The Commonwealth of Massachusetts
Massachusetts Gaming Commission

NOTICE OF MEETING and AGENDA
February 21, 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, February 21, 2013
1:00 p.m.
Division of Insurance
1000 Washington Street
1st Floor, Meeting Room 1-E
Boston, Massachusetts

PUBLIC MEETING - #53

1. Call to order

2. Approval of Minutes
   a. February 14, 2013 Meeting

3. Administration
   a. Master schedule
   b. Personnel update
   c. Sites for Western Massachusetts meetings
   d. Enhanced Code of Ethics - VOTE

4. Public Education and Information
   a. Report from the Ombudsman
   b. Discussion of preliminary evaluation criteria matrix
      i. Weighting factors and process
   c. Preparation for Region C discussion
   d. Report from the Director of Communications and Outreach
      i. Website review

5. Regulation Update
   a. Review of draft regulations
   b. Schedule update
   c. License fee discussion

6. IEB Report
   a. Scope of licensing
      i. License category declaration - VOTE
   b. Investigations status report
   c. Discussion of processing public records requests for applications
      i. Dissemination process

7. Racing Division
   a. Administrative Update
      i. Equine drug testing laboratory services – VOTE
      ii. Pari-mutuel software system - VOTE
   b. Legislative review update and discussion

8. Research Agenda

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

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

2/19/2013
(date)

Stephen P. Crosby
Stephen P. Crosby, Chairman

Date Posted to Website: February 19, 2013 at 1:00 p.m.

2-a

The Commonwealth of Massachusetts
Massachusetts Gaming Commission

DRAFT

Meeting Minutes

Date: February 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 52nd public meeting.

Approval of Minutes:

See transcript pages 2-4.

Commissioner McHugh stated that he has distributed the February 7, 2013 minutes to the Commissioners for review. Chairman Crosby and Commissioner Stebbins suggested making two revisions.

Motion made by Commissioner McHugh that the minutes of February 7, 2013 be approved as amended. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.

Administration:

See transcript pages 4-24.

Master Schedule – Chairman Crosby stated that the Commission is working very hard on issuing the slots license as soon as possible. The Commission set September 1, 2013 as an aspirational

target date. A number of issues, however, must be resolved before the Commission can firmly settle on that date.

Personnel Update – Chairman Crosby stated that the hiring process for a Director of Workforce Supplier and Diversity Development is well underway. The Commission posted an advertisement for the Director of Licensing and the Director of Research and Problem Gaming positions. He stated that he asked Marlene Warner from the Mass Council and Joel Weisman, formerly a senior researcher for the Department of Health and Human Services, to be part of the interview team.

License Fee Discussion – Commissioner McHugh stated that the M.G.L. c. 23K provides that the Category 1 licensee must pay $85 million as a licensing fee and the Category 2 licensee must pay $25 million as a licensing fee. The Commission anticipates that the licenses it issues will carry conditions that may not be satisfied for a substantial period of time, so the question becomes whether the Commission should collect the fee when the license is awarded or when the conditions are fulfilled. Under the statute, the bulk of that initial licensing money goes into a fund that the Commonwealth distributes to other statutory funds, some of which are distributed through appropriations. In his FY 2014 budget proposal, the Governor has relied on appropriations from those funds. The statute says that the licensee must pay the license fee within 30 days after the Commission awards the license. In the case of the Category 1 license, the statute also provides that the licensee must place in escrow ten percent of the total amount the licensee plans to spend on the project.

Commissioner McHugh stated that the practical problem with waiting to collect the fee until the licensee fulfills all the conditions is that the money, in all likelihood, will have been allocated and the entire fund into which these monies are put expires on December 31, 2015. It is unlikely that all of the conditions will have been met by that time. Commissioner Cameron stated that she discussed the timing issue with the gaming consultants, who were adamant in saying that the fee is always collected upfront when the license is awarded, however conditionally. All licenses have some conditions, the fee is always nonrefundable, and it is up to the applicant to meet those conditions. She stated that the consultants were not aware of another jurisdiction that has some kind of a failsafe, as it is incumbent upon the applicant to resolve problems. Commissioner Zuniga stated that it has always been his interpretation of the statute that the fee would be collected upfront. Commissioner Stebbins stated that he agrees with the interpretation that the fee would be due upfront.

Chairman Crosby stated that he checked with the Legislature and the Senate informed him that the intent was to collect the licensing fee upfront, but they never considered how the license conditions would affect fee collection. Now that this issue has been raised, the Senators want to think about it a little more. He stated that the House also has not contemplated the issue. His discussions clarified that there are two types of conditions: those that are within the licensee's control and those outside of the licensee's control, such as not getting federal highway approval for something that is absolutely essential to the project. He discussed with legislators what would happen if the licensee paid the fee upfront, but the project could not go forward through no fault of the developer. In such a scenario, the license would go to another developer and the House would be open to considering a time period, either through a change to the law or the

Commission's own regulations, for the Commission to return the money to the original licensee upon receipt of the license fee from the successor licensee.

Commissioner McHugh stated that the developer may be able to get insurance to protect it against a condition that is beyond its control. Commissioner Stebbins stated that the ENF certificate, received far in advance of the license award, will outline where the major environmental, traffic, or other hurdles may come up. When making licensing determinations, the Commission will consider these potential hurdles in determining the likelihood of success of each applicant. Chairman Crosby asked that the Commission request public comment on this issue. Commissioner McHugh agreed that it would be helpful to get a wide range of comments and do more research on this topic. Chairman Crosby stated that the Commission will revisit this topic in two weeks.

Public Education and Information:

See transcript pages 24-55.

Report from the Ombudsman – Ombudsman Ziemba stated that the Commission received 20-25 comments on the surrounding community definition. The Commission is reviewing these comments to determine if there is any need to amend the current draft. He stated that communities are submitting requests for community disbursements and the Commission will process the requests as they come in. He continues to have conversations with applicants and communities on a number of different issues. He stated that he received a recommendation that the Commission should be mindful of the differences between resort casino and slots applicants when developing policies and procedures.

Chairman Crosby stated that in a month the Commission will be reopening the Region C discussion and next week's meeting agenda will include a discussion of what information the Commission will need to begin this discussion. He asked the Commissioners to consider how they would like to handle this discussion.

Discussion of Preliminary Evaluation Criteria Matrix – Commissioner McHugh stated that he and Commissioner Zuniga have created a preliminary evaluation criteria matrix to start preliminary discussion. He stated that the question is: what criteria should the Commission use to evaluate the applications for Category 1 and Category 2 licenses. This matrix is designed to lay out the criteria and indicate the supporting evidence needed for each criterion. He stated that he has grouped the criteria listed into five categories with topics attached to each of the five categories. The sources for the topics are varied and include the statute as well as the applications for casino licenses used in Pennsylvania, Missouri, Louisiana, Philadelphia, and Springfield. He also reviewed the evaluations used in Pittsburgh, Pennsylvania, Maryland, Kansas, and Singapore. He reviewed the strategic plan and recommendations of the gaming consultants, as well as a draft of an AIA white paper.

Commissioner Zuniga stated that there is a great deal of substance behind all the references Commissioner McHugh has outlined. He indicated that thinking about the criteria in five rational groupings is of great value to the Commission. Chairman Crosby stated that it is important to determine if these are the correct groupings. Commissioner McHugh organized the

criteria into revenue generation, employment, goods and services, building and site design, and mitigation. Chairman Crosby indicated that the legislation talks most about economic development, jobs, and revenue. He recommended that the Commission consider changing the five groupings to finance, economic development, design, mitigation, and amenities and enhancements. Commissioner McHugh stated that these ideas are intriguing, as he thought his original third category was weak. Commissioner Zuniga stated that the Commission should balance needs, as the largest facility may generate the most revenues and jobs, but there could be a place for the Commission to look at things holistically to ensure that proposals meet the spirit of the legislation and the vision of the Commission.

Commissioner McHugh asked about the best way to work on category five and enhance the others. Commissioner Stebbins stated that laying out thought provoking questions and putting them out for broader public dissemination may provide feedback and enhancement. He stated that the amenities and enhancement group has a blurred connection to finance and economic development and the Commission may broaden category three to include unique business strategies. Chairman Crosby stated that he would work on reordering the categories and recommended in the meantime posting the present draft for public comment. Commissioner Zuniga stated that the Commission should consider in the future how to weight the criteria. Chairman Crosby stated that there are four main steps that the Commission must undertake in connection with the applications: (1) identifying the evaluation criteria and writing an application form, (2) develop a weighting mechanism for the criteria, (3) designing and describing the application process, and (4) developing a list of outside resources that the Commission will use in the evaluation process.

Chairman Crosby stated that the Commission will post online for comment the preliminary evaluation criteria matrix and the Commission will continue discussions at the next meeting. Commissioner Zuniga stated that the Commission has already held discussions on some of the policy questions that dovetail into several of these categories, such as finance, and the Commission will write regulations relative to a number of financial ratios that are not alluded to in this matrix. Commissioner Cameron stated that this matrix is well thought out and pointed out that the Commission needs a group of criteria to evaluate innovative competitive ideas that do not squarely fit within any criterion that the Commission could predict ahead of time. She stated that a bigger facility does not necessarily generate more revenue and there are many questions to think about. Commissioner Stebbins stated that he would like to see what an applicant's track record has been in areas such as retention of employees. Commissioner McHugh agreed that historical data would be very helpful in many of the evaluation criteria.

Regulation Update:

See transcript pages 55-62.

Key Policy Questions – Commissioner McHugh stated that the key policy question sessions in January resulted in key policy decisions which the Commission has included in a matrix that it will post today. Chairman Crosby stated that the Commission still must address policy questions related to the second phase of Phase 2. Commissioner McHugh stated that the second part of the Phase 2 regulations deals with operational matters and he anticipates fewer policy questions. The Commission can deal with these questions as they arise.

Attorney Grossman addressed the Commission. He stated that the Commission has made substantial progress in drafting the regulations. He noted that he altered the regulation grid to identify internal target dates, thereby allowing the Commission to keep track of milestones in the drafting process. He stated that he will compile portions of the regulations for the Commission to review at public meetings over the course of the next few weeks. He stated that he has met internally with staff and the consultants to develop a plan, with a goal of meeting on March 12, 2013 to make a final run through of the projected draft language and then send it to the Commission for a review before sending it to the Local Government Advisory Committee. He asked the Commission to consider how it would like to look at this language and recommended setting aside a large amount of time to go through the Phase 2 draft language in its entirety, either before the Commission's March 14, 2013 meeting or in a full day on March 13 or 15, 2013. He stated that this time frame would allow promulgation of the Phase 2 regulations sooner than projected.

IEB Report:

See transcript pages 62-85.

Scope of Licensing – Director Wells stated that she has sent letters to those applicants who did not state which license they were seeking and gave them until February 19, 2013 to respond. She stated that she heard from one applicant who indicated that it will meet this deadline. The second applicant expressed initial concerns because of the structure of its negotiations and anticipates providing further information over the next few days. She stated that if the applicants are not prepared to make a declaration on February 19, 2013, then they should submit something in writing regarding their status and she will discuss the submissions with the Commission at its February 21 meeting. Chairman Crosby expressed concern that this may not be fair to the applicant that intends to meet the February 19, 2013 date. Commissioner Cameron stated that these two applicants are different from every other applicant who has designated the type of license for which it is applying. Commissioner Cameron stated that the Commission did not anticipate this situation and must now decide how to acquire the information that the Commission needs to prioritize Category 2 investigations. Chairman Crosby stated that he agrees with Director Wells' plan as long as the IEB gives both applicants the same option to delay declaring the license it is interested in pursuing.

Investigation Status Report – Director Wells stated that the IEB has sent all applications to the gaming consultants and the background investigations are continuing. She stated that the investigators are updating her on a regular basis and the State Police are also involved in the investigatory process.

Public Records – Director Wells stated that the State Police reviewed the applications as well as the redacted forms, which the Commission stated should be in compliance with the specimen form posted online. Certain applicants have over redacted and certain applicants have under redacted. She stated that the proposed procedure for going forward with public records requests is to inform the applicants of any discrepancies and applicants who desire additional redactions beyond the specimen form would submit a written request to the Commission, which the legal

department will review. She stated that the applicant would be notified of the legal department's determination and if the applicant is not satisfied with that determination it may appeal to the full Commission.

Director Wells stated that discussion is needed on the method of disclosure once the applications have been properly redacted. She notified the applicants that the Commission would discuss this issue at today's meeting and gave them an opportunity to comment. Commissioner McHugh stated that the Commission wrote a set of instructions that told applicants what they were supposed to do, created a specimen form that showed them how to do what they were told to do, and wrote a letter telling them that the Commission wanted them to do what the instructions and the specimen form told them to do. After all of these requests, many of the applicants still did not do the redactions properly. He stated that at this point it is fair to assess the cost of the processing against the applicants whose applications required correction. Chairman Crosby agreed and stated that the Commission should already be billing for any hours spent on the background investigation process. Commissioner Cameron stated that she agreed and commended the State Police for supplying additional troopers. Commissioner Zuniga stated that this billing is already being done to some extent, but agrees that if additional resources are being expended the cost should be assessed against applicants.

Chairman Crosby asked whether the Commission is in agreement to authorize Attorney Grossman to review the confidentiality requests submitted to the Commission. Commissioner McHugh stated that the regulations provide for a process under which people can ask for information to be redacted and list the criteria that the Commission should consider. He stated that he supports Director Wells' recommendation for delegating this responsibility. Commissioner Cameron stated that she is in agreement, as delegation will expedite the process and she is confident in Attorney Grossman's ability to make good decisions. Commissioner McHugh recommended revising this recommendation and delegate to the Director of the IEB the responsibility for making this decision, knowing that the Director will rely on legal staff to give the appropriate advice in close cases. Commissioner McHugh is concerned with putting another labor intensive process in the hands of the small legal staff at the same time as it is working on regulation drafting. Director Wells and the members of the Commission were in agreement with this recommendation.

Motion made by Commissioner McHugh that the decision on whether to allow requests for additional confidentiality be delegated in the first instance to the Director of the IEB, with the right of a dissatisfied applicant to appeal to the full Commission any action the Director takes. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 5-0-0 vote.

Commissioner McHugh asked how to respond to public records requests once this process is finished and the applications are redacted. It was decided to invite written comment and make a final decision at the next Commission meeting.

Racing Division:

See transcript pages 85-93.

Racing Division Update – Director Durenberger reported there has been tremendous success this week with the IT difficulties previously reported. She stated that the Racing Division sent out the letter to the Division of Local Services regarding the calculation of local aid payments, and the Racing Division has begun processing payments to the racing stabilization fund. She stated that new administrative hires are going through the background check process and seasonal employee interviews are underway. She anticipates coming before the Commission next week to make recommendations on laboratory services and the auditing software.

Legislative Review Update – Director Durenberger stated that a finalized version of the legislation will be ready to present at the Commission's next meeting. She stated that significant stakeholders have submitted two requests to have an additional opportunity to submit some advocacy documents. She determined that these requests were reasonable and will not affect the timetable. She stated that the Commission was tasked with reviewing the current pari-mutuel and simulcast laws in Chapters 128A and 128C for efficacy and has determined that there is a very real need for changing the legislation.

She reminded everyone that the Commission has scheduled a public hearing for Monday, February 25, 2013 at 1:00 p.m. to discuss the proposed changes to 205 CMR 3.00 and 4.00 and that the document is still available on the website for public comment.

Chairman Crosby stated that he has received a great deal of positive feedback on the hiring of Rick Day as the Commission's Executive Director. He stated that he had a conversation with the Chairman of the Washington State Gaming Commission to discuss interaction with Mr. Day and he indicated that the Commission is free to contact him at work during the transition, in the hope that the Commission will reciprocate when Mr. Day moves to Massachusetts by allowing Mr. Day to be available if he is needed to solve a problem in Washington. Chairman Crosby announced that Mr. Day will be joining the Commission on March 18, 2013.

Motion made to adjourn, motion seconded and carried unanimously.

List of Documents and Other Items Used at the Meeting

1. Massachusetts Gaming Commission February 14, 2013 Notice of Meeting and Agenda
2. February 7, 2013 Massachusetts Gaming Commission Meeting Minutes
3. Massachusetts Gaming Commission Draft Evaluation Criteria Matrix

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

Catherine A. Blue

EDUCATION

Law School:	College of William and Mary, Williamsburg, VA.
College:	Stonehill College, North Easton, MA
	B.A. Magna cum Laude

BAR ADMISSIONS

Pennsylvania
New York
Massachusetts
Virginia

CAREER HIGHLIGHTS

General Counsel – General Counsel of various legal departments ranging in size from 3 to 30 members and in companies ranging from $24 million to over $1 billion in value. Responsible for broad range of substantive legal areas and legal personnel and budget management.

Real Estate – Land Use - Acquisition, sale, leasing and zoning of all types of real estate, from wireless communications facilities to major office buildings and retail stores

Commercial transactions - Agreements to purchase goods and services, with committed spends anywhere from several thousand to several hundred million dollars ($5,000 to $700,000,000)

Ability to master new areas of the law - Throughout my career I have been called upon to take on responsibilities for new and different areas of the law. I have mastered those areas quickly, no matter how unusual or how different from my current practice.

People management, communication, and budget skills - Managed a diverse group of attorneys and paraprofessionals and molded them into a cohesive team that reviewed over 3000 documents per year, managed 100+ pieces of litigation, reviewed legislation on matters affecting wireless carriers, answered day to day questions on various legal issues, all within expected time frames and on budget. Created processes and workflows to better handle increased volume with the same or fewer staff. Hired and effectively used outside counsel, including negotiation of outside counsel rate caps, within outside counsel budgets ranging from $200,000 to $20 million.

Strategic thinking and long term planning - Responsible for assisting in the overall administration of several legal departments by working on career pathing plans for department personnel, title and compensation issues, providing internal training for legal professionals on updating legal skills and the provision of quality legal service, and providing training for non-legal employees and contractors on drafting and negotiation.

External Communications - Represented the company in interactions with members of state government, both in the legislative and executive branches. Assisted in planning and drafting legislation on wireless issues. Speak to various industry groups on issues affecting telecommunications carriers and infrastructure providers.

EMPLOYMENT

Massachusetts Development Finance Agency
General Counsel –February 2012 – present
Deputy General Counsel - September 2010- February 2012

Metropolitan Transportation Authority - *Associate Counsel—September 2008- August 2010*
Counsel to the nation's largest mass transportation public authority covering 5000 square miles, and providing service to 8 million people per day through subways, buses and commuter railroads.

Responsible for legal support of board of commissioners' operation and relations which includes creating and reviewing all board briefing materials such as board resolutions and staff summaries. Implemented a process for quicker delivery of board materials using electronic processing which saves approximately $10,000 a month in printing and postage costs. Responsible for attending all board committee and regular board meetings to assure compliance with Open Meeting Law requirements and to provide legal support as needed. Responsible for drafting and updating bylaws in compliance with state law for all subsidiary and affiliate public benefit corporations.

Assist the corporate compliance group in drafting, reviewing and filing 20+ yearly reports required by NY and Federal law and providing guidance on regulations pertaining to those reports.

Provide legal support on the filing, acceptance, and compliance with grants ranging in amount from $100,000 to $500 million+ from the Federal Transportation Administration for transportation capital projects and from the Department of Homeland Security for transit security grant projects.

Donohue & Blue - *Partner, 2006-September 2008*
Partner in a boutique real estate firm specializing in providing legal support for the transactional (including leasing and acquisition of stores, warehouses, office space and other unique real estate opportunities), permitting and property management needs of companies with high volume real estate needs, telecom infrastructure builders and vendors. Completed permitting for 30+ telecommunications facilities in Fairfax, Prince William, Stafford and Loudoun counties in VA. Filed for 10+ CLEC certifications in various states across the United States.

Holland & Knight LLP - *Senior Counsel—2005- 2006*

Senior Counsel in the largest real estate and land use group in the country, specializing in real estate and land use matters in the telecom space, particularly wireless facility infrastructure deals, including DAS agreements, as well as retail and office leasing.

AT&T/Cingular/AT&T Wireless

Chief Counsel, Land Use-2005(post merger)
Vice President Law and Associate General Counsel, Land Use and Commercial Transactions- 2000 - 2005
Chief Counsel, Land Use/Supply Management- 1998- 2000
Director, Land Use- 1997- 1998
Regional General Counsel-Central Region—1995-1997

Provided legal support to Cingular/AT&T Wireless on a national basis in the areas of real estate, land use, and related litigation. Managed a team of 5 attorneys, 6 paralegals and 2 administrative assistants who resided in Paramus, NJ, Basking Ridge, NJ and Atlanta, GA.

Responsible for the acquisition, sale, leasing and zoning of all types of real estate, from wireless communications facilities to major office buildings and retail stores

Responsible for commercial transactions and agreements to purchase goods and services for the company, with committed spends anywhere from several thousand to several hundred million dollars.

People management, communication, and budget skills—diverse group of attorneys and paraprofessionals and molded them into a cohesive team that reviews over 3000 documents per year, manages 100+ pieces of litigation, reviews legislation on matters affecting wireless carriers, answers day to day questions on various legal issues, all within expected time frames and on budget.

Strategic thinking and long term planning—I was responsible for assisting in the overall administration of the AT&T Wireless legal department by working on career pathing plans for department personnel, title and compensation issues and setting up internal training sessions.

External Communications—I represent the company in interactions with members of state government, both in the legislative and executive branches. I assist in planning and drafting legislation on wireless issues. I speak on industry panels on issues affecting telecommunications carriers.

QED Communications Inc. - *General Counsel and Corporate Secretary*
QED Communications is a major public television production house and the licensee of 2 public television stations, 1 public radio station, and the publisher of Pittsburgh Magazine.

As an attorney and later General Counsel, responsible for all legal matters for a $24,000,000 non-profit corporation. Responsible for all legal and contract matters including:

FCC licensing and compliance

Negotiation of production deals for television and radio programs, along with the rights to further distribute these programs

Negotiations with the talent and owners of material included in such productions

General employment matters, both in Pennsylvania and in regional offices in New York and California

General copyright and trademark issues

Real estate acquisition and leasing

Bank financing, including the negotiation of term loans, time loans and revolvers

Responsible as well for the selection and cost effective management of outside counsel in litigation and tax matters

Working with the Board of Directors to rewrite the company bylaws and restructure the Board of Directors and the Community Advisory Board

Coordinate board and board committee meetings, draft all resolutions, review and publish board minutes

Managed a staff which included a part time attorney, paralegal and clerical support and had budgetary responsibility for all outside counsel and the legal department in general

Commonwealth of Pennsylvania

Department of Labor and Industry - *Assistant Counsel*
In-house counsel for state owned workers compensation insurance carrier. Represented the Commonwealth and other insured entities in all phase of workers compensation litigation with responsibility for 300+ cases at various stages of litigation. Handled depositions and appeared daily in administrative hearings. I also handled oral arguments before the Commonwealth Court and briefed cases before the PA Supreme Court.

Department of Revenue - *Assistant Counsel*
Responsible for providing advice on non-tax matters before the Department, such as state contracts, general employment matters and the operations of the state lottery bureau. Additionally, provided advice and counsel on the implementation of the Commonwealth's Abandoned and Unclaimed Property Law and participated in audits of entities required to submit property to the Department.

Aluminum Company of America - *Attorney, General Corporate Group*
Responsibilities included SEC matters such as drafting materials for a debt/equity swap, compilation of the legal section of the 10K/10Q, supervision of outside counsel in various litigation matters, general employment matters, board resolutions, and general contract matters.

MEMBERSHIPS
Member, Virginia Bar Association; Massachusetts Bar Association

BOARDS
Member of the Board of the William & Mary Law School Law School Foundation, 2005-present
President, Wireless Women's Leadership Forum, 2007-2008

PUBLICATIONS: Contributor to *Working with Wireless: The Massachusetts Municipal-Industry Wireless Collaborative*

3.d

ENHANCED CODE OF ETHICS

MASSACHUSETTS GAMING COMMISSION

FIRST EDITION

BY VOTE OF THE MGC EFFECTIVE DATE

1. Scope and Purpose

The purpose of this Enhanced Code of Ethics (hereinafter, "Code") is to help ensure the highest level of public confidence in the integrity of the regulation of all gaming activities in the Commonwealth. To that end, in accordance with G.L. c.23K, §3(m), this Code establishes ethics rules for Commissioners, employees and consultants of the Massachusetts Gaming Commission (hereinafter, "Commission") that are more restrictive than those already applicable to all state employees under G.L. c.268A and c.268B.

2. Continuing Obligation

It is the continuing obligation of each Commissioner, employee, and consultant to review and assess their conduct in light of this Code. Commissioners, employees, and consultants have an affirmative obligation to request advice from the Office of the General Counsel or their immediate supervisor when they have any reasonable doubt regarding the propriety of their past, present or future conduct or the conduct of any other Commissioner or employee, or if they have any question regarding the applicability or meaning of any provision of this Code or any other restriction.

3. Applicability

This Code shall apply to all Commissioners, employees of the Commission, and where applicable, consultants.

4. Use of this Code

This Code is intended as a supplement to G.L. c.23K, G.L. c.268A (Conduct of Public Officials and Employees), G.L. c.268B (Financial Disclosure by Certain Public Officials and Employees), and 930 CMR (regulations of the State Ethics Commission). To the extent that any provisions of any of the above referenced authorities conflict with any provision of G.L. c.23K, the applicable provision in G.L. c.23K shall govern. In the event that a provision of this Code addresses a matter covered by G.L. c.268A, G.L. c.268B, or 930 CMR, the provision found in this Code shall control to the extent that it is more restrictive. The provisions of G.L. c.268A, G.L. c.268B, and 930 CMR shall otherwise remain fully applicable to all state employees, as that term is defined by G.L. c.268A, §1.

5. Ethics Training

Although this Code is intended only to enhance and supplement the existing provisions of G.L. c.23K, G.L. c.268A, G.L. c.268B, and 930 CMR, Commissioners and employees must be fairly and fully apprised of all ethical obligations incumbent upon them. To that end, the Commission shall provide ethics training to all Commissioners and employees. The training program shall be as follows:

A. Each Commissioner and employee of the Commission shall be provided with a copy of this Code, a copy of G.L. c.23K, G.L. c.268A, G.L. c.268B, 930 CMR, *Advisory 86-02: Nepotism* issued by the State Ethics Commission, and the *Campaign Finance Guide* published by the Office of Campaign and Political Finance within 14 days of appointment or employment.
B. Within 30 days of appointment or employment each Commissioner and employee shall undergo a program of ethics training administered by the Office of the General Counsel. The program shall cover the provisions of this Code, and the applicable provisions of G.L. c.23K, G.L. c.268A, G.L. c.268B, 930 CMR, G.L. c.55, and the *Conflict of Interest Law Online Training* program prepared by the State Ethics Commission. The program shall be reviewed and approved by the Executive Director.
C. At the completion of the training program each Commissioner and employee shall sign a form acknowledging receipt of the materials identified in Paragraph 5A, completion of the *Conflict of Interest Law Online Training* program, and completion of the Commission's ethics training program. The form shall be signed by the trainer upon completion.
D. Each Commissioner and employee shall complete the process outlined in this section on an annual basis.

6. Annual filing

On an annual basis, each Commissioner and employee shall file the following with the Executive Director:

A. A copy of the Ethics Training form required under section 5(C) of this Code.
B. If they are required to file a Statement of Financial Interest with the State Ethics Commission in accordance with G.L. c.268B, §5, a receipt showing that they have done so.
C. A disclosure statement required under section 8 of this Code.

7. Definitions

All words and terms in this Code shall be assigned their ordinary meaning as the context requires unless specifically defined by G.L. c.23K, §2 or as follows:

Consultant means a person with whom the Commission has entered into a contract, either directly or through a consulting firm or entity, to provide specifically described advisory services relative to gaming, racing, or regulatory issues within the Commission's jurisdiction. With respect to service contracts with firms or entities, the Commission shall determine which persons within that firm or entity are consultants for purposes of this Code.

Direct or indirect interest means an ownership, stock ownership, loan, property, leasehold or other beneficial interest or holding office as director, officer or trustee in an entity. The term does not include an individual's interests in less than one percent of publicly traded companies, nor mutual or common investment funds such as employee pension plans and publicly traded mutual funds, unless the individual is involved in the management or investment decisions of such fund or plan or the fund or plan specializes in gaming related issues.

Employee means:

(1) a person who is hired by the Commission to perform services whether serving with or without compensation, on a full, regular, part-time, or intermittent basis, but shall not include consultants; or
(2) an employee of the Alcoholic Beverages Control Commission who is assigned to the Investigations and Enforcement Bureau under G.L. c.10, §72A; or
(3) an employee or officer of the Department of the State Police assigned to the Massachusetts State Police gaming enforcement unit under G.L. c. 22C, §70.

Provided, in addition to its use in this Code, this definition shall apply to use of the term *employee* in G.L. c.23K.

Financial Interest means an ownership, stock ownership, loan, property, leasehold or other beneficial interest in an entity, or an interest in one's salary, gratuity, or other compensation or remuneration.

Gift means anything of value that is given without something of equivalent fair market value being given in return.

Immediate family means the spouse, parent, child, brother or sister of an individual.

License means a license issued under G.L. c. 23K, G.L. c.128A, and/or G.L. c.128C.

Licensee means a person or entity granted a license under G.L. c. 23K, G.L. c.128A, and/or G.L. c.128C.

Relative within the third degree of consanguinity means, the parents, grandparents, great grandparents, children, grandchildren, great grandchildren, brothers, sisters, nephews, nieces, uncles, aunts of a person by blood or adoption.

Secretarial and clerical employee means a person whose duties consist primarily of administrative tasks such as scheduling, record keeping, document handling, word processing and typing, and similar tasks.

Significant relationship means:

(1) a spouse, domestic partner, or life partner;
(2) a relative within the third degree of consanguinity of a person's spouse, domestic partner, or life partner, i.e., affinity;
(3) a former spouse, domestic partner, or life partner; or
(4) anyone with whom a person shared an influential or intimate relationship that could reasonably be characterized as important.

8. Disclosure prior to employment

A. In addition to the disclosure required by G.L. c.23K, §3(n), a prospective employee, prior to commencing employment, shall disclose to the Commission whether they were employed by, presently hold, or previously held any direct or indirect interest in any licensee or current applicant within the period commencing 3 years prior to the date of the employment application. Prior to employment, each candidate shall be provided with a list of the names of all pending applicants for licensure. In the event of an affirmative disclosure relative to a current applicant, the prospective employee may not be employed until such time as the applicant's status is resolved.

B. In addition to the disclosure required by section 8(A), candidates for major policymaking positions as defined in G.L. c.23K, §1, shall, prior to employment, disclose to the Commission whether any immediate family members own, are in the employ of, or own stock in, any business which is a current applicant or holds a license. The Commission shall not employ an individual for a major policymaking position who has immediate family members that own, are in the employ of, or own stock in, any business which is a current applicant or holds a license.

9. Conflicts of Interest

A. No Commissioner, employee, or consultant may participate in a particular matter, as defined by G.L. c.268A, §1, pending before the Commission that may affect the financial interest of a relative within the third degree of consanguinity or a person with whom they have a significant relationship.

B. No Commissioner, employee, or consultant may hold an occupational license as an owner, lessor, lessee, or trainer of a horse that is entered in a race in this jurisdiction. Nor may any Commissioner, employee, or consultant accept or be entitled to a part of the purse or purse supplement to be paid on a contestant in a race held in this jurisdiction.

C. Commissioners must recuse themselves from any licensing decision in which a potential conflict of interest exists. Commissioners, employees, and consultants must disqualify and recuse themselves, and abstain from participating or voting in any proceeding in which their impartiality may reasonably be questioned, and shall disclose to the Executive Director or, in the case of the Executive Director or a Commissioner, to the Chair of the Commission the nature of their disqualifying interest, including but not limited to instances where they have a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding.

10. Outside Employment by a Consultant

A consultant may hold other employment which does not involve employment or a contract with a licensee or current applicant for a license, or a holding company, intermediary company, or other affiliate or close associate of a licensee or current applicant for a license and that is otherwise in accordance with G.L. c.268A and G.L. c.268B.

11. Gifts

A. Except where permitted by section 11B, no commissioner, employee, or consultant may solicit or directly or indirectly receive any complimentary service, commission, bonus, discount, gift or reward from an entity regulated by, or subject to the regulation of, the Commission, or any close associate, holding company, intermediary company or other affiliate thereof. A Commissioner, employee, or consultant who is

offered any such complimentary service, commission, bonus, discount, gift or reward shall disclose such offer to their immediate supervisor, who shall make a record of the disclosure, as soon as reasonably possible.

B. Exceptions to section11A. A Commissioner, employee, or consultant may accept the following:

1. Food or refreshment of nominal value where a Commissioner, employee, or consultant attends a function as an invitee, in their official capacity, that is hosted, sponsored, or subsidized by a current applicant, licensee, permittee, holder of a certification or registration or licensed entity representative thereof and is available to all members of the general public (*e.g.,* opening ceremonies for licensed slot operator facilities, industry showcases and expositions, symposia, seminars, association meetings, and continuing education programs).
2. Unsolicited advertising or promotional materials of nominal value.

12. Unwarranted privileges

No Commissioner, employee, or consultant shall use or attempt to use their official position to secure for themselves or others unwarranted privileges or exemptions which are not available to members of the general public. Any action taken in accordance with section 15(A) of this Code shall not be considered an unwarranted privilege.

13. Use of Licensee Facilities

No Commissioner, employee, or consultant shall stay overnight in a guest room at any hotel, in Massachusetts, owned or operated by a person or entity licensed by the Commission or an Indian tribe with a gaming establishment in Massachusetts, except in the course of their official duties and with the prior approval of the Commission or the Executive Director. Complimentary provision of such rooms to any Commissioner, employee, or consultant is prohibited and any approved use shall be at established governmental rates pre-approved by the Commission. The Executive Director shall maintain and make accessible a list of all such prohibited facilities.

14. Wagers and Other Gaming Activity

No Commissioner, employee, or consultant shall place any wager, including pari-mutuel wager, or receive any prize from a wager in a gaming establishment or at any pari-mutuel facility or through any pari-mutuel system, either within the boundary of Massachusetts or without, owned or operated by a person licensed by the Commission, or owned or operated by an Indian tribe

with a gaming establishment in Massachusetts, except in the performance of their official duties and with the prior approval of the Commission, the Executive Director, or the Director of Investigations and Enforcement. The Executive Director shall maintain and make accessible a list of all such prohibited facilities. The Commission shall not discipline a person placing a wager or receiving a prize from a facility not on the prohibited list if the Commission later determines that the facility should have been on the prohibited list.

15. Charitable and other outside activities

A. A Commissioner, employee, or consultant may not attend any convention, meeting, show, exhibition or other event, eat any meal, drink any beverage, or purchase any thing or service in any Massachusetts gaming establishment or racetrack, commercial or tribal, except in the course of the performance of their official duties. Notwithstanding the foregoing, a Commissioner or employee may attend a family or similar social gathering, or a civic, charitable or professional association function in a Massachusetts gaming establishment, provided that:

1. They do not permit payment for any such attendance by any person, other than themselves or the host or sponsoring organization;
2. They do not, directly or indirectly, sponsor or contract for such gathering or function;
3. Prior to the event, they file a statement with the Executive Director identifying the location and circumstances of the event; the cost and manner of payment thereof, if known, and the payor therefor. Such statements shall be maintained by the Executive Director and made available for public inspection;
4. They receive prior approval of the Executive Director or designee; and
5. They check-in at the office of the designated state police unit at the subject establishment.

B. A Commissioner may not solicit funds for any educational, religious, charitable, fraternal or civic organization, or use or permit the use of their office for that purpose; be listed as an officer, director or trustee of such an organization in any letter or other document used in such solicitation; be a speaker or guest of honor at an organization's fundraising events, but may attend such events and contribute to such organizations; or give investment advice involving gaming related interests to such an organization ~~or serve on its board of directors or trustees if it has the responsibility for approving investment decisions~~.

C. A Commissioner or employee may speak, write, lecture or participate in other activities concerning the gaming industry, if in so doing the Commissioner or

employee does not cast doubt on his or her ability to decide impartially any matter which may come before the Commission, and provided that the Commissioner or employee does not accept compensation or honoraria for any such activity.

D. No Commissioner, employee, or consultant may accept compensation from any person or entity other than the Commission for published works created as part of their official duties.

E. A Commissioner or employee may participate in any civic or charitable activities, not including ~~charitable gaming~~ bazaars governed by G.L. c.271, §7A, that do not interfere with his or her independence of judgment.

16. Nepotism

No Commissioner or employee in a major policymaking position may solicit, request, suggest or recommend the employment by the Commission or by any person regulated by the Commission of any of their relatives within the third degree of consanguinity or a person with whom they have a significant relationship.

17. Unlawful Conduct

It is the duty of each Commissioner and employee who has been charged with any felony or misdemeanor, or cited for possession of marijuana, whether within Massachusetts or elsewhere, to promptly report such incident to the Executive Director in writing.

18. Conduct Unbecoming

Commissioners and employees shall conduct themselves at all times in such a manner as to reflect most favorably upon themselves and the Commission. Conduct unbecoming shall include that which brings the Commission into disrepute or reflects discredit upon the person as a member or employee of the Commission, or that which impairs the operation, efficiency, or effectiveness of the Commission or the person.

Employees and Commissioners shall not associate with individuals they know or should know are engaged in criminal activities unless in the performance of duty or upon official Commission business. Employees and Commissioners shall not frequent or remain at any place where they know or should know criminal activity is occurring unless in the performance of their duty or upon official Commission business.

19. Duty to Cooperate

A. In all matters related to their duties with the Commission, all Commissioners, employees, and consultants shall cooperate with law enforcement officers in the proper performance of the law enforcement officer's official duties.

B. In all matters related to their duties with the Commission, all Commissioners, employees, and consultants shall cooperate with the Executive Director, General Counsel, Office of the Attorney General, or State Ethics Commission in all matters relating to the operation and enforcement of this Code or the ethics laws.

20. Duty to Report

It is the duty of all Commissioners, employees, and consultants to report any conduct that they become aware of in the course of their official duties that a reasonable person would believe to be a violation of the criminal laws or G.L. c.23K. The individual shall report the conduct to the State Police at the gaming establishment where the conduct occurred, the Executive Director, or the Director for Investigations and Enforcement. The identity of the reporting individual shall be deemed confidential in accordance with G. L. c. 4, §7(26)(c) and (f).

21. Limits on Public Comments

Commissioners shall abstain from public comment about the merits of a pending adjudicatory proceeding, quasi-judicial proceeding, application or other similar proceeding pending before the Commission, except in a duly posted open meeting, or otherwise in the course of their official duties or in explaining for public information the procedures of the Commission.

22. Prohibited Communications

A. Except during a hearing or meeting conducted in accordance with the Open Meeting Law, G.L. c.30A, and/or 205 CMR, Commissioners may not engage in ~~direct or indirect~~ communications that a reasonable person would view as likely to affect the Commissioner's judgment regarding an application or other matter pending before it in an adjudicatory proceeding or reasonably likely to come before it in such a proceeding, except for consulting with another Commissioner, Commission employees, or consultants whose function it is to aid the Commission in carrying out its responsibilities, and shall

take all reasonable actions necessary to avoid receiving such communications.

~~B. If a Commissioner receives a communication prohibited by section 22A the Commissioner shall notify the other members of the Commission at a duly posted open meeting, the substance of the communication and it shall be included in the minutes of the meeting, and all persons directly affected by the anticipated vote or action of the Commission on such matter of the substance of the communication shall be notified and provided an opportunity to respond.~~

C. Any Commissioner who receives any communication ~~prohibited by section 22A which they believe attempts to influence~~ that a reasonable person would view as an improper attempt to influence that Commissioner's official action shall disclose the source and content of the communication to the Executive Director. The Executive Director may investigate or initiate an investigation of the matter to determine if the communication violates this Code. The disclosure under this paragraph and the investigation shall ~~remain confidential~~ be withheld from disclosure in accordance with the personnel exemption (G. L. c. 4, §7(26)(b)), privacy exemption (G. L. c. 4, §7(26)(c)), investigatory exemption (G. L. c. 4, §7(26)(f)), and/or other applicable exemption to the Public Records Law. Following an investigation, the Executive Director shall advise ~~the governor or~~ the Commission~~, or both,~~ of the results of the investigation and may recommend such action as the Executive Director considers appropriate.

D. No Commissioner, employee, or consultant may engage in any communication, in any medium, that:

(1) improperly discloses any confidential information, materials or data of or pertaining to the Commission's activities not legally available to the public, i.e., that reasonably fit within one or more of the exemptions to the definition of public records as defined by the Public Records Law and/or has been deemed *confidential information* in accordance with 205 CMR, and were acquired by an employee in the course of their official duties; or
(2) is protected from disclosure by a legally recognized privilege.

Public records requests shall be processed in accordance with the Commission's Public Records Request Policy.

23. Character Witness

A Commissioner, employee, or consultant may not voluntarily testify as a character

witness in any matter before the Commission.

24. Violations

A. If a Commissioner is (i) is guilty of malfeasance in office; (ii) substantially neglects the duties of a Commissioner; (iii) is unable to discharge the powers and duties of the commissioner's office; (iv) commits gross misconduct; (v) is convicted of a felony or (vi) is found to have committed a material violation of this Code, the remaining Commissioners shall refer the matter to the Governor for action pursuant to G.L. c. 23K, §3(c), which may include removal from office as provided by law.

B. An employee or consultant, other than an employee assigned to the Investigations and Enforcement Bureau under G.L. c. 10, §72A or G.L. c. 22C, §70, who violates this Code or a provision of G.L. c.23K shall be subject to appropriate disciplinary action, ranging from reprimand to dismissal or, in the case of employees under contract or a consultant, the termination of said contract.

C. An employee assigned to the Investigations and Enforcement Bureau under G.L. c. 10, §72A or G.L. c. 22C, §70 who violates this Code shall be subject to appropriate disciplinary action by the Alcoholic Beverages Control Commission or Colonel of the State Police, respectively. Provided, however, that their employment with the Commission may be terminated by the Commission.

25. Post-employment

A Commissioner, employee, or consultant, who has been removed, dismissed or terminated for a violation of this Code, or who violates the post-employment restrictions:

A. shall be ineligible for future appointment, employment or contracts with the Commission or the Enforcement Unit, and
B. may not be approved for a license or registration for a period of two years after the violation.

26. Enforcement Actions

The Commission or Executive Director may issue any order necessary to achieve compliance with this Code.

27. Variances

A. A Commissioner, employee, or consultant who believes that full compliance with a particular provision of this Code will be overly burdensome in a particular instance, they may apply to the Commission for a variance. The burden is on the petitioning Commissioner or employee to demonstrate in writing to the Commission that the grant of a variance would not compromise the intent of this Code or undermine public confidence in the integrity of the regulatory process.

B. No variance may be granted by the Commission from any provision of G.L. c.23K, G.L. c.268A, G.L. c.268B, 930 CMR, or G.L. c.55.

C. No employee assigned to the Investigations and Enforcement Bureau under G.L. c. 22C, §70 shall apply for a variance, and the Commission shall not grant a variance, unless the employee first receives approval from the Colonel of the State Police or his/her designee.

28. Requests for Advice

Any Commissioner, employee, or consultant may request a written opinion from the General Counsel relative to the applicability of any provision of this Code and may act in conformance with that opinion. An opinion rendered by the General Counsel, until and unless amended or revoked, shall be a defense in any disciplinary action brought under this Code and shall be binding on the Commission in any proceedings concerning the person who requested the opinion and who acted in good faith, unless material facts were omitted or misstated by the person in the request for an opinion. Such requests shall be deemed confidential and exempt from disclosure under the privacy exemption to the Public Records law (See G. L. c. 4, § 7(26)(c)) ; provided, however, that the Commission may publish such opinions, but the name of the requesting person and any other identifying information shall not be included in such publication unless the requesting person consents to such inclusion.

7.a.i

Massachusetts Gaming Commission

MEMORANDUM

Date: February 21, 2013

To: Commissioners

From: Jennifer Durenberger, Director of Racing JD

Re: Recommendation for approval of a primary laboratory for equine drug testing services

Recommendation: That the Gaming Commission approve the following vendor as the highest scoring respondent to the RFR # MGC–2012–Equine, for Laboratory Testing Services – Equine Drug Testing, dated December 05, 2012:

- **Truesdail Laboratories, Inc.**

Description of the Procurement Process

The Commission issued a Request for Responses for equine drug testing laboratory services on December 05, 2012. The response deadline was January 7, 2013. The Commission received three responses prior to that deadline.

Phase I Review: Agency staff conducted a "Phase I" review of all responses. This review was undertaken to ensure compliance with administrative provisions of the RFR, and verify the inclusion of mandatory forms and attachments. Respondents were not scored on the Phase 1 review, and all three respondents proceeded to the Phase II review.

Phase II Review: This phase consisted of the review and evaluation of the technical proposal. The evaluation criteria were part of the RFR and were put forth in advance (prior to the receipt of the proposals) and it was as follows:

- Organizational Support and Experience = 20%
- Programmatic Response = 20%
- Management = 10%
- Contract Management = 5%
- Contract Schedule = 5%
- Mobilization and Implementation Plan = 5%
- Potential Problems = 5%

The above accounted for 70 points of the 100 points available. The remaining 30% of the score was reserved for the cost proposal (Phase III review – see below).

Phase III Review: Respondents were asked to submit a cost proposal in a separately sealed envelope. After the review of the technical proposal was completed, the procurement management team moved on to the phase III review. The Cost proposals (Phase Three) were assigned a weight of 30% of the overall score.

PMT – Evaluation of the Technical Proposal

The procurement management team (PMT) was comprised of Dr. Jennifer Durenberger, Director of Racing, Dr. Alexandra Lightbown, Chief Commission Veterinarian and Operations Manager, and Ms. Danielle Holmes, Staff Attorney, with Eileen Glovsky, Director of Administration, as recorder.

The PMT assigned scores on the criteria stipulated above on the following scale:

5 = Provides evidence of a response that far exceeds MGC's needs in most areas.
4 = Provides evidence of meeting all MGC's needs and excels in a few areas
3 = Provides adequate evidence of meeting needs of MGC but does not excel in any way
2 = Provides some evidence of meeting needs of MGC
1 = Provides no evidence of meeting MGC needs
0 = Non-responsive

Each member of the PMT scored all responses on the criteria of the technical proposal. The PMT met and discussed each of the scores to reach a consensus score on all criteria for each respondent. Business references were checked for all responses. The scores were then weighed according to the previously determined relative weight.

After review of the Phase II scores, the cost proposals were opened. The costs proposals were scored according to responses filled out on the template sent with the RFR. A request for clarification of sample shipping schedule and an opportunity for a Best and Final Offer ("BAFO") were sent to all three respondents on February 05, 2013. All three respondents replied and the PMT met for the final time to review the BAFOs

Recommendations

After the Phase II, Phase III, and BAFO scoring, the respondent that ranked the highest was:

- **Truesdail Laboratories, Inc.**

It is my recommendation that the Commission approve the initiation of the contracting process with this vendor to provide equine drug testing laboratory services.

7.a.ii

Massachusetts Gaming Commission

MEMORANDUM

Date: February 21, 2013

To: Commissioners

From: Jennifer Durenberger, Director of Racing JD

Re: Recommendation for approval of a service to provide pari-mutuel auditing services

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Recommendation: That the Gaming Commission approve the following vendor as a qualified respondent to the RFR # MGC–Audit–2013, Pari-Mutuel Auditing Services, dated January 16, 2013:

- **Pari-Global Solutions, Inc.**

Description of the Procurement Process

The Commission issued a Request for Responses for pari-mutuel auditing services on January 16, 2013. The response deadline was February 11, 2013. The Commission received one response prior to that deadline.

Phase I Review: Agency staff conducted a "Phase I" review of all responses. This review was undertaken to ensure compliance with administrative provisions of the RFR, and verify the inclusion of mandatory forms and attachments. Respondents were not scored on the Phase 1 review, and the respondent proceeded to the Phase II (review and evaluation of the technical proposal) and Phase III (cost) review.

Evaluation of the Technical and Cost Proposals

Because there was only one respondent to the solicitation, the technical and cost proposals were evaluated for adequate evidence of meeting the Commission's needs but were not individually scored.

Recommendations

Upon review of the response of Pari-Global Solutions, Inc. to RFR # MGC-Audit-2013, it is my recommendation that the Commission approve the initiation of the contracting process with this vendor to provide pari-mutuel auditing services.

7.b

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

February, 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. Because (1) substantial portions of the Racing Laws concern live dog racing and the wagering thereon, now prohibited by G.L. c. 128A, §14E, and (2) the changes recommended in this Report will result in amendments to a substantial number of the

provisions of the Racing Laws, the Commission has submitted its recommended legislative changes in the form of a single "omnibus" proposed new chapter that integrates current chapters 128A and 128C, amended to reflect the Commission's recommended statutory changes (hereinafter the "Proposed New Chapter").

The Commission reminds the Legislature that in view of the repeal, pursuant to St. 2011 c. 194, §§39 and 41, of chapters 128A and 128C of the General Laws on July 31, 2014, some legislative action needs to be taken in order to continue the authorization of live racing, pari-mutuel wagering and simulcasting in the Commonwealth. 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 legislative action that should be taken by the Legislature prior to the aforementioned repeal.

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 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.

[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."

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).

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 rules that a decade ago seemed appropriate to manage signal allocation so as to counteract the perceived threat to a diverse industry from unrestricted simulcasting. Such management and competitive counterpoise, in the Commission's view, is no longer necessary or desirable; the business model for the racing industry across America has changed, and the current Massachusetts simulcast management model has been discarded by most other racing states. Moreover, in light of the authority under the Expanded Gaming Act to grant simulcasting licenses to non-racing licensees

(i.e., 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 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.

Because of the §14E prohibition, the only entities capable of being qualified to simulcast *under c. 128C* will be c. 128A horse racing meeting licensees.[2] 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

[2] The Commission recognizes, of course, that under G.L. c. 23K, §7(b) it "may grant a simulcasting license to a gaming establishment or an entity previously licensed pursuant to chapter 128A or chapter 128C . . . ."

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)[4], and in the Legislature's formulation of the underpinnings of its permission to the former Bristol and Suffolk county greyhound meeting licensees to continue to simulcast.[5] St. 2011 c. 194, §92 did not, in light of the greyhound racing ban, authorize these former racing meeting licensees simply to continue

[4] 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."

[5] Pursuant to St. 2011 c. 194, §92.

to simulcast, perhaps as licensees under §7(b) of the Expanded Gaming Act. Instead, it premised that simulcast permission on their "remain[ing] licensed as greyhound racing meeting licensees" pursuant to chapter 128A and chapter 128C. Then, in an express incorporation by reference of the regulatory framework of the Simulcasting Law, invoked its "dark day" provisions to avoid the greyhound racing ban: "the days of the year between January 1 and December 31 of each year shall be dark days pursuant to said chapter 128C . . . ."

The Commission views the positioning within chapters 128A and 128C of the right of these greyhound racing licensees to continue to simulcast, even when racing itself is prohibited, as an affirmation that simulcasting outside of the regulatory framework of the Racing Laws continues to be prohibited in Massachusetts. For this reason, and because a uniform system is essential to the establishment of fair and equitable treatment of racing and non-racing entities authorized to simulcast in Massachusetts, the Commission has included in the Proposed New Chapter a provision that harmonizes, to the extent reasonably possible, given the differences between them, 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 under the Proposed New Chapter[6].

[6] Under the Racing Laws only a racing meeting licensee had the right to simulcast, conditional upon compliance with the many and various conditions set forth in the Simulcast Law affecting the exercise of that right. "Such [simulcasting] right may be exercised only on any calendar day on which the licensee conducts a racing performance, a dark day, or during a dark season." G.L. c. 128C, §2. However, with passage of §7(b) of the Expanded Gaming Act, as amended, "[t]he commission may grant a simulcasting

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 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[7] 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

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license to a gaming establishment or an entity previously licensed pursuant to chapter 128A and chapter 128C."

The universe of simulcasting authorizations, therefore, now comprises three distinct classes: (1) that possessed, pursuant to the Simulcast Law, by a racing meeting licensee that does not also hold a gaming license; (2) that possessed, again pursuant to the Simulcast Law, by a racing meeting licensee that also holds a gaming license; and (3) that possessed, pursuant to G.L. c. 23K, §7(b), by a gaming establishment or "an entity previously licensed pursuant to chapter 128A or chapter 128C." The first class of authorization is one of the rights that vest in a racing meeting licensee automatically, so long as certain preconditions to its exercise are met. The second class of authorization, like the first class, derives from the racing meeting license; however, §24 of the Expanded Gaming Act has increased the minimum live racing threshold for exercising the simulcasting right for those racing licensees that also hold gaming licenses (and made the gaming license conditional upon continued live racing and simulcasting under the Racing Laws -- §§19 and 20). The third class of authorization is a creation of the Expanded Gaming Act and, unlike the other two classes, is unconnected with live racing or with any rights derivative of a live racing license. The existence side by side of these different classes of simulcasting rights signals the need for a single, uniform regulatory framework that threats each in a fair and equitable manner in relation to the others.

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

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").

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.

The §7(b) simulcast license is neither a gaming nor a racing license. The holder of a Section 7(b) license either already has a gaming license or once was, but no longer is, a racing licensee. Moreover, a §7(b) simulcast license is not a gaming license because pari-mutuel wagering on a simulcast race is not "gaming" as defined by the Extended Gaming Act. The §7(b) license to simulcast is not dependent on licensure under the Racing Laws. Consequently, current G.L. c. 128C, §2 does not apply to a §7(b) licensee.

Further, because such licensees are not involved in thoroughbred or standardbred racing, the premise for much of the §2 framework (e.g., that a racing licensee's live racing investment and interests should be taken into account in regulating the terms on which another racing licensee may simulcast into Massachusetts a race signal competitive with theirs) is inapposite.

In these circumstances, the Commission construes the absence in §7(b) of provisions specifying operational criteria for its simulcasting license to signal a legislative intent to have the Commission formulate and establish an applicable operational framework. The Commission's recommendation, as the provisions of the Proposed New Chapter make clear, is that such licensees be expressly subject to the regulatory authority of the Commission with respect to all aspects of licensure, including suspension or revocation of the license to simulcast, upon such terms as the Commission might deem appropriate, consistent with the statutory and regulatory framework applicable to simulcasting by a racing licensee.

(ii) Creating A Uniform Simulcasting Regulatory Framework

It is plain from the above that 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 its proposed statutory revisions, 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 Commission recommends that the Legislature enact the provisions of the Proposed New Chapter that 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%. The Commission reiterates here its earlier conclusion (*See* pages 9-11) 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 Commission recommends that the current takeouts under G.L. c. 128C, §§4 and 5 (as amended in the Proposed New Chapter) remain the same. With respect to unclaimed winning simulcast wagers placed with racing meeting licensees, the Commission recommends that their treatment pursuant to G.L. c. 128C, §3A[8] remain the same. With respect to unclaimed winning simulcast wagers placed with licensees under §7(b) of the Expanded Gaming Act, the Commission recommends that, as provided for in the Proposed New Chapter, wagers on simulcast races occurring at racetracks within Massachusetts be treated in the manner set forth in

[8] 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."

G.L. c. 128C, §3A; but, for unclaimed wagers placed on simulcast races occurring outside Massachusetts, the Commission recommends that they 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, as is plain from the provisions of §3A, is for purse accounts. The Massachusetts simulcast licensee is not authorized to retain them as its own. Guided by that principle, the Commission recommends 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 track. For unclaimed wagers on races simulcast from outside Massachusetts, the Commissions recommends that they should be paid 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.

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[9].

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 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[10]. 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

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

[10] 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).

into the Fund, the Commission considers the current system of funding through *premiums* under G.L. c. 128C, §2 to have been superseded[11].

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.

[11] 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.

III. REBATING AND WAGERING ON CREDIT UNDER THE RACING LAWS

Pursuant to G.L. c. 128A, §5C, both rebating and wagering on credit is 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.

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"[12] and other statutorily

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

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 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, 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 Commission recommends replacing the current system with one that takes out 20% of the breaks from each racing and §7(b) licensee, and earmarks that money for use, under the supervision of the Commission in a Backstretch Improvement Fund (the establishment of which is

proposed in the Proposed New Chapter), solely for maintaining infrastructure on the backstretch and for improving the living and working conditions of employees and horses housed on the backstretch. The Commission recommends that racing meeting licensees be permitted to retain the remaining 80% of their breaks; and §7(b) licensees should pay the 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 restricting 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.

WRITTEN SUBMISSIONS OF THE
NEW ENGLAND HORSEMEN'S BENEVOLENT AND PROTECTIVE ASSOCIATION, INC.

The following modifactions to MGL Chapters 128A and 128C are recommended by the thoroughbred Horsemen of Massachusetts. November 14, 2012

Racing (Operations/Facilities)

Chapter 128A		
Section	**Sub-Section**	**Comments**
1	definition	Clarify "adjacent places" as including, but not limited to, an abutting barn area with a minimum of 1200 stalls.
4		Clarify that the licensee must take immediate action to reschedule cancelled race days and cancelled races to the satisfaction of the horsemen.
Chapter 128C		
Section	**Sub-Section**	**Comments**
2	(5)	Clarify that the licensee must take immediate action to reschedule cancelled race days and cancelled races to the satisfaction of the horsemen.

Recognition of Horsemen's Standing as an Integral Party

Chapter 128A		
Section	**Sub-Section**	**Comments**
3	i	Recognize and consider financial interests of horsemen.
5	g	Require horsemen's input prior to any decisions by regulatory authority to approve projects and award funding from Capital Improvements Fund.
5	g	Require horsemen's input prior to any decisions by regulatory authority to approve projects and award funding from Promotional Fund.

Provide Notice & Opportunity for Input to Horsemen Prior to Regulatory Authority Decisions

Chapter 128A		
Section	**Sub-Section**	**Comments**
3	e	Provide notice & opportunity for input to Horsemen.
3	i	Provide notice & opportunity for input to Horsemen.
3	k	Provide notice & opportunity for input to Horsemen.
3	m	Provide notice & opportunity for input to Horsemen.

Provide Copies of Records to Horsemen

Chapter 128A		
Section	**Sub-Section**	**Comments**
6		Provide records to Horsemen.
Chapter 128C		
Section	**Sub-Section**	**Comments**
2	(5)	Provide records to Horsemen.

Purse Account Income

Chapter 128A		
Section	**Sub-Section**	**Comments**
5	j	Clarify language that the 3.5% is paid from licensee's proceeds and not the Horsemen's purse account.
Chapter 128C		
Section	**Sub-Section**	**Comments**
2	(1)	Insert requirement that Premiums must be paid on international simulcasting of thoroughbred racing.

2	(1)	Remove language allowing free Premiums for "special events" on thoroughbred simulcasting.
2	(2)	Insert requirement that Premiums must be paid on international simulcasting of thoroughbred racing.
2	(2)(c)(ii)	Remove language allowing free Premiums for "special events" on thoroughbred simulcasting.
2	(3)	Remove language allowing free Premiums for "special events" on thoroughbred simulcasting.
2	(4)(c)(ii)	Change the 2% Premium to 10%, which is the fee that should be allocated to thoroughbred purses for any thoroughbred simulcast wager taken at any venue in Massachusetts.
2	(4)(c)(ii)	Insert requirement that Premiums must be paid on international simulcasting of thoroughbred racing.
2	(4)(c)(ii)	Remove language allowing free Premiums for "special events" on thoroughbred simulcasting.
2	(4)(c)(ii)	Remove language allowing free Premiums for 12 weeks of thoroughbred simulcasting.
2	(5)	Remove language allowing free Premiums on thoroughbred simulcasting during the month of August.
2	(5)	In the fifth paragraph after all phrases of "racing meeting" insert the phrase "or simulcasting licensee". The current language limits approval to "racing meeting" licensees and must be changed to include casinos and possible off-track-betting facilites.
2	(5)	In the fifth paragraph insert after the last word of the last sentence "; provided that each racing meeting licensee or simulcast licensee continues to render full payment of the 10% Premium on thoroughbred simulcast wagering within 30 days from the date of the simulcasting wager."
3A		Since some racing meeting licensees and all casino based simulcasting licensees do not have purse accounts for Horsemen, all unclaimed simulcast wagers should accrue to the purse accounts of the Horsemen according to the breed upon which the unclaimed wager was placed.
4		In line 12 of the sixth paragraph, remove the phrase "4 per cent and not more than 7.5" and replace it with the word "10".

Chapter 23 Sec. 104 - Analysis

November 15, 2012

Racing Facility	Live Race Days	2000 Live Handle	
		Live On-Track	Live Signal Sent
Suffolk Downs (TB)	148	26,318,978	104,861,162
Northampton (TB)	9	2,357,536	0
Wonderland (G)	350	23,213,185	39,618,076
Raynham (G)	570	54,184,720	44,133,043
Plainridge (S)	150	3,434,254	15,788,585
Totals	**1,227**	**109,508,673**	**204,400,866**

Racing Facility	2000 Total (received) Simulcast	Simulcast (Received) By Breed			Percentage by Breed		
		Thoroughbred	Standardbred	Other Breeds	T - Bred	S - Bred	Other
Suffolk Downs (TB)	143,759,661	unavailable	unavailable	unavailable	unavailable	unavailable	unavailable
Northampton (TB)	0	0	0	0	0	0	0
Wonderland (G)	49,746,519	unavailable	unavailable	unavailable	unavailable	unavailable	unavailable
Raynham (G)	62,794,851	unavailable	unavailable	unavailable	unavailable	unavailable	unavailable
Plainridge (S)	52,669,732	unavailable	unavailable	unavailable	unavailable	unavailable	unavailable
Totals	**308,970,763**	unavailable	unavailable	unavailable	unavailable	unavailable	unavailable

Racing Facility	Live Race Days	2010 Live Handle	
		Live On-Track	Live Signal Sent
Suffolk Downs (TB)	101	8,878,836	94,185,289
Wonderland (G)	0	0	0
Raynham (G)	0	0	0
Plainridge (S)	100	1,584,498	9,911,390
Totals	**201**	**10,463,334**	**104,096,679**

Racing Facility	2010 Total (received) Simulcast	Simulcast (Received) By Breed			Percentage by Breed		
		Thoroughbred	Standardbred	Other Breeds	T - Bred	S - Bred	Other
Suffolk Downs (TB)	131,637,340	129,403,757	2,233,583	0	98	2	0
Wonderland (G)	11,194,266	unavailable	unavailable	unavailable	unavailable	unavailable	unavailable
Raynham (G)	42,817,404	18,305,533	unavailable	unavailable	43	unavailable	unavailable
Plainridge (S)	48,064,038	33,006,234	15,057,804	0	69	31	0
Totals	**233,713,048**	**180,715,524**	**17,291,387**	**0**	**77**	**7**	**0**

FACTS EVIDENCING NEED TO COMPLETELY
REVISE CHAPTERS 128A and 128C

- The statute was written in 1992 when simulcasting was in its infancy and revised in 2000 at a time when the simulcast industry was evolving and had very limited history to consider
- The revised 2000 statute has been followed by 12 years of change and expansion of the simulcast industry
- Pursuant to the 2000 statute, the Thoroughbred Industry subsidized the Greyhound and Standardbred Industries by below-market premiums and numerous events and time periods when no premium was due.
- The statute as enacted in 2000 established a fund from which the Massachusetts Racing Commission was to allocate funds to mitigate damages, recognizing that the expansion of rights to the Greyhound and Standardbred facilities to simulcast thoroughbred performances and the below-market (and free) premiums would negatively impact the thoroughbred industry
- Despite the support the Greyhound Industry continued to decline and is no longer operational in Massachusetts.
- Despite the support the Standardbred Industry continued to decline at a much faster rate than the thoroughbred industry.
- While the Standardbred Industry has prospered in other states such as New York and Kentucky, its product has not been well received or supported in Massachusetts
- Since the year 2000 when the statute was written, 1of the 3 Industries the statute addresses (Greyhounds) is no longer operational Massachusetts.
- Since the year 2000 when the statute was written, 2 of the 4 operational facilities the statute affects (Wonderland and Raynham) no longer conduct live racing.
- Wonderland has closed
- When the Legislature enacted Chapter 23 Section 104, it provided an expiration date in recognition that circumstances would change and the statute should be revised. The legislature anticipated a significant redirection of the gambling dollar from horse racing to slot machines and casinos that would negatively impact the agricultural network supported by horse racing.
- The Legislature reviewed the issue of simulcast premiums when it recently enacted legislation providing for expanded gaming. The Legislature determined that a 10% premium should be paid by Race Books for thoroughbred simulcasts
- Pursuant to the 2000 statute, the Plainridge Standardbred Facility pays only a 2% premium and no premium at all on numerous events.
- Pursuant to the 2000 statute, the Raynham off-track betting Facility pays only a 3% premium and no premium at all on numerous events.
- Raynham is presently an off-track betting facility that should not be subsidized by live racing.
- Chapter 23K, Section 60(b) of the recently enacted legislation providing for expanded gaming established a Horse racing Committee to make recommendations on how the funds received from expanded gaming should be distributed between the Thoroughbred and Standardbred racing facilities to support the Thoroughbred and Standardbred Industries.
- The distributions pursuant to Chapter 23K, Section 60(b) evidence a legislative intent to replace by that legislation the subsidies provided by the 2000 legislation to the Standardbred industry.

THE ISSUE IS HOW TO REWRITE RATHER THAN WHETHER TO REWRITE

Massachusetts Simulcasting (received) Handle by Breed (2006 through 2010)

Year	Source	Simulcast Handle (received) Thoroughbred	Harness	Total	Suffolk % of Total	Plainridge % of Total
2006	Simul - On Track (received)	129,511,718	58,489,860	188,001,578	68.9	31.1
	Reduction for other breed	(3,667,503)	(40,609,932)	na	na	na
	Credit for appropriate breed	37,850,000	3,667,503	na	na	na
	Credit from Raynham (by breed)			na	na	na
	Credit from Wonderland (by breed)					
	Total Breed-Specific Simulcasting	**163,694,215**	**21,547,431**	**185,241,646**	**88.4**	**11.6**
2007	Simul - On Track (received)	131,252,935	57,933,998	189,186,933	69.4	30.6
	Reduction for other breed	(3,166,496)	(39,343,544)	na	na	na
	Credit for appropriate breed	39,343,544	3,166,496	na	na	na
	Credit from Raynham (by breed)	25,220,433		na	na	na
	Credit from Wonderland (by breed)	11,198,400				
	Total Breed-Specific Simulcasting	**203,848,816**	**21,756,950**	**225,605,766**	**90.4**	**9.6**
2008	Simul - On Track (received)	117,764,929	50,871,872	168,636,801	69.8	30.2
	Reduction for other breed	(2,637,244)	(33,617,638)	na	na	na
	Credit for appropriate breed	33,617,638	2,637,244	na	na	na
	Credit from Raynham (by breed)			na	na	na
	Credit from Wonderland (by breed)					
	Total Breed-Specific Simulcasting	**148,745,323**	**19,891,478**	**168,636,801**	**88.2**	**11.8**
2009	Simul - On Track (received)	130,672,147	50,228,514	180,900,661	72.2	27.8
	Reduction for other breed	(2,024,519)	(33,367,851)	na	na	na
	Credit for appropriate breed	33,367,851	2,024,519	na	na	na
	Credit from Raynham (by breed)	19,215,700		na	na	na
	Credit from Wonderland (by breed)					
	Total Breed-Specific Simulcasting	**181,231,179**	**18,885,182**	**200,116,361**	**90.6**	**9.4**
2010	Simul - On Track (received)	131,637,340	48,064,038	179,701,378	73.3	26.7
	Reduction for other breed	(2,233,583)	(33,006,234)	na	na	na
	Credit for appropriate breed	33,006,234	2,233,583	na	na	na
	Credit from Raynham (by breed)	18,305,533		na	na	na
	Credit from Wonderland (by breed)					
	Total Breed-Specific Simulcasting	**180,715,524**	**17,291,387**	**198,006,911**	**91.3**	**8.7**
2011	Simul - On Track (received)			0	#DIV/0!	#DIV/0!
	Reduction for other breed	(2,066,913)	(31,741,259)	na	na	na
	Credit for appropriate breed			na	na	na
	Credit from Raynham (by breed)			na	na	na
	Total Breed-Specific Simulcasting	**(2,066,913)**	**(31,741,259)**	**-33,808,172**		

Source:
- **MA State Racing Commission - Annual Reports**
- **Premiums reported by Suffolk Downs and estimates by NEHBPA**

Note: **The above simulcasting (received) annual harness amounts have not been reduced by either the 12 premium-free weeks of thoroughbred simulcasting nor the 15 premium-free Special Thoroughbred Events.**

Note: **The majority of Plainridge simulcast (received) and Raynham Simulcast (received) is from out-of-state thoroughbred signals.**

Percentage of *SIMULCAST SIGNAL (Received On Track)*		
Total Simulcast Handle (received) by breed		
Year	**Thoroughbred**	**Harness**
2006	88.4	11.6
2007	90.4	9.6
2008	88.2	11.8
2009	90.6	9.4
2010	91.3	8.7
2011		
Avg.	**89.8**	**10.2**

Revenue Source	Number of Machines	Annual Drop ($309/mach-day)	Percent	Slot Rev Assessment	Thoroughbred- Standardbred Split		Thoroughbreds - Annual Purse Revenue & And Allocations								Avg. Daily Purse	AVG. Purse /Race
					80% Thoroughbreds	20% Standardbreds	80% Slots share	16% MA Breeders	4% Benefits	MGL	Gross Purse	Breeders 3.5%	HBPA 2.5%	Paid Purse	125 days	125 days
Slot Parlor	1,250	140,981,250	9.0000	12,688,313	10,150,650	2,537,663	8,120,520	1,624,104	406,026							
Casinos (Pool)	10,000	1,127,850,000	0.6250	7,049,063	5,639,250	1,409,813	4,511,400	902,280	225,570							
Total Revenue				19,737,375	15,789,900		12,631,920	2,526,384	631,596	7,000,000	19,631,920	648,224	463,017	18,520,679	148,165	16,463
							Purse 3.5%	442,117								
							New S Breeders	2,968,501								
Revenue Source	Number of Machines	Annual Drop ($309/mach-day)	Percent	Slot Rev Assessment	Thoroughbred- Standardbred Split		Thoroughbreds - Annual Purse Revenue & And Allocations								Avg. Daily Purse	AVG. Purse /Race
					80% Thoroughbreds	20% Standardbreds	80% Slots share	16% MA Breeders	4% Benefits	MGL	Gross Purse	Breeders 3.5%	HBPA 2.5%	Paid Purse	125 days	125 days
Slot Parlor	1,250	140,981,250	9.0000	12,688,313	10,150,650	2,537,663	8,120,520	1,624,104	406,026							
Casinos (Pool)	9,000	1,015,065,000	0.6250	6,344,156	5,075,325	1,268,831	4,060,260	812,052	203,013							
Total Revenue				19,032,469	15,225,975		12,180,780	2,436,156	609,039	7,000,000	19,180,780	633,328	452,377	18,095,075	[illegible]	[illegible]
							Purse 3.5%	426,357								
							New S Breeders	2,862,483								
Revenue Source	Number of Machines	Annual Drop ($309/mach-day)	Percent	Slot Rev Assessment	Thoroughbred- Standardbred Split		Thoroughbreds - Annual Purse Revenue & And Allocations								Avg. Daily Purse	AVG. Purse /Race
					80% Thoroughbreds	20% Standardbreds	80% Slots share	16% MA Breeders	4% Benefits	MGL	Gross Purse	Breeders 3.5%	HBPA 2.5%	Paid Purse	125 days	125 days
Slot Parlor	1,250	140,981,250	9.0000	12,688,313	10,150,650	2,537,663	8,120,520	1,624,104	406,026							
Casinos (Pool)	6,000	676,710,000	0.6250	4,229,438	3,383,550	845,888	2,706,840	541,368	135,342							
Total Revenue				16,917,750	13,534,200		10,827,360	2,165,472	541,368	7,000,000	17,827,360	588,639	420,457	16,818,264	134,546	14,950
							Purse 3.5%	379,468								
							New S Breeders	2,541,430								

Average Purse Per Race East Coast Thoroughbred Racetracks - compiled by "The Thoroughbred Times"								
State	Thoroughbred Racetrack	2008 Avg. All Purses Purse/Race	State	Thoroughbred Racetrack	2009 Avg. All Purses Purse/Race	State	Thoroughbred Racetrack	2010 Avg. All Purses Purse/Race
New York	Saratoga	77,000	*Kentucky*	Keenland	74,120	*New York*	Saratoga	na
Kentucky	Keenland	68,000	*New York*	Saratoga	71,911	*New Jersey*	Meadowlands	na
New York	Belmont	51,887	*New York*	Belmont	53,799	*New Jersey*	Monmouth	65,112
Kentucky	Churchill Downs	50,404	*New York*	Aquaduct	40,513	*Kentucky*	Keenland	61,681
New York	Aquaduct	40,000	*Kentucky*	Churchill Downs	37,951	*Kentucky*	Churchill Downs	59,936
Florida	Gulfstream Park	34,000	*New Jersey*	Monmouth	36,835	*New York*	Belmont	38,627
New Jersey	Monmouth	33,504	*Florida*	Gulfstream Park	36,439	*Florida*	Gulfstream Park	34,132
New Jersey	Meadowlands	31,000	*Pennsylvania*	Philadelphia Park	30,559	*New York*	Aquaduct	31,719
Maryland	Pimlico	29,393	*New Jersey*	Meadowlands	30,380	*Maryland*	Pimlico	27,761
Pennsylvania	Philadelphia Park	25,643	*Maryland*	Pimlico	29,393	*Pennsylvania*	Philadelphia Park	27,184
Delaware	Delaware Park	24,756	*Delaware*	Delaware Park	27,302	*Delaware*	Delaware Park	23,922
Maryland	Laurel	20,000	*West Virginia*	Charles Town	20,287	*Pennsylvania*	Penn National	19,879
West Virginia	Charles Town	18,910	*Maryland*	Laurel	20,087	*West Virginia*	Charles Town	18,450
Florida	Calder	18,069	*Pennsylvania*	Penn National	19,772	*Maryland*	Laurel	18,237
Pennsylvania	Penn National	16,504	*Florida*	Calder	18,958	*Florida*	Calder	17,395
Florida	Tampa Bay Downs	16,000	*Florida*	Tampa Bay Downs	14,800	*Florida*	Tampa Bay Downs	14,737
New York	Finger Lakes	12,854	*New York*	Finger Lakes	13,581	*Kentucky*	Turfway Park	13,305
West Virginia	Mountaineer	12,606	*West Virginia*	Mountaineer	13,534	*New York*	Finger Lakes	13,096
Kentucky	Turfway Park	12,000	*Kentucky*	Turfway Park	11,511	*West Virginia*	Mountaineer	11,535
Massachusetts	Suffolk Downs	11,685	*Massachusetts*	Suffolk Downs	9,933	*Massachusetts*	Suffolk Downs	7,078
	Average All Purses	**30,211**		**Average All Purses**	**30,583**		**Average All Purses**	**na**

New England HBPA
Thoroughbred Purse Revenue Data

2/15/2013

Premium Revenue for Thoroughbred Purse Account				
Premiums	**2009**	**2010**	**2011**	**2012**
Plainridge	500,294	483,349	477,407	430,721
Raynham	576,471	549,166	431,787	432,269
Wonderland	123,733	60,549	na	na
Premiums - Total	**1,200,498**	**1,093,064**	**909,194**	**862,990**

Racehorse Development Fund - Gaming Revenue				Total	RHDF Split		Thoroughbreds - Annual Purse Revenue & And Allocations								Avg. Daily	Avg.
Revenue	Number of	Annual Taxable	MGL	RHDF	Thoroughbred	Standardbred	RHDF Thoroughbred Distribution			Contracts	Gross	Asst.	NEHBPA	Paid	Purse	Purse /Race
Source	Machines	Revenue **	Percent	Income	80%	20%	80% Slots share	16% MA Breeders	4% Benefits	& MGL	Purse	Fund	2.5%	Purse	125 days	125 days
Slot Parlor	1,250	123,643,750	9.0000	11,127,938	8,902,350	2,225,588	7,121,880	1,424,376	356,094							
Casino Slots	12,000	1,186,980,000	0.6250	7,418,625	5,934,900	1,483,725	4,747,920	949,584	237,396							
Table Games	300	390,258,000	0.6250	2,439,113	1,951,290	487,823	1,561,032	312,206	78,052							
Poker Tables	100	21,754,000	0.6250	135,963	108,770	27,193	87,016	17,403	4,351							
Total Revenue			Totals	21,121,638	16,897,310	4,224,328	13,517,848	2,703,570	675,892	8,632,968	22,150,816	72,500	538,451	21,538,052	172,304	19,145
							Purse 3.5%	473,125								
							New S Breeders	3,176,694								

Racehorse Development Fund - Gaming Revenue				Total	RHDF Split		Thoroughbreds - Annual Purse Revenue & And Allocations								Avg. Daily	Avg.
Revenue	Number of	Annual Taxable	MGL	RHDF	Thoroughbred	Standardbred	RHDF Thoroughbred Distribution			Contracts	Gross	Asst.	NEHBPA	Paid	Purse	Purse /Race
Source	Machines	Revenue **	Percent	Income	80%	20%	80% Slots share	16% MA Breeders	4% Benefits	& MGL	Purse	Fund	2.5%	Purse	125 days	125 days
Slot Parlor	1,250	123,643,750	9.0000	11,127,938	8,902,350	2,225,588	7,121,880	1,424,376	356,094							
Casino Slots	10,000	989,150,000	0.6250	6,182,188	4,945,750	1,236,438	3,956,600	791,320	197,830							
Table Games	300	390,258,000	0.6250	2,439,113	1,951,290	487,823	1,561,032	312,206	78,052							
Poker Tables	100	21,754,000	0.6250	135,963	108,770	27,193	87,016	17,403	4,351							
Total Revenue			Totals	19,885,200	15,908,160	3,977,040	12,726,528	2,545,306	636,326	8,632,968	21,359,496	72,500	519,151	20,766,033	166,128	18,459
							Purse 3.5%	445,428								
							New S Breeders	2,990,734								

Racehorse Development Fund - Gaming Revenue				Total	RHDF Split		Thoroughbreds - Annual Purse Revenue & And Allocations								Avg. Daily	Avg.
Revenue	Number of	Annual Taxable	MGL	RHDF	Thoroughbred	Standardbred	RHDF Thoroughbred Distribution			Contracts	Gross	Asst.	NEHBPA	Paid	Purse	Purse /Race
Source	Machines	Revenue **	Percent	Income	80%	20%	80% Slots share	16% MA Breeders	4% Benefits	& MGL	Purse	Fund	2.5%	Purse	125 days	125 days
Slot Parlor	1,250	123,643,750	9.0000	11,127,938	8,902,350	2,225,588	7,121,880	1,424,376	356,094							
Casino Slots	8,000	791,320,000	0.6250	4,945,750	3,956,600	989,150	3,165,280	633,056	158,264							
Table Games	250	325,215,000	0.6250	2,032,594	1,626,075	406,519	1,300,860	260,172	65,043							
Poker Tables	80	17,403,200	0.6250	108,770	87,016	21,754	69,613	13,923	3,481							
Total Revenue			Totals	18,215,051	14,572,041	3,643,010	11,657,633	2,331,527	582,882	8,632,968	20,290,601	72,500	493,080	19,723,208	157,786	17,532
							Purse 3.5%	408,017								
							New S Breeders	2,739,544								

Racehorse Development Fund - Gaming Revenue				Total	RHDF Split		Thoroughbreds - Annual Purse Revenue & And Allocations								Avg. Daily	Avg.
Revenue	Number	Annual Taxable	MGL	RHDF	Thoroughbred	Standardbred	RHDF Thoroughbred Distribution			Contracts	Gross	Asst.	NEHBPA	Paid	Purse	Purse /Race
Source	of Units	Revenue **	Percent	Income	80%	20%	80% Slots share	16% MA Breeders	4% Benefits	& MGL	Purse	Fund	2.5%	Purse	125 days	125 days
Slot Parlor	1,250	123,643,750	9.0000	11,127,938	8,902,350	2,225,588	7,121,880	1,424,376	356,094							
Casino Slots	6,000	593,490,000	0.6250	3,709,313	2,967,450	741,863	2,373,960	474,792	118,698							
Table Games	200	260,172,000	0.6250	1,626,075	1,300,860	325,215	1,040,688	208,138	52,034							
Poker Tables	80	17,403,200	0.6250	108,770	87,016	21,754	69,613	13,923	3,481							
Total Revenue			Totals	16,572,095	13,257,676	3,314,419	10,606,141	2,121,228	530,307	8,632,968	19,239,109	72,500	467,434	18,697,362	149,579	16,620
							Purse 3.5%	371,215								
							New S Breeders	2,492,443								

** ***Note:*** Spectrum Consultants "Moderate case estmate" blended per unit slot machine drop (Northeast Region & Central/Western Region) is $271 per machine per day.
Spectrum Consultants "Moderate case estmate" blended per unit table games revenue (Northeast Region & Central/Western Region) is $3,564 per table per day.
Spectrum Consultants "Moderate case estmate" blended per unit poker tables revenue (Northeast Region & Central/Western Region) is $596 per table per day.

New England Horsemen's Benevolent and Protective Association, Inc.

A National Organization

P.O. Box 388
Revere, MA 02151
617-568-3333 or 800-225-3460 Ext. 7258
WWW.NewEnglandHBPA.com

February 18, 2013

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

Re: Comments on issues and recommendations regarding changes to Chapters 128A & 128C

Dear Chairman Crosby:

On behalf of the New England HBPA and the Massachusetts Thoroughbred Breeders Association, we are writing in response to your website solicitation requesting comments on the following issues that will be considered by the Gaming Commission.

The Racing Commission, working with the Gaming Commission, has taken measures and has allocated time to elicit and listen to our concerns throughout this process. The thoroughly transparent and fair treatment we have experienced in this process is greatly appreciated.

Issue I. Harmonizing simulcasting rights under the Racing Statues and the Gaming Act

Comment (a):
The common goal of racetracks, horsemen and state government is to achieve successful racing operations. Greater success will result in greater economic and agricultural benefits for Massachusetts such as retaining and creating permanent jobs, added economic boost to the Massachusetts economy far in excess of the incoming purse revenue, preservation and expansion of agricultural green space, and enhanced economic impact on the agricultural industry. Many states have conducted studies which demonstrate that a viable racing operation achieves and can exceed the results desired by their government.

A racing operation must deliver a competitive product to remain viable in these ever-changing times. As the Massachusetts Gaming Commission, Racing Commission, racetrack owners, horsemen and, ultimately, the state government work together to evaluate the current racing and simulcasting laws for improvements that will help to achieve the successful racing goals, we suggest that the primary target to assure viable live racing in Massachusetts is to reach a purse revenue level that will place our live product in a competitive position with the mid-range of the purse levels offered in the eastern United States.

Comment (b):
The revenue streams for racing purses are generated from contracts, simulcasting, wager profit-sharing formulas established by Massachusetts law and, eventually, from the gaming tax. Each of the many revenue items that comprise the total purse revenue are collectively intended to achieve a successful racing product. We recommend that as each issue is considered for revision of Chapter 128A or 128C, the issue should be evaluated for its specific impact (if any) on each component of the purse revenue stream. Such consideration should include an evaluation of the overall impact on the live racing product's competitiveness.

Comment (c):
Under the contractual agreement between Suffolk Downs and the thoroughbred horsemen, a substantial percentage of the net revenue realized from simulcasting is allocated to fund purses for races at Suffolk Downs. Present allocation of net revenue from simulcasting is consistent with the revenue sharing contracts of the vast majority of other racing jurisdictions. Since the thoroughbred horsemen of Massachusetts and their associated agricultural network have a significant financial interest in the revenue realized from simulcasting and since these entities were recognized by the Legislature as intrinsic entities that rely heavily on the legislative and regulatory framework of simulcasting, any discussion of policy involving fair and equitable treatment of entities directly involved in simulcasting must necessarily recognize that the horsemen and their associate agricultural network are substantial and integral entities whose interests must be protected by simulcast regulation.

Comment (d):
We welcome a clear direction that the Commission has the authority to regulate existing simulcasting licenses and that said authority clearly extends to gaming licensees that are granted simulcasting licenses.

.Comment (e):
We encourage a uniform regulatory framework that treats fairly and equitably all entities authorized to simulcast in Massachusetts and that said framework requires each simulcasting licensee to conform to the exact takeout percentages specified in chapter 128C.

Comment (f):
We support the licensing of additional non-racing venues for simulcasting in Massachusetts; provided that each such licensee contribute reasonable uniform percentages of each dollar wagered on a thoroughbred race (in-state or out-of-state), regardless of the location that the wager is accepted within Massachusetts.

Comment (g):
We agree that the Commission is obligated to enforce a payment of 10% of each wager received by a non-racing simulcasting licensee to the Race Horse Development Fund. We note that said fee recognizes the otherwise lack of obligation to support the economic and agricultural benefits of live racing and breeding in the Commonwealth of Massachusetts.

Issue II. HARMONIZING CURRENT SIMULCASTING FEES AND PREMIUMS

Comment (h):
We recommend exercising much caution when making comparisons to another state's racing practices, formulas and regulations. Each such comparison must be analyzed with great scrutiny as to their success and shortcomings in meeting their goals regarding racing, breeding and associated agricultural impacts. This is particularly true when evaluating those states that have gaming, since

their racing industries receive funding support directly from casino proceeds and at much higher levels than funding support received in Massachusetts via the Commonwealth's share of casino profits. The higher levels of casino funding allow much more flexibility to adjust practices, formulas and regulation such as takeouts, premiums, rebates and extension of wagering credit.

Comment (i):
In the absence of an alternative system of assuring that a portion of each wager made in Massachusetts on an out-of-state thoroughbred race is allocated to support Massachusetts thoroughbred racing, breeding and agriculture through the thoroughbred purse account, we oppose the elimination of premiums. The existing premium requirement compensates the local thoroughbred industry for reduction in on-site wagering that results from the availability of alternative venues for thoroughbred wagering at non-thoroughbred facilities. As the Federal Government has recognized in 15 US Code Chapter 57 (The Interstate Horseracing Act) by requiring the consent of a local horsemen's group for transmission of the signal of its races to other jurisdictions, venues that accept wagers on thoroughbred signals should be required to provide fair compensation to the source of the signal as a condition of receipt and use of the signal. In addition, the local horsemen's group should be compensated for dilution of its on-site customer base.

We recommend that the existing premiums should be changed to uniform percentages for each and every wager on an out-of-state thoroughbred race. All premiums should be substantially raised to reflect a fair and equitable share of all profits generated by simulcasting licensees' on thoroughbred wagering being applied to thoroughbred purses. With the elimination of greyhound dog racing in Massachusetts, the interest of the Commonwealth of Massachusetts in subsidizing the facilities that previously conducted greyhound dog racing has been eliminated. To the extent such facilities continue as simulcasting facilities, they no longer bear the expense of live racing so the prior subsidy intended to compensate for that expense should be eliminated.

Issue III. REBATING AND WAGERING ON CREDIT UNDER THE RACING STATUTES

Comment (j):
We are open and willing to participate in a discussion on the advantages and disadvantages of rebating and use of credit on pari-mutuel wagering. Since these issues will have entirely new impacts on our revenue stream, we would clearly like to understand how the costs and benefits would be applied and we would like to evaluate any projections upon which such changes would be based, prior to formulating our position. Since the licensee extending credit and/or granting rebates will necessarily be required to exercise its discretion and judgment in such matters, it appears that any economic risk must necessarily vest solely in the licensee.

Issue IV. CAPITAL IMPROVEMENTS AND PROMOTIONAL TRUST FUNDS.

Comment (k):
The funding formula for the Running Horse Capital Improvements Trust Fund currently receives 100% of the "breaks" (approximately $350,000 annually) as the Fund's sole revenue source from thoroughbred pari-mutuel wagering at Suffolk Downs. It appears that a portion of the current funding method will be removed from the Running Horse Capital Improvements Trust Fund revenue stream. If that is the intention, then this reduction will be very detrimental to the process of replacing deteriorated backside facilities.

Comment (l):
The revenue generated from pari-mutuel wagering on thoroughbred racing currently provides approximately 90% of the revenue allocated to the Harness Horse Capital Improvement Trust Fund, Running Horse Capital Improvement Trust Fund, Harness Promotional Trust Fund and the Running Horse Promotional Trust Fund. The balance of the revenue allocated to these funds is generated from pari-mutuel wagering on standardbred racing.

The Trust Funds have not been adequate to accomplish their objective. A reduction in the funding allocation will be contrary to legislative policy that was instituted to enhance horse racing and its associated agricultural network.

Comment (m):
While the current Trust Fund system applicable to capital improvements and promotional activities of racing meeting licensees may be outdated, it should be supplemented by a new source of funding that provides resources adequate to accomplish the objectives of the Trust Funds and determines the manner in which all such resources are expended.

Comment (n):
Since the licensees and the horsemen are both significantly and materially affected by the purpose and manner in which such funds are expended, we suggest that both the licensee and the representative organization of the horsemen racing at the licensee's facility should be formally included in the project evaluation and priority process prior to final decisions on expenditures from the Trust Funds.

Comment (o):
We support the recommendation to earmark funds exclusively for backstretch infrastructure improvements.

Comment (p):
We suggest that all "breaks" and "unclaimed winnings" from wagers placed at non-racing simulcasting facilities should be deposited into the Race Horse Development Fund, in the identical manner that the existing non-live racing simulcasting licensee was mandated in the 2011 gaming law.

Thank you for your consideration and for providing us with an opportunity to offer our comments.

Sincerely,

Anthony Spadea, President
New England HBPA

George Brown, Chairman
MA Thoroughbred Breeders Association

Cc:

Gayle Cameron, Commissioner, MA Gaming Commissioner
Dr. Jennifer Durenberger, Executive Director, MA Racing Commission

New England HBPA 9/27/2010

Eastern States Purse Comparision

Average Purse Per Race East Coast Thoroughbred Racetracks - compiled by "The Thoroughbred Times"								
State	**Thoroughbred Racetrack**	**2008 Avg. All Purses Purse/Race**	**State**	**Thoroughbred Racetrack**	**2009 Avg. All Purses Purse/Race**	**State**	**Thoroughbred Racetrack**	**2010 Avg. All Purses Purse/Race**
New York	Saratoga	77,000	***Kentucky***	Keenland	74,120	***New York***	Saratoga	na
Kentucky	Keenland	68,000	***New York***	Saratoga	71,911	***New Jersey***	Meadowlands	na
New York	Belmont	51,887	***New York***	Belmont	53,799	***New Jersey***	Monmouth	65,112
Kentucky	Churchill Downs	50,404	***New York***	Aquaduct	40,513	***Kentucky***	Keenland	61,681
New York	Aquaduct	40,000	***Kentucky***	Churchill Downs	37,951	***Kentucky***	Churchill Downs	59,936
Florida	Gulfstream Park	34,000	***New Jersey***	Monmouth	36,835	***New York***	Belmont	38,627
New Jersey	Monmouth	33,504	***Florida***	Gulfstream Park	36,439	***Florida***	Gulfstream Park	34,132
New Jersey	Meadowlands	31,000	***Pennsylvania***	Philadelphia Park	30,559	***New York***	Aquaduct	31,719
Maryland	Pimlico	29,393	***New Jersey***	Meadowlands	30,380	***Maryland***	Pimlico	27,761
Pennsylvania	Philadelphia Park	25,643	***Maryland***	Pimlico	29,393	***Pennsylvania***	Philadelphia Park	27,184
Delaware	Delaware Park	24,756	***Delaware***	Delaware Park	27,302	***Delaware***	Delaware Park	23,922
Maryland	Laurel	20,000	***West Virginia***	Charles Town	20,287	***Pennsylvania***	Penn National	19,879
West Virginia	Charles Town	18,910	***Maryland***	Laurel	20,087	***West Virginia***	Charles Town	18,450
Florida	Calder	18,069	***Pennsylvania***	Penn National	19,772	***Maryland***	Laurel	18,237
Pennsylvania	Penn National	16,504	***Florida***	Calder	18,958	***Florida***	Calder	17,395
Florida	Tampa Bay Downs	16,000	***Florida***	Tampa Bay Downs	14,800	***Florida***	Tampa Bay Downs	14,737
New York	Finger Lakes	12,854	***New York***	Finger Lakes	13,581	***Kentucky***	Turfway Park	13,305
West Virginia	Mountaineer	12,606	***West Virginia***	Mountaineer	13,534	***New York***	Finger Lakes	13,096
Kentucky	Turfway Park	12,000	***Kentucky***	Turfway Park	11,511	***West Virginia***	Mountaineer	11,535
Massachusetts	Suffolk Downs	11,685	***Massachusetts***	Suffolk Downs	9,933	***Massachusetts***	Suffolk Downs	7,078
	Average All Purses	**30,211**		**Average All Purses**	**30,583**		**Average All Purses**	**na**

WRITTEN SUBMISSIONS OF THE
MASSACHUSETTS STANDARDBRED BREEDERS

Maryanne Lewis
Attorney at Law

November 16, 2012

Mr. David A. Murray(MGC)
RE:Standardbred Breeders

Dear David,

It was nice to talk with you last week. Thank you for your information and attention to this matter.

We appreciate the opportunity to share our thoughts with you regarding the breeders program. Let me preface our remarks by saying that the one of the original goals in regulating standardbred racing in the Commonwealth was to encourage and support the horse farms in Massachusetts. Massachusetts as you probably know has over 650 farms that support the breeding and fostering of horses. Most of the farms that breed in Massachusetts are Standardbred.

As I am sure you are aware the economic and environmental benefits of a healthy and sustainable breeder's program have long been recognized in the Commonwealth of Massachusetts. Many of these farms contribute not only to the economy, but contain much of the state's open space, hunting areas, and most importantly, water recharge areas. Given the state of our aquifers and the need to develop more areas of water supply, this should be a critical concern. Horse farms also contribute to the well being of the farming sector with local purchases of farm supplies. In fact, it allows for the continuation of services that would not otherwise support a farming infrastructure if the horse farms were unable to continue.

While the original intent of racing legislation was to encourage horse farms and breeding in Massachusetts, the introduction of simulcast and the diminution of live racing has turned the intent on its head. Simulcast legislation has been used to sustain the racing industry and the horse farms have been dependent on the ability of various racing venues to win simulcast dates. That has lead to uncertainty in the industry as the horse breeders have to wait for the passage of a new bill as the last is sunset and have to have faith that the Legislature will not make changes (major

or otherwise) that may impact the breeding program retroactively.

While the political struggles over who should have what simulcast dates at the various venues shift year to year, one constant has been the importance that the Legislature has placed on the continuation of the horse programs in Massachusetts. In order to encourage and facilitate a viable program that the farm industry can rely going forward , we recommend that the breeding requirements be segregated from the simulcast political struggle. We would urge you to separate the guidelines for the breeding program from the simulcast sections of the gaming laws. Admittedly, for all practical purposes, an end to simulcast extensions would have a devastating impact on the breeders program and the farming sector in the Commonwealth, however, we believe a carve out section for breeders separate from the simulcast regulations would alleviate some of the concerns and doubt from breeders who invest time, money and effort to comply with the calendar set forth in the statute.

As it currently stands, the simulcast dates could likely follow a two year cycle while the breeders are committed to a four year cycle (for breeding and growth purposes). This opens up the potential situation that a horse could be rendered ineligible after a breeder acted in good faith under existing statute. This is an untenable situation and will lead to fewer farmers taking that risk. Enacting a statute separate from the ever changing simulcast calendar would eliminate some uncertainty for the breeders and those investing in breeding and investing in Massachusetts. Today's tenuous business climate can always be helped and calmed by clarifying and minimizing potential unknown negative factors.

As with all farming efforts in Massachusetts, breeders face uncertainty far more than almost any other industry sector in the Commonwealth. They are subject to the vagaries of the industry, the Legislature, and competition from other states. A separation that gives them their own statute gives them some certainty that at least the statute will not change due to a stalemate on resolving the simulcast issue over a longer term. It also allows them to plan over the term of their investment. That is , the time period over the growth of the horse being bred.

The other suggestion we would make is that we would like to see a clarification in section 2 of Chapter 128. This section has language that allows for paying purses and awards in the form of bonuses to Massachusetts bred horses that are older than 3 and race in overnight events (at term for regular, not stake races). While we believe that this section gives them the power to do this, we would urge that they should have the power to do so or not to do so at their discretion. It gives them more flexibility and that is important in these fiscal times and in this industry.

Thank you again for the opportunity to weigh in on this issue. This is an issue that goes to the very heart of the breeding program and the viability of the horse industry in Massachusetts. I hope that we can take this action for our farmers.

If there are any questions, please feel free to contact me and I can make industry officials and farm breeders available to clarify any issues.

Sincerely,

Maryanne Lewis

Maryanne Lewis, on behalf of
Standardbred Breeders

Below is the breeder language in effect now, and as it is currently a subsection (j) of the simulcasting statute it is subject to the sunset clause of the entire Chapter and section and as such we respectfully request that this language of subsection (j) stand alone as its own Chapter and section, thereby not subjecting it to the aforementioned sunset clause.

Chapter 139 of the acts of 2001.

SECTION 3. Section 2 of chapter 128 of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by striking out subsection (j) and inserting in place thereof the following subsection:-

(j) Promote, develop and encourage, through the Massachusetts Standardbred Breeding Program, the breeding of standardbred horses in the commonwealth by offering cash prizes to breeders of such horses. The representative organization of standardbred breeders and owners approved by the state racing commission shall, from time to time in consultation with the chairman of the racing commission and the commissioner of the department of

food and agriculture, set the percentages for purses to be awarded to the breeder of a Massachusetts standardbred horse. The representative organization of standardbred breeders and owners approved by the state racing commission may pay cash purses and stallion awards for stakes races limited to Massachusetts bred standardbred race horses and qualified Massachusetts stallions from the Massachusetts standardbred breeding program at licensed pari-mutuel racing meetings authorized by the state racing commission. Such races may be betting or non-betting races and may or may not be scheduled races by the licensee conducting the racing meeting. All races for the standardbred breeding program shall be held at a licensed pari-mutuel facility. Purse monies and stallion awards paid by the representative organization of standardbred breeders and owners approved by the state racing commission may be paid in such amounts as the representative organization shall determine and may be either the sole cash purse for such races or may be supplemental to the cash purses established by the licensee of the pari-mutuel facility.

The standardbred horses eligible to participate in the purses provided herein shall be limited to those of racing ages 2 and 3 and shall have met the following requirements:

(1) the qualifying standardbred horses shall have been sired by a Massachusetts registered stallion on file with the department of food and agriculture; provided, however, that the stallion shall have stood the entire breeding season of February 1 to July 15, inclusive, in the commonwealth in the year any such eligible foal was conceived; or

(2) the foal of a standardbred mare that drops the foal in the commonwealth and is bred back to a Massachusetts registered stallion; or the foal of a standardbred mare that resides in the

commonwealth from December 1 of the year prior to foaling and continues such residence until foaling and foals in the commonwealth;

(3) in either the case of subparagraph (1) or (2), each standardbred foal dropped in the commonwealth shall be registered with the United States Trotting Association and the department of food and agriculture.

Prior to October 1 of each year, each breeder standing a standardbred stallion in the commonwealth at either private or public service shall file with the department of food and agriculture a list of all standardbred mares bred to such stallion in that year and a verified statement representing that the stallion stood the entire breeding season in the commonwealth.

The representative organization may expend up to 8 per cent of the amount received each fiscal year for the program for advertising, marketing, promotion and administration of the standardbred breeding program in the commonwealth.

The state auditor shall annually audit the books of the qualified organization to ensure compliance with this section.

WRITTEN SUBMISSIONS OF SUFFOLK DOWNS

SUFFOLK DOWNS.

November 16, 2012

Commissioner Gayle Cameron
Massachusetts Gaming Commission
Racing Division
1000 Washington Street, Suite 710
Boston, MA 02118

Re: Recommendations for Gaming Commission's Legislative Report on G.L. Chapters 128A and 128C

Dear Commissioner Cameron:

We appreciate the Gaming Commission's invitation to Suffolk Downs to submit comments and recommendations for the Commission's consideration as it prepares its Legislative Report on the racing and simulcasting laws.

Before providing specific comments, we would like to commend the Commission and the work of Dr. Durenberger in promoting the RCI model rules for racing. Over the past two years, Suffolk Downs has also advocated for adopting these rules to enhance the safety and integrity of the racing industry, and we congratulate the Commission for its leadership in this endeavor.

As the Commonwealth's only thoroughbred racing licensee for the past 20 years, Suffolk Downs is intimately familiar with the laws and regulations under which racing and simulcasting are conducted here. We respectfully offer the following recommendations for your consideration.

1. Expiration of the Simulcasting Statues. In what has become more of an anachronism than a sound public policy, the simulcasting statutes in the Commonwealth expire every few years. Invariably, the industry faces shut down as each expiration date approaches until the legislature enacts an extension (the next expiration date is July 31, 2014). The practice of incorporating sunset provisions within the simulcasting laws made some sense when simulcasting was first enacted in 1992, but given its longstanding history and the dependence of the industry on revenue from simulcasting, the expiration provisions serve no productive purpose, while adding an unhealthy level of uncertainty to the industry (and in the years when extensions were not timely enacted, economic hardship). Suffolk Downs recommends that the sunset provisions be eliminated from Chapters 128A and 128C, and that the current laws be allowed to remain in effect without the prospect of expiration on July 31, 2014 (or any extended date thereafter).

2. Gaming Commission Authority Over Racing Schedules. Racing licensees must hold a certain number of live racing performance to be authorized to conduct simulcasting. Simulcasting has become the economic lifeblood of the racing industry, and any loss of simulcasting rights would devastate any racing licensee. Section 2 of Chapter 128C acknowledges that certain major events—weather conditions, track conditions, work stoppages, etc.—may preclude a racing licensee from achieving these racing requirements, and gives the Commission authority to waive these requirements and allow simulcasting to continue. However, given the many amendments to this provision over the decades, it has become convoluted and difficult to interpret. Suffolk Downs recommends that the ninth paragraph of Section 2 not only be revised for clarity, but also revised to broaden the authority and discretion of the Commission to determine the simulcasting requirements of racing licensees. In particular, in the event that any racing licensee obtains a gaming license, it will be required to comply with the racing and simulcasting laws as a condition of its gaming license. Given the dramatic implications of a suspension of a gaming license, the Commission should be granted broad authority to determine whether or not a violation has occurred and whether or not a waiver of racing requirements may be appropriate in any given situation.

3. Volume Discounts, Rewards and Rebates. One competitive disadvantage that Massachusetts racing licensees face is the prohibition of rebating found in Section 5C of Chapter 128A. Racing facilities across the country commonly provide volume discounts, rewards or rebates to customers as an effective marketing tool. However, that now well-established business practice is not allowed in the Commonwealth. Suffolk Downs recommends amending Chapter 128A to allow rebating. We note that these types of marketing activities would be allowed at gaming facilities in the Commonwealth under the Gaming Act passed last year.

4. Tax Withholding Standards. Racing licensees in Massachusetts (in accordance with the national standard in the racing industry) have long followed IRS rules with respect to withholding taxes on certain winning wagers. A provision within the Gaming Act enacted last year (Section 28 of Chapter 194) seeks to address tax withholding issues applicable in a gaming facility, but its language has raised confusion about whether or not it would have any effect on wagers in racing facilities (whether as part of a gaming facility or not). If interpreted to apply to racing wagers, this provision would force Massachusetts tracks to depart from the IRS standard and would impose a terrible hardship on the Massachusetts racing industry. Suffolk Downs would appreciate guidance from the Gaming Commission regarding whether this provision applies to wagers at racing facilities, in addition to those at gaming facilities. If the Commission interprets this provision to apply to racing, we would respectfully request that this provision be amended to reinstate the policies applicable to race tracks in effect before the passage of that act.

5. Modernizing Minus Pool Regulations. We note that the prior Racing Commission had approved changes to the racing regulations (205 CMR 6.29(1)) that would modernize the Massachusetts rule governing so-called "minus pools," and

understand that the Gaming Commission is also considering moving forward with this regulatory update. Changing the minimum payment from $1.10 to $1.05 per dollar wagered in any minus pool would bring Massachusetts into conformity with national standards, increase the integrity of pari-mutuel wagering, and limit unnecessary economic losses from racing licensees. We encourage the Commission to move forward with this change.

6. Support of Breeding Programs. As the annual foal population continues to decrease nationally, the need to support breeding programs becomes greater. Suffolk Downs would encourage measures to support Massachusetts thoroughbred breeding programs.

7. National Trends in Racing. In recent years, especially as the supply of horses has declined, a trend toward shorter racing seasons with larger purses has emerged among the healthiest tracks. As the simulcast market has become more mature, fulfilling the demand for year-round pari-mutuel product, racing fans have gravitated toward racing meets of higher perceived quality. In many instances, tracks that have followed this trend have reinvigorated their racing enterprises. We would encourage the Commission to consider policies that take lessons from the successes of racing facilities in other states in response to changes in the industry.

We appreciate the Commission's invitation to provide these recommendations. We would also be happy to provide draft language for the Commission's consideration on any of these points. Please let us know if you have any questions or would like any further information.

Sincerely,

Chip Tuttle
Chief Operating Officer

WRITTEN SUBMISSIONS OF PLAINRIDGE

Murray, David A (MGC)

From:	Robert Kraus <RKraus@kraushummel.com>
Sent:	Thursday, November 15, 2012 4:43 PM
To:	Murray, David A (MGC)
Cc:	Durenberger, Jennifer (MGC); Gary Piontkowski (gtpharness@aol.com); Steve O'Toole (o2lprc@aol.com); Kathi Luoto
Subject:	RE: Read: Submissions re Gaming Commission's Legislative Report Pursuant to St. 2011, c. 194, sec. 104

Dear Attorney Murray:

I have had a chance to review your request with my client and have very simple responses pursuant to Section 104 of the Gaming Act.

"SECTION 104. Notwithstanding any general or special law to the contrary, the Massachusetts gaming commission established in chapter 23K of the General Laws shall analyze the pari-mutuel and simulcasting laws in effect on the effective date of this act. The analysis shall include a review of the efficacy of those laws and the need to replace those laws pursuant to the continuation of chapters 128A and 128C of the General Laws in this act. The analysis shall not address whether to increase the number of running horse, harness horse or greyhound racing meeting licensees in the commonwealth. The commission shall 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 not later than January 1, 2013."

My client believes that the present legislation maintains a carefully considered and developed balance of racing and simulcasting interests that have been forged since 1992, when the law went into effect; however, having said that, our position is that the law should reflect and be amended to insure that simulcasting is limited to those places where "live" racing occurs and is operational.

Please call if you have any questions.

Thanks, Rob Kraus

Cc: Gary T. Piontkowski, President, Plainridge Racecourse