



The Commonwealth of Massachusetts

Massachusetts Gaming Commission

NOTICE OF MEETING and AGENDA

January 3, 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, January 3, 2013

1:00 p.m.

Division of Insurance

1000 Washington Street

1st Floor, Meeting Room 1-E

Boston, Massachusetts

PUBLIC MEETING - #44

1. Call to order
2. Approval of Minutes
 - a. December 18, 2012 Meeting
3. Administration
 - a. Master schedule
 - b. Employee Manual – Chapter 6 - VOTE
4. IEB Report
 - a. Scope of licensing
 - b. Investigations status report
5. Key Policy Questions
 - a. Future questions
6. Racing Division Report
 - a. Transition update
7. Public Education and Information
 - a. Report from Ombudsman
 - i. Information requests from developers, communities or others
 - ii. State permitting process
8. Charitable Gaming – VOTE
9. Practice of law by out of state attorneys
10. 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.

12/28/12
(date)

Stephen P. Crosby
Stephen P. Crosby, Chairman

Date Posted to Website: December 31, 2012 at 1:00 p.m.

The Commonwealth of Massachusetts
Massachusetts Gaming Commission

Meeting Minutes

Date: December 18, 2012

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 43rd public meeting. He announced that the Commission will hold its regular monthly meetings on Thursdays beginning in 2013, with the next meeting scheduled for Thursday, January 3 at 1:00 p.m.

Approval of Minutes:

See transcript pages 2-4.

Commissioner McHugh stated that the minutes for the meetings of December 4 and December 11 are ready for approval.

Motion made by Commissioner McHugh to accept the minutes of December 4, 2012 as written. Motion seconded by Commissioner Zuniga. The motion passed unanimously by a 5-0-0 vote.

Motion made by Commissioner McHugh to accept the minutes of December 11, 2012 as written. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.

Administration:

See transcript pages 4-23.

Report from Director of Administration - Director Glovsky stated that she has been working on Racing Division matters with Director Durenberger, who will address the status of that work.

Director Glovsky stated that she has nothing further to report. Chairman Crosby reviewed the master schedule. Director Glovsky stated that the Commission has added the process for procuring and installing a document management system to the schedule. Her goal is to implement the document management system in phases starting on April 1, 2013, with full implementation by the start of fiscal year 2014.

Personnel Searches – Chairman Crosby stated that the Commission is working toward meeting an end of December deadline for some of the new hires. He stated that there is a very small pool of qualified candidates for the executive director position, most of whom have been in and out of the regulatory side and have also worked in the private sector side. He raised the possibility that there may be a candidate who currently, or in the past, represented companies now bidding for a Massachusetts gaming license. Chairman Crosby would like the Commission to discuss how the Commission will handle such a candidate.

Commissioner Zuniga stated that a section of M.G.L. c. 23K creates a waiting period during which a prospective employee may not have worked for an applicant. Commissioner McHugh stated that the section that Commissioner Zuniga referenced is 3(n), and it states that no individual can be employed by the Commission if during the period commencing three years prior to employment that individual held a direct or indirect interest in, or was employed by a licensee. He stated that this section creates a statutory minimum that the Commission must meet. He recommended obtaining a ruling from the State Ethics Commission regarding any candidate for the executive director position that had an interest in a gaming applicant within the past three years. He also stated that the Commission is developing an enhanced ethics policy and will need to make certain that anyone who is hired will meet the criteria spelled out in that policy.

Commissioner Cameron stated that the Commission has received nine scope of licensing letters from eleven parties interested in a gaming license. She stated that she would not be comfortable hiring an executive director who had a direct relationship with one of the applicants within the three year period. Commissioner McHugh stated that the Commission needs to engage someone in the executive director position who has not had a relationship with one of the applicants within the three year period.

Employee Manual – Commissioner Zuniga stated that he has submitted for review and vote the last chapter of the Employee Manual, Chapter 6, dealing with communications and outreach. He would like the Commission to review this chapter, with the intention of voting on it at a subsequent Commission meeting. Commissioner Stebbins stated that the Commission should explain its social media policy, which is outlined in this chapter, to new hires so that they do not unknowingly violate the policy prior to reading the employee manual.

IEB Report:

See transcript pages 23-28.

Scope of Licensing – Commissioner Cameron stated that eleven potential applicants have requested meetings and/or conference calls regarding scope of licensing. The IEB has received information on exemption requests and questions regarding qualifiers from nine of those

potential applicants. The IEB has made determinations and sent out letters on who the qualifiers will be for five of these potential applicants.

Investigations Status Report – Commissioner Cameron stated that the IEB is finalizing a fingerprinting process with the assistance of its law enforcement partners. She stated that in the coming week the IEB will sign MOU's with the State of Ohio and the State of Nevada, among others, to allow the transfer of investigative information in a timely manner.

Key Policy Questions:

See transcript pages 28-67.

Key Policy Question No. 18: Should the Commission approve the wording of the concise summary required by M.G.L. c. 23K, § 15(13) before it is submitted to the public?

Chairman Crosby stated that the concise summary must be approved by referendum of the home ward or the full community. He reviewed the comments that the Commission received from the public relative to this question. He stated that the Commission believes that the legislative intent was that the concise summary be a concise summary of the host community agreement. He recommended that the Commission not vote to require the Commission's approval of the concise summary but that the Commission should reserve its right to intercede at any stage of the process in the event that something in the referendum is troubling. Commissioner Zuniga stated that having a copy of the concise summary for informational purposes would be helpful to the Commission.

Motion made by Commissioner Stebbins to issue a regulation stating that the "concise summary" accompanying the ballot question required by G.L. c. 23K, § 15(13) is a summary of the host community agreement. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 5-0-0 vote.

Future Questions – Chairman Crosby reviewed additional policy questions that may need to be addressed soon. Commissioner Cameron recommended that the Commission schedule one day to handle all the questions, as they all have to be addressed prior to the next phase of regulations. Chairman Crosby stated that he had anticipated scheduling a week in January to discuss the remaining questions and asked Chief of Staff Reilly to coordinate the scheduling. He reviewed the work that each Commissioner must conduct as a result of the policy question meetings held last week.

Region C Status Review - Chairman Crosby stated that the Commission considered at a prior meeting a proposal to open in region c the commercial process on a parallel track with the Tribal process and invited public comment. He stated that in thinking about the proposal, the commission is trying to balance four interests. First is recognizing the legitimate historic and legal rights of federally recognized tribes in Massachusetts. Second is assuring equal treatment for the residents of southeastern Massachusetts in terms of jobs and economic develop. Third is limiting southeastern Massachusetts to a single Category 1 casino license and limiting Massachusetts to no more than three casino licenses. Fourth is creating a stable, predictable gaming environment in southeastern Massachusetts.

He stated that none of the options in front of the Commission is risk free to the Commonwealth's interests. If the Commission waits for the Tribe for an extended period of time, and the Tribe is ultimately unsuccessful with the land in trust or the compact, the Commission will then start the commercial process, but southeastern Massachusetts will at that point be at a substantial disadvantage in terms of job generation and economic development. On the other hand, if the Commission proceeds with a commercial process and subsequently the tribe negotiates a compact and receives land in trust, then southeastern Massachusetts has the potential of opening two competing casinos, which is not desirable.

Chairman Crosby stated that the Commission received public commentary on this issue, and the comments are posted on its website. As part of this feedback, the Tribe has requested that the Commission wait 90-days to make a decision to allow the Tribe time to complete the compact. He stated that the tribe was concerned that the commission's adoption of a parallel process now could imply that the Commission has come to the conclusion that the Tribe will be unsuccessful in its efforts to obtain a compact or land, although the Commission has reached no such conclusion. A parallel process could also mean that commercial developers could make a large investment and never get to stage 2. Chairman Crosby therefore recommended that the Commission postpone for 90 days a vote on the next step, thereby giving the Tribe an opportunity to complete the compact. After 90 days the Commission can reassess the situation.

Commissioner McHugh stated that the Commission should separate the land in trust issue from the compact issue for the purpose of analyzing risk. He stated that if the tribe gets land in trust, with or without a compact, it will have an unencumbered right to operate Class 2 gaming without any state involvement. He stated that the Commission should try to ensure that Region C has an economically viable casino development and that effort will take some time. He stated that there seems to be a uniform perception that opening up a parallel track has sent a signal that the Commission believes that the Tribe is not likely to execute the compact, and this perception is having a deleterious effect on the ability of the negotiating team from the Tribe and the City of Taunton to succeed. He stated that in introducing the parallel track, the Commission was engaged in risk reduction and had made no judgment on the likelihood that the Tribe was going to negotiate a compact. He stated that he favors giving the Tribe a 90-day window before making a decision.

Commissioner Cameron stated that the legislation states that, if a compact is not signed by July 31, 2012, then the Commission shall open a commercial license process in October 2012. She stated that if the Commission allows this 90-day window and the Tribe does not sign a compact at that time, then the Commission should open the commercial license process. Commissioner Zuniga stated that for the compact to be signed within 90 days, the Tribe would need to reach an agreement, and that agreement would need to be approved by the legislature and the Bureau of Indian Affairs. He stated that if any of these things are not accomplished by March 18, 2013 the Commission would find itself in the same position it is in now.

Commissioner Cameron stated that without a date in place there is no urgency to move the Tribal process along. Commissioner McHugh stated that the dates in the legislation clearly did have a motivating effect on everyone to get the compact signed and approved. If substantial progress

has been made by March 18 and more time is needed for full approval, any request for additional time would have to be evaluated in light of the circumstances as they then appeared.

Motion made by Commissioner McHugh that the Commission postpone discussion of the course to take in Region C for a 90-day period without condition or prejudgment as to what course the Commission will take at the end of that period. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.

Racing Division:

See transcript pages 67-77.

Report from Director of Racing Division – Director Durenberger stated that the Racing Division is following the provisions regarding conflict of interest in G.L. c. 23K, § 3(n) when hiring Racing Division employees. She stated that the Division is on track with closing and cleaning out the laboratory. The Division is moving forward with interviews and background checks for former SRC employees who have applied for positions with the Racing Division. The Division is working to archive the large amount of documents from the DPL. Director Durenberger is pursuing the possibility of hiring a library science intern from Simmons College or U. Mass Boston who could assist with this process.

Director Durenberger stated that Racing Commissioners International held a meeting and announced that regulatory changes regarding medicine are moving forward. She stated that Massachusetts is in a good position for compliance with these regulations. She discussed local aid payments to racetrack host communities, stating that the Commission has an ongoing obligation to make these payments. The payments for FY 2013 are six months in arrears, with a payment that was due on September 30 and another that will be due next week. There is also an outstanding fourth quarter payment from FY 2012. She stated that there is a line item in the FY 2013 budget to make these payments, but the Commission will have to make a decision regarding the FY 2012 payments. She recommended that the Commission vote to make these payments.

Motion made by Commissioner McHugh that the Commission approve the payments for FY 2012 and FY 2013 that are due and will become due at the end of this year and authorize the appropriate person to make the distributions. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 5-0-0 vote.

Public Education and Information:

See transcript pages 77-82.

Report from the Ombudsman – Mr. Ziembra thanked several regional planning agencies that helped the Commission get out notice regarding the Region C conversation. He stated that he continues to have discussions with communities and applicants. He attended a meeting in the City of Everett to discuss the licensing process and details about what is planned for Everett. He stated that he and Commissioner Zuniga had a scoping meeting with three regional planning

agencies during which they held a discussion on potential assistance that the Commission can provide to surrounding communities, such as technical advice or other facilitation services, to help alleviate concerns about potential impacts caused by gaming. He stated that he and Commissioner Zuniga also met with other regional planning agencies at the MARPA meeting. They have followed up with the Mass Municipal Association, detailing some of the items about which they had concerns and outlining the process going forward.

Report from the Director of Communications and Outreach – Director Driscoll stated that she has asked the website designer to expedite work on the website. She stated that she is holding a meeting on Friday to begin transferring content from the current site. She stated that the Commission has secured massgaming.com as the site's URL. Her goal is to have this site up and running to coincide with the January 15 application deadline.

Charitable Gaming:

See transcript pages 82-84.

Commissioner McHugh stated that the Commission had set January 1 as the deadline to prepare legislation relative to charitable gaming in the Commonwealth. The Commission has draft legislation and he anticipates having the legislation ready for a vote at the Commission's January 3, 2013 meeting.

Enhanced Ethics:

See transcript pages 84-85.

Commissioner McHugh stated that the Commission is almost ready to distribute the enhanced ethics policy for a vote. He stated that Commissioner Cameron and Attorney Grossman have been working on this, along with the ABCC and State Police. They circulated a draft and are holding a meeting with all the stakeholders to review the draft. He anticipates that the policy will be ready for consideration at the Commission's January 3, 2013 meeting.

Research RFP:

See transcript pages 85-86.

Chairman Crosby stated that the RFP responses for the research agenda are due January 5 and the Commission has selected a procurement management team to review the RFPs and make a decision.

Other Business:

See transcript pages 86-88.

Commissioner Zuniga stated that the Department of Revenue has issued a draft document for public comment relative to the withholding of wagering winnings and its view of how the Gaming Act overlays statutes that pertain to the withholding of taxes. He provided a copy of this

draft document to the Commission for informational purposes. Chairman Crosby recommended that the Commission post a link to this document on its website to facilitate public comment.

Motion made to adjourn, motion seconded and carried unanimously.

List of Documents and Other Items Used at the Meeting

1. Massachusetts Gaming Commission December 18, 2012 Notice of Meeting Agenda
2. Massachusetts Gaming Commission December 4, 2012 Meeting Minutes
3. Massachusetts Gaming Commission December 11, 2012 meeting minutes
4. Massachusetts Gaming Commission Section 6 of Employee Handbook
5. Key Policy Question #18
6. December 17, 2012 Memorandum Regarding Considerations for Licensing Status of Region C
7. December 17, 2012 Letter from State Representative Shaunna O'Connell
8. December 7, 2012 Letter from State Representative Antonio Cabral
9. December 17, 2012 Letter from K.G. Urban Enterprises
10. December 14, 2012 Letter from K.G. Urban Enterprises
11. December 11, 2012 Letter from Smith, Segel & Ruddock
12. December 18, 2012 Letter from the Town of Barnstable
13. December 14, 2012 Email from Representative Robert Koczera
14. December 17, 2012 Email from Dominic Tigano
15. December 16, 2012 Email from Carolyn Crowell
16. Working Draft for Practitioner Comment 12/17/2012 – Withholding on Wagering Winnings

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



Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

Official Audit Report – Issued December 28, 2012

State Racing Commission

For the period July 1, 2011 to May 20, 2012



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INTRODUCTION AND SUMMARY OF FINDINGS AND RECOMMENDATIONS

On May 20, 2012, pursuant to Chapter 194 of the Acts of 2011, the Massachusetts Gaming Commission (MGC) assumed all duties and responsibilities formerly carried out by the State Racing Commission (SRC). MGC adopted emergency regulations, 205 Code of Massachusetts Regulations CMR 13.00, under the authority of Chapter 23K, Sections 4 and 5; Chapter 128A, Section 9; and Chapter 128C, Section 8, of the Massachusetts General Laws to provide for the orderly transition of the regulation of horse racing; harness horse racing; dog racing; pari-mutuel wagering; simulcasting; the humane handling, care, treatment, and transportation of racing greyhounds; and related subject matters from the SRC to the MGC. In addition, the MGC entered into an Interdepartmental Service Agreement (ISA) with the Office of Consumer Affairs and Business Regulation's Division of Public Licensure (DPL) under which personnel employed by the SRC will continue to carry out all of the operating functions they performed before May 20, 2012. This agreement extends through December 31, 2012, the end of this calendar year. Prior to the transition to the MGC, the DPL had provided oversight of the SRC since January 1, 2010.

In accordance with Chapter 11, Section 12, of the General Laws, and at the request of the MGC, the Office of the State Auditor (OSA) conducted a transition audit of the status of financial activities, accounts and functions and the related systems and control environment of the SRC for fiscal year 2012 through the transition date of May 20, 2012. In addition, we examined fiscal year 2012 transactions subsequent to the transition date for appropriateness and reasonableness. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence that provides a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our conclusions based on our audit objectives.

The purpose of our audit was to inform the MGC of the status of fiscal and administrative operations as of May 20, 2012 to enhance the transition from the prior administration to the new administration and to identify systems and internal accounting and administrative controls needing corrective action and improvement. As a result of our audit, we have concluded that, during the period July 1, 2011 through May 20, 2012, the SRC adequately administered its operations; had adequate controls in place to safeguard its assets; had adequate and complete accounting and

contractual documentation; and complied with applicable laws, rules, and regulations for the areas tested.

OVERVIEW OF AUDITED AGENCY

Pursuant to Chapter 194 of the Acts of 2011, the State Racing Commission (SRC) ceased operations on May 20, 2012 and the Massachusetts Gaming Commission (MGC) assumed oversight responsibility for horse racing, pari-mutuel wagering, and simulcasting in the Commonwealth. The Expanded Gaming Act, Chapter 23K, Sections 7, 37, 38, and 40, of the Massachusetts General Laws, substitutes the MGC for the former SRC as the agency with the power to administer and enforce the provisions of Chapters 128A and 128C of the General Laws.

The MGC entered into an Interdepartmental Service Agreement (ISA) with the Division of Professional Licensure (DPL), the agency that provides administrative services within the Office of Consumer Affairs and Business Regulation, on May 20, 2012. This ISA was signed to assist in the effective transition of the oversight of racing to the MGC by having DPL perform, for a transitional period, the day-to-day activities that support Massachusetts horse racing, harness horse racing, pari-mutuel wagering, simulcasting, and related activities. These efforts are supported by an administrative office, racing inspectors, accountants, laboratory personnel, veterinarians, judges and stewards, and State Police investigators. In addition, former SRC personnel are to remain DPL and not MGC employees while carrying out the operating functions they performed before May 20, 2012. During this transition period, the MGC will take steps to develop the capacity to directly perform these activities by December 31, 2012. DPL will be responsible for all hiring, personnel management, and administrative needs of the SRC and will keep the MGC informed of any changes or actions during this period. In addition, the MGC will be responsible for all adjudicatory functions previously performed by the SRC and policy decisions and approvals required for DPL to perform these activities required within the ISA.

Under the current ISA, DPL is charged with the supervision of all conduct relating to the business of racing in Massachusetts and ensuring the integrity of the racing industry. This is accomplished through the regulation of pari-mutuel racing at the one thoroughbred racetrack, Suffolk Downs; one harness track, Plainridge Racecourse; and a simulcasting facility at Raynham/Taunton (the former Greyhound Park). Current operations include the issuance of licenses to all persons who participate in racing. Upon request by the Chief Steward at the racetracks, officers of the State Police investigate the backgrounds of new license applicants, racing officials, and trainers. The State Police also enforce all state regulations at each track conducting scheduled racing operations, including special

investigations related to the violation of racing rules. In addition, testing is performed on racing animals for the detection of prohibited drug usage, and inspections of stables at the racetracks and off-site locations are performed to detect safety violations.

Massachusetts racing receives a significant amount of its revenues from such sources as commissions from racing operations, referred to as the “handle,” assessments on live races, and license fees from associations operating racetracks and from staff such as trainers and jockeys who work at the racetracks. The SRC also receives revenue from fines and penalties assessed on track workers and money due from unpaid winning tickets. Total revenues collected in accordance with Chapter 128A of the General Laws for fiscal year 2012 was approximately \$5.2 million (see Appendix III).

AUDIT SCOPE, OBJECTIVES, AND METHODOLOGY

In accordance with Chapter 11, Section 12, of the General Laws and at the request of the Massachusetts Gaming Commission (MGC), the Office of the State Auditor (OSA) conducted a transition audit of the status of financial activities, accounts, and functions and the related systems and control environment of the State Racing Commission (SRC) as of the transition date of May 20, 2012, which included a review of transactions prior to and subsequent to the transition date for the fiscal year 2012. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our conclusions based on our audit objectives.

The purpose of our audit was to inform the MGC of the status of fiscal and administrative operations as of the date of transfer, to enhance the transition from the prior administration to the new administration, and to identify systems and internal accounting and administrative controls needing corrective action and improvement.

To accomplish our audit, we first assessed the management controls established and implemented by the SRC over its operations. We reviewed organizational charts, annual reports, internal policies and procedures and applicable laws, rules and regulations, including the implementation of the aforementioned Chapter 194 of the Acts of 2011. We also examined pertinent documentation to determine whether operational and contracted expenses incurred were reasonable, allowable, properly authorized and recorded, and in compliance with the scope and mission of the SRC's enabling legislation and regulations. Specifically, we:

- Interviewed SRC and DPL staff to gain an overall understanding of the entire financial and operational environment at the SRC.
- Reviewed and examined fiscal operations to determine the status of accounts, activities, and records.
- Evaluated the controls in place in order to determine the types of revenue derived and how they are collected, safeguarded, reported, and reconciled.
- Reviewed and examined fiscal year 2012 spending from July 1, 2011 through the date of transition and performed a comparison of budget to actual expenditures.

- Analyzed and tested agency expenditures and documentary evidence to ensure proper review, approval, and classification as the expenditures relate to the scope and mission of the SRC.
- Reviewed the SRC's internal control plan to determine whether it is up-to-date, suitably designed and implemented to safeguard Commonwealth assets, and in compliance with the Office of the State Comptroller's Internal Control Guide for Departments and Chapter 647 of the Acts of 1989.
- Reviewed inventory controls over supplies and equipment and vehicle usage policies to determine their adequacy.

As a result of our audit, we have concluded that, during the period July 1, 2011 through May 20, 2012, the SRC adequately administered its operations; had adequate controls in place to safeguard its assets; had adequate and complete accounting and contractual documentation; and complied with applicable laws, rules and regulations for the areas tested.

APPENDIX I

**Schedule of Appropriation Accounts under the State Racing Commission
Fiscal Year 2012**

State Racing Commission Appropriation Number	Appropriation Title	New Massachusetts Gaming Commission Appropriation Number	Appropriation Title	Appropriation Amount	Expenditures as of May 20, 2012	Unexpended Balance as of May 20, 2012	Percentage Expended as of May 20, 2012	Transfer to New Massachusetts Gaming Appropriation As of May 20, 2012	Appropriations As of June 30, 2012 ⁽¹⁾	Expenditures as of June 30, 2012 ⁽¹⁾	Balance as of June 30, 2012 ⁽¹⁾	Percentage Expended as of June 30, 2012
7006-0001	Mass. Racing Development and Oversight Fund	1050-0003	Mass. Racing Development and Oversight Fund	\$3,194,501	\$1,799,999 ⁽³⁾	\$1,394,502	56.35%	\$1,453,677	\$3,509,347	\$1,805,800	\$1,703,547	51.46%
7006-0012	Plainridge Racecourse Promotional Trust	1050-0012	Plainridge Racecourse Promotional Trust	87,449	0	87,449	0.00%	87,449	101,619	0	101,619	0.00%
7006-0013	Plainridge Racecourse Capital Improvement Trust	1050-0013	Plainridge Racecourse Capital Improvement Trust	227,007	142,417	84,590	62.74%	84,590	266,076	222,504	43,574	63.62%
7006-0018	Massasoit Promotional Trust	1050-0018	Massasoit Promotional Trust	76,295	71,422 ⁽⁴⁾	4,873	93.61%	4,873	85,017	78,362	6,655	92.17%
7006-0019	Massasoit Capital Improvement Trust	1050-0019	Massasoit Capital Improvement Trust	56,470	53,175 ⁽⁴⁾	3,295	94.17%	3,295	62,621	57,915	4,706	92.48%
7006-0021	Sterling Suffolk Promotional Trust	1050-0021	Sterling Suffolk Promotional Trust	229,089	171,000	58,089	74.64%	58,089	259,057	171,000	88,057	66.01%
7006-0022	Sterling Suffolk Capital Improvement Trust	1050-0022	Sterling Suffolk Capital Improvement Trust	1,753,921	500,063	1,253,858	28.51%	1,253,858	1,661,813	500,063	1,361,750	26.86%
7006-0027	Wonderland Greyhound Park Promotional Trust	1050-0027	Wonderland Greyhound Park Promotional Trust	9,967	9,244 ⁽⁴⁾	723	92.75%	723	11,413	10,187	1,226	89.26%
7006-0028	Wonderland Greyhound Park Capital Improvement Trust	1050-0028	Wonderland Greyhound Park Capital Improvement Trust	9,967	9,244 ⁽⁴⁾	723	92.75%	723	11,413	10,187	1,226	89.26%
7006-0110	State Racing Commission Services and Operations ⁽²⁾	1050-0110	State Racing Commission Services and Operations	1,600,253	1,101,950	498,303	68.86%	498,303	1,600,253	1,257,881	342,372	78.61%
7006-0140	Payments to Cities/Towns for Local Share of Racing Tax Revenue ⁽²⁾	1050-0140	Payments to Cities/Towns for Local Share of Racing Tax Revenue	1,150,000	782,729	367,271	68.06%	367,271	1,150,000	782,729	367,271	68.06%
9200-0711	Racing Stabilization Trust Fund	1050-0002	Racing Stabilization Trust Fund	2,565,450	2,565,450 ⁽⁵⁾	0	100.00%	2,565,450	2,607,939	0	2,607,939	0.00%
	Totals			\$10,960,369	\$7,206,693	\$3,753,676	65.75%	\$6,378,301	\$11,526,570	\$4,896,628	\$6,629,942	42.48%

⁽¹⁾ May 21, 2012 through June 30, 2012 expenditures were not audited.

⁽²⁾ SRC Services and Operations Appropriation (7006-0110) and Payments to Cities/Towns for Local Share of Racing Tax Revenue (7006-0140) are lapsing (expire June 30 of each year) appropriations of the Commission.

⁽³⁾ Expenditures include Operating Transfer of \$1,126,760 to the General Fund.

⁽⁴⁾ Expenditures are Operating Transfers to Racing Stabilization Trust Fund.

⁽⁵⁾ Operating Transfer to MGC Account 1050-0002

APPENDIX II

**Schedule of Expenditures under
the State Racing Commission
Administration Appropriation Number 7006-0110
Fiscal Year 2012**

	<u>July 1, 2011 to May 20, 2012⁽¹⁾</u>	<u>July 1, 2011 to June 30, 2012⁽²⁾</u>
Appropriation	<u>\$1,600,253</u>	<u>\$1,600,253</u>
Expenditures	\$1,101,950	\$1,257,881
Balance	<u>498,303</u>	<u>342,372</u>
	<u>\$1,600,253</u>	<u>\$1,600,253</u>
 <u>Analysis of Expenditures</u>		
Regular Employee Compensation	\$669,332	\$757,677
Regular Employee-Related Expenses	4,287	5,212
Special Employees/Contracted Services	155,940	204,074
Pension and Insurance-Related Expenditures	16,319	17,836
Administrative Expenses	35,073	35,266
Facility Operational Supplies and Related Expenses	33,514	47,515
Energy Costs, Utilities and Space Rental Expenses	88,999	88,999
Operational Services	69,474	70,828
Equipment Leases-Purchase, Lease/Rental Maintenance and Repair	10,906	10,907
Information Technology Expenses	<u>18,106</u>	<u>19,567</u>
Total Expenditures	<u>\$1,101,950</u>	<u>\$1,257,881</u>

(1) Through May 20, 2012, the State Racing Commission expended 68.86% of its fiscal year 2012 administrative appropriation.

(2) May 21, 2012 through June 30, 2012 expenditures not audited and are presented for reporting purposes, only.

APPENDIX III**Schedule of the State Racing Commission
Revenue by Revenue Type⁽¹⁾
Fiscal Year 2012**

<u>Revenue Type</u>	<u>July 1, 2011 through May 20, 2012</u>	<u>July 1, 2011 through June 30, 2012⁽³⁾</u>
Commissions	\$1,428,002	\$1,634,823
Fines and Penalties	4,050	5,350
Association License Fees	388,500	435,900
Licenses and Regulations	51,395	76,045
Assessments	679,941	769,757
Unpaid Tickets	710,589	710,589
Miscellaneous	10,801	13,631
Trust Funds ⁽²⁾	1,213,738	1,427,416
Racing Stabilization Funds	<u>125,942</u>	<u>141,909</u>
Total Revenues	<u>\$4,612,958</u>	<u>\$5,215,420</u>

(1) Information obtained from the Commonwealth of Massachusetts Information Warehouse.

(2) Trust Fund Revenues are derived from eight separate trust funds, including Capital Improvement and Trust Funds for the following racetracks and applicable associations: Plainridge Racecourse, Massasoit, Sterling Suffolk, and Wonderland.

(3) Revenues received from May 21, 2012-June 30, 2012 were not audited and are presented for reporting purposes, only.

OTHER MATTERS

As part of obtaining reasonable assurance about whether the State Racing Commission's (SRC) financial activities were free of material misstatement, we performed tests of the SRC's compliance with certain provisions of laws, regulations, contracts, and grant agreements where noncompliance could have a direct and material effect on the determination of the ending balances in SRC's accounts. As previously noted, the results of our audit testing disclosed no issues of noncompliance. However, an issue requiring further legal review and resolution was identified. Specifically, the state's Fiscal Year 2012 Budget language included a \$1.15 million appropriation to the SRC in Account No. 7006-0140, Payments to Cities and Towns for Local Share of Racing Tax Revenues. The SRC was to use this funding to make quarterly payments to cities and towns that hosted a racing venue under Chapter 58, Section 18D, of the Massachusetts General Laws, which states:

The state treasurer, upon certification by the state racing commission, shall quarterly distribute to each city and town within which racing meetings are conducted, including racing meetings conducted in connection with a state or county fair, under licenses issued under the provisions of chapter one hundred and twenty-eight A, the sum of .35 percent of the total pari-mutuel wager for each such racetrack within said city or town for the three months ending two quarters prior to the quarter for which said distribution is being made, which sum shall be allocated from the commonwealth's share; provided, however, that if the parcel of land containing such racetrack is located in two cities or towns, said sum shall be divided so that two-thirds shall be distributed to the city or town in which the major portion of said parcel is located, and one-third shall be distributed to the other city or town.

Chapter 194, Section 26, of the Acts of 2011 repealed Chapter 58, Section 18D, of the General Laws regarding these distributions to cities and towns effective November 22, 2011. However, the Division of Professional Licensure (DPL), which had provided oversight of the SRC since January 1, 2010 under Chapter 6, Section 48, of the General Laws continued to process distributions to the cities and towns in question, which included Boston, Revere, Raynham, and Plainville, during fiscal year 2012, two of which occurred after the repeal of the legislation.

The payments made to these cities and towns during this period, which totaled \$782,728, are detailed in the following table:

Quarter Covered	Ending Period Covered	Ending Period of Payment	Amount of Payment
Quarter 1	3/2011	9/2011	\$166,598
Quarter 2	6/2011	12/2011	257,520
Quarter 3	9/2011	3/2012	<u>358,610</u>
Totals			<u>\$782,728</u>

With the May 20, 2012 transfer of the SRC to the Massachusetts Gaming Commission (MGC), a member of the MGC raised certain questions to OSA staff, including whether DPL and the SRC were authorized to make the 2nd and 3rd quarter payments based on the repeal of the law, whether cities and towns should be required to reimburse the funds they received under these payments and whether those funds, if reimbursed, should be returned to the General Fund or MGC's account. It should be noted that, although Chapter 58, Section 18D, of the General Laws was repealed, the state's Fiscal Year 2013 Budget includes a \$1.15 million appropriation to make such payments, and Outside Section 164 of this budget directs the State Treasurer to quarterly distribute the payments to the designated cities and towns upon the MGC's certification.

In addition to clarification on the 2nd and 3rd quarter DPL payments in question, further clarification is needed to determine what the MGC's legal responsibility is relative to these payments to cities and towns in the future. Consequently, the MGC may want to obtain a legal opinion on this matter from the State Attorney General.

Question 12 Analysis

Draft for Policy Discussion Purposes Only

Question: To what degree will an applicant be required to have progressed in federal, state and local permitting and other regulatory process before submitting its RFA-2 application?

Discussion- The MGC has an interest in the status of local and state permitting because projects that have progressed further in permitting may be developed quicker after licensure and face less development risks compared to projects that have not progressed in permitting. As such, the Commonwealth benefits through the quicker realization of enhanced state revenues and new jobs from a respectively abbreviated development schedule associated with developments with advanced permitting. An abbreviated development schedule would be one of many characteristics of a project that could be evaluated by the MGC in its review process.

While the MGC post licensure would benefit from projects that have advanced further through state and local permitting, a requirement that all projects must secure all necessary permits prior to licensure would likely be unreachable by some or many applicants given the MGC's scheduled award of licenses in late 2013 or early in 2014. In such time frame, some applicants may not be able to provide the studies and information necessary to fulfill their obligations in order to meet their MEPA requirements prior to the award of state permits. Further, because some of the applicants are likely still in the process of designing their facilities, they may not be able to begin their local permitting process until well into the first quarter of 2013 or later. Thus, even if a community utilizes the 180 day deadlines associated with MGL c. 43D permitting, applicants may not be able to proceed through local permitting by the date applications are received by the close of 2013. Finally, there is a risk that a requirement that projects engage in a significant degree of expensive permitting prior to licensure may result in the potential loss of applicants. Some potential applicants will be averse to committing to a high degree of pre-development costs prior to the certainty provided by the granting of a license.¹

Although the anticipated date of licensure may not permit a requirement of the completion of local and state permitting, the MGC could consider a number of options and statutory tools in order to meet its objective of achieving more certainty and a quicker construction of projects post licensure.

First, because of the uncertainty of permitting, the MGC will in all likelihood first issue gaming licenses that are conditional upon the conclusion of all local and state permitting. The MGC and the applicant would need to agree on a timetable for the conclusion of such permitting.

Second, the MGC could establish that readiness to proceed (including evidence of achieved permitting) will be among those criteria used to evaluate applications against each other. Thereby, the difficulties

¹ For example, it has been reported in the press that local and state application and review costs weighed heavily on Ameristar's application in Springfield because Ameristar was not guaranteed full consideration by the MGC.

of establishing too high a bar would be reduced while incentivizing applicants to complete as much of the permitting as possible. This readiness to proceed would be one of the many factors evaluated by the MGC in its evaluation.

Third, the Ombudsman's office is designed to identify any such obstacles and work with the state regulatory agencies (see below discussion) before any overwhelming delays occur.

Finally, MGL c. 23K, §10(b) specifies significant penalties for applicants that fail to meet the construction deadlines that will be agreed to by the MGC when issuing its license, including a fine of up to \$50,000,000 and suspension or revocation of their license. The MGC could use these penalties to ensure that projects proceed expeditiously. Although these potential penalties provide an incentive to developers to proceed as expeditiously as possible with construction, the direct applicability to permitting milestones is constrained because such monetary penalties shall not be imposed upon a licensee until "1 year after the date specified in its construction timeline, as approved by the commission."

It should be noted that there are risks associated with allowing applications to proceed without the benefit of the completion of substantial local and state permitting. There is the potential that the mitigation plan anticipated in the host community agreement may be based on project elements that may never be approved. Therefore, the host community agreement and the local referendum may result from an understanding of mitigation that is not possible. The Commission may need to consider how to evaluate such situations when the eventually approved project elements (e.g. transportation improvements) significantly differ from those anticipated in the host community agreement and which informed the local referendum. Further, it is highly recommended that the MGC should inform the public, applicants, and communities that projects that have not engaged in significant permitting before the RFA-2 application will require significant time to receive permits, even with efforts to expedite permitting.

State permitting – It is recommended that the MGC should not specifically mandate completion of local and state permitting prior to the RFA-2 application. However, pursuant to 301 CMR 11.05 (2) of the Massachusetts Environmental Protection Act regulation (MEPA regulation), project proponents are required to initiate MEPA review within ten days of filing for a permit or financial assistance from a state agency.² 301 CMR 11.05(2) states that "[i]n the case of a Project that is undertaken by a Person and requires one or more Permits or involves Financial Assistance but does not involve a Land Transfer, the Proponent shall file the ENF [Environmental Notification Form] at any time prior to but no later than ten Days after filing the first application for a Permit or Financial Assistance."

Although under this regulation proponents would not need to file with MEPA until 10 days after filing applications with the MGC, it is recommended that the MGC consider that prior to submitting an RFA-2

² 301 CMR 11.00 defines an agency as "[a]ny agency, department, board, commission, or authority of the Commonwealth" and defines a permit as "[a]ny permit, license, certificate, variance, approval, or other entitlement for use, granted by an Agency for or by reason of a Project."

application to the MGC, applicants should be required to both file the ENF and receive a Certificate from the Secretary of the Executive Office of Energy and Environmental Affairs after the conclusion of the comment period on the filing of a an Environmental Notification Form pursuant to 301 CMR 11.06(7). As noted by the MAPC in its comments on this policy question, “the ENF lays out all potential categories of impacts that will be addressed in the full draft EIR (Environmental Impact Report). Although the ENF won’t provide the final impact analysis, it will identify the potential significance of the various impacts, and identify potential fatal flaws in any proposal. This will allow the Commission to review each application with an understanding of all potential impacts – economic , transportation, environmental, etc. – that may affect the viability or likelihood of a permitable project. Additionally, because the ENF requires 21 days for public comment, it would also keep the process transparent, and provide added opportunities for public input.”³

Based upon guidance received from impacted agencies, it is recommended that applicants should be encouraged to be expansive in the information included in any ENF filing. A model for the level of information to be included by applicants can be found in the Expanded Environmental Notification Form, pursuant to 301 CMR 11.05(7) which provides more “ extensive and detailed information describing and analyzing the Project and its alternatives, and assessing its potential environmental impacts and mitigation measures.” Although applicants should be encouraged to be expansive in their ENF filings, it is not recommended that the commission require the filing of an Expanded ENF because the underlying premise of an Expanded ENF (ability to only file a single Environmental Impact Report) may not be applicable in the context of MGC applicants.

Except for the above MEPA ENF Certificate requirement, it is not recommended that the MGC establish specific pre-RFA2 timeframes for the completion of the numerous other state (and federal) approvals that will be necessary prior to the construction and operation of a gaming facility. Below is a list of some of the typical permits and reviews that could potentially be required of applicants :

Massachusetts Department of Environmental Protection (MassDEP) - Section 401 (of the Clean Water Act) Water Quality Certification, Sewer Extension Permit, Sewer Connection Permit, water supply Distribution Modification permit, MGL c. 91 Waterways License, Superseding Order of Conditions from MassDEP,

Massachusetts Department of Transportation Vehicular Access Permit

Massachusetts Aeronautics Commission Airspace Review.

MEPA Greenhouse Gas Emissions Policy and Protocol

United States Environmental Protection Agency National Pollutant Discharge Elimination System (NPDES) Construction General Permit

Federal Aviation Administration Airspace Review

³ Some considerations such as economic impacts will be explained in the RFA-2 application but are not part of the scope of the MEPA review.

State Permitting Technical Assistance / Expedited Permitting. Because, as described above, permitting will not likely be completed or substantially completed by all applicants prior to the MGC's receipt of RFA-2 applications, it is recommended that the MGC establish a process to determine permitting obstacles before the receipt of RFA-2 applications, during the review of such applications, and after conditional licenses have been granted to applications.

Post Award of Conditional Licenses- it is recommended that the MGC work with an interagency team now to find ways to expedite permitting for applicants that have been granted a conditional license after the MGC's review. The interagency team can find ways to dedicate the resources necessary to expedite permitting for this smaller subset of applicants.

Agency Assistance to MGC During Its Review - agencies have agreed to assist the MGC in its review of applications prior to award. This review will help the MGC identify obstacles to plans (e.g. infrastructure improvements) put forward by applicants.

Agency Technical Advice Prior to Application - It is recommended that the MGC coordinate with agencies to develop an agency advisory program for use by communities prior to execution of impact agreements. The goal of this program would be to inform communities (e.g. through a meeting with a community) about agency preliminary thoughts about infrastructure plans and potential permitting obstacles. Communities could evaluate such information in finalizing impact agreements. The program could take into account whether or not an applicant has received its ENF Certificate. If the ENF Certificate (or more advanced MEPA approval) has already been received by an applicant prior to the planned execution of the impact agreement, the advice may be just a further explanation of agency comments submitted during the MEPA process and any update that may be necessary. If an applicant has not yet submitted the ENF prior to the date the community desires to execute the agreement, the advice will be based on the best available information. Communities will be informed that any such information is preliminary and that agencies will continue to make decisions throughout the permitting process as information is made available. Communities will also be informed that significant permitting time will be required for applicants that have not progressed with permitting prior to submission of the RFA-2 application.

Local Permitting - While it is not recommended that regulations specify deadlines for all local permits and approvals (building permit, conservation commission approval, planning board review, etc.), it is recommended that the Commission consider requiring applicants to demonstrate consistency with local zoning prior the award of a conditional license following the Commission's review of a filed RFA-2 application. Pursuant to MGL c. 40A, §5, "no zoning ordinance or by-law or amendment thereto shall be adopted or changed except by a two-thirds vote of all the members of the town council, or of the city council where there is a commission form of government or a single branch, or of each branch where there are two branches, or by a two-thirds vote of a town meeting." Therefore, there is a significant risk that a project may not be able to go forward if it is not consistent with local zoning. Under one potential scenario, even though a majority of citizens may approve of a gaming application through the

required referendum, a much smaller minority of a community's population (35% of attendants at a town meeting) could make that project impossible due to a failure to approve necessary changes to the zoning, such as the allowed use for the parcel.⁴ Also pursuant to MGL c. 40A, §5, "[n]o proposed zoning ordinance or by-law which has been unfavorably acted upon by a city council or town meeting shall be considered by the city council or town meeting within two years after the date of such unfavorable action unless the adoption of such proposed ordinance or by-law is recommended in the final report of the planning board." The supermajority vote and potential delays after any disapproval pose significant risks to the MGC in its goal to choose an applicant that can move forward expeditiously with the development with the gaming facility. The potential risk of local zoning also poses risks to applicants that may be subject to loss of a conditional license, or for monetary penalties for failure to proceed expeditiously to construction after licensure.

While it is recommended that the MGC carefully weigh all costs that it imposes on applicants prior to licensure, some of the extensive preparation (substantial design) that applicants must undertake in order to file an application will be useful in any efforts to ensure the zoning consistency of the project.

.....

Statutory Background: Section 96 of Chapter 194 of the Acts of 2011 states that:

The governing body of a host community which has accepted chapter 43D of the General Laws shall file a proposal with the interagency permitting board to designate the site proposed for a category 1 establishment as a priority development site. In a community which has not accepted said chapter 43D, the planning board shall designate a local permitting ombudsman, who shall be a planning board member of the host community or a member of the host community planning board's professional staff, to help coordinate and expedite local permitting of the category 1 establishment.

MGL c. 23K, §10(b) states that:

A licensee who fails to begin gaming operations within 1 year after the date specified in its construction timeline, as approved by the commission, shall be subject to suspension or revocation of the gaming license by the commission and may, after being found by the commission after a hearing to have acted in bad faith in its application, be assessed a fine of up to \$50,000,000.

MGL c. 23K, §15 states that

⁴ It is noted that the City of Boston is exempt from MGL c. 40A. However, in order to achieve consistency and to avoid any unfairness to other potential applicants, any such deadlines applicable to the remainder of the state may also need to apply to the City of Boston. However, the MGC may need to consider how individual differences within communities can or should be accommodated within the general rules.

No applicant shall be eligible to receive a gaming license unless the applicant meets the following criteria and clearly states as part of an application that the applicant shall:

...

(12) comply with state and local building codes and local ordinances and bylaws, including sections 61 to 62H, inclusive, of chapter 30; ...

CHARITABLE GAMING LEGISLATION

Notwithstanding any general or special law to the contrary:

SECTION 1. Clause 41 of section 4 of chapter 23K of the General Laws is hereby repealed.

SECTION 2. Section 39A of chapter 10 of the General Laws is hereby repealed.

SECTION 3. Chapter 271 of the General Laws is hereby amended by striking section 7A, as appearing in the 2008 Official Edition, and inserting in place thereof the following section:-

Section 7A:

(a) In this section the following words shall have the following meanings:

“Raffle”, an arrangement for raising money by the sale of tickets, certain among which, as determined by chance after the sale, entitle the holders to prizes of merchandise, of any value, or cash awards, including a “50/50 raffle” which is an arrangement whereby the prize is half the amount of money raised by the sale of tickets.

“Bazaar”, a place maintained by the sponsoring organization for disposal by means of chance of one or both of the following types of prizes: (1) merchandise, of any value, (2) cash awards, not to exceed one hundred dollars each.

(b) (1) Notwithstanding any other provisions of law, raffles and bazaars may be promoted, operated and conducted only under permits issued in accordance with the provisions of this section.

(2) No organization issued a permit under this section shall conduct more than three bazaars in any single calendar year nor shall such organization conduct more than one bazaar in any single calendar day. The operation of a bazaar shall be limited to five consecutive hours.

(3) Notwithstanding any provision of this section, a city or town may elect to prohibit the promotion and operation of raffles or bazaars, or both, in such city or town in a town by town meeting action and in a city by city council action, and in a town with no town meeting by town council action, by adoption of appropriate by-laws and ordinances.

(c) No raffle or bazaar shall be promoted, operated or conducted by any person or organization, unless the same is sponsored and conducted exclusively by (1) a veterans' organization chartered by the Congress of the United States; (2) a church or religious organization; (3) a fraternal or fraternal benefit society; (4) an educational or charitable organization; (5) a civic or service club or organization; or (6) clubs or organizations organized and operated exclusively for pleasure, recreation and other nonprofit purposes, no part of the net earnings of which inures to the benefit of any member or shareholder.

Such organization shall be in compliance with the registration and filing requirements of the public charities division of the department of the attorney general under sections 8E and 8F of chapter 12 and section 19 of chapter 68 and have been organized and actively functioning as a nonprofit organization in the commonwealth for a period of not less than two years before it may apply for a permit.

(d) The promotion and operation of the raffle or bazaar shall be confined solely to the qualified members of the sponsoring organization and no such member shall receive remuneration in any form for the time or effort devoted to the promotion or operation of such raffle or bazaar.

(e) All funds derived from any raffle or bazaar shall be used exclusively for the purposes stated in the permit application of the sponsoring organization which purposes shall be limited to educational, charitable, religious, fraternal or civic purposes or for veterans' benefits.

(f) An organization which meets the qualifications required by this section and which desires to conduct or operate a raffle or bazaar within the commonwealth shall apply for a permit to conduct raffles and bazaars from the clerk of the city or town in which the raffle will be drawn or the bazaar held. The application form shall be approved by the commissioner of public safety and shall include:

- (1) the name and address of the applicant;
- (2) a statement from the applicant affirming under the penalties of perjury that it meets all of the requirements of this section including registration, reporting and operational requirements;
- (3) the applicant's six digit attorney general account number, if any, assigned by the division of public charities of the department of the attorney general;
- (4) the names of three officers or members of the organization who shall be responsible for the operation of the raffle or bazaar with affirmation that they will receive no remuneration for such operation; and
- (5) the uses to which the net proceeds will be applied.

(6) the application fee of ten dollars to be retained by the city or town. A fee in excess of ten dollars may be set in a town by town meeting action and in a city by city council action, and in a town with no town meeting by town council action, by adoption of appropriate by-laws and ordinances to set such fees, but in no event shall any such fee be greater than fifty dollars.

(g) Upon receipt of an application to conduct a raffle or bazaar, the clerk shall determine whether it is in conformity with this section. If the clerk so determines, he shall forward the application to the chief of police of the city or town, who shall determine whether the applicant is qualified to operate raffles and bazaars under this section. If the chief of police so determines, he shall endorse the application and return it to the clerk, who shall forthwith issue a permit, which shall be valid for one year from the date of its issuance.

The clerk shall give notice of issuance to the state lottery commission and the sponsoring organization, along with notice of its tax obligations under this section and related tax form. Such notice and tax form shall be prepared by the state lottery commission. The clerk shall not issue a permit to an organization found to have violated any provision of this section within three years from the date of such violation.

(h) An organization holding a raffle or bazaar permit issued pursuant to this section shall submit such information and reports to the state lottery commission concerning raffles and bazaars conducted by it as may be required by said commission regulations, and said commission may establish regulations governing the operation of raffles and bazaars conducted by such organizations.

(i) If an application is not acted upon within thirty days after it is submitted, or if the organization is refused a permit, or if a permit is revoked, any person named on the application may obtain judicial review of such refusal or revocation by filing within ten days of such refusal or revocation or within ten days of the expiration of such thirty day period a petition for review in the district court having jurisdiction in the city or town in which such application was filed. A justice of said court, after a hearing, may direct that such permit be issued, if he is satisfied that there was no reasonable ground for refusing such permit, and that the applicant was not prohibited by law from holding raffles or bazaars.

Such permit may be suspended or revoked at the discretion of the director of the state lottery commission and shall be suspended or revoked upon written request to the director by the city or town approving authority as set forth above in this section. The action of the director in suspending or revoking a permit shall be final, and the permittee shall not have a right of appeal.

(j) An organization issued a permit under this section shall within thirty days of the expiration of its permit submit a report on a form to be approved by the commissioner of public safety. Such form shall require information concerning the number of raffles and bazaars held, the amount of money received, the expenses connected with the raffle or bazaar, the names of the winners of prizes exceeding twenty-five dollars in value, the net proceeds of the raffles and bazaars, and the uses to which the net proceeds were applied.

The organization shall maintain and keep such books and records as may be necessary to substantiate the particulars of such report, which books shall be preserved for at least **three** years from the date of such report and shall be available for inspection. Such report shall be certified by the three persons designated in the permit application as being responsible for such raffle or bazaar and by an accountant. **Three** copies of said report shall be filed with the city or town clerk that issued the permit. **The clerk shall send one copy to the commissioner of public safety and one copy to the state lottery commission.** Failure to file said report shall constitute sufficient grounds for refusal to renew a permit to conduct raffles or bazaars. The fee for renewal of such permit shall be ten dollars.

(k) Any organization conducting or operating a raffle or bazaar under this section shall file a **tax** return with the state lottery commission, on a form prepared by it, within ten days after the raffle or bazaar is held and shall pay therewith a tax of five per cent of the gross proceeds derived from such raffle or bazaar.

All sums received by the state lottery commission from the tax imposed by this section as taxes, interest thereon, fees, penalties, forfeitures, costs of suits or fines, less all amounts refunded thereon, together with any interest or costs paid on account of such refunds, shall be paid into the treasury of the commonwealth and shall be credited as **follows: --**

- (1) **Two-fifths of all such sums received shall be credited to the State Lottery Fund established under the provisions of section thirty-five of chapter 10 of the General Laws and, subject to appropriation, the state lottery commission may expend such sums for the expenses incurred in the administration of this section.**
- (2) **Three-fifths of all such sums received shall be credited to the General Fund.**
- (3) **Any unappropriated balance remaining in the State Lottery Fund from the sums credited under subsection (1), as determined by the comptroller as of June first and December first of each year, shall be credited to the Local Aid Fund.**

(l) Whoever violates any provision of this section or submits false information on an application or report required under this section shall be punished by a fine of not more than ten thousand dollars or by imprisonment in the house of correction for not more than two and one-half years, or both. Whoever violates this section shall be deemed to have engaged in an unfair and deceptive trade practice in violation of chapter 93A.

Provided, however, that no organization, society, church or club which conducts a raffle or bazaar under the provisions of this section shall be deemed to have set up and promoted a lottery and nothing in this chapter shall authorize the prosecution, arrest or conviction of any person connected with the operation of any such raffle or bazaar; provided, further, that nothing contained in this section shall be construed as permitting the game commonly known as "beano" or any similar game regardless of name.

(m) No person who prints or produces tickets, cards or any similar article used in the conduct of a bazaar or raffle pursuant to a permit issued under the provisions of this section shall be subject to any penalty therefor, provided that a certified copy of such permit was presented to him prior to his undertaking to print or produce such tickets or cards.

(n) Nothing in this section shall limit the attorney general's authority over public charities pursuant to the General Laws.



The Commonwealth of Massachusetts Massachusetts Gaming Commission

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MEMORANDUM

TO: Massachusetts Gaming Commission
FROM: Todd Grossman, staff attorney
RE: Practice of law before the Commission
DATE: January 3, 2013

As the licensing process advances, it is likely that the Massachusetts Gaming Commission (“Commission”) will begin to receive applications from out of state attorneys to appear and practice law before it. The Commission’s regulations address this subject. See 205 CMR 107.02. In essence, the regulations provide that an out of state attorney may appear and practice law before the Commission only by permission of the Commission. In order to attain the necessary permission, an application requesting such must be submitted by a Massachusetts attorney in good standing that contains a certification from the out of state attorney that: (1) they are a member of the bar in good standing in every jurisdiction where they have been admitted to practice, (2) there are no disciplinary proceedings pending against them as a member of the bar in any jurisdiction, and (3) they have read and are familiar with G.L. c.23K and 205 CMR.

If the application is approved, the Massachusetts licensed attorney must: (1) represent the client concurrently with the out of state attorney as local counsel, (2) appear of record in the matter with the out of state attorney, (3) be responsible for the conduct of the out of state attorney, and (4) ensure that both attorneys sign any papers submitted by counsel to the Commission.

This process, while significant, is fairly ministerial and akin to the *pro hac vice* process required for out of state attorneys to practice before the courts of the Commonwealth. For this reason, I recommend that the Commission delegate the review and approval of such applications to the Commission’s legal department. The legal department will review the applications to ensure that they comport with the requirements of the Commission’s regulations, as generally discussed above, and confirm that the Massachusetts licensed attorney submitting the applications is in good standing with the Massachusetts Board of Bar Overseers. Upon determination that the applicants meet the requirements of the regulations, an approval letter will be issued to the applicants. The legal department will maintain a record of out of state attorneys who have been granted permission to practice before the Commission. If there is any uncertainty with an application that cannot be resolved, the matter will be brought before the Commission for review.