NOTICE OF MEETING and AGENDA

April 4, 2013 Meeting

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

Thursday, April 4, 2013
9:00 a.m.
Division of Insurance
1000 Washington Street
1st Floor, Meeting Room 1-E
Boston, Massachusetts

PUBLIC MEETING - #62

1. Call to order

2. Approval of Minutes
    a. March 12, 2013
    b. March 14, 2013
    c. March 21, 2013
    d. March 25, 2013

3. IEB Report
    a. Phase I application status report

4. Public Education and Information
    a. Report from the Ombudsman
        i. Category 2 and Category 1 deadlines

5. Administration
    a. Master schedule

6. Racing Division
    a. Administrative update
    b. Legislative review final product – VOTE
    c. Hearing Officer
    d. First quarter review of operations

7. Region C discussion

Massachusetts Gaming Commission

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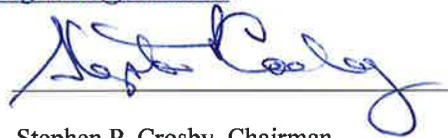
8. Other business – reserved for matters the Chair did not reasonably anticipate at the time of posting

I certify that on this date, this Notice was posted as "Gaming Commission Meeting" at www.massgaming.com and emailed to: regs@sec.state.ma.us, melissa.andrade@state.ma.us, brian.gosselin@state.ma.us.

4/1/13

(date)



Stephen P. Crosby, Chairman

Date Posted to Website: April 1, 2013 at 4:00 p.m.

2-a

Meeting Minutes

Date: March 12, 2013

Time: 1:00 p.m.

Place: Division of Insurance
1000 Washington Street
1st Floor, Meeting Room 1-E
Boston, Massachusetts

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

Absent: None

Call to Order:

Chairman Crosby opened the 56th public meeting.

Approval of Minutes:

See transcript page 2.

Chairman Crosby stated that there are no minutes to review.

Administration:

See transcript pages 2-8.

Master Schedule – Commissioner Zuniga reviewed the key dates on the Master Schedule that the Commission has updated. He stated that the Commission will start rolling out the Phase 2 regulations between March 30 and April 12, 2013. He stated that the Commission will soon update the schedule to reflect the second phase of the Phase 2 regulations, which he would like to refer to as Phase 2B.

Category 2 Licensing Schedule – Commissioner Zuniga stated that the current forecast is to have applicants submit all applications for a Category 2 license to the Commission by October 5, 2013. The Commission hopes to make a decision by December 2, 2013, or sooner if possible.

He stated that the Commission must still determine how to proceed if applicants do not execute surrounding community agreements by the deadline.

Commissioner Zuniga stated that he would like to prequalify the firm of Morgan, Brown, and Joy as a labor and employment law firm for the Commission. This firm has done a substantial work for the Lottery and other state agencies and is highly recommended.

Motion made by Commissioner Zuniga that the Commission prequalify the law firm of Morgan, Brown, and Joy as its employment and labor counsel for miscellaneous and ongoing advice relative to employment and labor law for the Commission. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.

IEB Report:

See transcript pages 8-9.

Investigations Status Report – Commissioner Cameron reported on behalf of Director Wells who was unable to attend. She stated that the IEB is continuing the investigations and having daily contact with the applicants.

Public Education and Information:

See transcript pages 9-20.

Report from the Ombudsman – Ombudsman Ziemba stated that he continues to have numerous conversations with host communities and applicants regarding the potential RPA planning process and he anticipates conducting a presentation at the Commission's meeting on Thursday. He stated that the Commission received two requests for community disbursements, one from the Town of Plainville and one from the City of Everett, and the Commission is processing those request.

Chairman Crosby asked about the status of Category 2 applicants picking a location and finalizing their qualifier lists. Ombudsman Ziemba stated that he and Director Wells have had conversations with the four applicants for Category 2 facilities and they have each reported on: their progress in the application process, what information they need to determine additional qualifiers, whether they will be able to meet any deadlines set for qualifiers, and where they stand in the development process. Two applicants have identified sites and have indicated that they will be able to meet an aspirational target of September 1 for Category 2 license issuance. He stated that two applicants have not identified sites and he believes that it would be very difficult for them to complete the tasks necessary to meet a September 1 target.

Chairman Crosby stated that in order to meet the September 1 target these two applicants would have to schedule the referendum prior to passing the Phase 1 qualification. He stated that if the Commission wants to continue to pursue the earlier deadline it will have to determine whether applicants can request elections before finishing the Phase 1 qualification process and set a target date by which time the applicants would have to inform the Commission where their sites are located.

Commissioner McHugh recommended that, to avoid being governed by the readiness of the applicants, the Commission should consider setting a date by which an applicant must identify its site and a second date by which an applicant must submit its RFA-2 application. He stated that, for efficiency purposes, the Commission should allow applicants to set election dates prior to passing the Phase 1 qualification stage. Commissioner Cameron stated that she agrees that prior to being qualified the applicants may set a date for the referendum, but the date set should be after the determination of qualification. Commissioner Zuniga also agreed and recommended that the Commission reflect in the schedule the process that would occur if an applicant schedules an election and the Commission then finds the applicant unsuitable or suitable with conditions.

Preparation for Region C Discussion – Chairman Crosby stated that the Commission is holding its March 21 meeting in Region C to discuss whether or not to open Region C to commercial applications. He stated that several people have requested to speak at the meeting and he has invited any public official or representative of an interested party to let the Commission know via the Commission website if he or she would like to speak.

Regulation Update:

See transcript pages 20-65.

Review of Draft Regulations – Commissioner McHugh stated that the Commission is continuing to draft the Phase 2 regulations. The legal team met with the consultants to review the draft regulations, which Todd Grossman will distribute to the other Commissioners within the next two days. He stated that the draft regulations currently contain a placeholder for the evaluation criteria, the evaluation process, and the hearing process. He anticipates scheduling time in two weeks to go through the regulations and approve them, with a goal of meeting the March 29, 2013 deadline to send the regulations to the Local Government Advisory Committee. Ombudsman Ziemba stated that he spoke to representatives of the City of Springfield and they intend to hold the election for both applicants on the same date, but they did note that the statute may prevent an election on the same date if applicants do not request the referendum within an overlapping 30 day period. Chairman Crosby stated that enforcing a single day for the referendum would be within the Commission's control, and if one applicant was not ready then the other applicant would have to wait to hold its vote. After discussing many scenarios Chairman Crosby stated that the Commission agrees with the officials in Springfield that a host community should hold all of its host community agreement elections on the same day.

Motion made by Commissioner McHugh that the Commission require that elections for multiple host community agreements in the same city or town be held on the same day. Motion seconded by Commissioner Zuniga. The motion passed unanimously by a 5-0-0 vote.

Commissioner McHugh asked whether the Commission should similarly require that two host communities, with a single applicant located in both communities, hold their election on the same day. Commissioner Zuniga stated that imposing such a requirement would be impractical. The Commission agreed not to impose this requirement.

Chairman Crosby stated that the Commission discussed last week the extent to which an applicant must disclose requests for, or delivery of, anything of value to municipalities or public officials. He stated that the Commission posted a request for comments but received none. Commissioner McHugh agreed that the Commission should require disclosure, from November 21, 2011 until the date the application is filed, for any requests for, or delivery of, anything of value to an official of a host or surrounding community. Commissioner Zuniga recommended that the requirement only apply to contributions that are actually made, not also to requests for contributions. Commissioner Stebbins stated that he agreed with Commissioner Zuniga that asking for every request an applicant gets would be burdensome, but asking applicants to report when they have actually made an investment would be helpful information.

Based on the Commission's discussion, Commissioner McHugh outlined what the Commission will require an applicant to report between the period of November 21, 2011 and the date the application is filed: any political contributions; any requests for political contributions; anything of value donated to a person or entity in a host community or surrounding community; any request by a public official for a donation of a thing of value within a host or surrounding community; any requests by anybody for donation of a thing of value to a person or entity within a host or surrounding community. Chairman Crosby stated that if the Commission is in agreement in principle then the general counsel can draft specific language.

Racing Division:

See transcript pages 65-96.

Administrative Update – Director Durenberger stated that the Racing Division rules do not take effect in accordance with the traditional Massachusetts rulemaking process because there is an additional statutory requirement with which the old Racing Commission, and now the Gaming Commission, must comply as part of the rulemaking process. Rather than approving the regulations, filing with the Secretary of the Commonwealth, and having the Secretary publish the regulations in the Register, the Commission must file the proposed regulations with the Clerk of the Senate, which adds some time to the rulemaking process. The regulations will then go to the Joint Committee on Government Regulations for review. If approved, the rules will take effect within 60 days. She stated that this timeline would mean that the regulations would not become effective until some time after the new racing season began. She recommended adopting the rules on an emergency basis on March 14 when they are before the Commission. Adoption on an emergency basis may be done when necessary to protect the health or safety of the public, participants, or animals.

Legislative Review Update – Director Durenberger provided the Commission with a proposed Chapter 128D and a comment received from the New England Horsemen's Benevolent Protective Association. Commissioner McHugh asked for clarification on the concerns of the Horsemen's Association. Danielle Holmes stated that this concern relates to premiums paid. The premiums presently are deposited into the purse accounts, which essentially go back to the owners and horsemen. She stated that they could find no other jurisdiction that statutorily mandates disposition of these premiums. The Racing Division believes that the money coming into the purse accounts from gaming would be greater than amounts received from the current

premium structure. She stated that certain tracks have exceptions to the premiums so the Horsemen have proposed a flat premium rate with no exceptions. The Racing Division's proposal is to do away with the premium structure and rely entirely on gaming money to fund the purse accounts.

Director Durenberger stated that this issue is a significant bone of contention. In the current structure there are negotiated premiums and exemptions to the premiums, so depending on when a track is simulcasting it may or may not be paying the premiums. She stated that this new policy adds simplicity going forward. Chairman Crosby stated that he respects the work that the Racing Division has done and is inclined to go with Director Durenberger's recommendation, however, if he were debating this point he would have a hard time arguing for the intrinsic value of this simplification over the intrinsic value of putting more money in the purses. This change may create negative consequences for the racehorse industry in the state. Director Durenberger stated that there are other ways to put money into the purses, such as increasing percentages that go to the Racehorse Development Fund.

Commissioner McHugh stated that the Commission is simply making a recommendation to the Legislature. The legislature will hold a legislative proceeding and make a judgment on whatever the Commission recommends. Commissioner McHugh also recommended removing Section 20 of the proposed legislation because the proposed legislation needs to replace each reference to the provisions of Chapter 128A and 128C appearing in the general Laws with a new reference to the appropriate section of Chapter 128D rather than the broad catch-all provision now set out in proposed section 20.

Commissioner Zuniga made reference to Section 5b, the assessment for operations of the Commission. The language states that the Commission will not make assessments on a licensee that exceed $750,000. He recommended that, because the Commission intends to have this statute in place for a number of years, the number should be something that is either a percentage of amounts wagered, or at the discretion of the Commission. Director Durenberger stated that hard numbers are littered throughout the statute and there could be two approaches: tie it into a percentage or index, or include language stating that the Commission will periodically set the fee as it deems appropriate.

Chairman Crosby stated that if he had to pick a solution he would leave the amount to the discretion of the Commission. Commissioner McHugh recommended using an inflation adjusted value. Steve O'Toole of Plainridge Racecourse stated that to use inflation in this particular case would be inflation downward because the handles have dwindled. Director Durenberger suggested using a percentage rather than a cap, but preferred not to rush the proposed language. Commissioner McHugh stated that if the Commission agrees in principle not to have a cap, then the Racing Division could draft language to achieve this goal.

Commissioner Zuniga made reference to c. 128D, §(6) which states that the Commission shall at all reasonable times have access to the records and books of any licensee. He recommended striking out the word "reasonable" to preserve the Commission's discretion. The Commission agreed that the word "reasonable" does not unduly limit the Commission's discretion.

A brief recess was taken.

Chairman Crosby reconvened the 56th public meeting.**Research Agenda:**

See transcript pages 96-97.

Chairman Crosby stated that the Commission has scheduled a conference call for 4:00 p.m. to receive more advice regarding the RFP responses to the Commission's research proposal.

Motion made to adjourn, motion seconded and carried unanimously.

List of Documents and Other Items Used at the Meeting

1. Massachusetts Gaming Commission March 12, 2013 Notice of Meeting and Agenda
2. March 6, 2013 Massachusetts Gaming Commission Memorandum Re: Recommendation to Prequalify Morgan, Brown & Joy as Labor and Employment Law Firm
3. March 12, 2013 Massachusetts Gaming Commission Memorandum Re: Correction to Rulemaking Process Timeline for Racing Division
4. March 5, 2013 Letter from New England Horsemen's Benevolent and Protective Association, Inc.
5. Proposed New Chapter 128D – Horse Racing Meetings and Simulcast Wagering
6. Report of the Massachusetts Gaming Commission to the Senate and House of Representatives Pursuant to Chapter 194, Section 104, of the Acts of 2011

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

2.6

Meeting Minutes

Date: March 14, 2013

Time: 1:00 p.m.

Place: Division of Insurance
1000 Washington Street
1st Floor, Meeting Room 1-E
Boston, Massachusetts

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

Absent: None

Call to Order:

Chairman Crosby opened the 58th public meeting.

Approval of Minutes:

See transcript page 2.

Chairman Crosby stated that the Commission has no new minutes to review.

Administration:

See transcript pages 2-3.

Category 2 Licensing Schedule – Chairman Crosby stated that the Commission is working hard on the Category 2 license schedule and expects to award the license in early December. He stated that one of the last two applicants without a site has identified the location where it would like to build a slots parlor.

IEB Report:

See transcript pages 3-8.

Investigations Status Report – Director Wells stated that the investigations are proceeding. All eleven applicants are submitting additional documentation that the consultants and State Police are reviewing. She stated that they are developing a strategy going forward to conduct investigations in the most efficient manner possible. Recognizing that the Commission is looking to expedite the Category 2 license, they are prioritizing those investigations and she will provide updates as the process proceeds. She stated that there is some concern about the April 15 deadline. Chairman Crosby commended Director Wells and her staff for the thorough work they are doing.

Public Education and Information:

See transcript pages 8-70.

Report from the Ombudsman: Regional Planning Agency Discussion – Chairman Crosby introduced Steven Smith, Executive Director of the Southeast Regional Planning and Economic District, and Timothy Brennan, Executive Director of Pioneer Valley Planning Commission, who were present to discuss a plan to assist the Commission on questions relating to surrounding communities.

Ombudsman Ziemba thanked the regional planning agencies for the support they have provided over the past couple of months. He stated that they are proposing a plan whereby the regional planning agencies can help on questions relating to potential surrounding communities. The support of the regional planning agencies should be seen as a service that is provided by the Commission and may be voluntarily adopted by applicants and communities if they choose to do so. He stated that the Commission has outlined a draft definition of what a surrounding community is and has recently adopted a process whereby communities could ask for disbursement of money for technical assistance funding if they cannot reach an agreement with an applicant.

Ombudsman Ziemba outlined the services that the regional planning agencies would provide. The first task of the RPA would be to serve as a convener to organize up to two informational forums per region, followed by a series of taskforce meetings for each of the specific gaming facilities. The second phase would be technical analysis and assistance, whereby the RPA would look at the data that the applicants and host communities provide to determine impacts on surrounding communities. He stated that the third step would be to help communities with agreements that they enter into with applicants.

Stephen Smith addressed the Commission. He stated that his agency, the Southeast Regional Planning and Economic District, is located in Region C, which currently has two potential commercial sites and one tribal site. He provided background information on his agency and details on the plan for the region.

Timothy Brennan addressed the Commission. He provided background information on his agency, the Pioneer Valley Planning Commission based in Springfield, and details on the plan for the region.

Joel Barrera of the Metropolitan Area Planning Council addressed the Commission. He provided background information on his agency. He stated that he would welcome this partnership with the Commission.

Chairman Crosby asked if anyone considered making participation in this plan obligatory. Ombudsman Ziemba responded that he was concerned about being challenged on whether or not making this obligatory would contravene the statute. Commissioner McHugh stated that the Commission has an obligation to look at the regional impact of the casinos and expressed concern about what would happen if a community declined to participate in this process and all of its neighboring communities did participate. Ombudsman Ziemba stated that it is up to the applicant to address regional impacts, so if a community does not participate the applicant would be responsible for showing how they will address the regional concerns.

Ombudsman Ziemba stated that one idea he heard, and which he is not recommending, is that rather than conducting impact studies, applicants could donate additional money to the Community Mitigation Fund so that the money can be used for studies conducted after the license is awarded. Commissioner McHugh stated that this idea would not be consistent with the statute, as the legislature envisioned that the fund compensate communities for items not anticipated before the award of the license.

Ombudsman Ziemba stated that the biggest issue he encountered across the state is that creating this RPA process for helping communities to review impacts may actually serve to create false expectations that communities will be surrounding communities at the end of the process. Commissioner McHugh asked how easy it would be for a RPA to say no to a constituent community seeking funds. Mr. Brennan stated that the majority of questions they have received have been relative to understanding the legislation itself, and many communities improperly believe that this process is aimed at providing the community with money, not mitigation. They continuously emphasize that this process seeks to find ways to mitigate the harms from gaming rather than providing compensatory money. Chairman Crosby asked if the applicants see the regional planning agencies as objective third parties. Mr. Smith stated that they do see the RPAs as objective.

Commissioner Stebbins asked if the Commission will have access to the background information to aid in determining whether a community is a surrounding community. Ombudsman Ziemba stated that he anticipates that the Commission will have the necessary information when making its determinations. Commissioner Stebbins stated that he is familiar with the Pioneer Valley's economic development plan and asked whether the other regional planning agencies have similar plans. Mr. Smith stated that his agency does have an economic development plan and it is required to update this plan annually. Mr. Barrera stated that his agency has a plan and also maintains four economic development specialists to assist with economic development concerns.

Chairman Crosby asked for a sense of the methodology that the RPAs use in measuring impact. Mr. Brennan stated that there is no simple answer, as the approach RPAs take is very site specific. Commissioner Cameron asked if the RPAs have considered which towns may be impacted after developers complete casino construction. She cited an example in New Jersey of towns that initially felt no impact, but later grew enormously as they provided housing for gaming employees. Mr. Barrera stated that the MEPA process does not consider housing and his

executive director, who is a housing specialist, is very concerned with housing. He stated that the RPAs will be able to see the impacts on housing as they analyze the applicants' proposals.

Omudsman Ziemba stated that participants in the RPA process are concerned about lack of time to fully understand the effects of the applicants' proposals. He recommended that the RPAs work with the applicants and host communities, and that the Commission allow enough time to enable surrounding communities to really understand the impacts. Commissioner McHugh stated that if the Commission endorses the RPA process, then the Commission should allocate enough time for the process to work. Commissioner Stebbins asked that the RPAs provide the Commission with periodic updates as this process evolves.

Motion made by Commissioner Zuniga that the Commission accept this proposal, endorse it, and follow the recommendations as outlined in the memorandum of March 12, 2013. Motion seconded by Commissioner McHugh. The motion passed unanimously by a 5-0-0 vote.

A brief recess was taken.

Chairman Crosby reconvened the 58th public meeting.

Region C Discussion – Chairman Crosby stated that the Commission will hold its regular weekly meeting, which includes discussion of Region C, at 4:00 p.m. on Thursday, March 21 at Bristol Community College in Fall River. He stated that the Commission invites representatives of entities or public officials to speak at the meeting, however, anyone interested in speaking should sign up prior to the meeting.

Regulation Update:

See transcript pages 70-76.

Review of Draft Regulations – Attorney Grossman stated that the Commission is on schedule with the RFA-2 regulation process. He stated that he has circulated updated drafts which include new sections pertaining to fees, transfers of interest, conservatorships, and the issuance of new licenses in the event of circumstances that lead to a licensee not being able to continue holding a license. He stated that the Commission still needs to make several policy decisions and he anticipates circulating the language and summaries to the Local Government Advisory Council by March 29, 2013. He recommended setting time aside on Monday, March 25 for an open meeting to discuss the regulations. Chairman Crosby recommended including in this meeting a discussion on the evaluation criteria.

Racing Division:

See transcript pages 76-84.

Chairman Crosby recognized Director Durenberger for the accolades Massachusetts and the Gaming Commission have been receiving on leading the way with regulations on horse medication in the racing industry.

Administrative Update – Chairman Crosby stated that he would like the Commission to be as involved as possible in the openings of the two racetracks on April 15 and June 1, 2013 and would like to discuss ideas on how the Commission can be most involved.

Proposed Changes to 205 CMR 3.00 and 4.00 – Director Durenberger stated that the Commissioners have in their packets the proposed changes to the regulations, the written comments received, a memorandum discussing where they are in terms of incorporating those comments, and additional staff analysis. She recommended that the Commission vote on these changes today.

Motion made by Commissioner Cameron that the Commission accept Director Durenberger's recommendations and approve the changes, as well as the entire 205 CMR 3.00 and 4.00, and adopt the same as emergency regulations and as permanent regulations simultaneously. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.

Tentative Decision and Motion for Reconsideration for Occupational Licensee Heard on January 16, 2013 – Commissioner Cameron provided information on two hearings that the Racing Division held to reconsider decisions for occupational licenses. She stated that the Racing Division is notifying the individuals in question of the tentative decision to their motion and that they have 30 days to appeal to the full Commission.

Research Agenda:

See transcript pages 84.

Chairman Crosby stated that there is nothing new to report on the research agenda at this time.

Evaluation Criteria:

See transcript pages 84-90.

Commissioner Zuniga stated that an important component of the evaluation criteria is considering what the market can bear. He stated that the Commission has to be careful as it analyzes these proposals because the biggest proposal may not necessarily be the best. He stated that in the fifth category there is an element of balance that the Commission may need to consider, and having a strong, enduring proposal is something that the Commission should discuss. Commissioner McHugh stated that this idea ties back into the Commission's mission statement to provide a reasonable return to licensees. Chairman Crosby emphasized that the Commission has repeatedly stated that it wants competition in order to push the bidders to perform at their best, short of compromising their financial stability. He stated that when the Commission redrafts Section 5 it should consider including additional language to this purpose. Chairman Crosby stated that Executive Director Day had similar concerns and recommended adding to the evaluation criteria security, cash management, and other items.

Motion made to adjourn, motion seconded and carried unanimously.

List of Documents and Other Items Used at the Meeting

1. Massachusetts Gaming Commission March 14, 2013 Notice of Meeting and Agenda
2. March 12, 2013 Massachusetts Gaming Commission Memorandum Re: Regional Planning Agencies
3. March 14, 2013 Massachusetts Gaming Commission Memorandum Re: Recommendation Regarding Proposed "Phase I" Changes to 205 CMR 3.00 and 4.00
4. Proposed Changes to 205 CMR 3.00 and 4.00

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

2.c

Meeting Minutes

Date: March 21, 2013

Time: 4:00 p.m.

Place: Bristol Community College
Commonwealth College Center
777 Elsbree Street
Fall River, Massachusetts

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

Absent: None

Call to Order:

Chairman Crosby opened the 59th public meeting.

He introduced Dr. John Sbrega, President of Bristol Community College, and thanked him for hosting this meeting. Dr. Sbrega welcomed the Commission and briefly provided background information about the college.

Approval of Minutes:

See transcript pages 3-4.

Commissioner McHugh stated that the minutes for February 28, 2013 are ready for approval.

Motion made by Commissioner McHugh to approve the minutes. Motion seconded by Commissioner Zuniga. The motion passed unanimously by a 5-0-0 vote.

Public Education and Information:

See transcript pages 4-8.

Report from the Ombudsman: Ombudsman Ziemba stated that he has reached out to nine of the eleven existing applicants to determine whether they will be interested in utilizing the assistance of the regional planning agencies and has asked that they respond within a week. Chairman

Crosby stated that he received a call from the director of a regional planning agency who was under the impression that if a surrounding community or potential surrounding community does not participate in the RPA process, then that community would not have access to any monies to help it assess mitigation or negotiate with the developer. Mr. Ziemba indicated that this understanding is incorrect. The RPA process is voluntary for applicants as well as communities and they can choose among many different avenues for assistance.

Regulation Update:

See transcript pages 8-11.

Regulation Update – Commissioner McHugh stated that the Commission is in the final stages of writing the regulations for a formal approval process. He stated that the Commission will conduct a final review of the draft regulations at Monday's public meeting. At the meeting the Commission will discuss the evaluation criteria and the process for receiving applications. He stated that the Commission will hold a public hearing on the regulations and set aside a period for public comment. The Commission will make final adjustments to the regulations, with a goal of promulgating the final version no later than June 7, 2013.

Research Agenda:

See transcript pages 11-28.

Chairman Crosby stated that the legislation mandates that the Commission conduct a comprehensive research project on the socioeconomic impacts of introducing expanded gaming into the Commonwealth. The research project would include a comprehensive baseline study of the preexisting conditions before the casinos or slot parlors open and another study after they open. He stated that the Commission conducted an RFP process to determine a vendor who could perform the studies and he asked Commissioner Zuniga to provide an update.

Commissioner Zuniga stated that the Commission received four thoughtful responses to the RFP and narrowed those four finalists down to two. He stated that the procurement team struggled at deciding between the finalists because they are both very capable. He stated that the procurement team is currently split in its recommendation. Chairman Crosby stated that one bidder, Cambridge Health Alliance, wanted to perform a baseline study of 6,000 people and study those people forever, even if they moved out of Massachusetts. The second group, headquartered at University of Massachusetts Amherst, proposed using a 17,000 person sample and would take a snapshot of those people, representing the whole population of Massachusetts. Every few years that proposal would aggregate data on a new 17,000 person sample so that researchers could study what happened to a larger community, not what happened to a cohort of people. Commissioner Zuniga stated that the latter study would cost $1.2 million more to conduct.

Commissioner McHugh recommended that the Commission invite presentations by the two finalists so that the Commission has an opportunity to learn more about their proposals and ask questions. Commissioner Zuniga agreed with this recommendation. Chairman Crosby stated that these proposals are complicated and the project management team spent hours discussing the

proposals with two experts in research and problem gaming and they could not come to a decision without the help of an outside consultant. He expressed concern that a presentation would not provide an opportunity to get to the level of depth and analysis that is required to make this determination. He stated that the Commission could make a better judgment with the help of outside consultants. Commissioner Cameron stated that she agrees with Chairman Crosby's recommendation. Commissioner Stebbins recommended asking UMass to come in and make a recommendation to the full Commission prior to negotiating a contract, mirroring the process the Commission has been using for hiring in which the final candidate comes before the Commission for questions. The Commission agreed with this recommendation.

Motion made by Commissioner Zuniga that the Commission authorize him to begin the process of further refining the scope of work and undertake contract negotiation with a team of UMass Amherst as part of the response to the research RFP, subject to their further presentation about scope to this Commission. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.

Region C Discussion:

See transcript pages 28-157.

Chairman Crosby stated that the Commission is committed to a process that is participatory, transparent, and fair. He stated that the Commission is facing a situation in Region C that has conflicting interests, but the legislation has given the Commission some tools to reconcile those interests. He stated that the Commission knows that parties have strong interests, strong rights, strong economic impacts, and strong emotions on many sides of this issue and is taking this decision very seriously. He stated that interested parties can still submit comments on the Commission's website at any time and the Commission has already provided an opportunity for public officials to sign up to speak at this meeting. He stated that the Commission has scheduled fifteen speakers to speak for 10 minutes each.

Cedric Cromwell, Tribal Council Chair, Mashpee Wampanoag Tribe

See transcript pages 30-40.

Chairman Cromwell provided background information on the Wampanoag Tribe and its rights under Federal law. He stated that the Tribe has the right to pursue gaming as an economic development tool and the Commonwealth fully recognized these rights with the passage of the Expanded Gaming Act. He stated that the Commission does not need to open Region C for commercial gaming license applications because the Tribe's project is on track and it has made historic and swift progress toward taking land in trust. He stated that the Tribe is years ahead of any other project in the Commonwealth and is poised to bring thousands of jobs and hundreds of millions of dollars in economic growth to Southeastern Massachusetts in the very near future. He stated that the Tribe expects that the Department of Interior will take its land into trust this year and will have shovels in the ground by this time next year. Opening of a gaming facility is scheduled for early 2015.

Chairman Cromwell stated that he and Governor Patrick signed a new compact this week, which the Governor will send to the Legislature for approval. He expects to receive speedy approval from the Legislature and the Department of Interior. He believes that it would be unwise for the Commission to accept applications and nonrefundable $400,000 fees from commercial applicants to Region C. He stated that the legislation states that the Commission may not award a commercial license in Region C unless it is determined that the Secretary of the Department of Interior shall not take the Tribe's land into trust. He stated that if the Tribe is unsuccessful in its plans to build and operate a casino under the compact, the Tribe will still build and operate a Class 2 Indian gaming casino in Taunton and will not pay any revenue to the Commonwealth. However, the Tribe has chosen to negotiate a compact in good faith with Governor Patrick because it wishes to be partners with the Commonwealth.

Commissioner McHugh stated that he spoke to Secretary Washburn today, as it is the Commission's obligation to reach out to all participants in this forum. Secretary Washburn said that that the Bureau of Indian Affairs has provided both the Commonwealth and the Tribe substantial technical assistance and it is the Bureau's policy not to reject compacts if possible. He said that the Solicitor's office is currently looking at the Carcieri issue, which stems from the Supreme Court decision saying that the federal government cannot take land into trust unless the tribe was under federal jurisdiction in 1934, when the relevant statute was passed. Mr. Washburn also stated that the land in trust issue is proceeding and the environmental process is ongoing, but he was unable to give an estimate as to when the processes would conclude.

Representative Robert Koczera, 11th Bristol District

See transcript pages 40-48.

Representative Koczera stated that the Commission should vote today on whether or not to issue a request for applications for a commercial casino license in Region C. He stated that delay in issuing a Category 1 license in Region C is costing the Commonwealth revenue and the region jobs. He stated that the timeframe noted in Chapter 194 of the Acts of 2011 for Indian gaming preference in Massachusetts has passed, the Department of the Interior rejected the compact, and the Tribe faces insurmountable obstacles to getting land placed in trust due to the 2009 Carcieri Supreme Court decision. He stated that the Mashpee Wampanoag Tribe did not receive federal recognition until 2007. He stated that the Commission must act to ensure that Region C will derive the same benefits from casino gaming as the other two regions of the Commonwealth. He emphasized that the legislation clearly calls for three regional destination resort casinos and the Commission should not disadvantage Region C in the service of good intentions. He stated that the Commission could not reasonably expect a timely resolution to the land in trust issue and urged the Commission to take action today.

Chairman Crosby clarified that the Commission will not vote on the Region C issue today, as the purpose of this meeting is to listen, take the comments under advisement, and vote at a subsequent meeting in the coming weeks.

Representative Keiko Orrall, 12th Bristol District

See transcript pages 48-55.

Representative Orrall stated that she represents the district that includes the proposed tribal casino. She stated that the communities in this district continue to be concerned about mitigation funds for towns surrounding the tribal casino proposed for Taunton. The renegotiated compact includes mitigation for surrounding communities, but the communities have not determined whether this amount will be sufficient to meet their need. She stated that it is not clear to her how the Commission will make its determination as to which communities will receive mitigation assistance or the extent of the assistance the Commission will authorize. She stated that since the Commission's December 4, 2012 meeting, the Tribe has only addressed one of the concerns raised at that meeting by Commissioner McHugh and the Legislature has not yet approved the compact. She expressed concern about the Tribe's ability to get land in trust. She stated that the Secretary of the Interior does not have the authority to take land into trust for any tribe not recognized and under federal jurisdiction in 1934. Current federal law does not allow this tribe to have any land in trust.

Chairman Crosby stated that that the Legislature was very respectful of the rights of surrounding communities and set up resources for them and the Commission. However, these resources do not exist at present for a tribal casino. Commissioner McHugh stated that the federal government put in place safeguards for surrounding communities under the NEPA process, although these safeguards may not be as strong as the safeguards for communities surrounding a proposed commercial gaming establishment.

Representative Alan Silvia, 7th Bristol District

See transcript pages 55-60.

Representative Silvia stated that over the years the residents of Fall River and the south coast have strongly supported several ballot initiatives favoring the establishment of casino gaming, and since the early 1980's they have been told that a tribal casino was right around the corner. He stated that it is incredibly disheartening and unfair that while other regions of the Commonwealth finally get to benefit from casino gaming, the one region pursuing it for thirty years is pushed to the side. He stated that the Commission should not provide the residents of Fall River less opportunity than provided to other regions. He stated that by the time the courts review the land in trust issue and arrive at what is an obvious conclusion based on precedent, many years will pass and gaming facilities in other areas of the Commonwealth will be well established, generating millions in tax revenue and creating thousands of jobs, while Region C will still be told that gaming is just around the corner.

He stated that his district has the highest unemployment rate in the Commonwealth and a commercial gaming license in Region C starts the process of creating the economic environment that generates jobs. He stated that taxing one group less than 25% of that which every other commercial gaming entity has to pay is not okay. He stated that the notion that you cannot have two casinos, a commercial and tribal, in the same region is complete nonsense, as the gaming customer will patronize the facility with the best value, entertainment, and experience. He asked that the Commission open Region C to a commercial gaming license process now and provide the people in the entire south coast area the same benefits given to the rest of the

Commonwealth: an equal process to pursue a commercial gaming license and jobs for the people.

Representative Shauna O'Connell, 3rd Bristol District

See transcript pages 60-66.

Representative O'Connell stated that at the hearing in December the Commission correctly delayed a decision on whether to open up the bidding process in order to give the Tribe time to make adequate progress. She stated that the Expanded Gaming Act recognizes and protects the federal rights of the Tribe to conduct gaming in southeastern Massachusetts and it is the Commission's obligation to follow that law. She stated that the Tribe continues to make progress and meet the requirements of that legislation in a timely manner and is on track to open their destination resort casino sooner than the opening of any casino by a commercial developer. She stated that the economic benefits are numerous for Taunton as well as the surrounding communities. The casino will employ over 2500 people with good paying jobs, averaging about $35,000 a year with benefits. She stated that the Commission should allow the Tribe to continue along its process as the Expanded Gaming Act envisioned, ensuring that there is one successful casino in Region C and that casino opens in a timely manner.

Commissioner McHugh stated that one of the things that divides Representative O'Connell and her colleagues is not the desirability of the tribal casino but how likely it is to arrive and how long everyone will have to wait to figure out whether the Tribe will be able to build the casino. He asked her if she had a recommendation on how long the Commission should wait. Representative O'Connell stated that as long as the Tribe is making progress, the Commission should allow the progress to move forward. She stated that she wants one successful casino in this region, not two.

Representative Antonio Cabral, 13th Bristol District

See transcript pages 66-73.

Representative Cabral urged the Commission to act today to allow Region C potential bidders to join the RFA-1 process currently underway in Regions A and B and to consider proposals from across Massachusetts equally. He stated that the Legislature crafted the Expanded Gaming Act to allow a tribe a very brief window to explore the opportunity for casino development. It did so recognizing the substantial hurdles any tribe would face in receiving federal approval to build a casino on nontribal land and understanding the importance placed on ensuring that Region C has equal opportunity to explore casino development. He stated that it is unlikely that the tribal applicant could justify any other reading of the Gaming Act and it would be irresponsible to drag out his process any longer. He stated that the only tribal candidate in Massachusetts is really a Malaysian investment group that is financing the efforts of the Mashpee Wampanoag Tribe.

Representative Cabral stated that the Legislature is about to begin its annual budget process, potentially leading to many months of delay before it considers this revised compact. He expressed concern with the Tribe's ability to take land into trust. He stated that the residents of New Bedford have twice voted to express their desire for casino development and the Legislature passed the Act because it expected that economic development would quickly follow. He urged

the Commission to allow his region to join the rest of the Commonwealth to investigate casino development opportunities. He stated that if at some point in the future the Tribe does have land in federal trust, it is still able to build its casino and deal with the marketplace and free enterprise.

Hon. William Flanagan, Mayor of Fall River

See pages 73-78.

Mayor Flanagan strongly urged the Commission to end the exclusive rights of the Mashpee Wampanoag in Region C. He stated that the longer the Tribe has exclusivity to a gaming license in Region C the less likely there will be a casino opening in this region. He stated that he believes that the Legislature will approve the compact, but the current draft of the compact effectively prohibits a commercial casino from opening in Region C, because if it does, the Tribe will not have to provide any revenue to the Commonwealth. He stated that the compact also significantly diminishes the opportunity for a racino in Southeastern Massachusetts because of the lower percentage of profits that the Tribe would have to give to the Commonwealth. He expressed concern with the Tribe's ability to take land into trust. He stated that he was an advocate for the gaming legislation because it was a jobs bill. He stated that by opening up Region C to commercial applications the Commission will not only create competition, but will also increase the likelihood of a developer in this region putting a shovel in the ground to construct a casino and prevent leaving behind the people of the region.

Hon. Tom Hoye, Mayor of Taunton

See transcript pages 78-88.

Mayor Hoye stated that one year ago the City of Taunton and the Mashpee Wampanoag Tribe announced that they were commencing discussions about the possibility of developing a casino in Taunton that would bring much needed jobs, development, and economic opportunity. He stated that they knew that developing a Tribal casino would be difficult given the significant number of steps that the Governor and Tribe had to complete under the Expanded Gaming Act. The Expanded Gaming Act gave the Governor and the Tribe until July 31, 2012, to secure all necessary land, enter into a mutually agreed upon compact, obtain a general court's approval of the compact, enter into an intergovernmental agreement between the Tribe and the City, and obtain approval of both the City Council and residents by way of a referendum. He stated that the Governor accomplished all these steps on time in a true partnership with tribal leadership. He stated that the land in trust process is complex and cumbersome and the Tribe is making substantial progress. The Commission has no evidence before it that could lead it to conclude that the Tribe will not have its land taken into trust. He respectfully requested that the Commission not commence the process of soliciting bids for commercial casinos in Region C.

A brief recess was taken.

Chairman Crosby reconvened the 59th public meeting.

Senator Marc Pacheco

See transcript pages 88-97.

Senator Pacheco stated that he has represented Region C for 25 years and at his very first meeting as a House member, the members discussed the possibility of expanded gaming in the Commonwealth. He stated that the legislature put its trust in the Commission that whatever the Commission determines is not only in the best interest of the region, but also in the best interest of the Commonwealth as a whole. He stated that under the compact, if both a commercial and tribal casino open in the region the state will not receive any additional tax revenue from the Tribe. He asked the Commission to give this issue due time and consideration before moving down the road. He stated that if the Legislature wanted to put a time certain in the legislation it would have done so. He stated that the legislative intent was to create jobs. He stated that prior to the recession the southeast region was the fastest growing region in the northeast part of the United States, and as the economy recovers he predicts that the tribal casino will bring more money to the state than a commercial casino in western Massachusetts will bring.

Chairman Crosby asked that Senator Pacheco provide feedback from the Legislature on this situation when they are reviewing the compact.

David Alves, Councilor At-Large, City of New Bedford

See transcript pages 97-105.

Councilor Alves stated that present with him is Councilor Joseph Lopes. He stated that he is Chairman of the city's gaming committee and has been a city councilor for 20 years. He stated that he is here to seek support for opening the region to commercial bidders. He stated that he intends no disrespect to the Tribe and supported the first major effort in the Commonwealth to introduce tribal gaming. He stated that he is here for the opportunity to fight for economic and employment opportunities in his community. He requested that the Commission not lock his community, or any community in Region C, out of the opportunity to open fair competition to apply for a license. He pointed out that some have stated that no developer would want to apply for a casino in Region C knowing that the Tribe may open a competing casino. However, he is aware of a developer who is interested in the region and has already spent over $5 million in studies. He stated that the Governor is committed to providing the Tribe with an opportunity. Many people are also committed to ensuring that the opportunity is not restricted, limited, or discriminatory, but rather open, above board and fair for everyone. He asked the Commission to open Region C to all applicants, as the fate of his community's employment and economic development opportunities, and those of other cities and towns in Region C, are in the Commission's hands.

Allin Frawley, Vice Chairman Middleborough Board of Selectmen

See pages 105-114.

Selectman Frawley stated that he is here to ask the Commission to consider opening Region C to commercial bids in a parallel track with the Tribe for a gaming license. He stated that Middleborough has been dealing with the issue of tribal gaming for over six years, longer than

any other municipality in the state. He stated that the town has learned quite a bit about this Tribe and tribal gaming on a local, state, and federal level. He stated that in 2007 Middleborough negotiated an intergovernmental agreement with the Tribe and passed a local referendum vote in support of a tribal casino by almost 2:1. In the fall of 2007 the Tribe submitted its first land into trust application to the BIA, and in a notice dated January 19, 2012, the BIA returned the application as incomplete and no longer under consideration. He stated that the Tribe never notified its tribal members of that decision, nor did it notify the Town of Middleborough.

He stated that as of June 1, 1934 the federal government had not officially recognized the Mashpee Wampanoag Tribe as being under federal jurisdiction. He read a letter from the Department of Interior on the case of the Mashpee Wampanoag versus New Seabury Corporation for the return of their native lands dated October 2, 1937. He stated that no federal public lands exist in the original thirteen colonies and the Department of the Interior could not establish otherwise. He expressed concern that the Tribe is excluding surrounding communities from the tribal casino process and stated that, in the negotiation of the first and second state tribal compact, the Tribe did not contact a single community regarding the potential impacts.

Selectman Frawley stated that, in reading the Commission's mission statement, he is confused at how communities surrounding the Tribe's proposed casino have fewer protections than communities surrounding a proposed commercial casino have. He expressed concern that the tribal casino enterprise will not go through any of the background checks that the Commission requires of other applicants. He asked that the Commission consider the numerous hurdles that this Tribe will face in its pursuit, the significant risk of the land in trust acquisition failing, and the possibility that any tribal casino be encumbered by numerous, valid, and time-consuming lawsuits. He stated that this Tribe, eight months after the initial deadline, does not have a valid state tribal compact and is no closer to receiving land in trust today than it was in January 2012.

Kerri Babin, President & CEO of the Taunton Area Chamber

See transcript pages 114-115.

Ms. Babin stated that she is here to advocate for what the proposed casino projects would bring to the region. The Chamber believes that regardless of whether a casino in Region C is tribal or commercial, it will bring much needed jobs. She stated that when considering all proposals the Chamber hopes that the Commission considers the benefits not only to the host community, but also to the surrounding communities. She stated that job creation must be in the forefront of any proposal and the greatest consideration in the decision to award a license.

Marsha Sajer, Attorney Representing KG Urban

See transcript pages 115-127.

Ms. Sajer stated that she has great experience in tribal gaming and land in trust, and her role is typically to advise state governments on these issues. She provided background information on the Constitution as it pertains to tribes. She stated that tribal gaming is not commercial gaming, but rather government gaming that serves as an economic engine to allow the tribal government

to support the tribe. She provided detailed background information on the Supreme Court's Carcieri decision in 2009. She stated that moving forward the Tribe must first overcome a Carcieri hurdle and then pass the NEPA process, which has been running for six years or more. She stated that all the progress that the Tribe has made thus far, including the compact, is without legal effect until and unless the Tribe can get land in trust.

Ms. Sajer stated that KG Urban recognizes that a commercial license in Region C is very valuable. She cited studies that anticipate revenues of about $600 million annually. She stated that by keeping this region open in the hope that a Tribe may one day build on land that is not now, nor may ever be, Indian land the Commission is imposing a burden on a region that is most in need of economic development. She stated that holding the region open amounts to a loss to the Commonwealth of $150 million a year, or $1.5 billion over ten years. She asked on behalf of her client that the Commission open Region C to commercial bidding.

Elias Patoucheas, President of Claremont Corp.

See transcript pages 127-130.

Mr. Patoucheas stated that he is president of a 45-year-old family owned real estate investment company headquartered in Southeastern Massachusetts. He stated that he is here to support competition for commercial gaming in Southeastern Massachusetts. He stated that the obstacles facing the Tribe's land in trust application are insurmountable, and the Commission could wait years before knowing for sure whether the Tribe is able to build a casino. He stated that Southeastern Massachusetts needs the economic stimulus and jobs today. He was concerned that Region C is falling behind while the rest of the state has the opportunity to prosper from commercial gaming. He stated that he has spoken to many of the top gaming companies in the country who are interested in this region but are reluctant to take action until the Commission opens the region to commercial gaming. He stated that the region will benefit from competition in this region.

Chairman Crosby asked if the companies with which Mr. Patoucheas has spoken were concerned with the possibility of having a tribal casino in the same region that would not be subject to the 25% tax burden on Commercial applicants. Mr. Patoucheas stated that gaming is all about risk and these companies are aware of the length of time it will take to get land into trust and are not concerned.

Michelle Littlefield, Chair of Preserve Taunton's Future

See transcript pages 130-143.

Ms. Littlefield stated that she appreciates the transparent and open process that the Commission has provided and she wishes that the political process her community faced a year ago with this Tribe were as transparent. She stated that 32 states, including Massachusetts, signed onto an amicus brief that supported the Carcieri decision, and that is why a Carcieri fix will never pass through the federal legislature. She noted that she is disappointed that the elected officials for Taunton and the Tribe felt the need leave immediately after present their point of view. She stated that others represented that the vote in Taunton passed overwhelmingly. She stated that

the proposed location for this casino, Ward 4,voted overwhelmingly against the project, as did Ward 3.

Ms. Littlefield pointed out that the Tribe's land in trust application is incomplete, as the Federal Register does not list the land as being in trust. She stated that the Tribe has applied for dual reservation status, for land in Taunton and Mashpee, a status that the BIA has never approved. She stated that her organization has retained an attorney and conducted extensive research supporting their opinion that this Tribe does not qualify for land in trust. She read aloud a letter prepared by their attorney, Adam Bond. She stated that the best course of action for the Commission to take at this point regarding Region C would be to bet on a commercial casino, having a 25% tax on gaming revenues and significant community mitigation and regulatory oversight, and let the chips fall where they may with the Tribe.

Thomas Flaherty, Vice President of Sprague Operating Resources

See transcript pages 143-149.

Mr. Flaherty stated that his company is headquartered in Portsmouth, New Hampshire, and owns the property in New Bedford where KG Urban Enterprises intends to construct a gaming facility if it receives a gaming license. He stated that they began to work with KG Urban on this site in 2007 and he provided information on what work completed since that time. He stated that the appeal of the site is its natural beauty and majestic view of the waterfront. He stated that a gaming facility would provide thousands of jobs to the region. He stated that construction on this site could begin very quickly if the Commission grants a commercial license.

Stephen Carroll, Real Estate Manager NSTAR

See transcript pages 149-154.

Mr. Carroll described the history of the site on which KG Urban would like to build. He stated that KG Urban has done all the due diligence on this site and its level of detail and effort is impressive. He stated that NSTAR still needs a location in New Bedford so KG Urban has secured another site for it. He stated that his intention today was to address the readiness and ability of KG Urban to pursue a license in Region C.

David Fenton, Business Manager, Electricians Union Hall

See transcript pages 154-156.

Mr. Fenton stated that he is here to say, "let's get this process going." He stated that the Tribe is on the cusp of overcoming all hurdles to construction and it hopes that the Commission will keep this process going to create jobs.

Chairman Crosby stated that the huge data point is the timing. He stated that the legislative intent was to give the Tribe a chance but not let this process go on forever. The Commission has an important decision to make. He thanked everyone for their participation.

Motion made to adjourn, motion seconded and carried unanimously.

List of Documents and Other Items Used at the Meeting

1. Massachusetts Gaming Commission March 21, 2013 Notice of Meeting and Agenda
2. February 28, 2013 Massachusetts Gaming Commission Minutes
3. March 20, 2013 Memorandum Regarding Recommendation Regarding Research Agenda Responses
4. List of Speakers for March 21, 2013 Public Meeting #59
5. Support for Speaker Requests
6. List of Public Written Comments
7. Public Written Comments

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

RPA ELECTION

Applicant	Yes, is interested in utilizing some or all of the RPA services and will attend planning/scoping meeting	Has not yet determined if it is interested in using some or all of the RPA services but will attend planning/scoping meeting.	Is not interested, at this time, in using some or all of the RPA services and will not attend a planning/scoping meeting
Crossroads Massachusetts, LLC	X		
Hard Rock MA		X	
MGM Springfield	X		
Mohegan Sun	X		
Penn National Gaming, Inc.		X	
Plainridge Racecourse	X		
Raynham Park	X		
Sterling Suffolk Racecourse, LLC		X	
Wynn LLC		X	

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Massachusetts Gaming Commission / 2013-03-27 Summary Schedule Update

2013: Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec
2014: Jan | Feb | Mar | Apr | May

Data Date 03/27/2013

SUMMARY SCHEDULE

- Local Negotiations & Vote / Category 2 — 2/1 – 10/4
- Complete Local Negotiations & Vote / Category 1 — 10/4 – 12/31
- Commission Awards 1st License / Category 1 — 2/26
- Regulations - Phase 2 — to 6/7
- RFA - Phase 2 (Application) Category 1 Licenses — 6/7 – 12/31
- Arbitration Category 1 (If Needed) — 12/31 – 4/28
- MGC Evaluation - Applicants Phase 1 (Background Investigations / Suitability of Applicants) — to 10/15
- Commission Evaluates Proposal - Category 1 License — 10/15 – 2/26
- Racing Division — to 5/8
- Support Team of Advisors — 5/17 – 7/25
- Commission Evaluates Proposal - Category 2 License — 7/26 – 12/2
- RFA - Phase 2 (Application) Category 2 License — 6/8 – 10/4
- Arbitration Category 2 (If Needed) — 10/4 – 1/30
- F HIRES — to 7/12
- Meet Host and Surrounding Communities — to 12/31
- Research Agenda (Baseline Study / Studies of the Social and Economic Impacts of Gambling / Individual Studies) — to 2/25

DETAILED SCHEDULE

- Meet Host and Surrounding Communities — 279 — to 12/31
- Host Community Agreement Executed — 2/1 – 11/1 — 219
- Host Community Agreement Approved by Referendum — 11/1 – 12/31 — 60
- Surrounding Community Agreements Executed — 2/1 – 12/31 — 194
- Commission Awards 1st License - Category 1 — 2/26

MGC Evaluation - Applicants Phase 1 (Background Investigations / Suitability of Applicants)

- Prepare & Submit Phase 2 Applications - Category 1 License — 6/8 – 12/31 — 207
- Background Investigations / Suitability of Applicants - Phase 1 — to 6/28 — 93
- Evaluation Reports (All Applicants) — 6/28
- MGC Review (C1) — 6/28 – 8/5 — 38
- Hearings Period — 8/5 – 10/1 — 57
- Determine Suitability (C1) — 10/1 – 10/15 — 14
- Approval of Applicants Category 1 — 10/15
- MGC Receives Applications Phase 2 — 12/31
- Evaluate Proposals — 10/16 – 1/1 — 76
- Commission Reviews Responses to RFA-2 (C1) — 1/1 – 2/26 — 57
- SC File Application — 1/1 – 1/14 — 14
- MGC Decides SC — 1/15 – 1/28 — 14
- Negotiation & Sign SC — 1/29 – 2/27 — 30
- Arbitration — 2/28 – 3/29 — 30
- MGC Review RFA-2 and Awards License C2 — 3/30 – 4/28 — 30
- Special Election Senate Vote — 6/25
- HCA — 8/4
- Host Community Agreement Executed / Category 2 — 2/1 – 8/5 — 130
- Approve HCA via Referendum — 10/4
- HCA Approved by Referendum / Category 2 — 8/5 – 10/4 — 61
- Surrounding Community Agreements Executed / Category 2 — 2/1 – 10/4 — 191
- Prepare & Submit Phase 2 Applications - Category 2 — 6/8 – 10/4 — 119
- Deadline for MGC Receipt of C2 Applications — 10/4
- Evaluation Reports (Category 2 License Applicants) — 4/30
- MGC Review — 5/1 – 5/29 — 29
- Hearings Period (C2) — 5/29 – 7/11 — 43
- Determine Suitability — 7/11 – 7/25 — 14
- Approval of Applicants C2 — 7/25
- MGC Evaluates Early C2 Proposals — 7/26 – 10/5 — 72
- MGC Evaluates All C2 Proposals — 10/5 – 12/2 — 58
- Commission Awards Category 2 License — 12/2
- SC File Application — 10/5 – 10/18 — 14
- MGC Decides SC — 10/19 – 11/1 — 14
- Negotiation & Sign SC — 11/2 – 12/1 — 30
- Arbitration — 12/2 – 12/31 — 30
- MGC Review RFA-2 and Awards License C2 — 1/1 – 1/30 — 30

MGC - Support Team of Advisors

- Write RFP — 5/17 – 5/31 — 14
- Publish RFP — 5/31 – 6/28 — 28
- Award Contractor — 6/28 – 7/25 — 28

Regulations - Phase 2

- Notice LGAC — 3/29
- SOS — 4/12
- Filing
- Publish MA Register — 4/26
- Public Hearing — 5/3
- Draft Regulations - Phase 2 — 2
- File — 3/30 — 13
- Receive Comments (2) — 4/13 – 5/3 — 21
- Incorporate Comments — 20
- Submit Approved Regulations MA Register — 5/23 — 15
- Publish MA Register P2 — 6/7

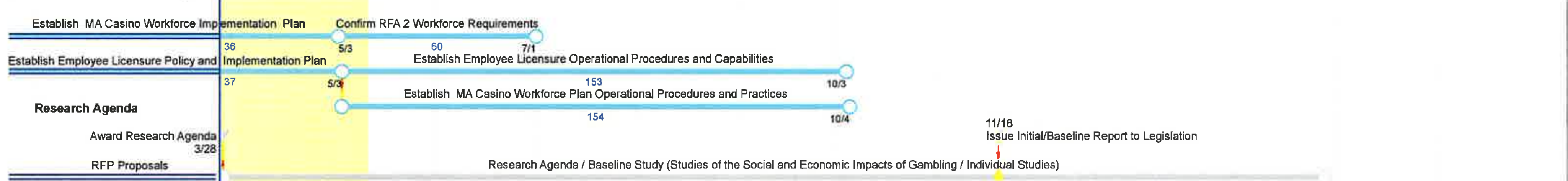
LEGEND

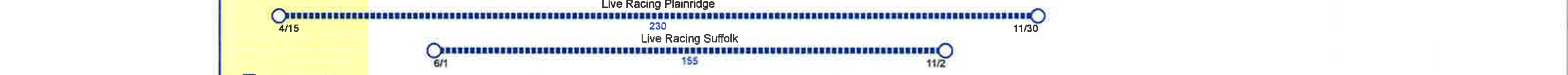
ACT DESCRIPTION — Start Date, Duration (Calendar Days), End Date

SUMMARY ACTIVITY — Start Date, End Date

2013 | 2014

Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec | Jan | Feb | Mar | Apr | May





Publish Regs Phase 2
3/29
Public Hearing
4/22
5/9
Approved Regs Phase 2 (Emergency)
7/19
Publish Regs MA Register
Phase 2
Filing
3/4
10
3/15
Receive Comments
3/28
26
4/22
Rule Making Process (Phase 2)
5/9
60
Regs to Register
7/7
11
7/19
Incorp Comments
4/23
12
5/8

Award Lab Contract
3/12
Negotiate Contract
2/25
12
3/12

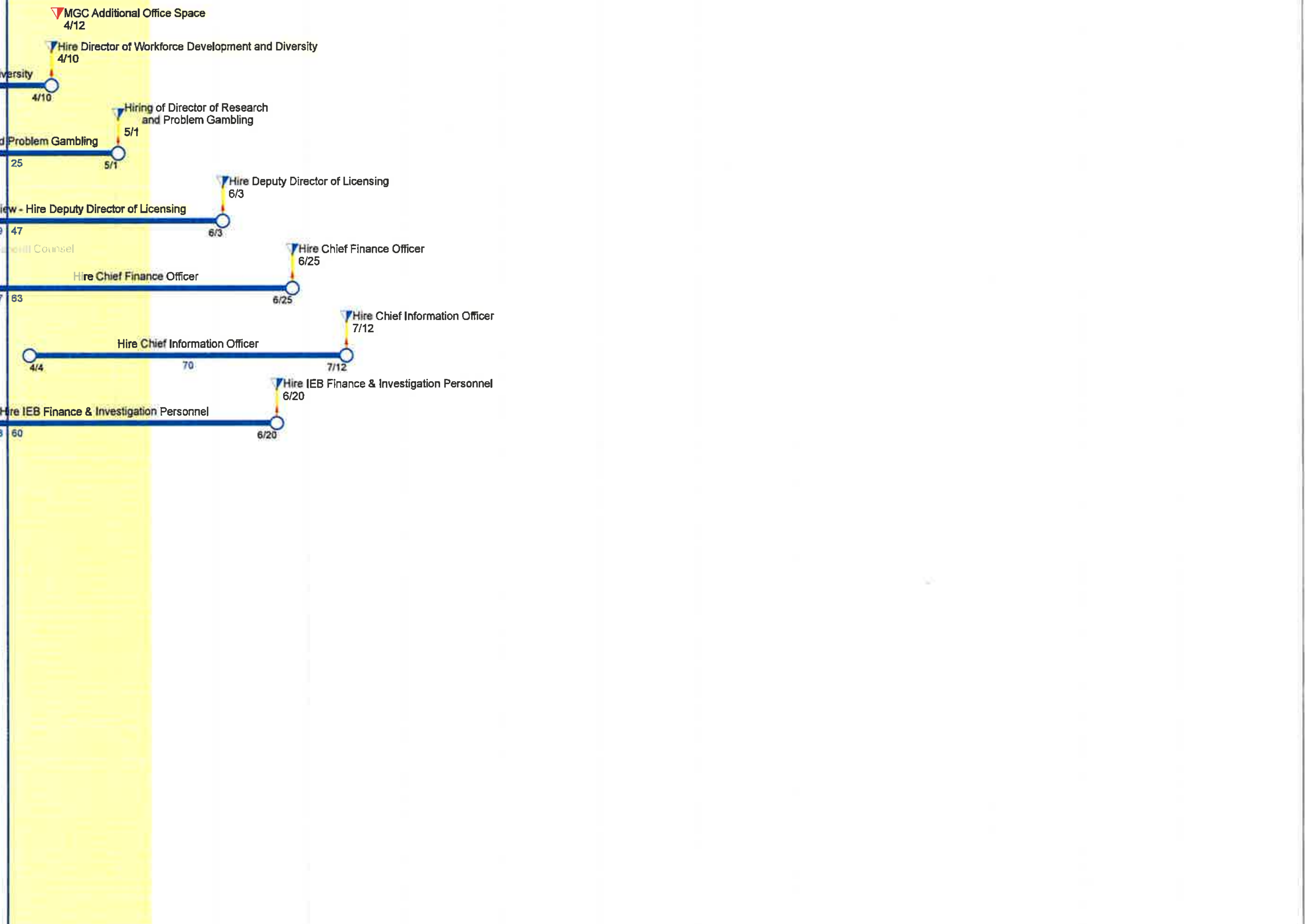
PO Auditing Software
3/12
Auditing Software Implemented
4/30
Implement Auditing Software
Negotiate Contract
3/1
3/12
8
15
34
4/30

Administration

Develop Requirements & Procurement
EDMS Fully Integrated
8/28
Procurement Responses and Review
4/16
42
6/13
Staged Implementation
53
8/28

PMA Consultants

B2


2013
2014
Feb
Mar
Apr
May
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Sep
Oct
Nov
Dec
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Feb
Mar
Apr
May
MGC - Staff Hires
MGC Additional Office Space
4/12
Hire Director of Workforce Development and Diversity
4/10
rector of Workforce Development and Diversity
4/10
Hiring of Director of Research and Problem Gambling
5/1
Hiring of Director of Research and Problem Gambling
1/28
25
5/1
Hire Deputy Director of Licensing
6/3
Advertise & Interview - Hire Deputy Director of Licensing
2/15
29
47
6/3
Hire Chief Finance Officer
6/25
Hire Chief Finance Officer
3/19
63
6/25
Hire Chief Information Officer
7/12
Hire Chief Information Officer
4/4
70
7/12
Hire IEB Finance & Investigation Personnel
6/20
Hire IEB Finance & Investigation Personnel
3/4
18
60
6/20
PMA Consultants

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MGC Master Schedule

Category 2 Licensing Schedule Scenarios

Massachusetts Gaming Commission

February 28, 2013

Current MGC Schedule Update

Category 2 License Issue Date Targeted for Early December 2013

2013

Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec Ja

MGC Evaluation - Applicants Phase 1
(Background Investigations / Suitability of Applicants)

Background Investigations / Suitability of Applicants - Phase 1 — 6/28

Special Election Senate Vote 6/25

HCA 8/4

10/4 Approve HCA via Referendum

Host Community Agreement Executed / Category 2 — 2/1, 8/5

HCA Approved by Referendum / Category 2 — 61 — 10/4

Surrounding Community Agreements Executed / Category 2 — 2/1, 10/4

Deadline for MGC Receipt of C2 Applications 10/4

Evaluation Reports (Category 2 License Applicants) 4/30

Prepare & Submit Phase 2 Applications - Category 2 — 6/8, 119, 10/4

7/25 Approval of Applicants C2

Determine Suitability

MGC Review — 5/1, 29, 5/29

Hearings Period (C2) — 43, 7/11

147/25

MGC Evaluates Early C2 Proposals — 7/26, 72, 10/5

MGC Evaluates All C2 Proposals — 58, 12/2

Commission Awards Category 2 License 12/2

Current Schedule

Scenario 1 – As Early As Possible
Issue License Date Targeted for Early September 2013

Scenario 1 – As Early As Possible
Issue License Date Targeted for Early September 2013

Scenario 1 Challenges

- ✓ MGC to complete the Background Investigation for Category 2 Applicants by April 15th, 2013 – *2 weeks earlier than originally planned*
  - ✓ Host Community Agreement (HCA) executed no later than May 16th, 2013 – *2.5 months from today*
  - ✓ Hold the HCA referendum no later than mid July 2013
  - ✓ Surrounding Communities Agreements executed no later than July 15th, 2013
  - ✓ Applicants to Submit their applications no later than July 15th, 2013 – *After the HCA gets approved by referendum.*
- ✓ MGC to complete its proposal evaluation process and award license by Sept 10, 2013- *83 days earlier than originally planned.*
- ✓ Arbitration process by Surrounding Communities could potentially delay the license issuance date by 7 weeks.

Scenario 2 – Optimistic HCA date
Issue Date Targeted for Late September 2013

Scenario 2 - Optimistic HCA date
Issue License Date Targeted for Late September 2013

Scenario 2 Challenges

- ✓ MGC to complete the Background Investigation for Category 2 Applicants by April 15th, 2013 – *2 weeks earlier than originally planned*.
  - ✓ Host Community Agreement (HCA) executed no later than June 3rd, 2013 – *3 months from today.*
  - ✓ Hold the HCA referendum no later than late July or early August 2013
  - ✓ Applicants to Submit their applications no later than August 2nd 2013 – *Once the HCA gets approved by referendum*.
- ✓ MGC to complete its proposal evaluation process and issue license by Sept 28, 2013- *65 days earlier than originally planned*.
- ✓ Arbitration process by Surrounding Communities could potentially delay the license issuance date by 7 weeks.

Scenario 3 – Referendum in September
Issue Date Targeted for Early November 2013

Scenario 3 – Referendum in September
Issue License Date Targeted for Late November 2013

Scenario 3 Challenges

- ✓ MGC to complete the Background Investigation for Category 2 Applicants by April 15th, 2013 – *2 weeks earlier than originally planned*
  - ✓ Host Community Agreement (HCA) executed no later than July 12th, 2013 – *4.5 months from today*
  - ✓ Hold the HCA referendum no later than first Tuesday after Labor Day – September 2013
  - ✓ Applicants to Submit their applications no later than September 10th, 2013 – *After the HCA gets approved by referendum.*
- ✓ MGC to complete its proposal evaluation process and issue license by November 6 2013- *26 days earlier than originally planned*
- ✓ Arbitration process by Surrounding Communities could potentially delay the license issuance date by 7 weeks.

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REPORT OF THE MASSACHUSETTS GAMING COMMISSION TO THE SENATE AND HOUSE OF REPRESENTATIVES PURSUANT TO CHAPTER 194, SECTION 104, OF THE ACTS OF 2011, ANALYZING THE COMMONWEALTH'S PARI-MUTUEL AND SIMULCASTING LAWS, WITH RECOMMENDATIONS AS TO THEIR EFFICACY AND NEED TO BE REPLACED

April, 2013.

INTRODUCTION

Section 104 of Chapter 194 of the Acts of 2011 directs the Massachusetts Gaming Commission ("Commission") to analyze the pari-mutuel and simulcasting laws in effect on the date of its passage, and to include in that analysis a review of the efficacy of those laws and the need to replace them "pursuant to the continuation of chapters 128A and 128C of the General Laws in this act." The Commission is further directed to report its findings and recommendations, together with drafts of legislation necessary to carry those recommendations into effect, by filing the same with the clerks of the Senate and House of Representatives and with the House and Senate chairs of the Joint Committee on Economic Development and Emerging Technologies.

In accordance with those directions the Commission has reviewed and analyzed the efficacy of those pari-mutuel and simulcasting laws (collectively, the "Racing Laws"), and considered the need to replace them. The Commission's review and analysis included a consideration of how to harmonize the Racing Laws with G.L. c. 23K (Expanded Gaming Act"), in particular as respects simulcasting. The Commission also looked at generally updating the Racing Laws, including some aspects of the current simulcast framework and formulas, in order to assess whether they were in line with best practices, current trends and with generally accepted standards in the racing industry nationwide. From its review and analysis, the Commission's conclusion is that very substantial revisions to the current racing laws are necessary.

Because of the breadth of the recommended revisions to the current racing and simulcasting regulatory framework, the Commission has submitted its recommended statutory changes in the form of a single "omnibus" proposed new chapter that integrates the content of current chapters 128A and 128C, amended to reflect those recommended statutory changes (hereinafter the "Proposed New Chapter").

The Legislature's repeal of chapters 128A and 128C of the General Laws as of July 31, 2014 (pursuant to St. 2011 c. 194, §§39 and 41) will abolish the current racing regulatory infrastructure. That repeal will necessitate legislative action prior to that date in order to continue the authorization of live racing, pari-mutuel wagering and simulcasting in the Commonwealth by racing licensees. Should reauthorization through such legislative action not occur, racing in Massachusetts and wagering thereon would end, and the provisions of the Extended Gaming Act linking continued live racing and simulcasting to retention of a racing licensee's gaming license (§§19 and 20), and the increasing of the minimum number of racing days to 125 (§24), as well as the establishment and operation of the Race Horse Development Fund (§60), would become moribund. The Proposed New Chapter constitutes the Commission's recommendation as to the appropriate legislative action that would allow continued racing and simulcasting in a modernized, uniform and fair statutory and regulatory framework as between gaming establishments and racetracks.

THE REVIEW AND ANALYSIS PROCESS

In establishing how gaming funds earmarked for the racing industry in the Race Horse Development Fund should be allocated, §60 of the Expanded Gaming Act adopts a collaborative, committee approach, rather than a particularized, fixed statutory allocation, for determining the size and apportionment of distributions as between thoroughbred and standardbred beneficiaries. While §60 provides a broad funding distribution outline (80% to horsemen and purse accounts; 16% to breeding programs; and 4% for health, pension, life insurance and other benefits for horsemen beneficiaries, including jockeys and drivers), it leaves to the horse racing committee,[1] which includes thoroughbred and standardbred horsemen's organizations, "to make recommendations on how the funds received . . . shall be distributed between thoroughbred and standardbred racing facilities to support the thoroughbred and standardbred horse racing industries under this section."

In its review and analysis the Commission has tried to broaden the use of this collaborative approach. Participation by the horsemen in the decision-making process for revenue allocations to thoroughbred and standardbred purses has been at or near the top of the list of issues most often raised by them when reform of the Racing Laws is discussed. Taking the lead from the Legislature in its incorporation of the voice of racing

[1] This horse racing committee is comprised of "the governor's designee, . . . the treasurer's designee, . . . the chair of the commission or his designee, . . . [an appointee of] the New England Horsemen's Benevolent & Protective Association and the Massachusetts Thoroughbred Breeding Program, . . . [and an appointee of] the Harness Horseman's Association of New England and the Massachusetts Standardbred Breeding Program."

industry beneficiaries in decision-making affecting them, the Commission has sought, as far as is reasonably practicable, to make recommendations that are consistent with that collaborative approach. One illustration is the Commission recommendation herein that Suffolk Downs and Plainridge be permitted the freedom to negotiate their own intrastate simulcasting signal fees (albeit with a cap), as is done in most other jurisdictions.

In the process of the Commission's review and analysis of the Racing Laws for this report, Commission staff have consulted with and invited written comments from a broad range of the racing industry stakeholders in Massachusetts. Copies of written comments received by the Commission have been attached hereto as Attachment I. Commission staff also met with the thoroughbred horsemen and their representatives for a round-table discussion, to which the standardbred horsemen and their representative were also invited. Many of the ideas received as a result of such consultation significantly informed the Commission's recommendations to the Legislature.

OVERVIEW OF THE RACING LAWS

The provisions of G.L. c. 128A relate broadly to the live racing licensing process and to the benefits and obligations of licensure, including license revocation and suspension (§§2-4, 11); the rules and restrictions related to pari-mutuel wagering (including account wagering) and to the keeping of financial records related thereto (§§5-6, 10B); the employment of stewards, police officers, veterinarians and the like, and to periodic inspections of licensed premises (§§7-8A); the Commission's broad regulatory

powers (§§9 and 9B); the licensing and registration of licensee employees (§§9A and 10); exclusion of persons detrimental to the proper and orderly conduct of racing (§10A); the necessity of Commission approval for change of control in a licensee (§11C); punishment for non-compliance with the chapter (§§12, 13, 13A); prohibition of drug use or conspiracies to affect a horse's performance (§§13B and 13C); county approval of licenses (§§14, 14B, 14C and 14D); and the prohibition of dog racing (§14E).

The provisions of G.L. c. 128C (individually, the "Simulcast Law") relate broadly to establishing the authority of live racing licensees to simulcast, and conditions and restrictions thereon (§§2 and 2A); pari-mutuel pools (§3); treatment of unclaimed wagers, known as "outs" (§3A); regulation of the takeout from simulcast wagers at guest tracks simulcasting races from both within and from outside the Commonwealth (§§4, 5, 6); limitation on actions to recover winnings (§5A); injuries to and disposition of greyhounds, their transportation, and reporting thereon (§§7, 7A and 7B); and the Commission's power to promulgate regulations (§8).

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SUMMARY OF RECOMMENDATIONS

Other than the statutory changes recommended herein, and to the extent evident from the draft Proposed New Chapter, the Commission is satisfied that the Racing Laws themselves together with the broad powers granted to the Commission under the Expanded Gaming Act regarding pari-mutuel wagering and simulcasting cooperate to

effectively authorize all regulatory action necessary for comprehensive regulation of a modernized racing industry in Massachusetts through fair, effective and timely regulation of live horse racing and pari-mutuel wagering, including wagering on simulcast races.

The statutory changes to the Simulcast Law recommended by the Commission foster a uniform regulatory system for all entities authorized or licensed by the Commission to simulcast live races for pari-mutuel wagering purposes. They establish, as far as is practicable, equilibrium through fair and equitable treatment of racing and non-racing entities authorized to simulcast in Massachusetts. These changes would liberate licensees from the complex rules of §2 of chapter 128C (dealing with who can simulcast what kind of signal, at what times, for what premiums and prescribed fees) that a decade ago seemed appropriate to manage signal allocation so as to counteract the perceived threat to a diverse industry from unrestricted simulcasting. In the Commission's view, and consistent with the approach taken by other racing states, that kind of framework is no longer necessary or desirable; the business model for the racing industry across America has changed. Moreover, in light of the authority under the Expanded Gaming Act to grant simulcasting licenses to gaming licensees and entities *previously* licensed under the Racing Laws, continued operation of the current simulcast system is impracticable and contains inherent imbalance as between racing and non-racing licensees.

The Commission also recommends discontinuance of the current prohibition of rebating and wagering on credit under the Racing Laws. As explained below, repeal is

needed in order to place pari-mutuel wagering on the same footing as gaming. Finally, the Commission recommends abolishing the current costly and cumbersome trust fund system used to regulate licensee capital improvements and promotional activities; the Commission recommends replacing it with funding specifically earmarked for "backstretch" infrastructure improvements that will improve the safety and security of workers and horses. The "backstretch" is where barns, stalls, tack-rooms, wash stalls and dormitories that house employees who care for the horses are located.

STAKEHOLDERS' VIEWS

In the course of the Commission's review and analysis on this project, Commission staff invited racing stakeholders and their organizations to submit written comments in connection therewith. Invitees included all racing meeting licensees (including the former greyhound tracks), and the thoroughbred and standardbred horsemen and breeders. From the comments received (and as is well-known in the industry), it is clear that pari-mutuel wagering on simulcast races is and has been for many years the primary economic engine for the survival of the racing industry in Massachusetts and across the country. Without simulcasting revenues, the racing industry, as a stand-alone industry, would be imperiled. Such peril would affect not only the racetracks but also dependent state agricultural and farming interests in breeding, stabling, training, feeding, and maintaining open space within the Commonwealth.

Suffolk Downs, in its written submission to the Commission, declared that "simulcasting has become the economic lifeblood of the racing industry, and any loss of simulcasting rights would devastate any racing licensee." The standardbred breeders, in their comments, wrote that "an end to simulcast extensions would have a devastating impact on the breeders program and the farming sector in the Commonwealth." Plainridge commented that current law "maintains a carefully considered and developed balance of racing and simulcasting interests that have been forged since 1992," but urged that simulcasting should be limited to locations at which live racing occurs. Clearly, the success of the simulcast model is critical to the profitability of the racetracks and as a source of funding for purses and breeding programs. The thoroughbred horsemen, however, criticize the current simulcasting schedules, and fee and premium formulas, as "carve-outs" for tracks at the expense of purses and breeding programs.

In Commission staff's meetings and discussions with thoroughbred horsemen and their representatives (and in their written submissions) there were calls for a "universal percentage" takeout from all simulcast wagering to be allocated to purses and breeding programs. The sentiment expressed by the thoroughbred horsemen was that, rather than "tweaking" the simulcast rules, those rules should be rewritten in their entirety. They contend that the thoroughbred industry over the years has subsidized the greyhound and standardbred industries through below-market premiums, and sometimes (in view of the statutory exemptions) no premiums at all. These horsemen contrast the flat, uniform 10% takeout from simulcast revenues under §7(b) of the Extended Expanded Gaming Act with

the premium formulas and exemptions in the existing Simulcast Law. They suggest that the simulcasting provisions of the Expanded Gaming Act reveal a legislative intent to replace the current complexities of §2 of the Simulcast Law with the kind of flat 10% takeout provided for in §7(b).

Before turning to the review and analysis of the issues that are the subject matter of its recommendations for legislative changes, the Commission explains its decision to refrain from offering any recommendation with respect to the issue of whether G.L. c. 128A, §14E should be amended to prohibit the simulcasting within Massachusetts of greyhound races occurring outside Massachusetts.

THE SIMULCASTING OF GREYHOUND RACING

Because G.L. c. 128A, §14E prohibits live greyhound racing within Massachusetts, the Proposed New Chapter contains no references to live dog racing. Notwithstanding the urging of Grey2K (a sponsor of the initiative petition that resulted in enactment of chapter 388 of the acts of 2008), however, the Commission has declined to consider the issue whether the scope of §14E should be enlarged to prohibit simulcasting of dog races occurring outside Massachusetts. The Commission has concluded that that issue, involving as it does whether currently legal activity ought to be rendered illegal, especially when such a change would alter the scope of a successful initiative petition, is beyond the scope of the St. 2011 c. 194, §104 mandate for this Report.

That mandate directs the Commission to analyze the efficacy of the Racing Laws and, in furtherance of such efficacy, to make recommendations regarding whether those laws need to be changed or replaced. The Commission has concluded that the *regulatory efficacy* of the pari-mutuel and simulcast laws is not dependent upon the nature (horses or dogs) of the races being simulcast from outside Massachusetts, and not within the scope of that assignment.

Perhaps with that live racing requirement in mind, St. 2011 c. 194, §92 granted the former Wonderland and Raynham greyhound tracks statutory licenses "as greyhound racing meeting licensees until July 31, 2014," with the caveat that "the licensees shall continue to be precluded from conducting live races during that period . . . ." The Commission cannot presume to anticipate whether and what kind of action might or might not be taken by the Legislature regarding these former greyhound tracks as that date approaches. It has therefore refrained from comment or recommendation.

REVIEW, ANALYSIS AND RECOMMENDATIONS

(i) Current Simulcasting Authorizations

While gaming regulation and pari-mutuel wagering regulation have been merged in a single commission, the authority to regulate each continues to be derived from separate statutory authority; gaming is governed by the Expanded Gaming Act, and pari-mutuel wagering and simulcasting (with few exceptions) by the Racing Laws. This

retention of a dual-source regulatory authority is evident from provisions of the Expanded Gaming Act (e.g., §§19, 20, 24 and 60)[2].

The Commission considers the Legislature's repeal of chapters 128A and 128C, in the context of the continued references to those chapters in the Expanded Gaming Act, as a signal that the Commission's assignment in St. 2011 c. 194, §104 includes the presentment of a new chapter that would incorporate Commission recommendations regarding a modern framework for live racing in Massachusetts, including the integrating of racing and non-racing licensees into a single, uniform simulcasting formula. Consequently, the Commission has incorporated in the Proposed New Chapter provisions that , to the extent reasonably possible given the differences between them, harmonizes the regulatory framework of a non-racing simulcast license issued pursuant to the Expanded Gaming Act with that applicable to the racing licensee who is qualified to simulcast as a non-gaming, racing licensee[3].

Under current G.L. c. 128C, §2, regulation of the right of a racing meeting licensee to simulcast affects, among other things, (1) the kind of racing permitted to be

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[2] For racing licensees that also hold a gaming license, §§19 and 20 make their continued gaming licensure conditional upon performance of their live racing and simulcasting obligations under M.G.L. c. 128A and c. 128C; §24 increases the live racing minimums for entitlement to simulcast; and §60 provides that "the commission shall make distributions from the Race Horse Development Fund to each licensee under chapter 128A."

[3] Under the Racing Laws (and in the Proposed New Chapter) a racing meeting licensee has, by virtue of its racing license the right to simulcast, conditional upon compliance with various conditions affecting the exercise of that right However, with passage of §7(b) of the Expanded Gaming Act a racing license is no longer a necessary predicate for simulcasting: "[t]he commission may grant a simulcasting license to a gaming establishment or an entity previously licensed pursuant to chapter 128A and chapter 128C."

simulcast and the timing of such simulcasting, (2) the premiums payable to Massachusetts tracks according to the type of signal exhibited (thoroughbred or standardbred), and (3) the prescribed fees to be paid to local licensees, again dependent on the type of signal simulcast.

Under §2, Suffolk Downs, as the Commonwealth's only thoroughbred racing meeting licensee, may simulcast unlimited thoroughbred races; it may also simulcast unlimited harness races, except during live racing performances[4] at Plainridge (the only harness racing meeting licensee). Suffolk Downs must carry Plainridge race cards and pay 11% of gross handle to Plainridge for these compulsory *intrastate* race cards. Suffolk Downs must also pay Plainridge a premium of 2% of the gross handle with respect to any *interstate* harness signals received (except during a 12-week period chosen by Suffolk). Similarly, Plainridge may carry unlimited harness races; it may also carry unlimited thoroughbred races except during live racing performances at Suffolk Downs. Plainridge must also carry Suffolk's race cards (and must pay Suffolk 11% of gross handle for these compulsory *intrastate* race cards). Plainridge may also carry the thoroughbred racing cards from 2 California racetracks, and 2 companion cards of thoroughbred races from outside Massachusetts (on a day specified by the Commission) run at the same time as Suffolk Downs. Finally, Plainridge must also pay Suffolk a 2% premium (except during a 12-week period chosen by Plainridge, and for so-called "special events").

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[4] A "racing performance" is defined in chapter 128C as "the conduct of at least seven live races during one day."

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Turning to non-racing meeting licensee entities, §7(b) of the Expanded Gaming Act authorizes the Commission to grant simulcasting licenses to gaming licensees and to entities formerly licensed under the Racing Laws. However, §7(b) contains no statutory provisions like those, e.g., in §2 of the Simulcast Law, specifically regulating the exercise of simulcast license rights granted thereunder. In these circumstances, the Commission construes the absence in §7(b) of provisions specifying operational criteria for its simulcasting license as indicating the Legislature's desire to have the Commission offer recommendations regarding the appropriate framework for simulcasting by these §7(b) licensees. The Commission's recommendation, as the provisions of the Proposed New Chapter make clear, is that such licensees be subject to the same regulatory authority of the Commission with respect to all aspects of licensure and enforcement, including suspension or revocation of the license to simulcast, upon terms consistent with the statutory and regulatory framework applicable to simulcasting by a racing licensee.

(ii) Creating A Uniform Simulcasting Regulatory Framework

The simulcasting regulatory framework currently applicable to racing meeting licensees cannot simply be applied "as is" to simulcasting by a licensee under §7(b) of the Expanded Gaming Act. The business imperatives of gaming and those of racing are plainly not the same; and the racing industry factors behind many elements of the framework set forth in G.L. c. 128C, §2 have no obvious equivalents in gaming.

The challenge in creating a uniform simulcasting regulatory framework is in formulating regulatory criteria that, when applied in both gaming and racing contexts,

achieve results that are consistent with the interests of both, while fair as between the participants. In the Proposed New Chapter, the Commission has substantially revised the current G.L. c. 128C, §2 formulas. The current §2 formulas affect (1) what races may be simulcast, (both what may not be simulcast and what must be simulcast); (2) the statutorily fixed fee to be paid for intrastate signals that a licensee is obligated to carry; (3) and premiums that must be paid by the thoroughbred licensee to the harness licensee when it carries an interstate harness signal, and vice versa. There are premium exemptions for both the thoroughbred and harness licensees related to a 12-week period designated by the licensee when no premium need be paid. In the case of the harness licensee, there are premium exemptions for so-called "special events." Under current law, the premiums fund purse accounts of the horsemen at the racetrack of the licensee that receives the premium. G.L. c. 128C, §2.

While these §2 arrangements might have worked once when only race tracks were simulcasting, they are no longer feasible as regulatory criteria for simulcasting by both racing and non-racing simulcast licensees. The Commission recommends abolishing this current system and replacing it with a simulcasting regulatory regime (similar to that generally adopted by other states that permit simulcasting) that allows those authorized to simulcast to negotiate the fees for interstate and intrastate signals (with a cap on the fees for intrastate simulcasting), subject to an obligation to simulcast Massachusetts thoroughbred and harness races.

The provisions of the Proposed New Chapter abolish the premium system, permit unlimited interstate simulcasting of horse racing by racing and c. 23K, §7(b) licensees, and compel the carriage of intrastate thoroughbred and harness signals at a negotiated fee, capped at 12%. Although simulcasting was authorized in Massachusetts in 1992, subsidizing purses through premiums dates from 2001 (St. 2001 c. 139, §18). These premiums are derived from a percentage of the wagers on simulcast out-of-state racing, not from any racing product of local horsemen. The 2001statute tapped the racetrack licensee's share of the revenue pool from these wagers on out-of-state races for badly needed purse subsidies. However, the establishment of the Race Horse Development Fund in G.L. c. 23K, §60, by providing for substantial funding from gaming, has radically altered the landscape for funding purses.

The Commission's recommendation that premiums be abolished recognizes the establishment of the Race Horse Development Fund as the primary funding mechanism for purses, breeding programs and horsemen and jockeys, and as pointing to gaming revenues as superseding premiums as a source of such funding. The Commission's proposed redirecting of unclaimed wagers from simulcasting by gaming licensees that are not racing meeting licensees, in section 17 of the Proposed New Chapter, is consistent with that understanding of the function of that Fund.

The Commission reiterates here its earlier conclusion (*See* pages 10-11) that whether simulcasting within Massachusetts of dog racing occurring outside

Massachusetts should continue to be permitted is a matter for the Legislature, and is beyond the scope of the mandate for this Report, as set forth in St. 2011 c. 194, §104.

With respect to both intrastate and interstate simulcasting, the Proposed New Chapter leaves the current takeout structure under G.L. c. 128C, §§4 and 5unchanged. With respect to unclaimed winning simulcast wagers placed with racing meeting licensees, the Proposed New Chapter also retains their current treatment pursuant to G.L. c. 128C, §3A[5]. With respect to unclaimed winning simulcast wagers placed with licensees under §7(b) of the Expanded Gaming Act, the Proposed New Chapter provides that wagers on simulcast races occurring at racetracks within Massachusetts be treated in the manner set forth in G.L. c. 128C, §3A; but that unclaimed wagers placed on simulcast races occurring outside Massachusetts be paid into the Race Horse Development Fund ("Fund"), established by G.L. c. 23K, §60.

The Commission's recommended treatment of the §7(b) unclaimed simulcast wagers is grounded on the traditional view that the proper use to which they should be put is for purse accounts. The Massachusetts simulcast licensee is not currently authorized to retain them as its own. Guided by that principle, the Proposed New Chapter provides that the §7(b) simulcast licensee return to the Massachusetts track (to be used for purses) unclaimed winnings from wagers placed on races simulcast from that

[5] Section 3A provides: "The unclaimed simulcast wagers collected by the running horse racing meeting licensee, the harness horse racing meeting licensee and the greyhound racing meeting licensees shall be deposited in a separate account under the control and supervision of the commission for payment to the purse accounts of the licensees that generated the unclaimed wagers."

track. For unclaimed wagers on races simulcast from outside Massachusetts, the Proposed New Chapter provides for payment into the Fund.

While some horsemen may oppose the recommended abolition of premiums, as taking money away from purses, the earmarking of the vast majority of Fund's revenue's for purses should more than make up for any loss occasioned by the loss of premium revenue. As indicated below, the Commission considers that the establishment of gaming as a funding source for purses has superseded the need for continuation of the premium mechanism as a funding source for purses.

The Fund is the principal statutory funding source for the racing industry from gaming. It is administered by the horse racing committee (Committee), the members of which include representatives of the thoroughbred and harness horsemen, and of the thoroughbred and standardbred breeding programs. Revenues for the Fund consist of *a minimum* of 10% of the total simulcast wagers placed with each licensee under §7(b) of the Expanded Gaming Act (the actual percentage to be set by the Commission); 9% of the gross gaming revenues of the Category 2 gaming licensee; 2.5% of the tax on gross gaming revenue from each Category 1 gaming licensee; and 5% of the Gaming Licensing Fund[6].

Section 60 provides that 80% of the funds approved by the Committee must be deposited "into a separate interest-bearing purse account, to be established by and for the

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[6] This fund receives all gaming licensing fees; it expires on 12/31/2015.

benefit of the horsemen;" thoroughbred and standardbred breeding programs receive 16%; and the remaining 4% goes to fund health and pension, life insurance and other benefits for members of horsemen's organizations, including jockeys and drivers. The principal beneficiaries, the thoroughbred and harness horsemen, sit on the Committee. As discussed above (*See, ante,* page 2), these horsemen will be directly involved in decision-making affecting the disposition, including for purses, of what are likely to be quite considerable deposits from gaming licensees into the Fund[7]. In view of the 10% minimum takeout, pursuant to §7(b) of the Expanded Gaming Act, the horsemen's and breeders' seats on the Committee, and bearing in mind the likely very substantial deposits into the Fund, the Commission considers the current system of funding through *premiums* under G.L. c. 128C, §2 to have been superseded[8].

[7] Other beneficiaries of the Fund are generally the same as those benefitting from funding under the Racing Statutes except: the various promotional and capital improvement trust funds; the Division of Fairs (not to exceed $50,000); Tufts School of Veterinary Medicine (½% of the 26% take-out from exotic wagers – total for 2011 was $22,017.09); and an amount set aside for economic assistance to stable, backstretch, etc., employees facing hardship due to illness or unforeseen tragedy ($20,000).

[8] Other than through premiums and the §7(b) 10% minimum takeout, funding for purses under c. 128A currently include (for thoroughbreds) 8.5% of the 19% takeout from straight wagers and 9.5% of the 26% takeout from exotic wagers; and (for harness) 8% of the 19% takeout and 10% of the 26% takeout. Under c. 128C, §4, if simulcasting thoroughbreds as a guest track, when the host track is in Massachusetts, 5% of the 19% goes to the host track for purses, and 8.75% of the 19% takeout and 11.75% of the 26% takeout is retained by the guest track, of which at least 3.5% of that retained amount is paid to purses; if the host track is outside Massachusetts, between 4% and 7.5% goes to purses/horsemen. Under c. 128C, §5, if simulcasting harness races as a guest track, when the host track is within Massachusetts, 5% of the 19% takeout goes to purses at the host track, 7.33% of the 19% takeout is retained by the guest track, 3.5% of which goes to purses; 6% of the 26% takeout goes to purses at the host track, and of the 11% of the 26% retained by the guest track, at least 3.5% goes to purses; if the host track is outside Massachusetts, between 4% and 7.5% of the remainder of the amount retained by the guest track from the 19% and 26% takeouts are paid to purses/horsemen. Section 60 of the Gaming Act provides that 80% of the funds in the Race Horse Development Fund shall be deposited in an interest-bearing purse account for the benefit of the horsemen.

Abolition of the premium, in the context of the Commission's ability to adjust the §7(b) takeout, will level the simulcasting cost burden for racing and non-racing simulcast licensees, while maintaining a realistic funding level for purses. If simulcasting is to be expanded to non-racing gaming licensees, the need for reducing any competitive imbalance should be separated from the funding of purses if that funding can be handled separately, which §60 of the Expanded Gaming Act (together with the other funding listed in footnote 11) achieves. Moreover, the Commission's recommended overall approach is consistent with that taken by most states, as shown in the attached chart. This would bring Massachusetts in line with the rest of the country and modernize its approach to simulcasting, the critical element of the future of pari-mutuel wagering.

III. REBATING AND WAGERING ON CREDIT UNDER THE RACING LAWS

Pursuant to G.L. c. 128A, §5C, both rebating and wagering on credit are currently prohibited in Massachusetts. On the other hand, gaming on credit, rebating, and other modern marketing techniques applicable to gaming are permitted under the Expanded Gaming Act. Part of the modernization of pari-mutuel wagering involves bringing it up to a status equivalent with that of gaming in terms of available marketing techniques and the like. Moreover, to the extent that a current racing meeting licensee is also awarded a gaming license, it would be difficult, in terms of regulatory necessity, to justify why such a licensee should be statutorily entitled to offer wagering on credit to customers of its gaming operation but not to those of its pari-mutuel operation. Furthermore, pursuant to G.L. c. 128A, §5C, it is already permissible to deposit money into a betting account

"through the use of a credit card . . . issued by a federal or state-chartered bank . . . ." Thus, notwithstanding the prohibition of the extension of credit by a licensee, credit may be used by a patron to maintain the requisite minimum balance in that betting account. The apparent distinction drawn there between whether it is a bank or a licensee that is extending the credit, is not present for the gaming licensee, and should be similarly removed for the pari-mutuel licensee.

The modern racing business model has changed. As pointed out by Suffolk Downs in its written comments to the Commission, "racing facilities across the country commonly provide volume discounts, rewards or rebates to customers as an effective marketing tool." The national trend (described by Suffolk Downs as a "well-established business practice"), as shown in the accompanying spread sheet, is not to prohibit these marketing tools. The Commission is aware of no data that suggest that there are adverse consequences resulting from pari-mutuel rebating or wagering on credit that are distinguishable from those that might be attendant to rebating or wagering on credit in a gaming context. Consequently, pari-mutuel wagering and gaming, at least in these respects, ought to be treated alike.

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IV. CAPITAL IMPROVEMENTS AND PROMOTIONAL TRUST FUNDS

Under current law, the Commissioners serve as trustees for the Running Horse Capital Improvements Trust Fund, the Running Horse Promotional Trust Fund (both for

thoroughbreds), the Harness Horse Capital Improvements Trust Fund, and the Harness Horse Promotional Trust Fund (both for standardbreds). Use of the capital improvement fund is limited to use for "alterations, additions, replacements, changes, improvements or major repairs to or upon the property owned or leased by the licensee and used by it for the conduct of racing, but not for the cost of maintenance or of other ordinary operations." M.G.L. c. 128A, §5(g). Use of promotional funds is limited to use for "promotional marketing, to reduce the costs of admission, programs, parking and concessions and to offer other entertainment and giveaways." *Id.* Under current law, these funds are replenished by licensees' deposits of the "breaks"[9] and other statutorily identified takeouts into these funds. To use them, the licensee is required to submit "detailed business plans describing the specific promotions and capital improvements contemplated" (*Id.*), and the Commissioners, as trustees, review the proposals. The Commissioners are required to "hire the services of architectural and engineering consultants, or the services of such other consultants as they deem appropriate, to advise them generally and to evaluate proposed capital improvement and promotional projects submitted to them for their approval." *Id.* This is a cumbersome and costly process. The Commission's broad racing and gaming powers under the Racing Laws and the Expanded Gaming Act in connection with the regulation of plant and equipment standards are much more effective tools with which to police the maintenance of appropriate standards for racing and gaming licensees' premises. For example, the

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[9] "Breaks" are defined by G.L. c. 128A, §1 as ", the odd cents over any multiple of 10 cents of winnings per $1 wagered."

Commission is empowered to require an applicant for licensure to include in its license application a capital expenditure budget, particularizing how the sum budgeted is to be expended.

Abolishing the current system, and allowing the licensee to retain the remainder of the "breaks," after limited takeouts, subject to an accounting to the Commission, affords the licensee more flexibility in allocating maintenance dollars (and speedier access to those dollars) to where they might best be spent to improve the value of the product it offers to its customers. The Proposed New Chapter provides that 20% of the breaks from each racing and §7(b) licensee, is to be placed , under the supervision of the Commission, in a Backstretch Improvement Fund, solely for maintaining infrastructure on the backstretch and for improving the living and working conditions of employees and horses housed on the backstretch. Moreover, the Proposed New Chapter permits racing meeting licensees to retain the remaining 80% of their breaks, subject to an accounting to the Commission; but §7(b) licensees must pay their remaining 80% to the Commission to defer costs of regulating racing, including enhanced equine drug testing, and ensuring the safety and welfare of racing's participants.

This restructuring of the breaks' allocation would reduce the current regulatory burden on the track licensees associated with capital improvements and promotional investment. At the same time, the restructuring ensures that, for the first time, backstretch infrastructure needs, and the health and welfare of those who live and work there, will be elevated to the status of direct statutory funding from racing-sourced

revenues. This will put Massachusetts in the vanguard of a nascent national effort to focus on backstretch conditions, regulatory sign-on to which is already in place in New York, Pennsylvania and Kentucky.

CONCLUSION

The Commission thanks the Legislature for the opportunity to make recommendations regarding the restructuring of the Commonwealth's racing laws to modernize them, to bring them into line with best practices in the industry, and to provide a uniform and fair framework for simulcasting by both racing and non-racing licensees. To promote stability in simulcasting for both gaming and racing licensees, the Commission also urges the Legislature to end the former practice of including sunset provisions in simulcasting statutes.

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PROPOSED NEW CHAPTER

SECTION #

The General Laws are hereby amended by inserting after chapter 128C the following chapter:-

CHAPTER 128D

HORSE RACING MEETINGS AND SIMULCAST WAGERING

128D:1. Definitions

Section 1. As used in this chapter, the following words shall have the following meanings unless the context clearly requires otherwise:

"Breaks", in the case of racing meetings conducted in the commonwealth by a racing meeting licensee, the odd cents over any multiple of 10 cents of winnings per $1 wagered, except that, in the case of a minus pool, the odd cents over any multiple of 5 cents of winnings per $1 wagered. A minus pool occurs when the payout is in excess of the net pool. In the case of racing meetings conducted at a host track outside the commonwealth, the amount of the breaks shall be determined in accordance with the laws of the state in which the host track is located.

"Commission", the Massachusetts gaming commission established by chapter 23K.

"Guest track", a racing meeting licensee or an out-of-state pari-mutuel wagering facility which accepts any simulcast wager on a live race conducted at another track which is presented by simulcast at its facility; provided that, unless expressly provided to the contrary, an entity licensed to simulcast pursuant to section 7 of chapter 23K shall be deemed to be guest track for purposes of the provisions of this chapter affecting simulcasting, notwithstanding that such licensee is not a racing meeting licensee.

"Host track", a racing meeting licensee or an out-of-state track which conducts a live race which is the subject of simulcasting and simulcast wagering.

"Racing day", a day on which 1 or more racing performances are conducted.

"Racing meeting" shall include every meeting within the commonwealth where horses are raced and where any form of betting or wagering on the speed or ability of horses shall be permitted, but shall not include any meeting where no such betting or wagering is permitted even though horses or their owners, are awarded certificates, ribbons, premiums, purses, prizes or a portion of gate receipts for speed or ability shown.

"Race track" shall include the track, grounds, stands and/or bleachers, if any, and adjacent places used in connection therewith, where a horse racing meeting may be held; provided that race track shall not include a gaming establishment as defined in chapter 23K.

"Racing meeting licensee", a person licensed by the commission to conduct live horse racing meetings.

"Racing performance", the conduct of at least seven live races during one day.

"Simulcast", the contemporaneous transmission of audio or visual signals of live horse races for the purpose of pari-mutuel wagering.

"Simulcast wager", a wager taken at a guest track on a race conducted live at another track, whether inside or outside the commonwealth.

"Takeout", that amount of money wagered which is not returned as prize money to the wagerers and which does not include the breaks as defined herein.

128D:2. Application for license; filing; supplementary application

Section 2. Any person desiring to hold or conduct a horse racing meeting within the commonwealth shall make an application to the commission, for a license so to do. Such application shall:

(1) State the name of the applicant;

(2) State the post office address of the applicant, and if a corporation, the name of the state under the laws of which it is incorporated, the location of its principal place of business and the names and addresses of its directors;

(3) Identify the location of the race track where it is proposed to hold or conduct such horse racing meeting;

(4) Specify the days on which the applicant intends to hold or conduct such horse racing meeting, and specify the hours of each day between which it is intended to hold or conduct racing at such meeting, which hours shall not be before 10:00 a.m. except as provided for in section three, nor later than 7:00 p.m. for running horse racing nor later than midnight for harness horse racing;

(5) Answer such other questions and provide such information as the commission may from time to time prescribe or specify; and

(6) State that the applicant will comply, in case such license be issued, with all applicable laws and with all applicable rules and regulations prescribed by the commission.

(7) Submit a capital improvement plan that shall state separately and with particularity what alterations, additions, replacements, changes, improvements or repairs the applicant intends to effectuate during the term of the license upon the property to be used in the conduct of the racing meeting. At least annually, a representative of the commission together with a representative of the licensee, a representative of the horsemen's organization and a representative of the jockeys' organization representing a majority of the licensed jockeys riding regularly at the licensee's racing meeting, shall inspect the entire racing meeting facility, including the area commonly known as the backstretch, in order to determine whether such capital improvement plan submitted by the licensee has been implemented in a manner adequate to provide for the continued health, safety and well-being of patrons, jockeys, backstretch personnel and the horses in their care.

Such application shall be filed with the commission on or before the 1st day of October of the calendar year preceding the calendar year for which the application requests a license to be issued under this chapter; and the commission shall grant or dismiss such application not later than the 15th day of November next following. Such applications shall be signed and sworn to, if made by an individual, by such individual; if made by two or more individuals or a partnership, by one of such individuals or by a member of such partnership, as the case may be, if made by a trust, by a trustee of such trust, and, if made by an association or corporation, by the president or vice president thereof. The commission may prescribe forms to be used in making such application.

With such application there shall be delivered to the commission a certified check or bank draft, payable to the commission, for the full amount of the license fee required by this chapter.

Any person desiring to hold or conduct a horse racing meeting within the commonwealth in connection with a state or county fair shall make an application to the commission for a license to do so, upon such terms and conditions as the commission may from time to time specify by rule or regulation. Any fee for such license shall not exceed $100 per day for each day of such horse racing meeting.

With such application there shall be delivered to the commission a certified check or bank draft, payable to the commission, for the full amount of such license fee as may from time to time be specified by the commission.

128D:3. Issuance of license; contents; conditions; bond; recording

Section 3. If any application for a license, filed as provided by section 2, shall be in accordance with the provisions of this chapter, the commission, after reasonable notice and a public hearing in the city or town wherein the license is to be exercised, may issue a license to

the applicant to conduct a racing meeting, in accordance with the provisions of this chapter, at the race track specified in such application.

Such license shall state--

(1) The name of the person to whom the same is issued;

(2) The location of the race track where the racing meeting thereby authorized is to be held;

(3) The days on which such meeting may be held or conducted;

(4) The hours of each day between which racing may take place at such meeting; and

(5) That the required license fee has been received by the commission.

No license shall be issued which would permit a racing meeting to be held or conducted except under the following conditions:

(a) No license shall be issued for more than an aggregate of 200 days in any 1 year.

(b) Licenses shall permit racing meetings only between the hours of 10:00 a.m. and 12:00 midnight. The commission shall grant authorized dates at such times that are consistent with the best interests of racing and the public. The commission may, in its discretion, on written application from a racing licensee made at least 7 days prior to the date of any proposed change of time stated in the racing license and without necessity for further public hearing, change the hours of conducting such racing meeting between any of the aforesaid hours, notwithstanding the hours set forth on the license. For the purpose of imposing the fee provided for in section 4, computing the sums payable to the commission pursuant to section 5 and counting the number of days authorized herein, any racing meeting held after 7:00 p.m. on the same day on which a racing meeting is held at the same race track prior to 7:00 p.m. shall be considered a separate day of racing.

(c) No license shall be issued to any person who is in any way in default, under the provisions of this chapter, in the performance of any obligation or in the payment of any fee or debt to the commission; provided, however, that no license shall be issued to any person who has, within 10 years of the time of filing the application for the license, been convicted of violating section 5.

(d) In considering whether to grant a license and authorized dates under this section, the commission shall take into consideration, in addition to any other appropriate and pertinent factors, the following: the financial ability of an applicant to operate a race track; the maximization of state revenues; the suitability of racing facilities for operation at the time of the year for which dates are assigned; the circumstance that large groups of spectators require safe and convenient facilities; the interest of members of the public in racing competition honestly managed and of good quality; the necessity of having and maintaining proper physical facilities for racing meetings and the necessity of according fair treatment to the economic interest and

investments of those who in good faith have provided and maintain such facilities. Notwithstanding the foregoing provisions of this section, the racing commission shall have the right to review and reconsider without further notice or public hearing any application made prior to October 1 for which racing dates have been requested for the following year; provided that the application has had a public hearing prior to November 15; and provided, further, that any applicant who has been denied these racing dates makes a written request for review and reconsideration within 90 days of receiving notice of the denial; and provided further, that the commission shall reconsider and review the request within 180 days of the denial.

(e) No license shall be transferable, except with the approval of the commission.

(f) No license shall be issued to permit horse racing meetings to be held on premises owned by the commonwealth or any political subdivision thereof.

(g) No license shall be issued unless the person applying therefor shall have executed and delivered to the commission a bond payable to the commission in the amount of $150,000 with a surety or sureties approved by the commission conditioned upon the payment of all sums which may become payable to the commission under this chapter.

(h) Every license shall be recorded in the office of the clerk of the city or town in which the racing meeting is held or conducted at a time not less than 5 days before the first day of the meeting or forthwith upon the issuance of the license if the same shall be issued after that time. After the license is so recorded, a duly certified copy thereof shall forthwith be conspicuously displayed and shall be kept so displayed continuously during the racing meeting in the principal business office at the race track where the meeting is held and at all reasonable times shall be exhibited to any person requesting to see the same.

(i) Every licensee shall keep conspicuously posted in various places on its premises a notice containing the name and numbers of the council on compulsive gambling and a statement of its availability to offer assistance.

128D:4. Fees

Section 4. The fee for the license provided for in section three shall be $300 or three-fourths of one-tenth of 1 per cent of the average daily handle of the previous calendar year for each day of any running horse or harness horse racing meeting, whichever is the greater amount.

No license fee for the privilege of holding or conducting a horse racing meeting, or for any other purpose peculiarly incidental to the holding or conducting of such a meeting, shall be imposed upon or collected from the racing meeting licensee by any city or town.

128D:5. Pari-mutuel system of wagering; licensee's duties

Section 5. (a) Before holding or conducting a racing meeting, every racing meeting licensee shall provide a place or places, equipped as hereinafter provided, on the grounds where such meeting is held or conducted or adjacent thereto, or at such other place as may be authorized by law and approved by the commission, at which such licensee shall conduct and supervise the pari-mutuel wagering on the speed or ability of horses performing in the races held or conducted by such licensee at such meeting, and such pari-mutuel wagering upon such races so conducted shall not under any circumstances be held or construed to be unlawful, notwithstanding any general or special law to the contrary. Such place or places shall be equipped with automatic betting machines capable of accurate and speedy determination of awards or dividends to winning patrons, and all such awards or dividends shall be calculated by a totalisator machine or like machine.

(b) No other place or method of betting, poolmaking, wagering or gambling shall be used or permitted by the licensee, nor shall this chapter be deemed to authorize or legalize the pari-mutuel wagering on any races except horse races at the track where such pari-mutuel wagering is conducted; provided, however, that this prohibition shall not apply to wagering authorized pursuant to chapter 23K, to simulcasting or to account wagering authorized pursuant to this chapter.

(c) Each licensee conducting a running horse racing meeting shall return to the winning patrons wagering on the speed or ability of any 1 running horse in a race or races all sums so deposited as an award or dividend, according to the acknowledged and recognized rules and methods under which such pari-mutuel wagering has been operated, less the breaks and less an amount not to exceed 19 per cent of the total amount so deposited by patrons wagering on the speed or ability of any 1 running horse; and each such licensee shall return to the winning patrons wagering on the speed or ability of a combination of more than 1 horse in a single pool, also known as an exotic wager, all sums so deposited as an award or dividend, according to the acknowledged and recognized rules and methods under which such pari-mutuel wagering has been operated, less the breaks and less an amount not to exceed 26 per cent of the total amount deposited. Each licensee shall:--

(1) pay to the commission on the day following each day of such running horse racing meeting a sum equal to 0.75 per cent of the total amount deposited on the preceding day by patrons so wagering at the meeting, the percentage to be paid from the 19 per cent or 26 per cent withheld, as provided in this section, from the total amount wagered;

(2) pay to the Massachusetts Thoroughbred Breeders Association, Inc. on the day following each day of such running horse racing meeting a sum equal to 1 per cent of the total amount deposited by the patrons, less the breaks, and taken from the 19 per cent withheld and from the

26 per cent withheld from exotic wagers, the monies to be used for the purposes of subsection (g) of section 2 of chapter 128;

(3) allocate from the total amount deposited daily by the patrons wagering at the meeting a sum equal to 8.5 per cent from the 19 per cent withheld and a sum equal to 9.5 per cent from the 26 per cent withheld from the exotic wagers to be used solely for the payment of purses to the horse owners in accordance with the rules established by the commission;

(4) pay to Tufts University School of Veterinary Medicine on the day following each day of such running horse racing meeting a sum equal to 0.5 per cent of the total amount deposited by the patrons, less the breaks, from the 26 per cent withheld from exotic wagers, to be used for equine research scholarships and loans.

Each licensee may retain as its commission on the total of all sums so deposited, a sum not exceeding the balance of the 19 or 26 per cent withheld as provided in this section from the total amounts wagered less the amounts required to be paid pursuant to clauses (1) to (4), inclusive.

(d) There shall be established and set up on the books of the commonwealth a Backstretch Improvement Fund to be administered by the commission. The fund shall consist of monies to be deposited annually representing 20 percent of the breaks from pari-mutuel wagering, including on simulcast races, for use exclusively for expenditures for alterations, additions, replacements, improvements to or upon the property owned or leased by the licensee, used by it for the conduct of racing, and commonly referred to as the backstretch, but not for the cost of regular maintenance or of other ordinary operations. Nothing herein shall be deemed to relieve the licensee of, or affect, its obligation under this chapter to provide and maintain suitable premises and facilities for the time of year for which dates are assigned in its license; safe and convenient facilities; proper physical facilities for the conduct of racing meetings; and proper stabling and associated facilities that are calculated to render horses on the licensee's premises reasonably safe.

(e) Each licensee conducting a harness horse racing meeting shall return to the winning patrons wagering on the speed or ability of any 1 harness horse in a race or races all sums so deposited as an award or dividend, according to the acknowledged and recognized rules and methods under which such pari-mutuel wagering has been operated, less the breaks and less an amount not to exceed 19 per cent of the total amount so deposited by patrons wagering on the speed or ability of any 1 harness horse; and each such licensee shall return to the winning patrons wagering on the speed or ability of a combination of more than 1 horse in a single pool, also known as an exotic wager, all sums so deposited as an award or dividend, according to the acknowledged and recognized rules and methods under which such pari-mutuel wagering has been operated, less the breaks and less an amount not to exceed 26 per cent of the total amount so deposited. Each such licensee, including a licensee holding a harness horse racing meeting in connection with a state or county fair, shall:

(1) pay to the commission on the day following each day of such harness horse racing meeting a sum equal to 0.75 per cent of the total amount deposited on the preceding day by patrons so wagering at the meeting, the percentage to be paid from the 19 per cent withheld from the straight wagers or 26 per cent withheld from the exotic wagers as provided pursuant to this section;

(2) pay to the Massachusetts Standardbred Breeders program established pursuant to subsection (j) of section 2 of chapter 128, on the day following each day of the harness horse racing meeting a sum equal to 0.5 per cent of the total amount deposited by the patrons, less the breaks, and taken from the 19 per cent withheld from the straight wagers and a sum equal to 1.5 per cent of the total amount deposited by the patrons, less the breaks, from the 26 per cent withheld from the exotic wagers; the monies to be used for the purposes of said subsection (j) of said section 2 of said chapter 128;

(3) allocate from the total amount deposited daily by the patrons wagering at such meeting a sum equal to 8 per cent from the 19 per cent withheld and a sum equal to 10 per cent from the 26 per cent withheld from the exotic wagers to be used solely for the payment of purses to the horse owners in accordance with rules and regulations promulgated by the Commission;

Each licensee may retain as its commission on the total of all sums deposited, a sum not exceeding the balance of the 19 per cent withheld from the straight wagers or the 26 per cent withheld from the exotic wagers as provided in this section less the amounts required to be paid pursuant to clauses (1) to (3), inclusive.

(f) Each licensee conducting a running horse racing meeting in connection with a state or county fair shall return to the winning patrons wagering on the speed or ability of any 1 running horse in a race or races all sums so deposited as an award or dividend, according to the acknowledged and recognized rules and methods under which such pari-mutuel wagering has been operated, less the breaks and less an amount not to exceed 19 per cent of the total amount so deposited by patrons wagering on the speed or ability of any 1 running horse. Each such licensee shall return to the winning patrons wagering on the speed or ability of a combination of more than 1 horse in a single pool, also called an exotic wager, all sums so deposited as an award or dividend, according to the acknowledged and recognized rules and methods under which pari-mutuel wagering has been operated, less the breaks and less an amount not to exceed 26 per cent of the total amount so deposited. Each licensee shall:

(1) pay to the commission on the day following each day of such running horse racing meeting a sum equal to 0.75 per cent of the total amount deposited on the preceding day by patrons wagering at the meeting, the percentage to be paid from the 19 per cent and 26 per cent withheld, as provided pursuant to this section, from the total amount wagered on straight wagers and exotic wagers, respectively;

(2) allocate from the total amount deposited daily by the patrons wagering at the meeting a sum equal to 8 per cent from each of the respective 19 per cent withheld and 26 per cent withheld as provided in this subsection to be used solely for the payment of purses to the horse owners in accordance with the rules and established customs for the conduct of running horse racing meetings; and

(3) pay a sum equal to 1 per cent of the total handle at the end of its racing schedule to the Massachusetts Thoroughbred Breeders Association, Inc.; provided, however, that the Association shall utilize the monies to develop a program to support horse racing at agricultural fairs including, but not limited to, owners' and breeders' awards for Massachusetts-bred thoroughbreds and provisions to supplement the purses of races or to provide the entire purse for the Massachusetts-bred thoroughbred races.

Each licensee may retain as its commission on the total of all sums so deposited, a sum not exceeding the balance of the 19 or 26 per cent withheld as provided in this section from the total amounts wagered less the amounts required to be paid pursuant to clauses (1) to (3), inclusive.

(g) All pari-mutuel taxes paid to the commission pursuant to this section, together with all pari-mutuel taxes paid to the commission pursuant to this chapter, and all assessments, association licensing fees, occupational licensing fees, fines, penalties and miscellaneous revenues, other than unclaimed wagers and breaks, paid to the commission shall be deposited in a separate account under the control and supervision of the commission. The amount of pari-mutuel taxes and other revenues, except for the unclaimed wagers, credited during any calendar year to all racing licensees shall be expended in the following order of priority and for the purposes specified:--

(1) To provide and pay local aid to the racing meeting licensees' respective host communities pursuant to section 164 of chapter 139 of the acts of 2012.

(2) To pay, without further appropriation, the commission's expenses for the costs in connection with racing performances held by racing meeting licensees. The commission shall file a report with the house and senate committees on ways and means on January 15 of each year detailing the amount of such costs delineated by type.

(3) To pay any amount specifically funded from racing revenues under any general or special law.

(4) To pay annually: an amount as determined by the commission to an organization identified by the commission, to assist in deferring the cost of providing health, medical, food, substance abuse treatment and other social services for persons who are employed in the stable or the backstretch area of the running horse racing licensee located in Suffolk county; an amount, as determined by the commission, for the purpose of providing economic assistance to any person employed in the racing facility, the stable or the backstretch area of the running horse racing

licensee located in Suffolk county who is facing hardship due to illness or unforeseen tragedy; and an amount as determined by the commission, to an organization, as determined by the commission, that represent the majority of jockeys who are licensed by the commission and regularly ride in the commonwealth for the purpose of assisting with deferring the costs of providing health and other welfare benefits to active, disabled or retired jockeys; and provided further, that any organization receiving an allocation from any of the said amounts shall make an annual report with the joint committee on government regulations and the house and senate committees on ways and means detailing its expenditures from said allocations.

(5) To pay annually: an amount as determined by the commission to a compulsive gambling organization, identified by the department of public health.

(6) To pay the remaining revenues credited during any calendar year to all racing meeting licensees, up to but not exceeding $4,500,000, for purse accounts of such licensees; provided further, that any remaining revenues in excess of $4,500,000 shall be deposited in the General Fund. The amount credited to each licensee shall be based on a formula established by the commission. In no instance, shall the amount paid to the purse account of each licensee be less than $400,000 unless the commission collects insufficient funds to make such minimum payment to all licensees. Only racing meeting licenses that actually present a live racing meeting on its premises, and that are permitted to simulcast under this chapter shall be eligible for purse assistance under this subsection. The commission shall promulgate regulations regarding the distribution of such purse accounts funds; provided, however, that such regulations shall provide for the consideration of all pertinent factors including, but not limited to: (i) the relative needs for increased purses of each licensee; (ii) the number of live racing days conducted by each licensee; (iii) the amount of the live racing handle of each licensee; (iv) the total amount of employment, both direct and indirect, attributable to each licensee; (v) each licensee's total payroll; (vi) capital investments made by each licensee; (vii) the amount of tax revenue and other revenues payable to the commonwealth produced by each licensee; (viii) and total pari-mutuel tax revenue generated and payable to the commonwealth produced by each license. In the event that a portion of the funds is not deposited into purse accounts through the method of the minimum amount or through the formula of pertinent factors and is not otherwise expended or allocated pursuant to the provisions of this clause, that portion of funds shall be deposited into the General Fund unless otherwise specified by a general or special law. The commission may, in any case it deems appropriate, conduct an audit of any purse accounts and shall report the findings of the audit within 30 days of the conclusion thereof to the house and senate chairmen of the joint committee on government regulations.

(h) Three and a half per cent of all purses at all running horse racing meeting licensees' tracks in the commonwealth shall be paid to the Massachusetts Thoroughbred Breeders' Association, Inc.

128D:5A. Unclaimed winnings

Section 5A. Monies from all unclaimed wagers on live races made pursuant to this chapter shall be deposited with the commission. Subject to the rules and regulations established by the commission, the commission shall deposit the unclaimed live wagers into the purse accounts of the racing meeting licensees that generated those unclaimed live wagers.

128D:5B Assessment for operation of commission; refund

Section 5B. (a) One-quarter of one per cent of the total amount deposited at all racing meetings by the patrons wagering at such meetings shall be used to pay the commission's expenses for costs related to the conduct of racing performances held by racing meeting licensees, and for the operation and general administration of the commission in connection with the regulation of racing for the fiscal year next following the calendar year in which said total amount was wagered. Said one-quarter of one per cent shall be retained by the commission from the sums paid daily to the commission pursuant to section five.

(b) The commission is hereby authorized to make an assessment in each fiscal year against each licensee conducting a racing meeting in the commonwealth. Said assessment shall be made at a rate as shall be determined and certified annually by the commission as sufficient to defer the costs in connection with the operation of the commission's racing division; provided, however, that the total assessment for all licensees, not including the revenues received pursuant to paragraph (a), shall not exceed $750,000.00~~seven hundred and fifty thousand dollars~~; and provided further that the commission may periodically adjust the aforementioned upper limit of that assessment; and provided further that no such adjustment shall result in an assessment that is greater than 75 per cent of the total costs incurred in connection with the operation of the commission's racing division. Said assessment shall be made proportionately against each licensee on the basis of the amount withheld by each licensee less the sum paid to the commission as determined by section five. Each licensee against whom an assessment is made shall pay over daily to the commission a pro rata share of the assessment determined by dividing the total assessment of that license by the number of dates granted to the licensee pursuant to section three. If the commission fails to expend in any fiscal year the total amount assessed under this paragraph, any amount unexpended shall be credited against the assessment to be made in the following year and the assessment in such following year shall be reduced by such unexpended amount; provided however that, if no racing dates are granted in the following year to any licensee, the portion of unexpended funds due such licensee as a credit shall, at the request of such licensee to the state treasurer, be refunded.

Comment [DAM1]: This percentage is still to be finally determined.

128D:5C Account wagering system; betting accounts; licensee's duties; penalties

Section 5C. Notwithstanding section 17A of chapter 271, each person licensed to conduct a running horse or harness horse racing meeting or licensed to simulcast pursuant to section 7 of chapter 23K, may establish and maintain betting accounts with individuals for use in connection with account wagering on races offered or simulcast . As used in this section, "account wagering" shall mean a form of pari-mutuel wagering in which an individual may deposit money to an account, established through an agreement with a person licensed to conduct a running horse or harness horse racing meeting or a person licensed to simulcast pursuant to section 7 of chapter 23K, and use the account balance to make and pay for wagers by the holder of the account which wagers may be made in person, by direct telephone call or by communication through other electronic media by the holder of the account to the licensee. An individual who has established a betting account with a licensee may deposit money into said account through the use of a credit card or debit card issued by a federal or state-chartered bank and a licensee may collect and deposit money received in such a manner at the licensee's racetrack or through the telephone, Internet or other telecommunications media. Only those persons who have established a betting account with a person licensed to conduct a running horse or harness horse racing meeting in accordance with this section or to simulcast pursuant to section 7 of chapter 23K shall place bets by telephone or by communication through other electronic media with such licensee.

Such licensees shall accept and maintain betting accounts directly, or through an agreement with an authorized and licensed service provider, in the name of a natural person only. The licensee may refuse to establish or maintain a betting account and may refuse deposits to any such account if the licensee deems such refusal appropriate; provided, however, that such licensee shall not establish or maintain a betting account for any person who has been banned or prohibited from entering the premises of a racing meeting licensee or a gaming licensee in the commonwealth. The licensee may suspend or close any account at any time; provided, however, that the licensee shall return to the account holder any funds that are on deposit in the account at the time it is closed.

The distribution of monies collected from wagers made under this section shall be in compliance with this chapter.

Each betting account maintained by a person licensed to conduct a running horse or harness horse racing meeting or to simulcast pursuant to section 7 of chapter 23K shall contain a minimum balance, the amount of which the commission shall prescribe by regulation.

Each licensee shall, with respect to each betting account established hereunder, make tax withholdings and provide tax and revenue reporting, all as otherwise required for wagers placed at a racing meeting licensee.

The balance in any betting account hereunder, which account has been inactive for a period of 3 years, shall be presumed to be abandoned and paid to the state treasurer pursuant to the provisions of chapter 200A.

Betting accounts authorized by this section shall be established, maintained and operated in accordance with rules and regulations promulgated by the commission. The commission shall conduct annual audits of each racing meeting licensee and simulcasting licensee within 90 days of the end of each calendar year with respect to all monies attributable to account wagers. The commission shall report the findings of each such audit within 30 days of the completion of the audit to the house and senate chairs of the joint committee on government regulations.

A licensee failing to comply with this section shall be punished by a fine of not more than $10,000 or by imprisonment in the house of correction for not more than 2 years, or both. A licensee failing to comply with the requirements of the section shall also be subject to civil penalties imposed by the commission of not more than $10,000 if, after notice and a hearing, the commission finds that a violation has occurred.

Notwithstanding any general or special law or rule or regulation to the contrary, a racing meeting licensee and an entity licensed to simulcast under section 7 of chapter 23K shall be permitted, in accordance with rules and regulations established by the commission, to issue credits to individuals for use by such individuals in placing pari-mutuel wagers on live or simulcast races offered by the licensee.

128D:6. Records and books of wagers; access; financial statements; statements of wagers

Section 6. Accurate records and books shall at all times be kept and maintained by each licensee, showing the number, nature and amount of all wagers made in connection with such meeting. The commission, or its duly authorized representatives, shall at all reasonable times have access to the records and books of any licensee for the purpose of examining and checking the same, and ascertaining whether or not the proper amount has been or is being paid to the commission as herein provided.

Within sixty days after the close of a racing meeting, each licensee conducting a horse racing meeting shall submit, on forms prescribed by the commission, financial statements certified to the commission by a certified public accountant; provided, however, that said licensee with the prior written approval of the commission, may submit said statements annually within sixty days after the close of its fiscal year, if any. The commission, or its duly authorized representatives, shall at all reasonable times have access to all records and books of the licensee for the purpose of examining and certifying the same.

The commission may also from time to time require sworn statements of such wagers and may prescribe forms upon which such reporting shall be made. Any licensee failing or refusing to make such report as herein provided, or failing or refusing to pay the amount found to be due as provided in this chapter, shall be deemed guilty of larceny and upon conviction shall be punished by a fine of not less than one thousand nor more than $10,000.

128D:7. Stewards to conduct racing meetings; representatives; access; authority; reports; violations

Section 7. The commission shall appoint as many stewards as it deems appropriate to each track licensed to conduct racing meetings, who shall not be subject to chapter 31 or section 9A of chapter 30. The commission shall assign, by regulation, duties to be performed by each such steward. The compensation of a commission-appointed steward shall be fixed by the commission.

The commission may also appoint one or more other representatives to attend each racing meeting held or conducted under a license issued under this chapter, and the appointment of said representatives shall not be subject to chapter 31 or section 9A of chapter 30. The compensation and duties of each such representative shall be fixed by the commission.

Each such steward or representative appointed by the commission to attend a racing meeting shall have full and free access to the space or enclosure where the pari-mutuel wagering is conducted or supervised for the purpose only of ascertaining whether or not the provisions of this chapter and the rules and regulations related thereto are being properly observed. Each such steward or representative shall also, for the same purpose only, have full and free access to the books, records and papers pertaining to such pari-mutuel wagering. All employees of the commission assigned to the tracks for security purposes and all police officers assigned to the commission shall be under the control and authority of one of the representatives of the commission at each track. Said steward or representative shall have full and free access to any other areas used in connection with the conduct of racing, and shall investigate, ascertain and report to the commission in writing under oath as to whether or not he has discovered any violation at such meeting of any of the provisions of this chapter, and, if so, the nature and character of such violations. Such report shall be made within 10 days after the termination of the duties of such steward or representative at any racing meeting.

If any such report shows any violation of this chapter, the commission shall transmit a copy of such report to the attorney general for such action as the attorney general shall deem proper.

128D:8. Assignment of police officers at racing meetings; employment of veterinarians; testing facilities

Section 8. The commission shall utilize the services of as many veterinarians and drug testing facilities as it deems necessary to insure the legitimate performance of the horses to be raced at any racing meetings authorized by this chapter and to protect the health of such horses.

The commission shall assign from its complement of police officers such police officers as may reasonably be necessary to guard and protect the lives and safety of the public, property and the animals to be raced at licensed racing meetings, and to perform any such other duties as may be required by the commission in order to maintain fair and honest pari-mutuel racing at any such racing meeting. The police officers so assigned shall, except in the case of an emergency, and while on duty at any such racing meeting, be subject to the operational authority of the commission; provided, however, that such assignment or reassignment shall not in any way impair any rights to which any officer may be entitled.

128D:8A. Periodic inspections of installations and facilities operated by licensees; supervision of stewards, judges and starters

Section 8A. The commission shall make periodic inspections of all of the installations and facilities operated by its licensees under this chapter, including, in the case of racing meeting licensees, stable areas, the office of the racing secretary during the time that entries are being filed, and the jockeys' room to observe the activity of the custodians and valets, and the operation of the clerk of the scales, weighing procedures and security provisions. The activities of stewards, placing judges, patrol judges and starters shall be closely supervised by said commission and the calculating and tote control room of the various tracks shall be regularly spot-checked to insure fair and equitable results for the wagering public.

128D:9. Power of commission to make rules and regulations

Section 9. The commission shall have full power to prescribe rules, regulations and conditions under which simulcasting and all horse races at horse racing meetings shall be conducted in the commonwealth and under which simulcasts and simulcast wagering shall be conducted in the commonwealth, and may by rule or regulation prohibit licensees from admitting minors to horse racing meetings or to places in which pari-mutuel wagering including such wagering on simulcast races takes place. The commission may adopt emergency rules or regulations to protect the health or safety of the public, participants, or animals, or to insure the integrity of racing and pari-mutuel wagering.

The commission shall have power to prescribe special rules, regulations and conditions applicable to simulcasting and horse racing meetings held under licenses granted hereunder in connection with a state or county fair, or any exhibition for the encouragement or extension of agriculture.

The commission shall prescribe rules and regulations under which betting accounts for account wagering shall be established, maintained and operated.

Rules and regulations so prescribed shall be printed by the commission and furnished in reasonable numbers to anyone who may request them.

Any person violating any such rule or regulation shall, upon a complaint brought by the commission, be punished by a fine not exceeding $5,000 or by imprisonment not exceeding 1 year, or by both.

128D:9A Licensing and registering of racing participants and personnel; racing officials; persons employed by the licensee; badges; suspension and revocation; criminal records

Section 9A. For the purpose of enabling the commission to exercise and maintain a proper control over simulcasting and horse racing conducted under the provisions of this chapter, the rules, regulations and conditions prescribed by the commission under section nine shall provide for the licensing and registering at reasonable and uniform fees, of racing participants and personnel; racing officials; persons employed by the licensee, or employed by a person or concern contracting with or approved by the licensee or commission to provide a service or commodity, which requires their presence in a restricted area, or which requires their presence anywhere on licenses premises while pari-mutuel wagering is being conducted; and any other persons having access to horses and all pari-mutuel clerks and other persons with access to money wagered on races.

Such rules and regulations shall also provide for the fingerprinting of all such licensees. Every person so licensed shall be required to display and wear a badge containing a photograph. Such rules and regulations may also provide for the suspension and revocation of licenses so granted and for the imposition on persons so licensed of reasonable forfeitures and penalties for the violation of any rule or regulation prescribed by the commission and for the use of the proceeds of such penalties and forfeitures.

The commission shall have access to criminal offender record information of applicants for any license granted pursuant to this chapter, including officers, directors and beneficial owners of five per cent or more of the stock of a corporation applying for such a license, and for applicants

for employment by the commission. Such access shall be exercised in accordance with sections 167 to 178, inclusive, of chapter 6.

128D:9B Rules and regulations of the commission; emergency rules and regulations

Section 9B. Notwithstanding the provisions of section 5 of chapter 30A, no rule, regulation or condition of the commission promulgated pursuant to the provisions of this chapter shall take effect except as hereinafter provided.

A copy of every such rule, regulation or condition shall be filed with the clerk of the senate and shall be forthwith referred to the joint committee on government regulations.

Said committee shall file a written report with the clerk of the senate within 30 days after the filing of the copy thereof with said clerk, stating whether said rules, regulations and conditions are consistent with the statutory provisions under which they were promulgated.

Said rules, regulations and conditions shall take effect unless disapproved by a majority vote of both branches of the general court within 60 days after the filing of the copy thereof with the clerk of the senate unless the general court has prorogued within said 60 days.

If the general court prorogues within 60 days of the filing with the clerk of the senate of such rules, regulations and conditions, the clerk of the senate shall refer the same to the committee on government regulations the next session of the general court.

Said committee shall report as hereinbefore provided within 30 days of the 1st day of such session and such rules, regulations and conditions shall take effect unless disapproved by a majority vote of both branches of the general court within 60 days of the 1st day of such session.

The clerk of the senate shall notify the commission of the action taken thereon by the general court.

Notwithstanding the provisions of this section, the commission may adopt emergency rules or regulations to protect the health or safety of the public, participants, or animals; provided, however, that no emergency rule or regulation shall attempt to regulate the dates, manner of wagering, or economic terms or conditions of horse racing within the commonwealth; and provided, further, that such emergency rules and regulations shall expire within 90 days.

128D:10. Wagering at racing meetings by minors; citizenship requirement for employees of licensees

Section 10. Any licensee permitting any minor to participate in the pari-mutuel wagering at a racing meeting held or conducted by such licensee shall be punished by a fine of not more than $100. At least 85 per cent of the persons employed by a licensee at a racing meeting held or conducted by him shall be citizens of the commonwealth and shall have been such citizens for at least 2 years immediately prior to such employment.

128D:10A. Exclusion of certain persons

Section 10A. Any commissioner or representative of the commission or any person licensed to simulcast or to conduct a horse racing meeting shall have the right to refuse admission to or eject from its premises any person whose presence on said premises is detrimental, in the sole judgment of the commissioner or representative of the commission or of said licensee, to the proper and orderly conduct of a racing meeting or the simulcasting premises. Any person who has been notified by any commissioner or representative of the commission or a licensee of simulcasting premises or a racing meeting not to enter or attempt to enter its premises and who thereafter, without the express approval of any commissioner or representative of the commission or the licensee, enters or attempts to enter such premises, shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 6 months, or both. Any person so excluded by any commissioner or representative of the commission or by a licensee shall have a right of appeal to the commission. The commission shall hold a hearing within 10 days after any such person requests an appeal and may after such hearing by vote allow such person admission to such meeting.

128D:10B. Falsely making, altering, forging, uttering or publishing pari-mutuel betting tickets

Section 10B. Whoever, with intent to defraud, falsely makes, alters or forges a pari-mutuel betting ticket issued under the provisions of this chapter, or whoever, with intent to defraud, utters and publishes as true a false, forged or altered pari-mutuel betting ticket issued under the provisions of said section 5, knowing the same to be false, forged or altered, shall be punished by a fine of not more than $1,000 or by imprisonment in the state prison for not more than 5 years or in a jail for not more than 2 years.

128D:11. Refusal to grant, suspension or revocation of license

Section 11. The commission shall have full discretion to refuse to grant a license to any applicant for a license or to suspend or revoke the license of any licensee. If any license is

suspended or revoked, the commission shall make a record of its reasons for doing so and such record shall be made available to any person requesting to inspect the same.

128D:11A Sale of 10 per cent or more of stock; notice; approval

Section 11A. Except in the case of a publicly held corporation, no person, firm, partnership, trust, association or corporation who has been granted a simulcasting license or license to conduct a horse racing meeting, or an officer, director or the beneficial owner of 10 per cent or more of the stock of a corporation holding such a license, shall sell, transfer, convey or cause to be transferred, singly or in concert with others, more than 10 per cent of the value or stock of the facility or corporation so licensed without first obtaining the written approval of the commission.

The commission shall approve such sale, transfer or conveyance unless it finds that the consideration therefor is (i) inadequate or (ii) without good cause, (iii) that the sale or transfer results in an undesirable concentration of ownership of racing facilities within the commonwealth, or (iv) that the sale or transfer has an adverse impact upon the integrity of the racing industry or upon simulcasting in the commonwealth. A publicly held corporation, shall, prior to the sale, transfer or conveyance of more than 10 per cent of the stock of the corporation, file notice of such action with the commission. A copy of any filing required by state or federal securities law regarding notice of such sale, transfer or conveyance shall be simultaneously filed with the commission. The commission shall have the same rights as to transferees as it would have with respect to original applicants for licensure.

128D:12. Compliance with chapter

Section 12. No person shall hold or conduct, or assist, aid or abet in holding or conducting, any horse racing meeting or engage in simulcasting within the commonwealth unless such person shall comply with the provisions of this chapter related thereto.

Any person holding or conducting or any person aiding or abetting in holding or conducting, any horse racing meeting or engaging in simulcasting within the commonwealth in violation of any of the applicable provisions of this chapter shall, unless some other penalty for such violation is provided in this chapter, be punished for each such offence by a fine of not more than $10,000 or by imprisonment for not more than 1 year, or both. For the purpose of this section, each day on which any horse racing meeting shall be held or conducted or simulcasting engaged in, in violation of any of the provisions of this chapter, shall be considered a separate and distinct offence.

128D:13. Penalties for wagering or betting at race track except as permitted by chapter

Section 13. Any person making a handbook, at any race track within the commonwealth, or holding or conducting a gambling pool or managing any other type of wagering or betting on the results of any race, or aiding or abetting any of the foregoing types of wagering or betting, except as permitted by this chapter or chapter 23K, shall for a first offence be punished by a fine of not more than $2,000 and imprisonment for not more than 1 year, and for a subsequent offence by a fine of not more than $10,000 and imprisonment for not more than 2 years. Any jockey, trainer or owner of horses participating in horse racing, if found guilty by the commission of unfair riding or crooked tactics, may be barred or suspended from further participation in racing throughout the commonwealth.

128D:13A Application of laws to race tracks or racing meetings; exception; approval of locations

Section 13A. The provisions of sections 31, 33 and 34 of chapter 271, and of chapter 494 of the acts of 1908, shall not apply to race tracks or racing meetings laid out and conducted by licensees under this chapter or to animals eligible to race at such meetings; except that no license shall be granted by the commission for a racing meeting in any city or town, except in connection with a state or county fair, unless the location of the race track where such meeting is to be held or conducted has been once approved by the mayor and city council or the town council or the selectmen as provided by said section 33 of said chapter 271, after a public hearing, 7 days' notice of the time and place of which hearing shall have been given by posting in a conspicuous public place in such city or town and by publication in a newspaper published in such city or town, if there is any published therein, otherwise in a newspaper published in the county wherein such city or town is situated.

The approval of a location by a mayor and city council shall be deemed to be a measure within the provisions of section 42 of chapter 43 and the provisions of said sections shall apply to every city; provided, however, that such approval, if not rescinded as provided in said sections, shall be submitted to the voters of the city at a special election which shall be called by the city council and shall be held within 45 days of the filing of the petition protesting such approval taking effect.

The approval of a location by a town council, in a town having a town council, and by the selectmen in any other town, upon petition of 12 per cent of the voters of the town filed with the town clerk protesting against such approval taking effect shall be suspended from taking effect and the town council or the selectmen, as the case may be, shall immediately reconsider such approval, and if such approval is not rescinded, the question of such approval shall be submitted to the voters of the town at a special election which shall be called by the selectmen or town

council, as the case may be, and which shall be held within 45 days of the submission of said petition. Such approval shall become null and void unless a majority of the voters voting on the same at said election vote in the affirmative.

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128D:13B. Use of drugs to affect speed of dogs or horses

Section 13B. No person shall administer or cause to be administered, or induce or conspire or connive with, or attempt so to do, any drug, internally or externally by injection, drench or otherwise, to any horse for the purpose of retarding, stimulating or in any other manner affecting the speed of such horse in or in connection with a race conducted under the provisions of this chapter. Whoever violates this section shall be punished by a fine of $5,000 or by imprisonment for 1 year, or both.

128D:13C Influencing owner, trainer, jockey or agent to affect result of race

Section 13C. No person shall influence, induce or conspire or connive with, or attempt so to do, any owner, trainer, jockey, agent, driver, groom or other person associated with or interested in or having charge of or access to any horse entered or to be entered in a race for the purpose of fraudulently affecting the ultimate result of such race. Whoever violates this section shall be punished by a fine of not less than $100 or more than $3,000 or by imprisonment for not more than 1 year, or both.

128D:14 Granting licenses; petitions; ballots; vote of county

Section 14. Licenses shall not be granted under this chapter for the holding or conducting of any horse racing meeting within any county unless a majority of the registered voters of such county voting on the following questions relative to granting such licenses when said questions were last submitted to them have voted in the affirmative.

The state secretary shall, if there has been filed with said secretary, not later than the 60th day before the biennial state election at which such subdivision is to be submitted, petitions, the forms of which may be obtained from said secretary, signed by registered voters of such county, the total of which are equal in number to at least 10 per cent of the total number of registered voters in said county, cause to be placed on the official ballot to be used in the cities and towns at biennial state elections, the following question:

Shall the pari-mutuel system of betting on licensed live horse races be permitted in this county?

YES. : :

NO. : :

If a majority of the votes cast in a county in answer to the foregoing question is in the affirmative, such county shall be taken to have authorized the licensing of live horse races therein at which the pari-mutuel system of betting shall be permitted.

128D:14A. Granting licenses; election results; copy

Section 14A. A certified copy of the results of a vote on a question submitted to the voters of a political subdivision, in accordance with the provisions of this chapter, relative to granting a license for a horse racing meeting, shall be sent by the state secretary, or by the city or town clerk in the case of a vote by a city or town, to the commission, within 90 days after the election.

128D:14B. Dog racing prohibited; penalty

Section 14E. Notwithstanding the provisions of this chapter or any general or special law to the contrary, no dog racing or racing meeting where any form of betting or wagering on the speed or ability of dogs occurs shall be conducted or permitted in this commonwealth and the commission is hereby prohibited from accepting or approving any application or request for racing dates for dog racing.

Any person violating any provision of this section relative to dog racing shall be subject to a civil penalty of not less than $20,000 which shall be payable to the commission and used for administrative purposes of the commission subject to appropriation.

All other provisions of this Chapter shall be construed as if they contain no references to dogs, dog racing or dog races.

128D:15. Simulcast wagering; conditions

Section 15. A racing meeting licensee or other entity licensed to simulcast pursuant to section 7 of chapter 23K shall, upon obtaining prior approval from the commission, have the right to simulcast within the commonwealth for pari-mutuel wagering purposes live horse races from pari-mutuel licensees or other licensed wagering or gaming facilities located outside the commonwealth. A racing meeting licensee shall, upon obtaining prior approval from the commission, also have the right to simulcast, for pari-mutuel wagering purposes, its live races to pari-mutuel licensees or other licensed wagering or gaming facilities located within or outside the commonwealth. A violation of this chapter shall constitute cause for the commission, in addition to any other action it may take pursuant to chapter 23K, to suspend or revoke a racing license or the right to simulcast pursuant to this chapter.

Each entity authorized to simulcast pursuant to this chapter or to chapter 23K of the shall simulcast the racing cards of each racing meeting licensee within the commonwealth, at a fee to be agreed upon between the sending and receiving entities, such fee not to exceed 12per cent of the total sum wagered on such racing card;

An entity authorized to simulcast hereunder, except as may be otherwise expressly provided for herein, shall not be restricted as to the signal it may carry based on the location or the post-time of the horse race to which the simulcast signal relates;

All simulcast licensees shall file with the commission, the clerk of the senate and the clerk of the house of representatives a copy of all contracts, agreements, or conditions pursuant to which simulcast events are broadcast, transmitted or received which shall include provisions for takeout, commissions and charges.

No racing meeting licensee, whether acting as a guest track or host track, shall simulcast live races unless the licensee conducts a full schedule of live racing performances during a racing season except that, if the commission determines that a licensee cannot conduct a full schedule of live racing performances due to circumstances beyond the control of the licensee, the commission may permit the licensee to continue simulcasting. Nothing herein shall be construed to amend or affect any provision of section 24 of chapter 23K relating to the obligations of racing meeting licensees that hold gaming licenses.

All simulcasts shall comply with the provisions of the Interstate Horse Racing Act of 1978, 15 U.S.C. Sec. 3001 et seq. or other applicable federal law.

Each racing meeting licensee shall pay a fee for those days, whether a dark day, a day during a dark season, or any day between the periods of racing pursuant to an operating license, when no live races are conducted but simulcast races are shown and simulcast wagers are accepted. Such fee shall be determined by the commission in accordance with the license fees charged pursuant to the provisions of this chapter. No other daily fees shall be assessed.

128D:16. Commingling of pari-mutuel pools; rules

Section 16. All wagers on simulcast races accepted by a simulcast licensee within the commonwealth or by a pari-mutuel licensee in another jurisdiction when such licensee is operating as a guest track shall be included in the pari-mutuel pool of the racing meeting licensee which conducts the live race, unless the commission approves a different procedure.

The commission shall promulgate such rules as it considers to be reasonably necessary to facilitate the commingling of pari-mutuel pools, to ensure the proper calculations and distributions of payments and takeouts on such wagers and to regulate the distribution of net proceeds as provided in this chapter.

128D:17. Unclaimed simulcast wagers; separate account

Section 17. All unclaimed simulcast wagers collected by simulcast licensees shall be deposited in a separate account under the control and supervision of the commission. Unclaimed simulcast wagers collected by racing meeting licensees shall be paid by the commission into the purse accounts of the racing meeting licensee that generated the unclaimed wagers. In the case of unclaimed wagers collected by simulcast licensees that are not racing meeting licensees, unclaimed wagers on races simulcast from outside the commonwealth shall be paid by the commission into the Race Horse Development Fund established pursuant to section 60 of chapter 23K, and unclaimed wagers collected on races simulcast from within the commonwealth shall be paid by the commission into the purse accounts of the racing meeting licensees conducting the live races on which such unclaimed wagers were placed.

128D:18. Simulcast wagering at guest track for horse races from host track; payments to winning patrons, commission, and host track

Section 18.

(1) Each guest track licensee shall pay daily from its simulcast wagers a sum equal to 20 per cent of the breaks into the Backstretch Improvement Fund. In the case of a simulcast licensee that is also a racing meeting licensee, the remaining 80 per cent of such breaks may be retained by such licensee; provided that such retained percentage shall be used and accounted for to the commission in accordance with rules and regulations established by the commission. In the case of a simulcast licensee that is not also a racing meeting licensee, the remaining 80 per cent of such breaks shall be paid daily to the commission for use by the commission in deferring its operational costs in connection with the regulation of racing and pari-mutuel wagering, including simulcasting.

(2) Each simulcast licensee acting as a guest track and simulcasting a live horse race from a host track within the commonwealth shall return to the winning patrons wagering on such simulcast race all sums so deposited as an award or dividend, according to the acknowledged and recognized rules and methods under which such pari-mutuel system has been operated, less the breaks and less an amount not to exceed 19 per cent of the total amount so deposited by patrons wagering on the speed or ability of any one running horse, also known as a straight wager, and, each such licensee shall return to the winning patrons wagering on the speed or ability of a combination of more than one horse in a single pool, also known as an exotic wager, all sums so deposited as an award or dividend, less such breaks, and less an amount not to exceed 26 per cent of the total amount so deposited.

Such guest track licensee shall, from the 19 per cent and the 26 per cent withheld, as provided in this section, pay to the commission on the day following each day of simulcasting, a sum equal to 0.5 per cent; except in the case of a guest track that is not also a racing meeting licensee, a sum equal to 0.5 per cent to the breeders association of the most recent live racing performance at the guest track for the purposes of promoting the respective breeding in the commonwealth pursuant to law; a sum equal to 5 per cent to be paid from the 19 per cent withheld and a sum of 6 per cent to be paid from the 26 per cent withheld to the horse owners at the host track for purses; provided however, except in the case of a guest track that is not also a racing meeting licensee, that not less than 3.5 per cent shall be paid to the horse owners, of the most recent live racing performance at the guest track, for purses; and provided further that a guest track that is not also a racing meeting licensee shall pay not less than 4 per cent into the Race Horse Development Fund established by section 60 of chapter 23K., said percentages to be paid from the 19 per cent and the 26 per cent withheld, as provided in this section.

The sum of 4.25 per cent of the straight wagering pool and 7 per cent of the exotic wagering pool shall be paid by such guest track to the host track; and the remainder of the straight wagering pool and the exotic wagering pool shall be retained by such guest track licensee.

(3) Each simulcast licensee within the commonwealth acting as a guest track and simulcasting a live running horse race from a host track from outside the commonwealth shall return to the winning patrons all sums so deposited less the breaks and less either an amount not to exceed 19 per cent of the straight wagering pool and 26 per cent of the exotic wagering pool or the amount which would be paid under the laws of the jurisdiction exercising regulatory authority over the host track; provided, however, that, from the total of the percentages withheld, the sum of 0.5 per cent shall be paid daily to the commission; the sum of 0.5 per cent shall be paid daily to the breeders association of the most recent live racing performance at the guest track for the purposes of promoting the respective breeding in the commonwealth pursuant to law, except that in the case of a guest track that is not also a racing meeting licensee such guest track shall pay the aforementioned sum of 0.5 percent into the Race Horse Development Fund established by section 60 of chapter 23K; and the remaining percentages shall be retained by the simulcast licensee as its commission; provided further that a simulcast licensee that is a running horse racing meeting licensee and the appropriate horseman's association representing the horse owners racing at that race track shall contract between themselves a percentage of not less than 4 per cent and not more than 7.5 per cent of the remaining percentages to be paid to the horse owners, and a simulcast licensee that that is not a . If a new running horse racing meeting licensee should replace the existing running horse meeting licensee during any point in a calendar year and a new contract is not agreed upon between the new running horse meeting licensee and the horseman's association before the start of the next racing season, then the last signed, executed and completed contract between the previous running horse racing meeting licensee and the horseman's association shall remain in effect for the racing season only or until a new contract is agreed upon.

The commission shall promulgate regulations that ensure that the aggregate of the portion of the total simulcast wagers retained hereunder as commission by guest tracks that are not also racing meeting licensees, together with the portion thereof retained by such guest track after the allocation to the Race Horse Development Fund pursuant to section 7(b) of chapter 23K, is substantially the same as the portion of the total simulcast wagers retained hereunder as commission by guest tracks that are also racing meeting licensees.

128D:19. Limitation on actions to recover winnings

Section 19. No action to recover winnings upon a pari-mutuel wager, including wagers on simulcast races, shall be commenced after December 31 of the year following the year in which the wager was made, and no such winnings shall be paid by a licensee except pursuant to a final judgment in an action so commenced or in settlement of such an action. Within 90 days of December 31, money held by a licensee for the payment of any such wager for the recovery of which no action has commenced within the time herein limited shall be deposited with the commission. A notice of the limitation prescribed by this section in such form as the commission may prescribe shall be posted by each licensee in a conspicuous place at each window or booth where pari-mutuel tickets are sold.

~~**128D:20. General Laws**~~

~~Section 20. Notwithstanding any rule, regulation or general or special law to the contrary, all references to chapter 128A or chapter 128C in any general or special law shall be deemed to be references to this chapter.~~

128D:20. Records and books of wagers; financial statements; statement of wagers; licensees under chapter 23K

Section 20. Accurate records and books shall at all times be kept and maintained by each simulcast licensee licensed pursuant to chapter 23K, showing the number, nature and amount of all simulcast wagers placed with such licensee. The commission, or its duly authorized representatives, shall at all reasonable times have access to the records and books of any such licensee for the purpose of examining and checking the same, and ascertaining whether or not the proper amount has been or is being paid to the commission as herein provided.

Within sixty days after the close of its fiscal year each simulcast licensee licensed pursuant to chapter 23K shall submit, on forms prescribed by the commission, financial statements certified to the commission by a certified public accountant; provided, however, that said licensee with

the prior written approval of the commission, may submit said statements annually within sixty days after the close of its fiscal year, if any. The commission, or its duly authorized representatives, shall at all reasonable times have access to all records and books of the licensee for the purpose of examining and certifying the same.

The commission may also from time to time require sworn statements of such wagers and may prescribe forms upon which such reporting shall be made. Any such simulcast licensee failing or refusing to make such report as herein provided, or failing or refusing to pay the amount found to be due as provided in this chapter, shall be deemed guilty of larceny and upon conviction shall be punished by a fine of not less than one thousand nor more than $10,000.

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Division of Racing

To: Commissioners

From: Jennifer Durenberger, Director of Racing JD

Date: April 4, 2013

Re: **Hearing Officer for Racing**

Since June 12, 2012, Commissioner Cameron has been the designated hearing officer for Racing Division administrative appeals to the Commission. In 2012, twenty-nine such appeals were scheduled to be heard. With the Commission's strengthened regulatory structure and enhanced medication and testing regulations, the potential exists for an increased number of both administrative rulings and subsequent appeals.

Now that the Racing Division and Legal Department are nearly fully staffed, instead of delegating the authority to a commissioner to hear racing appeals, we recommend that the Commission consider creating an in-house administrative hearing function by hiring a part time hearing officer who can hear the appeals and write the decisions.

Respectfully submitted,

Jennifer Durenberger
Director of Racing

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Division of Racing

Quarterly Report - April 4, 2013

OVERVIEW

On May 20, 2012, the Massachusetts Gaming Commission assumed regulatory responsibility of the state's horse racing industry from the State Racing Commission. MGC's newly created Racing Division is now the lawful authority on all regulatory matters for the industry. In April 2012 and in preparation of the transfer of duties, MGC commissioned veteran racing and gaming consultants to conduct an independent and comprehensive overview of the current status of the state's racing industry. MGC also requested that the consultants outline critical next steps to prepare the industry for the arrival of expanded gaming. In preparation for the 2013 racing season, the Racing Division aggressively pursued implementing new protocols, procedures and standards to ensure the utmost integrity and efficiency of the system moving forward. The following provides an update on the Racing Division's significant progress as well as recommendations to proactively address identified challenges.

INDUSTRY EXPERT RECOMMENDATION	MGC ACTION
Recommendation I: Adopt the RCI Model Rules of Racing	✓ **Regulatory Changes (205 CMR 3.00 and 4.00)** ➢ Adopted bulk of the RCI Model Rules pertaining to veterinary practices and medication on an emergency basis and are currently proceeding through the regular rule-making process (205 CMR 3.00 and 4.00). ➢ Adopted bulk of the RCI Model Rules pertaining to the safety and equipment standards and the running of the race on an emergency basis and are currently proceeding through the regular rule-making process (205 CMR 3.00 and 4.00). ➢ Reviewing the RCI Model Rules pertaining to racing officials and duties of licensees and anticipate amendments following the 2013 live racing season. ➢ Participating of the Racing Division in a regional consortium working group to address medication and testing uniformity issues. ✓ **ROAP Accreditation and USTA Licensing** ➢ Recruited a steward who is not only ROAP-accredited, but also a ROAP course instructor and member of its national Stewards' Advisory Council ➢ Both Commission judges are currently applying for licensure with the USTA. Additionally, one of the judges has registered for the next available 60-hour ROAP accreditation program to be held this July

<table>
<tr><td></td><td>✓ Accredited Laboratory
➢ Executed a contract with an ISO-17025 accredited equine drug testing laboratory. This laboratory also recently submitted an application to the RMTC laboratory accreditation program.

✓ Licensing to include fingerprinting

➢ Note: M.G.L. c.128A §9A mandates fingerprinting of applicants for occupational licenses, beginning on July 31, 2014.
➢ Establishing a fingerprinting program with MGC's Investigations and Enforcement Bureau for applicants in the near future and will be in compliance by the required date. .

✓ Random drug and alcohol testing of licensees

➢ Note: a 1989 Supreme Judicial Court opinion enjoined regulations authorizing both random and reasonable suspicion-based drug testing of State Racing Commission occupational licensees.
➢ Note: Suffolk Downs adopted its own testing program for jockeys in late 2012.
➢ Identified a model program in use in another jurisdiction that provides the optimum blend of cost-efficiency and breadth of coverage, if and when the Commission is able to promulgate regulations which comport with the Massachusetts Constitution. The Legal Department is reviewing available options.</td></tr>
<tr><td>Recommendation 2: Upgrade the audit/financial system to automate data process.</td><td>✓ Executed a contract with an automated pari-mutuel auditing services company and is currently in the contract implementation phase. The new product will accomplish the following:
1. web-based
2. eliminate redundancy issues and opportunity for data entry operator error
3. provide greater transparency and data accessibility, in real time

The system is expected to be operational within the next 30-60 days, and will initially run in parallel with our current software.</td></tr>
</table>

Recommendation 3: Update the licensing system and/or utilize technology to enhance/streamline information management.	✓ Commission is one of a handful of state regulators working with Racing Commissioners International as part of a beta-testing program of a web-based licensing system. This system will allow instant access to occupational licensing information from other RCI member racing jurisdictions, eliminating the need to run separate, independent searches for each applicant. Note: There is room for improvement of security features appearing on the individual badges issued by Commission licensing offices. Working with both the Investigations and Enforcement Bureau and Division of Licensing, security features will soon be enhanced.
Recommendation 4: Invest in Human Resources to enhance the professional profile of the SRC/MGC-Racing Division.	✓ Recruited several individuals with broad industry experience at the national level, including the Director of Racing, Chief Pari-Mutuel Officer, and Associate Commission Steward. Additionally, the Racing Division has contracted with several key industry professionals to provide in-service training, conference calls, webinars, and educational materials for current and incoming Commission personnel. ✓ Note: Racing Division interviewed several ROAP-accredited and USTA-licensed judges, but was unable to reach a mutually-agreeable pay rate. As racing operations are meant to be revenue-neutral, we anticipate that payroll issues will continue to affect our ability to further enhance the professional profile of the Racing Division.
Recommendation 5: The MGC should arrange for an independent audit of the Racing Division. As noted earlier, the SRC has not had the benefit of such an audit for several years.	✓ Initiated as part of its transition process in May, 2012, that the State Auditor's Office to undertake a transition audit for the period July 1, 2011 to May 20, 2012. The results of this audit were issued on December 31, 2012, and the audit was discussed at the Commission's open public meeting held January 3, 2013. ✓ The report concluded that during that period, the State Racing Commission "adequately administered its operations; had adequate controls in place to safeguard its assets; had adequate and complete accounting and contractual documentation; and complied with applicable laws, rules, and regulations for the areas tested." ✓ Additionally, the Commission is currently working with an outside auditor to schedule and conduct a number of periodic audits as required by M.G.L. c.128A and 128C.

IDENTIFIED CHALLENGES AND NEXT STEPS

The Racing Division has successfully completed a thorough full quarter review of the current status of horse racing operations. The following recommendations and solutions are presented to the Commission to address several identified challenges.

ISSUE	MGC RACING DIVISION RECOMMENDATION
Public records requests	Responding to public records requests has proved challenging. ◦ Despite a valid forwarding order with the post office, much of the old mail addressed to the State Racing Commission continues to be delivered to the Division of Professional Licensure ("DPL") at 1000 Washington St. ◦ We were recently made aware of this, and picked up a bundle of mail last week that contained items with postmarks dating back to January 7. ◦ Because of these two issues, we have received public records requests well after the expiration of the 10-day period within which we needed to respond. **SOLUTION:** Racing Division staff members have double-checked the forwarding address on file, are updating addresses on a piece-by-piece basis, and are now checking the DPL mailroom on a weekly basis. All known records requests have been responded to, with a letter of explanation and apology included where appropriate.
2011 Annual Report	The 2011 Annual Report of the State Racing Commission is still in unapproved draft form. The Racing Division is working to locate and obtain an approved version of the report. The 2011 Annual Report has been the subject of two public records requests, and we have been unable to provide the requesters with an estimated time for its release. **SOLUTION:** The Legal Department has initiated correspondence with those who have made public records requests to provide a status update. The Racing Division aggressively continues efforts to obtain an approved version of the 2011 Annual Report.

Periodic Audits	M.G.L. c.128A and 128C require the Commission to conduct a number of periodic audits and authorize a number of other audits. With the exception of one of the authorized audits, none of these audits appear to have been conducted in recent years. **SOLUTION:** Racing Division has compiled a list of these audits and is currently working with an - independent auditing group to prioritize, schedule, and begin work on them.
Technology	Numerous network and software issues have challenged our ability to access information from the DPL auditing/financial reporting and occupational licensing databases since January 1. Several of these issues have been rectified; however, the system is not yet fully-functional. **SOLUTION:** As noted in the first part of this report, the Racing Division is working with both an auditing services system provider and a licensing database service provider to eliminate the need for the Commission's continued reliance on these programs. We anticipate both systems to be operating in parallel with current systems in the near future (30-60 days).
DATA	Although MGC has taken proactive steps to ensure the integrity of these systems in the future, but concerns remain as to the accuracy of historical information collected, recorded, and used in various calculations of statutory and other payments in the past. In particular, we note the following: The current financial reporting system requires its programmer to manually enter any statutory changes affecting percentage allocations to various distributions of funds. The perpetual sunsetting of the Commonwealth's pari-mutuel and simulcast laws has created a pattern of frequent changes to those percentage allocations, compounded by additional amendments found in session laws, and some apparent confusion regarding effective dates of those changes. Recent changes would have occurred during a time when the State Racing Commission was operating without an Executive Director, a Chief Financial Officer, or a Chief Pari-Mutuel Officer. It is unclear whether appropriate instructions were ever given to the software programmer to make these changes and whether the current percentage allocations that the software program utilizes accurately reflect current law. Affected allocations could *potentially* include the following:

- Distributions to the Racing Stabilization Fund ("RSF"). This is the fund that provides for the humane care, maintenance, and adoption of greyhound dogs and to assist efforts to secure alternative employment and retraining opportunities for workers displaced by the abolition of greyhound racing in the Commonwealth in 2010.

- Any of the enumerated distributions in M.G.L. c.128A § 5 or in M.G.L. c.128C §§ 4-6 (this would include distributions to the Commonwealth, the various Capital and Promotional Trust Funds, purse accounts, Breeder's Funds, and Tufts Veterinary school.)

Additionally, we have discovered at least one simulcast host track that was entered into the financial reporting system incorrectly. A signal from a harness track was set up in the system as a running horse signal, and so any distributions of monies generated by wagers placed on that track appear to have been allocated according to the wrong formula.

What we know: Monies have been and continue to be distributed to all of the intended recipients outlined in statute. The Commission continues to make estimated RSF distributions, based on the last payments issued by the Office of Consumer Affairs in 2012. Chapter 128A and 128C distributions are ongoing.

Further review needed: Whether the percentages currently utilized by the financial reporting system reflect current law, whether the percentages historically utilized by the financial reporting system accurately reflected the law in effect at the time those distributions were made, and how many other simulcast signal host tracks have been entered into the system incorrectly.

SOLUTION: The Racing Division has contracted with an independent consultant to conduct a review of this issue and to provide recommendations to move forward efficiently and effectively.

CONCLUSION

In conclusion, the Massachusetts Gaming Commission has made tremendous strides in a very short period of time in terms of modernizing and strengthening its horse racing regulatory infrastructure and framework in preparation for the arrival of expanded gaming. In addition, the Racing Division has identified several significant operational challenges that will take some time to appropriately address. We have identified and immediately begun to implement efficient solutions where we are able, and have contracted with independent industry experts in those areas requiring additional expertise.

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March 28, 2013

By Hand Delivery

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

Re: Region C

Dear Chairman Crosby:

I write on behalf of the Mashpee Wampanoag Tribe to correct a few of the many misstatements made by opponents of the Tribe's project to the Massachusetts Gaming Commission at the hearing held at Bristol Community College in Fall River last Thursday. The points set forth below are not exhaustive as the Tribe believes it is not necessary to repeat matters previously discussed with you and Commissioner McHugh.

The Tribe continues to believe the Commission lacks lawful authority under the plain language of the Massachusetts Expanded Gaming Act, St. 2011, c. 194, even to consider opening Region C for applications for a Category 1 license. The Commission's authority with Regard to Region C is expressly limited to taking action only when, and if, the Secretary of the Interior determines that she "shall not" take land into trust for the Tribe. This legislative intent was reaffirmed when the General Court approved the July 2012 Compact, and will be confirmed again when it approves the new Compact. More specifically, Section 2.6 of both compacts provide that the Commission **"will not issue a request for Category 1 License *applications* in Region C unless and until it determines that the Tribe will not have land taken into trust for it by the United States Secretary of the Interior.** " *See* Compact at Section 2.6 (emphasis supplied). Given Section 2.6, the plain language of the statute, and the substantial progress the Tribe has made with its trust application, it is premature for the Commission even to consider a request for applications in Region C at this time. The Tribe reserves all of its rights in this regard.

Let me now turn to some of the specific misstatements made to the Commission.

Opponents of the Tribe's project have incorrectly suggested to the Commission that the Tribe cannot have land taken into trust under the United States Supreme Court's decision in *Carcieri* as the Tribe was not recognized by the United States in1934. They misread the *Carcieri* opinion. The Court did not rule in *Carcieri* that a tribe must have been federally

recognized in 1934. Rather, it ruled that Tribe must have been "under federal jurisdiction" at that time. The Tribe has addressed the "under federal jurisdiction" inquiry in detailed and voluminous submissions to the Department of the Interior. The Tribe's submissions directly address federal correspondence claimed by opponents to disclaim federal jurisdiction over the Tribe. Such statements to Native Americans from a federal government then seeking to disclaim its responsibilities are common and do not determine the inquiry. Interior has taken land into trust in situations where similar erroneous correspondence from the federal government exists. Likewise, that the Tribe was under state jurisdiction as of 1934 is beside the point. Many tribes were subject to concurrent jurisdiction, and the United States Supreme Court has held that these relations did not alter the application of federal law. *See Oneida Indian Nation v. County of Oneida,* 414 U.S. 661, 670 (1974). With all respect, these issues are not properly before the Commission and it is only the determination by Interior which is relevant here. Regardless, the Tribe seeks a cooperative relationship with the Commission and for that reason we would be glad to make the Tribe's submissions available for review at my office if the Commission would like to see them.

As Assistant Secretary Washburn stated in his letter dated December 31, 2012, Interior will have a decision on the *Carcieri* issue in "early 2013." We understand that the Assistant Secretary has informed the Commission that the *Carcieri* review is now in its late stages and is in the hands of the Solicitor's Office. As Solicitor Hilary Tompkins has now told the Tribe in writing herself, the Office of the Solicitor considers the Tribe's application to be a "top priority, is making "substantial progress in its review, and will continue to actively consider the matter." This is all perfectly consistent with a decision being made in "early 2013."

Once the Tribe receives a favorable *Carcieri* decision, the two obstacles repeatedly cited by the Tribe's opponents will have been resolved. This will leave only the environmental review portion of the trust application process. At the hearing last week, the opponents of the Tribe incorrectly informed the Commission that it could take six years for Interior to complete its environmental review and for challenges to that review to be resolved. This too is incorrect.

As you know, the Bureau of Indian Affairs ("BIA") must comply with NEPA before the Secretary may acquire land into trust under the IRA. The Department processes fee-to-trust and NEPA concurrently. Significant progress has been made in the NEPA process and the Tribe anticipates it will be completed within the next year.

The NEPA process commenced on May 31, 2012, when the BIA published a Notice of Intent ("NOI") in the Federal Register announcing the proposed Federal action—to acquire certain lands in Taunton and Mashpee into trust for the benefit of the Tribe. The BIA then completed the NEPA scoping process (i.e., determining the scope of the environmental review to be completed)—the next NEPA milestone. Scoping for this proposed action comprised a public comment period (which ended July 2, 2012) and two public hearings, one conducted in Taunton on June 20, 2012, and the second in Mashpee on June 21, 2012. The Department issued a final Scoping Report on November 1, 2012, completing the required scoping under NEPA.

The next major milestone in the NEPA process—preparing the draft Environmental Impact Statement ("DEIS")—is nearly complete. All underlying technical studies (air, water,

traffic, socio-economic, etc.) have been completed and the BIA has prepared the DEIS and incorporated the defined scope, framework and depth of analyses identified during the scoping process. On February 8, 2013, the BIA, Regional Office (located in Nashville, TN and directly responsible for processing the Tribe's application) circulated the DEIS to internal Departmental offices for review and comment. Once internal review is complete, EPA will publish a Notice of Availability and the BIA will conduct a final public hearing to take final public comments on the DEIS. Once that period has ended, the BIA will use the DEIS to prepare the final Environmental Impact Statement ("FEIS").

Once complete, the EPA will publish a Notice of Availability of the FEIS in the Federal Register, which triggers a 30-day comment period. When the comment period expires, the BIA will issue a Record of Decision ("ROD") wherein the Assistant Secretary-Indian Affairs addresses any final comments and renders a decision as to the proposed action. The ROD will incorporate the BIA's final decision as to both NEPA and the Tribe's trust application.

As further illustrated below, the NEPA process is well underway and DEIS publication is anticipated to occur in spring 2013. Based on the progress to date and the anticipated timeline, we believe the NEPA process will be completed in less than one year from this date and will run concurrently with the Tribe's fee-to-trust application.

ANTICIPATED NEPA SCHEDULE

ACTION	STATUS
BIA prepares NOI	COMPLETED
NOI published in Federal Register with Notice of Scoping Meetings	COMPLETED
Scoping Meetings in Taunton and Mashpee	COMPLETED
Scoping Comment Period ends (30-days)	COMPLETED
Scoping Report submitted to BIA by environmental consultant	COMPLETED
BIA reviews and finalizes Scoping Report, Scoping Completed	COMPLETED
Perform and Complete all underlying Technical Studies	COMPLETED
Complete first draft of DEIS	COMPLETED
BIA reviews and circulates DEIS to Central BIA office	COMPLETED
EPA Publishes DEIS Notice of Availability in Federal Register	Spring 2013
DEIS Review and Comment Period (45-days); Public Hearing	Late Spring 2013
DEIS Comments Addressed; FEIS preparation commences	Summer 2013
FEIS review and circulates FEIS to Central BIA	Late Summer 2013
EPA Publishes FEIS Notice of Availability	Fall 2013

in Federal Register	
FEIS Waiting Period (30-days)	Winter 2013
NEPA Completed; AS-IA issues Record of Decision or ROD (approving federal action to acquire land into trust)	Early 2014

Finally, opponents of the Tribe incorrectly informed the Commission more generally that a challenge to any Interior decision taking land into trust for the Tribe will also take six years to resolve. Again, this is untrue, and essentially uses prior cases to obscure recent practice. As previously stated, the Tribe will move forward with its project as soon as the land is placed into trust by Interior. That decision includes the Department's satisfactory conclusion of the Environmental process. Thereafter, and in the recent Departmental practice, if any opponent of the Tribe with actual standing to sue decides to pursue litigation against Interior, the plaintiff will be obliged to seek and obtain a preliminary injunction very quickly. We have given you a number of court decisions that show how this has played out in actual practice. As in those cases, the soundness of the trust acquisition for Mashpee will overcome any request for a preliminary injunction and the Tribe will be allowed to proceed with its project notwithstanding litigation. Before the Supreme Court's Opinion in *Patchak*, the Department was concerned that any action before all challenges were exhausted could deny due process to those seeking review. Now that the Supreme Court has removed that concern, the Department is no longer compelled to "self-stay" all acquisitions, confident that the courts can sort out the need, if any, to enjoin acquisitions. Indeed, as we have also previously explained, any legal challenge will be brought if at all under the Administrative Procedures Act and the challenge will be an uphill battle based upon applicable standards of APA review.

I would be glad to speak with you further if you think it would be of assistance to the Commission.

Very truly yours,

Howard M. Cooper

HMC:ma

cc: James F. McHugh, Commissioner (by hand)
Chairman Cedric Cromwell

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IN REFERENCE TO:
031296-00001

April 1, 2013

VIA FACSIMILE

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

Judge James F. McHugh
Commissioner
Massachusetts Gaming Commission
84 State Street, Suite 720
Boston, MA 02109

Re: Region C

Dear Chairman Crosby and Commissioner McHugh:

We are counsel to the City of Taunton, Massachusetts ("Taunton") which has entered into an intergovernmental agreement with the Mashpee Wampanoag Tribe (the "Tribe") to site a destination resort casino development in Taunton. On behalf of Taunton, we request the Massachusetts Gaming Commission (the "Commission") defer any decision to accept applications for a commercial casino in Region C, as that term is defined in "An Act Establishing Expanded Gaming in the Commonwealth," codified in Chapter 194 of the Acts of 2011(the "Act").

Governor Patrick recently executed a Tribal-State Compact with the Tribe (the "Compact"). The Compact and the related Resolve (H. 3375 and H. 3776, respectively) were filed with the Legislature on March 27, 2013. We are advised that the Compact is likely to be quickly considered and voted upon by the Legislature. Section 2.6 of the Compact states that Section 91 of the Act provides the Commission "**will not issue a request for Category 1 License *applications* in Region C unless and until it determines that the tribe will not have land taken into trust for it by the United States Secretary of the Interior**[1]" (emphasis supplied).

1 It is significant to note that that this **exact language** prevailed in the previous Tribal-State Compact dated July 12, 2012. This expression of legislative intent was approved by the Massachusetts House of Representatives on July 18, 2012 by a vote of 121-32 (*see* Yea and Nay No. 313) and by the Massachusetts Senate on July 26, 2012 by vote of 27-9 (*see* Yeas and Nays No. 274).

Assuming that the Compact is approved by the Legislature, we believe that unless the Commission has determined that the Tribe will not have land taken into trust by the U.S. Secretary of the Interior, the Commission would be subjecting itself to a substantial likelihood of litigation by the Tribe for breaching the terms of the Compact and proceeding in violation of the Act. Having closely followed the Commission's deliberations concerning the status of the Tribe's land-into-trust efforts, and having reviewed the information submitted for the record on this issue, it is our firm belief that the Commission does not have sufficient current evidence to reasonably determine that the Tribe will not have land taken into trust. Indeed, it is also our belief that the plain language of Section 91 of the Act means that there is no basis upon which the Commission can reasonably conclude that the Tribe's land will not be taken into trust unless and until the U.S. Secretary of the Interior has made such judgment.

In addition, if the Commission commences the process of accepting applications for a commercial casino in Region C prior to the Legislature taking action on the Compact, and the Legislature subsequently approves the Compact, we believe the Commission would be required to immediately abandon this process or subject itself to significant time-consuming and expensive litigation.

For these reasons, we respectfully recommend the Commission defer its decision on accepting applications for commercial casinos in Region C until it determines that the Tribe will not have land taken into trust. We would appreciate the opportunity to discuss this issue with you prior to Thursday's meeting of the Commission.

Very truly yours,

SHEFSKY & FROELICH LTD.

Cezar M. Froelich

CMF:dg
cc: Jason D. Buffington, Esq.
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ST. 2011, c. 194

SECTION 91. (a) Notwithstanding any general or special law or rule or regulation to the contrary, the governor may enter into a compact with a federally recognized Indian tribe in the commonwealth.

(b) The Massachusetts gaming commission shall, upon request of the governor, provide assistance to the governor in negotiating such compact.

(c) The governor shall only enter into negotiations under this section with a tribe that has purchased, or entered into an agreement to purchase, a parcel of land for the proposed tribal gaming development and scheduled a vote in the host communities for approval of the proposed tribal gaming development. The governing body in the host community shall coordinate with the tribe to schedule a vote for approval of the proposed gaming establishment upon receipt of a request from the tribe. The governing body of the host community shall call for the election to be held not less than 60 days but not more than 90 days from the date the request was received.

(d) A compact negotiated and agreed to by the governor and tribe shall be submitted to the general court for approval. The compact shall include a statement of the financial investment rights of any individual or entity which has made an investment to the tribe, its affiliates or predecessor applicants of the tribe for the purpose of securing a gaming license for that tribe under its name or any subsidiary or affiliate since 2005.

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

COMPACT

2.6 Section 91 of the Act provides that if a compact negotiated by the Governor is approved by the General Court by July 31, 2012, the MGC will not issue a request for Category I License applications in Region C unless and until it determines that the Tribe will not have land taken into trust for it by the United States Secretary of the Interior. IGRA requires that a tribe's gaming must be conducted on Indian Lands, which includes land taken into trust by the United States.

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REGION C

Suggested Issues for MGC Discussion

SECTION ONE

ISSUES & BACKGROUND

PRINCIPAL ISSUES

- Status of Tribal Project
- Land in Trust Application
- Current Litigation: K.G. Urban
- Commercial RFP Considerations

Status of Tribal Project

- **Compact**
  - Executed
- **Legislative approval**
  - In committee but vote not scheduled
- **BIA Compact approval**
  - Prerequisite is Legislative approval
  - Probable according to Tribe
  - 45 days from submission – say mid-August, 2013

STATUS OF TRIBAL PROJECT

- **Project status**
  - Site identified
  - Voters approved Tribal gaming at the site on June 9, 2012
  - Intergovernmental Agreement between Tribe and City signed July 10, 2012
    - Analogous to the statutory Host Community Agreements
    - Tribe paid City $1.5 million mitigation fee on August 17, 2012
  - MEPA Process is moving forward
    - ENF Certificate issued by Secretary of Energy & Environmental Affairs on August 24, 2012
      - Stated that tribe was required to prepare a Draft Environmental Impact Report
    - Since then numerous environmental & economic studies have been completed
  - The relationship between MEPA the NEPA process discussed below is complicated but both may play some role in the overall project's execution

Land in Trust

- **Initial reservation determination**
  - Approved 2/17/13
  - Only matters if land taken into trust
- **Final decision**
  - Favorable outcome to Tribe unclear at best
  - Even if favorable, the timing of the BIA decision is unlikely to come soon
  - Several issues

Land in Trust: Issue One

- ***Carceiri* decision**
  - Land may be taken into trust only for "recognized" tribes that were "under federal jurisdiction" in June, 1934
    - No question that the Tribe is recognized
    - "Under federal jurisdiction" is a much more difficult issue
      - No definitive judicial decision stating what the phrase means
      - Whatever the meaning, the "federal jurisdiction decision" decision will be fact intensive
  - BIA 2010 *Cowlitz* decision
    - BIA took land of Cowlitz tribe into trust
    - In addressing *Carceiri*, BIA said that "under federal jurisdiction" inquiry contains two parts
      - "The first question is to examine whether there is a sufficient showing in the tribe's history, at or before 1934, that it was under federal jurisdiction, *i.e.*, whether the United States had, in 1934 or at some point in the tribe's history prior to 1934, taken an action or series of actions ... through a course of dealings or other relevant acts for or on behalf of the tribe or in some instance tribal members that are sufficient to establish, or that generally reflect federal obligations, duties, responsibility for or authority over the tribe by the Federal Government."
      - "Once having identified that the tribe was under federal jurisdiction, the second question is to ascertain whether the tribe's jurisdictional status remained intact in 1934."
    - *Cowlitz* has been in litigation since January 31, 2011, and remains at procedural stages in the District Court for the District of Columbia.
  - BIA action in this case
    - BIA has taken other land into trust after *Carceiri* and the *Carceiri* analysis is now a "top priority" for the BIA solicitor, Hilary C. Tompkins.
    - However, in her March 20, 2013 letter to the Tribe, Ms. Tompkins stated that "[t]he majority of *Carceiri* determinations require a comprehensive, fact-intensive analysis that can be time intensive and costly."
    - She continued by saying that "[t]he Office of the Solicitor considers the Mashpee *Carceiri* determination a top priority, is making substantial progress in its review, and will continue to actively consider the matter," though she gave no estimate of when the review would conclude.
  - Legislative fix
    - Unlikely
  - We have no independent basis for assessing the "under federal jurisdiction issue"

Land in Trust: Issue Two

- **NEPA process**
  - Must be completed before the Trust decision is made
  - The process has started and the Tribe predicts that it will be completed in early 2014
  - EPA Representative has stated that the Tribe's estimate is within the range of reason
    - EPA's status in the process is that of a commentator, not a decision maker
  - Kevin Washburn, DOI Assistant Secretary for Indian Affairs, has simply said that the NEPA process takes time
  - The record in other cases suggests that the entire land-in-trust process, including the NEPA component, takes years to conclude

LAND IN TRUST: ISSUE THREE

- Post decision litigation
  - Litigation is likely over
    - BIA authority to take land into trust in light of *Carceiri*
    - Merits of the BIA decision
  - June, 2012, Supreme Court decision in *Salazar* v. *Patchak* broadened the class of people who could challenge BIA land in trust determinations and effectively gave litigants six years from the date of the decision to file suit
  - BIA will no longer stay its decisions when a lawsuit is filed
    - A court could issue an injunction against commencement of construction but it is difficult to predict now whether it would do so
  - Litigation would likely take four years to conclude – longer if this were the first case to raise effectively the “under federal jurisdiction issue”

K.G. Urban Litigation

- K.G. Urban Litigation
  - Now pending in the Federal District Court after remand from the 1st Circuit
  - May limit the amount of time the Commission has to act
  - 1st Circuit decision said, in effect, that it is OK to freeze Region C commercial applications for the period of time necessary to support the IGRA process but the longer the freeze remains in place, particularly without an end date, the less likely it will be that the court will view the freeze as temporary IGRA support as opposed to a race-based set-aside.

COMMERCIAL RFP: LEGISLATION

- **The Commission may issue an RFP for commercial licenses in Region C when and if it chooses to do so**
  - Section 91(e) of the expanded gaming legislation says that the Commission **must** issue applications for Region C commercial licenses if there is no signed compact approved by the Legislature by July 31, 2012 or if the Commission determines that the BIA will not take land into trust.
    - The section does not prohibit the Commission from issuing an RFP for commercial licenses at any time.
  - The language of the current compact is not to the contrary
    - Although Paragraph 2.6 of the current and earlier compact interprets Section 91(e) as stating that "the Commission will not issue" a commercial RFP in Region C unless it determines that the BIA will not take land into trust, that is not what Section 91(e) says
    - The revenue portions of both compacts expressly contemplate the Commission's issuance of a commercial license in Region C and decrease the Commonwealth's share of Tribal gaming revenues if a commercial facility begins operations in that Region. In that event, the compacts also give the Tribe the right to terminate the compact.

Commercial RFP: Timetable

- **Timetable**
  - If the Commission solicits commercial applications for Region C and follows a schedule similar to the schedule for Category I licenses in the two other regions, the Region C licensing schedule would approximate the following, though it probably could be shortened somewhat:
    - RFP Phase 1 deadline – August, 2013
    - Suitability determinations – May, 2014
    - RFP Phase 2 deadline – August, 2014
    - Licensing decision – December, 2014

SECTION TWO

DISCUSSION TOPICS

Wait for More Clarity

- **If the Commission waits for clarity on the Tribal issues before issuing a commercial RFP in Region C, then**
  - It is likely that there will be no construction or gaming revenue in Region C for a considerable period of time, though the length is impossible to determine with the information currently available
  - If the land in trust decision is negative, the Commission will have to begin a commercial process perhaps years after licenses had been awarded in Regions A and B
  - If the land in trust decision is positive, the Commonwealth will face not only a revenue stream 8 – 10% less than the revenue stream from the commercial casinos but also a revenue stream that could start considerably later than the commercial revenue stream

PROCEED NOW

- **If the Commission proceeds now with the commercial process in Region C, then**
  - The Tribe could elect to pursue the commercial license without abandoning its land in trust application
  - If the Tribe does not elect to pursue a commercial license, or if it applies and is unsuccessful, it is possible that the land in trust application will be successful and that two casinos will operate in Region C, one of which will have a much lower overhead because its gaming revenues will be untaxed
    - Tribe could also disavow the compact and operate Class II gaming – essentially a slots operation -- without any Commonwealth participation or oversight

Financial Considerations

- **Would a commercial casino be viable in the same region as an untaxed Tribal casino**
  - What rate of return would investors need to compensate for the risk that operation in that kind of a competitive environment entails
- **What market share would a commercial casino need in order to generate tax revenues equal to those generated by the 15-17% levy the compact imposes on tribal gross gaming revenues**
- **What revenues will be needed to account for the absence of any revenue between now and the time a casino commences operation in Region C**
  - If we wait for more clarity
  - If we proceed now

OTHER ISSUES