John S (MGC)
Subject: Region C Schedule

Dear Mr. Day:

Please accept this email as the city of Fall River's opposition to extension of the Region C July 23 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.

As you may be aware the City of Fall River has been working with Foxwoods to host a destination resort casino facility within the city. Public commitments to date represent a project that will create 2500 - 3000 full time jobs and 2000 construction jobs. A site has been selected and placed under option. We are in the process of putting together a Community Host Agreement (CHA) and scheduling Special Election in early June. The CHA will closely resemble that of Springfield, MA and tailored for Fall River community needs and mitigation measures. We are fully aware of the tight time schedule before us but with our reported unemployment rate being 15% this project is our top priority.

Thank you for your time and attention in this matter. I will scheduling a meeting with John Ziemba to further discuss the application process to ensure that Foxwoods and the City submits a complete application for review by the July deadline. In the interim, please feel free to call me with any question, concerns or advice.

Kenneth Fiola, Jr. Esq.
Executive Vice President
Fall River Office of Economic Development
508-965-4942 (c)
508-324-2620 (o)
508-677-2800 (f)



City of Fall River
Massachusetts
Office of the Mayor

WILLIAM A. FLANAGAN
Mayor

March 27, 2014

Massachusetts Gaming Commission
84 State Street, 10th 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, 10th 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
7th Bristol District

C: Rick Day Executive Director



The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES
STATE HOUSE, BOSTON 02133-1054

CAROLE A. FIOLA
STATE REPRESENTATIVE
6th BRISTOL DISTRICT

STATE HOUSE, ROOM 448
TEL: (617) 722-2460
Carole.Fiola@MAhouse.gov



March 28, 2014

Massachusetts Gaming Commission
84 State Street, 10th 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

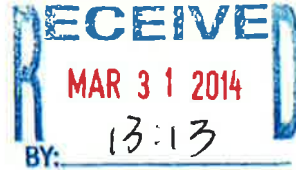
SINCE 1911

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, 10th 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,

A handwritten signature in black ink that appears to be "Robert A. Mellion".

Robert A. Mellion, Esq.

President and CEO

Chamber Title Sponsor

BayCoast
BANK



March 29, 2014

Stephen Crosby
Chair
Massachusetts Gaming Commission
84 State Street, 10th 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 Ziemba, 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.

One Government Center, Fall River, Massachusetts 02722-7700
(508) 324-2620
(508) 675-1497
FAX (508) 677-2840
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.

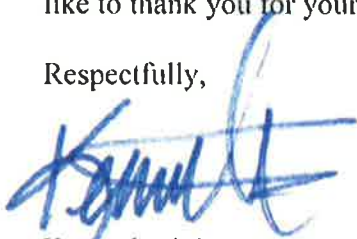
I firmly believe approval of this request, absent any special circumstances, would undermine the integrity of the application process as currently defined. It is my contention that when people go to the polls to vote on the issue of siting of a destination resort casino within their community they deserve 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,

A handwritten signature in blue ink, appearing to read 'Kenneth Fiola Jr.', is written over a large, light blue circular stamp or watermark.

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.zicmba@state.ma.us



KOPELMAN AND PAIGE, P.C.
Attorneys at Law

101 Arch Street
Boston, MA 02110
T: 617.556.0007
F: 617.654.1735
www.k-plaw.com

April 2, 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
Support for Variance from Capital Investment Regulation for Region C

Dear Chairman Crosby and Members of the Commission:

On behalf of the City of New Bedford, I write in support of the request by Massachusetts Gaming and Entertainment, LLC that the Commission grant a variance from the Commission's regulation regarding the minimum capital investment for a Category 1 facility, as set forth in 205 CMR 122 ("Capital Investment Regulation"). As discussed below, the City submits that the request variance may properly be granted under the Commission's regulations and would serve to improve the competitive environment in Region C.

As noted during the Commission's March 20 meeting, the Capital Investment Regulation excludes a number of substantial costs from calculation toward the \$500 million minimum investment required under the Expanded Gaming Act. For instance, costs associated with land acquisition, carrying costs and off-site public infrastructure improvements are all excluded from the minimum investment calculation under the Capital Investment Regulation.

Given the particular challenges facing Region C, particularly the prospect of a competing facility in Taunton that would pay no gaming taxes, a waiver of the Capital Investment Regulation is warranted to foster competition in that region. Waiver would be justified under the criteria set forth in 205 CMR 102.03(4), which requires that the waiver: (1) be consistent with the purposes of G.L. c.23K; (2) not interfere with the ability of the Commission to perform its functions; (3) not adversely affect the public interest; and (4) avoid prejudice to the requesting party.

First, granting the waiver would be consistent with the purposes of G.L. c.23K. The statute itself does not require exclusion of any of the costs excluded under the Capital Investment Regulation. By providing applicants flexibility to tailor projects to the market, as well as the host communities, the Commission would be promoting competition and encouraging applicants to submit applications notwithstanding the unique challenges of Region C. Or course, even if the

KOPELMAN AND PAIGE, P.C.

Stephen Crosby, Chairman
Massachusetts Gaming Commission
April 2, 2014
Page 2

Commission waives the Capital Investment Regulation, applicants may choose to propose projects that would have complied with that regulation. Furthermore, the Commission will of course retain the ability to evaluate applications on their merits, including the total investment and types of investments made by competing proposals. However, by waiving the regulation, the Commission would not be imposing a regulation that may have the effect of driving competition out of the Region, and this would be consistent with the clear goal of the Act to promote competition and encourage the best and most economically viable proposals from applicants.


Second, waiving the Capital Investment Regulation would not in any way interfere with the ability of the Commission or IEB to perform its functions. Indeed, for the reasons previously stated, the ability of the Commission to fulfill the goals of the Act may well be enhanced by the waiver.

Third, also for the reasons previously stated, granting the waiver would not adversely affect the public interest, since competition and economic viability of licensed gaming establishments are manifestly in the public interest.

Fourth, denying the waiver may cause substantial hardship to prospective applicants and potential host communities. Specifically, applicants may be unnecessarily excluded from the Region C license competition, and communities may consequently be deprived of the ability to attract economic development and negotiate potentially beneficial host community agreements.

Thank you for your attention to this matter.

Very truly yours,



Jonathan M. Silverstein

JMS/jam

cc: Hon. Jonathan F. Mitchell

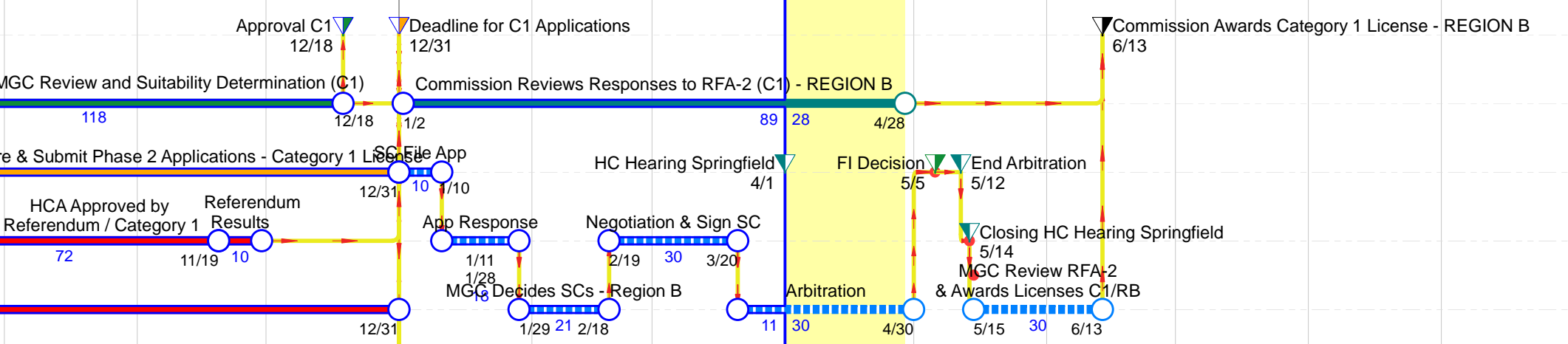
495235/20112/0003

5(b) — No documents

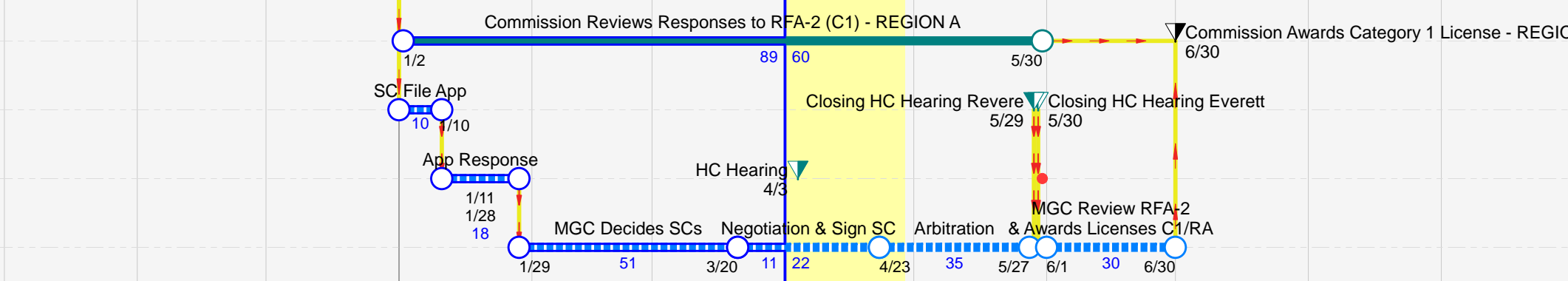
Massachusetts Gaming Commission / 2014-03-31 Licensing Schedule Update

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

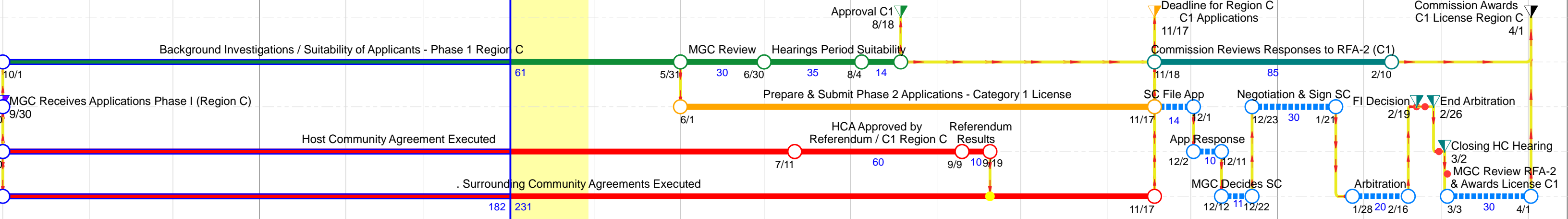
CATEGORY 1 LICENSE - REGION B



CATEGORY 1 LICENSE - REGION A



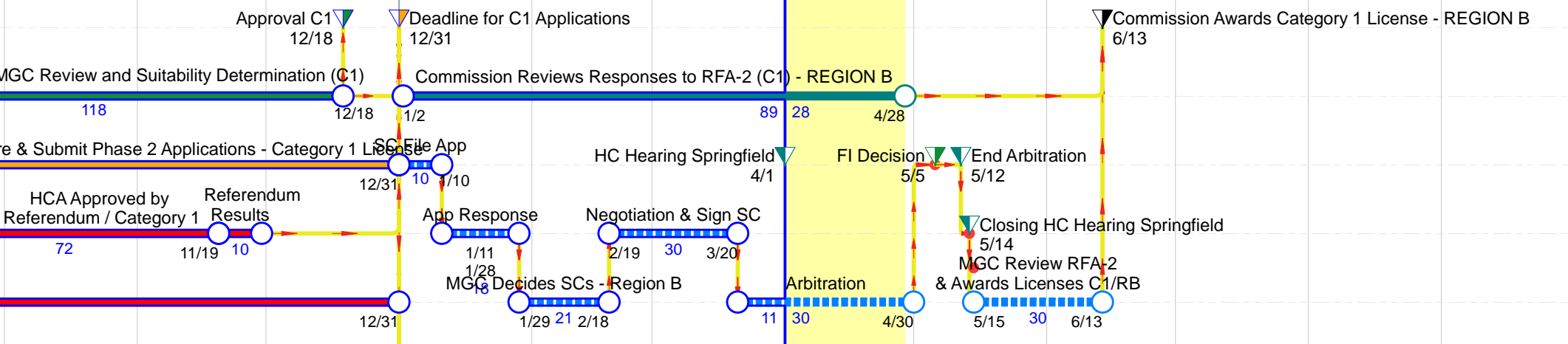
CATEGORY 1 LICENSE - REGION C



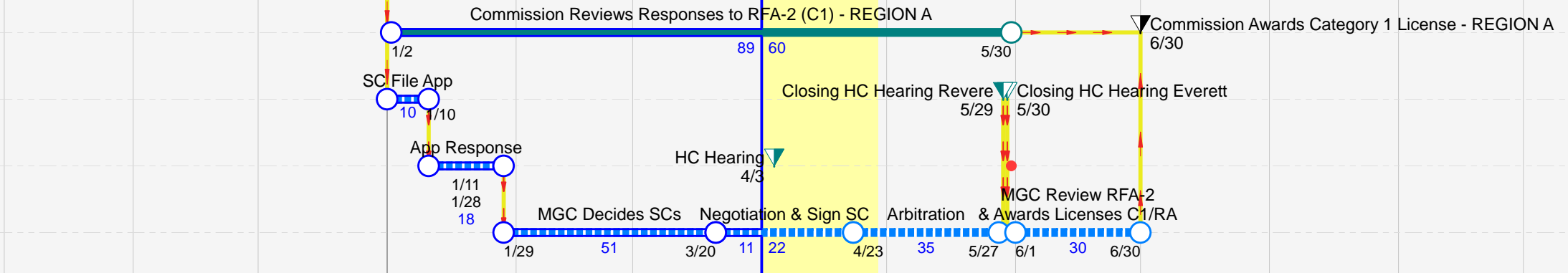
Massachusetts Gaming Commission / 2014-03-31 Licensing Schedule Update

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

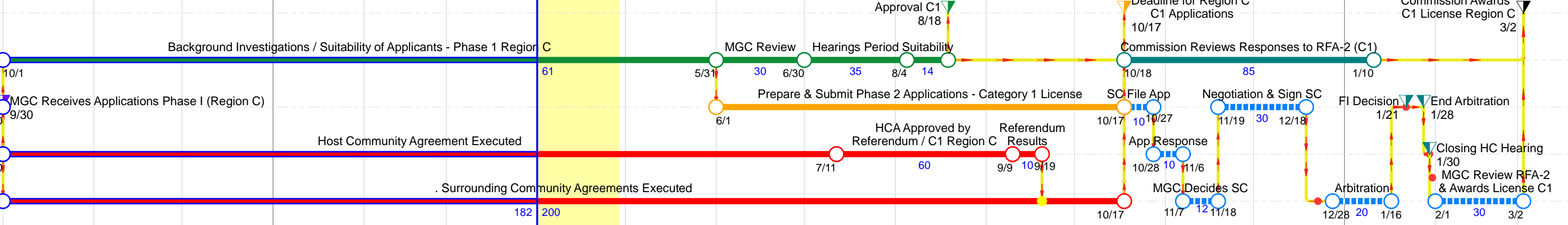
CATEGORY 1 LICENSE - REGION B



CATEGORY 1 LICENSE - REGION A



CATEGORY 1 LICENSE - REGION C



Data Date 03/31/2014

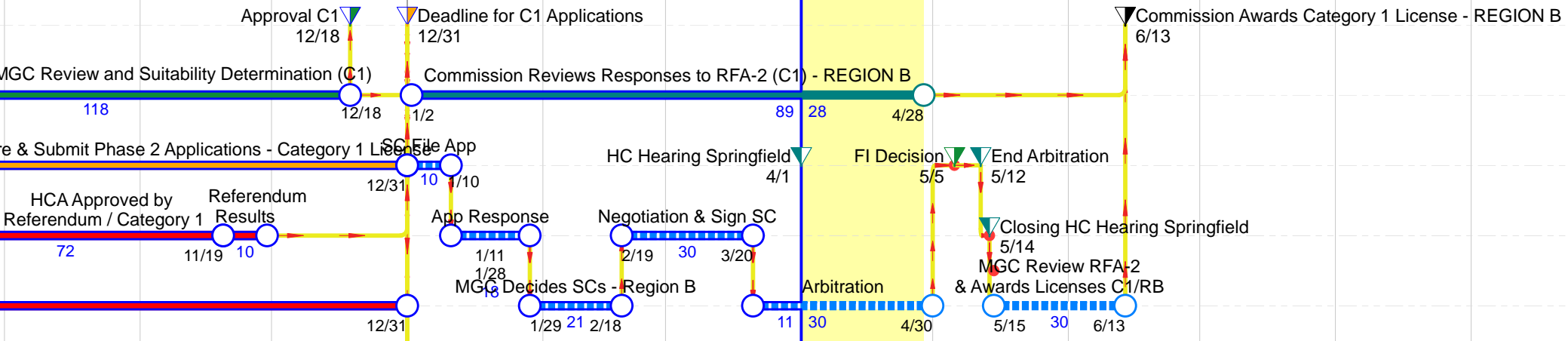
LEGEND

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

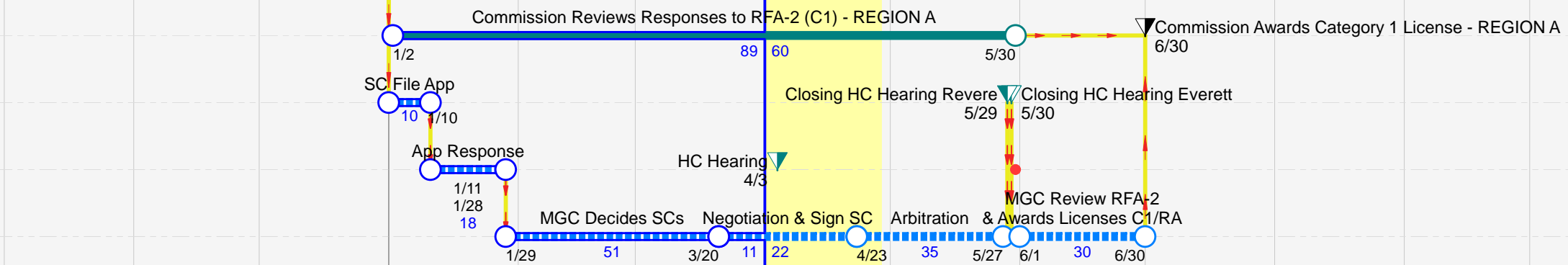
Massachusetts Gaming Commission / 2014-03-31 Licensing Schedule Update

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

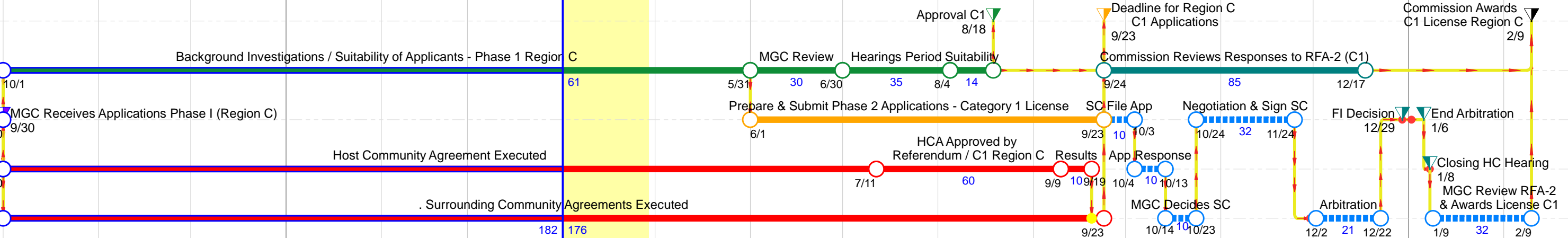
CATEGORY 1 LICENSE - REGION B



CATEGORY 1 LICENSE - REGION A



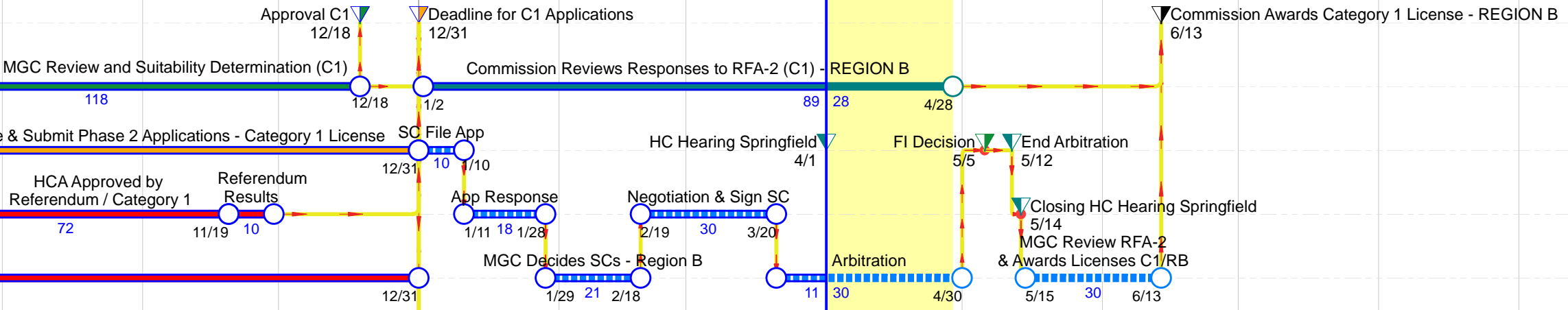
CATEGORY 1 LICENSE - REGION C



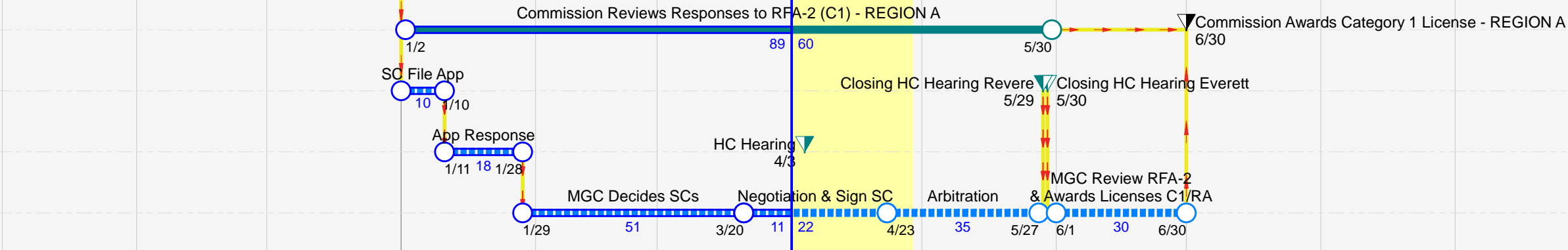
Massachusetts Gaming Commission / 2014-03-31 Licensing Schedule Update

Region B: MGC Decision on Arbitration

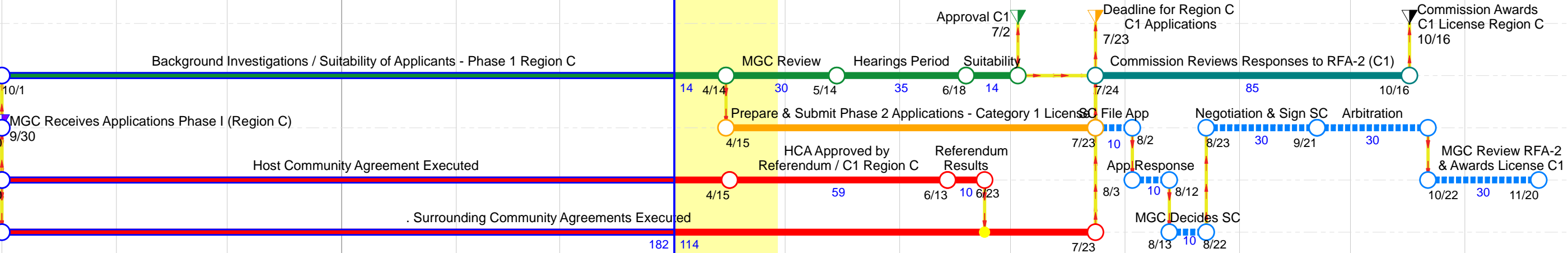
CATEGORY 1 LICENSE - REGION B



CATEGORY 1 LICENSE - REGION A



CATEGORY 1 LICENSE - REGION C



Data Date 03/31/2014

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

MASSACHUSETTS GAMING COMMISSION

In the Matter of:)
)
)
 Blue Tarp reDevelopment, LLC)
 and)
 the Town of West Springfield)

JOINT REQUEST FOR VARIANCE

Blue Tarp reDevelopment, LLC (hereinafter “MGM”) and the Town of West Springfield (hereinafter “Town”) (collectively, the “Parties”), hereby jointly request a variance from the time requirements for completion of an arbitration under 205 CMR 125.01(6)(c) (the “Regulation”), as further detailed below.

The Parties understand that the Regulation contemplates (i) the choosing and engaging of arbitrator(s), (ii) the commencement and completion of arbitration hearings and (iii) the issuance of the arbitrators’ final report, all by April 16, 2014. The Parties have engaged in good faith efforts to find and retain available and mutually agreeable arbitrators and to schedule hearings that would allow for a report to be issued by April 16th, but have been unable to do so. Arbitrators typically will not commit to certain dates absent a formal retainer agreement and payment of a retainer. The Parties were engaged in active and good faith negotiations through March 19, 2014 and thus were not in a position to formally engage arbitrators until it was clear that a negotiated agreement was not reasonably likely. As soon as the Parties determined that arbitration was unavoidable, they immediately and cooperatively commenced efforts to retain qualified arbitrators and are pleased to have been able to do so. Given the compressed timeframe

and active arbitration calendars, however, the three chosen arbitrators were not mutually available for commencement of a hearing until April 14, 2014, at the earliest.


As the panel of arbitrators for this matter, the parties have retained the following neutrals, all of JAMS, Inc.: Hon. Margaret Hinkle (Ret.) (as MGM's designee), Hon. Charles S. Swartwood (Ret.) (as the Town's designee) and Hon. Allan van Gestel (Ret.) (as a mutually agreed upon third designee). The panel has reserved April 14th and 18th as hearing dates. The Parties anticipate two hearing days sufficing and that this will allow for the panel to issue a report by April 28, 2014.

WHEREFORE, the Parties jointly request a variance from the Regulation to the panel of arbitrators to issue its report by April 28, 2014.

Respectfully submitted,

BLUE TARP REDEVELOPMENT, LLC

By:


Seth N. Stratton, Esq.
Fitzgerald Attorneys at Law, P.C.
46 Center Square
East Longmeadow, MA 01028
Tel: (413) 486-1110
Fax: (413) 486-1120
sns@fitzgeraldatlaw.com

TOWN OF WEST SPRINGFIELD

By:


Jonathan Silverstein, Esq.
Kopelman and Paige, P.C.
101 Arch Street
Boston, MA 02110
Phone: 617-556-0007
Fax: 617-654-1735
jsilverstein@k-plaw.com

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

MASSACHUSETTS GAMING COMMISSION

In the Matter of:

Blue Tarp reDevelopment, LLC
and
the Town of Longmeadow

)
)
)
)
)
)
)
)
)
)

JOINT REQUEST FOR VARIANCE

Blue Tarp reDevelopment, LLC (hereinafter “MGM”) and the Town of Longmeadow (hereinafter “Town”) (collectively, the “Parties”), hereby jointly request a variance from the time requirements for completion of an arbitration under 205 CMR 125.01(6)(c) (the “Regulation”), as further detailed below.

The Parties understand that the Regulation contemplates (i) the choosing and engaging of arbitrator(s), (ii) the commencement and completion of arbitration hearings and (iii) the issuance of the arbitrators’ final report, all by April 16, 2014. The Parties have engaged in good faith efforts to find and retain available and mutually agreeable arbitrators and to schedule hearings that would allow for a report to be issued by April 16, but have been unable to do so based upon extenuating circumstances beyond their control. Specifically, arbitrators typically will not commit to certain dates absent a formal retainer agreement and payment of a retainer. The Parties were not in a position to formally engage arbitrators until it was clear that a negotiated agreement was not reasonably likely, and the Parties had directed their efforts and focus towards a potential negotiated agreement consistent with the intent and express language of the Regulation.

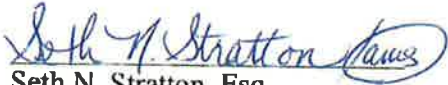
As soon as the Parties determined that arbitration was unavoidable, they immediately commenced efforts to retain qualified arbitrators and are pleased to have been able to do so. However, given the compressed timeframe, active arbitration calendars by potential arbitrators, and MGM's need to conduct another arbitration under the Regulation during the same time-frame with the Town of West Springfield (potentially using the same witness(es) as the MGM-Longmeadow arbitration), the Parties and the three (3) chosen arbitrators were not mutually available for a hearing until April 22, 2014, at the earliest.

As the panel of arbitrators for this matter, the parties have retained the following neutrals: Hon. Margaret Hinkle (Ret.) (as MGM's designee), William Hayward, Jr., Esq. (as the Town's designee) and Hon. Allan van Gestel (Ret.) (as a mutually agreed upon third designee). The panel has reserved April 22, 25, and 28 as hearing dates. The Parties are hopeful that two (2) hearing days will suffice, but have reserved April 28 with the panel as an available third hearing day, if needed. A similar request, involving the same underlying circumstances, has been separately made by MGM and the Town of West Springfield. This schedule should allow the panel to promptly issue a report as soon as possible, consistent with the Massachusetts Gaming Commission's framework and schedule for deciding MGM's Category 1 license application by April 30, 2014.


WHEREFORE, the Parties jointly request a variance from the Regulation to allow for arbitration hearings to conclude no later than April 28, 2014, with direction to the panel of arbitrators to issue their report by April 30, 2014.

Respectfully submitted,

BLUE TARP REDEVELOPMENT, LLC

By: 
Seth N. Stratton, Esq.
Fitzgerald Attorneys at Law, P.C.
46 Center Square
East Longmeadow, MA 01028
Tel: (413) 486-1110
Fax: (413) 486-1120
sns@fitzgeraldatlaw.com
Dated: April 1, 2014

TOWN OF LONGMEADOW

By: 
Brandon H. Moss, Esq.
Murphy, Hesse, Toomey & Lehane, LLP
300 Crown Colony Drive, 4th Floor
Quincy, MA 02169
Tel: (617) 479-5000
Fax: (617) 479-6469
bmoss@mhtl.com
Dated: April 1, 2014

781836v1



MASSACHUSETTS GAMING COMMISSION

MEMORANDUM

To: Chairman Crosby and Members of the Gaming Commission
From: Mark Vander Linden, Director of Research and Problem Gambling
Date: April 3, 2014
Re: Recommendation to award contract for longitudinal cohort study on gambling behavior

MGC Research Agenda

Section 71 of the Gaming Act requires the Massachusetts Gaming Commission (MGC) to establish an annual research agenda to assist in understanding the social and economic effects of casino gambling in Massachusetts and to minimize the harmful impacts. There are three essential elements of this research agenda:

- 1) Understand the social and economic effects of expanded gaming;
- 2) Implement a baseline study of problem gambling and the existing prevention and treatment programs that address its harmful consequences; and
- 3) Obtain scientific information relative to the neuroscience, psychology, sociology, epidemiology and etiology of gambling.

On October 21, 2013 the MGC with the advice of the Gaming Research Advisory Committee recommended to the Gaming Policy Advisory Committee (GPAC) that a longitudinal cohort study be conducted (memo from Chairman Robert Hubbard attached). The GPAC voted unanimously to add a longitudinal cohort study to the research agenda.

Cohort Study of Gambling Behavior

The proposed longitudinal cohort study of gambling behavior will follow a group of people with a shared experience (exposure to expanded gaming) at intervals over time. This type of study can provide detailed etiological information about how gambling and problem gambling develops, progresses, and remits. The information collected through a cohort study has significant value as it will highlight risk and protective factors important in developing effective prevention, treatment, and recovery support services.

Procurement Process

On November 20, 2013, the MGC released a Request for Proposal (RFP) to conduct a cohort study on gambling behavior to the University of Massachusetts, Amherst and the Cambridge Health



Massachusetts Gaming Commission

Alliance, Division on Addiction. The rationale for limiting to these two applicants is that they each possess a unique set of qualifications to conduct a study of this nature.

The review committee included:

- Lia Nower, JD, PhD, Associate Professor and Director, Center for Gambling Studies Co-Director, Addiction Counselor Training Certificate Program Rutgers University, School of Social Work;
- Wendy S. Slutske, Ph.D., Professor, Department of Psychological Sciences, University of Missouri and Scientific Review Board of the National Center for Responsible Gaming; and
- Mark Vander Linden, MSW, Director of Research and Problem Gambling, Massachusetts Gaming Commission

Consultation and feedback on the proposals was provided by:

- MGC Gaming Research Advisory Committee;
- Steve Keel, LICSW, MA Department of Public Health, Director of Problem Gambling Service; and
- Thomas Land, Office of the Commissioner, Interim Director, Office of Health Information Policy and Informatics

The following four evaluation criteria were considered by the review committee in determining the successful applicant.

- **Contribution to Massachusetts:** The findings of this research will be important in determining appropriate treatment and prevention strategies to mitigate the harm of expanded gaming in Massachusetts to the maximum extent possible.
- **Methodology:** The commission will consider the strength and feasibility of the proposed strategy, methodology and analysis in accomplishing the objectives stated in this RFP. The Commission expects that the methods and findings of the proposed research will be of high standard and publishable in reputable academic journals.
- **Cost Effectiveness and Scalability:** The Commission will consider the efficiency of the project in the context of the work proposed.
- **Demonstrated Excellence:** The Commission will consider the experience of the applicant in conducting high quality research related directly to the scope of the proposed study.

The review committee felt that both applicants prepared excellent proposals. The findings from each proposed study would contribute valuable information to Massachusetts and the field of problem gambling in general. However the review committee was in unanimous agreement that the proposal submitted by the University of Massachusetts, Amherst had a stronger research strategy and would more successfully carry out objectives of the study.

The proposals and evaluator recommendations have been shared with Steve Keel, Massachusetts Department of Public Health, Director of Problem Gambling Services and Thomas Land, Office of the Commissioner, Interim Director, Office of Health Information Policy and Informatics. Mr. Keel



Massachusetts Gaming Commission

and Dr. Land are in agreement with the recommendation of the review committee to support the proposal submitted by the University of Massachusetts.

Massachusetts Gambling Impact Cohort (MAGIC)

Contribution to Massachusetts: The University of Massachusetts project, titled Massachusetts Gambling Impact Cohort (MAGIC), promises to be a landmark study, providing new and much needed information about the incidence rates and course of problem gambling in Massachusetts. MAGIC will yield important and unique information leading to treatment and prevention initiatives that are tailored to the needs of the people of the Commonwealth. Additionally, this valuable addition to the research agenda will:

- Establish the raw number of new problem gamblers each year (necessary for resource allocation);
- Determine whether proportionally more resources should be put into prevention or treatment;
- Identify the variables of greatest etiological importance in the development of, and remission from, problem gambling and should therefore be the focus of prevention and treatment efforts; and
- Provide guidance on ‘safe levels’ of gambling involvement.

Methodology: The current SEIGMA baseline survey (n=10,000) will constitute the Wave 1 Assessment, with 2,600 of these individual recruited into the MAGIC cohort. Half of these individuals (n=1,300) will be recruited as a high-risk group based on current risk of becoming a problem gambler. This sampling methodology promises to “yield” a higher number of problem gamblers over the course of the project and create a comprehensive etiological model of problem gambling.

MAGIC will use a new measure of problem gambling, the Problem and Pathological Gambling Measure (PPGM) developed by Drs. Volberg and Williams. This measure is proven to be superior to other existing problem gambling measures.

The MAGIC team has proven experience in cohort retention – a key factor in producing high-quality data and confidence in findings. They have identified multiple methods to attain the highest possible retention rates.

Cost Effectiveness and Scalability: MAGIC will be complimentary and synergistic with the Social and Economic Impacts of Gambling in Massachusetts (SEIGMA) study, with each study providing considerable information relevant to the other study’s goals.

An additional “value added” element of the MAGIC project will be scrutiny of the findings from four other longitudinal cohort studies in the final stages of analysis so as to identify variables that would merit more detailed examination in the MAGIC project. Because of direct involvement in all four of these studies by either Drs. Volberg or Williams, the MAGIC team has unique access to this data.



Massachusetts Gaming Commission

Demonstrated Excellence: Dr. Volberg is arguably the world's leading expert in conducting epidemiologic surveys of problem gambling, with decades of experience. Drs. Volberg and Williams have previously conducted longitudinal gambling surveys with high retention rates in Canada. Dr. Stanek, is an experienced biostatistician and his expertise will be a great value to the success of the project.

Budget

The total budget for the initial project period is \$1,975,680 with an annual cost of:

\$126,101 in Fiscal Year 2014
\$849,274 in Fiscal Year 2015
\$1,000,305 in Fiscal Year 2016

The estimated cost to continue this project beyond Fiscal Year 2016 is \$900,000 annually.

Recommendation

This proposed study will advance the steadfast commitment of the MGC to mitigate to the maximum extent possible the potentially negative or unintended consequences of expanded gaming in Massachusetts. I therefore recommend that the University of Massachusetts, Amherst be granted a contract to conduct the longitudinal cohort study of gambling behavior in Massachusetts as described in their proposal submitted to the Massachusetts Gaming Commission.



Massachusetts Gaming Commission

7(a) — No documents



LICENSING MANAGEMENT SYSTEM (LMS) UPDATE



4/3/2014

LMS Application Video

- **Authentication**
- **License System Selection**
- **Password Reset**
- **Password Retrieval**
- **Forms**

LMS Project Timeline

	Phase	Week	Wk 1	Wk 2	Wk 3	Wk 4	Wk 5	Wk 6	Wk 7	Wk 8	Wk 9	Wk 10	Wk 11	Wk 12	Wk 13	Wk 14	Wk 15	Wk 16	Wk 17	Wk 18	Wk 19	Wk 20	Wk 21	Wk 22	Wk 23	Wk 24	Wk 25	Wk 26	Wk 27	Wk 28	Wk 29	Wk 30	Wk 31			
		From	12/9	12/16	12/23	12/30	1/6	1/13	1/20	1/27	2/3	2/10	2/17	2/24	3/3	3/10	3/17	3/24	3/31	4/7	4/14	4/21	4/28	5/5	5/12	5/19	5/26	6/2	6/9	6/16	6/23	6/30	7/7			
		To	12/13	12/20	12/27	1/3	1/10	1/17	1/24	1/31	2/7	2/14	2/21	2/28	3/7	3/14	3/21	3/28	4/4	4/11	4/18	4/25	5/2	5/9	5/16	5/23	5/30	6/6	6/13	6/20	6/27	7/4	7/11			
Original Timeline	Finalize Forms and Business Processes (MGC)																																			
	Requirements																																			
	Architecture & Design																																			
	Development																																			
	System Integration Testing																																			
	User Acceptance Testing																																			
	Training																																			
	Deployment & Go-live																																			
Post Production Support																										*										
Revised Timeline	Finalize Forms and Business Processes (MGC)																																			
	Requirements																																			
	Architecture & Design																																			
	Development																																			
	Infrastructure																																			
	<i>Verizon to Provide connectivity</i>																																			
	<i>ITD to complete initial setup and verification</i>																																			
	<i>Advizex to complete infrastructure setup</i>																																			
	<i>NTT to Setup Development Environment</i>																																			
	<i>NTT to Setup QA Environment</i>																																			
	<i>NTT to Setup Production Environment</i>																																			
	System Integration Testing																																			
	User Acceptance Testing																																			
Training																																				
Deployment & Go-live																																				
Post Production Support																																		*		



LMS Project Milestones

- **Platform / Infrastructure –** HP/Advizex – Configuration (4/4)
Verizon / ITD – Connected (3/21)
- **Business Requirements Document -** NTTData – Approved (3/21)
- **Technical Architecture Document -** NTTData - Submitted (3/28)
- **Application User Interface Review -** NTTData - in process (4/2)
- **System Integration Testing -** NTTData - (5/2)
- **User Acceptance Testing -** MGC – (6/6)
- **Planned Go-Live -** June 27



LMS Project Highlights

- **Interim Licensing Process – Licensing & IEB**
- **Change Order for NTTData SOW (3/21)**
- **Agreements with Lexis Nexis & TransUnion**
- **Criminal Justice Information Systems (CJIS) Integration**
- **Hardware Procurements**
 - **Fingerprinting System**
 - **License Printing System**
 - **High Speed Scanning Equipment**
 - **IPad Air Devices**

