

## **Situation Critical**

### ***The Urgent Need for Independent Analysis, Regulation, and Oversight Before Massachusetts Legalizes Casinos***

**O**nce again, the pundits and prognosticators are saying that Massachusetts is on the verge of forever changing the Commonwealth's cultural and economic landscape by legalizing casinos and expanded gambling.

A key legislative committee recently held a hearing on bills to vastly expand gambling – a hearing which, even at six hours, was remarkably shorter and less contentious than previous years. News reports and public comments tell us that the “Big Three” of Massachusetts government – the Governor, Speaker of the House and Senate President – are negotiating this issue, “behind closed doors” and might, in fact, emerge with a nearly completed bill presented as a *fait accompli* for members of the legislative branches and public to simply support or oppose.

Before this happens, it is absolutely essential that the Commonwealth establish a regulatory and enforcement regime capable of regulating, administering, and if necessary, restraining such a dramatic expansion. While Citizens for a Stronger Massachusetts (CSM) is not convinced that expanded gambling will be good for our economy or our taxpayers, we are certain that an independent analysis of the costs and benefits should be undertaken, and appropriate regulatory controls adopted, before any expansion occurs.

Proponents of casinos should be leading the charge for a comprehensive regulatory and enforcement system based on best practices and experience from other states. The fact that they have not done that and apparently believe this system can be devised after the fact is one of the major reasons that the rush to expansion is premature. The absence of these mechanisms is predicated either on a naive belief that the problems faced in other states cannot happen here in Massachusetts, or is influenced by the profit-making forces that will reap the benefits while our economy and taxpayers pick up the costs that the profit-seekers choose not to recognize.

Comprehensive regulation based on best practices is required for consumer and public

protection, for enhancing public safety, and for mitigating the potential for public corruption and major public health costs and impacts.

It is also the key to ensuring transparency, disclosure, accountability, and independent oversight. No responsible public or business leader can refute the reality that these regulatory pre-conditions are essential to ensure the efficiency, effectiveness, and integrity of expanded gambling – and to mitigate the predictable, as well as the unintended costs and consequences that inevitably will accompany this dramatic change in our public policy.

The gambling industry offers gamblers (along with governments and taxpayers) the promise of instant wealth at the blink of any eye or the roll of the dice. Experience in other states has shown that for casino patrons and local communities, those for whom this dream is fulfilled are typically only the casinos owners themselves.

Of course, the gross sums generated by the gambling industry are staggering, and the heavy taxation placed on legalized gambling can also generate significant amounts of revenue for a state's coffers. Because of the fiscal temptation to allow for unmitigated expansion of gambling, casino regulation cannot grow piecemeal along with expanded gambling. Rather, lawmakers must create gambling industry regulations, prior to and without being influenced by casino and gambling lobbyists and increased tax revenues.

Therefore, in our opinion, expanded gambling activities should not commence – should not even be licensed or authorized – until an independently created gambling commission certifies that all necessary and appropriate systems, personnel and regulations are in place to enable them to fulfill their operational responsibilities. Those responsibilities must include consumer protections, regulatory and law enforcement structures, and contractual provisions ensuring promises, pledges, and guarantees made to the Commonwealth, as well as appropriate indemnification and clawback provisions.

Before any action is taken on the current bevy of gambling bills or one introduced by the Governor, Speaker and Senate President, the key principles and best practices to be embedded in this system must include:

## **1. A Clearly Defined Role & Reason for Expanded Gambling**

Prior to creating this regulatory system, it is essential that the Governor and the Legislature clearly articulate and define the role that legalized gambling will play in the Commonwealth, including the public policy furthered by legalized gambling. Doing so would establish a baseline against which to measure any changes in policy and decisions driven by the pressing issues of the day and/or any changed circumstances.

These policy statements set the boundaries of legalized gambling in the Commonwealth. They provide guidance in the drafting of regulatory and enforcement requirements, and they establish the extent to which regulators exercise industry oversight. Fundamentally, they are essential to ensure public confidence in the integrity, accountability, and transparency in the gambling industry.

More specifically, the Governor and Legislature must address the following questions:

- How will legalized gambling further the public interest of the Commonwealth and its citizens?
- What aspects of the public interest are served through expanding state sponsored gambling? Is it revenue, jobs, entertainment and recreation, a fiscal safety net, or-to ensure rainy day funding?
- Is expanded gambling considered a business like any other in the state, albeit a more closely regulated one, like in Nevada? Or is it viewed primarily as a revenue source with the potential for serious societal, economic, public health, and medical problems to be very closely supervised like alcohol and tobacco? Or is it some combination thereof?
- In either case, what will be the standards for enforcing promises made, for reimbursement and penalties if promises are broken, and for raising revenues not realized and other predictable or unintended consequences?
- Who will bear the necessarily steep regulatory and enforcement costs?
- Who will bear the responsibility and costs for the development and enforcement of the criminal and regional mitigation regulations and

oversight?

The answers to these types of questions are essential to provide guidance for present and future lawmakers who will be responsible and held accountable for the potential expansion of the gambling industry. The answers will help ensure reasonable constraints in the public interest, while maintaining fairness to the industry's business interests.

## **2. A Clearly Defined Limit to Gambling's Presence**

Before expanding legalized gambling, the Commonwealth must decide how pervasive gambling will be in Massachusetts, both in form and quantity. The Commonwealth must decide what types of gambling will be permitted (slot machines, table games, racetrack betting, etc.). It must also designate where gambling can take place. Should it be restricted to actual casinos or can stand alone slot machines be placed in convenience stores? Will Massachusetts restrict the number of allotted licenses and, if so, how many licenses will be granted? These are critical threshold questions – especially since, to date, there appears to be little consensus as to their answers.

It is clear that no one seriously expects proposed limits on the number of casinos to survive if any expansion takes place. Many municipalities and special interest groups are already counting the promised revenue and jobs, while the Native American tribes are prepared to launch their bids for casino licenses as soon as the Legislature acts.

Therefore, this issue must be a primary topic of debate, as maintaining limits against the pressure and promise of more jobs and tax dollars may well be the single greatest force regulators, enforcers, and future political leaders will face.

Yet, limiting the scope and number of gambling establishments, while essential, poses several challenges. The potential for favoritism and improper influence in licensing casinos runs high. As such, the process demands full disclosure and transparency in the selection, licensing, and administration processes, together with tough regulation and penalties for any violations.

To prevent even the appearance of favoritism, there must be crystal clear rules regarding conflicts of interest, campaign contributions, employment of public employees or officials, and the infusion of the human and fiscal capital to implement and monitor best

hiring, selection, bidding, due diligence, auditing and programmatic practices as well as compliance with established procurement laws in Massachusetts.

The fact that there should be a limited number of licenses is the very reason that there will be significant costs attached to the development and implementation of the regulatory and enforcement scheme, as well as the need for continued transparency in the checks and balances of oversight and monitoring. Someone has to pay for this.

### **3. Pre-licensing, Independent Study of the Impacts and Costs of Expanded Gambling and of Any One Proposed Casino's Impact.**

To ensure that Massachusetts makes a responsible decision concerning the legalization of expanded gambling, the Legislature must have its eyes wide open to **all** the costs that a casino industry would bring to the state. These costs go beyond the predictable increases in infrastructure and regulatory costs associated with a new industry.

The Commonwealth should establish a structure that encompasses best practices for the essential regulatory, legal, and fiscal regime in order to minimize both predictable and unintended consequences that will come with expanded gambling. These consequences include: increased crime and corruption; economic "cannibalization;" addiction and social harms.

To date, not one study undertaken in the past several years has fulfilled the Governor's pledge of December 9, 2009 to seek a "fresh, independent and transparent analysis of the benefits and costs of expanded gaming." A thorough and independent cost/benefit analysis is a must before the Commonwealth launches such a significant change in public policy.

Independent analysis is needed now or it will never occur because once proposed gambling legislation is enacted, the experience in other states reveals that gambling expansion inexorably continues beyond the original legislative authorization. For example, in our neighboring state of Connecticut, politicians have sought more state revenue through further expansion of gambling. The state has not been satisfied with revenue from two of the largest casinos in the world nor have initial proposals in other states remained static, due to the ever growing appetite and lobbying momentum for

“quick and easy” revenue and casino/slots profits.

The casino industry – owners, principals, and shareholders – should bear all the costs associated with expanded gambling. They reap the benefits of expanded gambling and should be responsible for correcting any harm caused to the surrounding communities and the Commonwealth as a whole. Making sure this fair yet still abstract goal becomes practical reality will be a primary focal point for an independent commission analysis.

#### **4. An Independent Regulatory Body and Governing Commission**

The Legislature must establish an independent regulatory body to oversee the administration of the gambling industry, and a governing commission to oversee the start-up, and ongoing policy implementation.

Ideally, the governing gambling commission should be responsible for overseeing all aspects of the implementation of an expanded gambling proposal. The commission should consist of five or seven members, including the Governor (as chair), the Attorney General, the Inspector General, the Treasurer, the Auditor, or their appointees, and two members of the public selected for their expertise – one in public health and behavioral science, the other in economic development. In addition to the Attorney General or his/her appointee, additional members should have significant expertise in the regulation/prosecution of public corruption and white-collar/financial crimes.

The gambling regulatory body should be responsible for the day-to-day oversight of the gambling industry. In other states with legalized gambling, this agency was historically part of a state’s tax collection agency, given the huge sums of money collected from casinos in taxes. However, should the gambling industry reach a certain size (as in Nevada) the regulatory body may be a free-standing agency. Alternatively, the regulatory body can be a hybrid of the two. For example New Jersey’s Casino Commission Control is housed in but not a part of, the Department of the Treasury.

Given the number of states (and countries) with expanded gambling, including casinos, surely we should be implementing a regulatory structure based on a detailed study of the various state regulatory systems to determine the best option prior to adopting expanded gambling legislation. In Nevada, the regulatory system consists of three separate bodies:

the Gaming Policy Committee, the Nevada Gaming Control Board, and the Nevada Gaming Commission. The Committee is an 11 member organization comprised of the Governor, two state legislators, a member of the Commission, a member of the Board, a member of a Nevada Indian Tribe, two members of the general public, and three from the gaming industry. Its purpose is to discuss matters of gaming policy with the Governor, who chairs the committee. Its recommendations are advisory to the Committee, and are not binding on the Committee or the Board.

Nevada's Gaming Control Board is a three-member body, appointed by the Governor to four-year terms. Nevada law requires that one member be a CPA, and another to have some relevant experience in gaming, law, investigation, or law enforcement. The Board oversees seven internal divisions: Investigations, Corporate Securities, Technology, Audit, Enforcement, Tax and Licensure, and Administration. These divisions are responsible for all day-to-day activities of the Board, investigations, gaming device testing, licensee auditing and financial monitoring, and law enforcement (both criminal and administrative). When seeking to discipline a licensee, the Board acts in a prosecutorial capacity in front of the Commission.

The Commission is a five-member board, appointed by the Governor for four-year terms. It acts on the recommendations of the Board in licensing matters, although it is the final arbiter of licensing. It has the authority to approve, restrict, limit, condition, deny, revoke, or suspend any gaming license. It also adopts, amends, and repeals the state's gaming regulations, consistent with the Legislature's stated public policy. It also acts in a judicial capacity should the Board choose to pursue any type of sanctions against a gaming industry licensee.

New Jersey's Casino Control Commission is a five-member body, no more than three of which may be of the same political affiliation. They serve for staggered two, three, four, and five-year terms, with a maximum two term limit. They are appointed by the Governor with the advice and consent of the state Senate, and are investigated by the Attorney General prior to their nomination. Among other things, the Attorney General is instructed to give particular regard to the nominee's financial stability, integrity, and responsibility and his reputation for good character, honesty, and integrity. Once

appointed, Commissioners can be removed for misconduct, willful neglect of duty, incompetence, or other conduct evidencing unfitness for the job. If needed, the Attorney General's office may institute a proceeding for removal. The Legislature also sets maximum compensation levels for the Commissioners.

### **5. An Independent and External Overseer**

The Commonwealth should also establish and endow a third entity – a Foundation to serve as an advocate for the public interest and as a “watchdog” to ensure that implementation of the legislation is transparent, accountable, open and honest and consistent with best practices and the public interest. Drawing on the model of the Legacy Foundation and the TARP Congressional Oversight Committee, the Foundation should consist of an independent five-person board of trustees (and its staff) empowered to conduct an annual review of the benefits and costs of expanded gambling. It should be charged with making a report and recommendations to the gambling regulatory body, the Governor, Attorney General and Legislature, for legislative, regulatory, and budgetary changes, including (if appropriate) the elimination of the expansion, and/or sun-setting of the legislation. The Overseer/Foundation must have sustainable funding sources to perform in the public's interest.

### **6. An Adequately-Funded Governing Body**

The Commonwealth's general fund should provide any and all funding necessary for the regulatory body, the commission, and the foundation. Though taxes paid by the casinos (and other forms of expanded gambling) will indirectly fund these three through the state's general fund, such taxes should not directly fund the regulatory body. Nor should the regulatory agency's level of funding be tied to the amount of taxes, fees, and fines collected from the gambling industry to avoid even the appearance of a conflict of interest, dependence or undue influence.

States typically tax casinos very heavily, which in concert with the amount of money casinos draw, should provide enough revenue to fund these entities. States vary in their taxation rates and structures (i.e. flat or graduated), in the discretion of the Legislature, which can make an informed decision on the rates with data from the independent cost/benefit analysis.



Still, before authorizing expanded gambling in Massachusetts, the Legislature must have a clear sense of how much funding the regulatory infrastructure will need. Using several other states as barometers and previous legislative testimony, the estimates the Commonwealth will need to adequately fund range widely – from \$30 million to \$100 million every year for a gambling control regimen.

Table 1-1 below includes the data we used to come to this estimate.<sup>1</sup>

State (Budget Year)	Budget Allocation for Agency	Total State Budget	Percentage of Total	Number of Casinos	Allocation per Casino
Nevada (2009-11)	\$130,545,347	\$39,318,890,573	0.003%	260	\$502,097
Illinois (2010)	\$128,316,000	\$54,095,173,000	0.002%	9	\$14,257,333
Pennsylvania (2009-10)	\$38,310,000	\$61,707,669,000	0.001%	9	\$4,256,666
Mississippi (2010)	\$12,758,367	\$6,913,668,900	0.002%	30	\$425,279
<b>Averages</b>	\$77,482,429	\$40,508,850,368	0.002%	----- -	\$4,860,344
Massachusetts (2012)	<i>cost analysis needed</i>	\$30,500,000,000	-----	-----	-----

These numbers estimate only the costs of running the annual operations of a state gambling regulatory body. They do not take into account that states may assign different responsibilities to the agency. For example, Nevada’s Gaming Commission runs its own gaming lab that tests new gambling devices and products, while other states outsource this task. Some states may have advertising costs built into their regulatory agency’s budget, while others rely on other government agencies or the casinos themselves to attract tourists. These are critical components of the proposals that must be determined prior to expanding gambling in the Commonwealth.

These cost estimates do not include the additional police, judicial personnel, health/addiction, infrastructure, mitigation, public education and housing costs or the potential costs of treatment, business and lottery cannibalization, and/or other opportunity costs inherent in expanded gambling in Massachusetts. We reiterate the critical need for

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<sup>1</sup> The “Budget Allocation” was derived by averaging the percentage of total state budget allocated by other states to their relevant regulatory agency (i.e. gaming commissions, gaming board), then multiplying it by Massachusetts’ state budget. It appears states on average spend 0.002% of their annual budget on gambling regulation, which means that given Massachusetts’ budget of \$33.3 billion, it should anticipate spending \$66.6 million on a regulatory agency. The Allocation per casino column looks at how much other states spend on their regulatory infrastructure divided by the number of casinos that state has (cost per casino). While there are undoubtedly economies of scale working in every state (i.e. Nevada will spend less per casino than most other states because Nevada has so many casinos), we assume there to be some correlation between the number of casinos a state regulates and the amount it spends to regulate them.

independent analysis to provide this data, as well as why every state with expanded gambling still has significant budget deficits, in spite of expanded gambling revenue.

## **7. Crime Prevention and Law Enforcement**

Studies from other states have shown that casinos and slots can cause significant increases in crime. While some amount of this increase is attributed to increased tourism in the area, much can be directly attributable to the existence and proximity of a casino itself and, more particularly, the gambling that occurs within. And with every additional crime, expenses associated with police, prosecutors, judges, juries, jails, and administration increases, taxing already stressed state and local public safety and judicial budgets and resources. The Legislature must compensate for the local costs of increased crime by requiring casinos to take fiscal responsibility for their proportional share of the inevitable increase in crime and costs. To date, these known, but un-quantified, impacts have on the host towns and cities have been ignored.

A prime example of the impact of casinos on a community is right next door at Foxwoods and in Lincoln, RI. Former Connecticut Attorney General Richard Blumenthal believes that the single worst mistake Connecticut made with casinos was to ignore the impacts gambling has on the host region. While the casino will absolutely generate funds for the state through its tax payments, it will do so at the expense of the host region.

Because of the constant flow of cash (both incoming and outgoing), casinos are a lucrative and predictable vehicle for money laundering. Actions that may seem suspicious elsewhere – large amounts of small bills or quarters, exchanging large amounts of cash for chips, and vice versa – are commonplace in a casino, and require appropriate vigilance and oversight by local, regional and state law enforcement.

All potential casinos or gambling sites should establish and maintain policies to prevent money laundering, and should have a designated compliance officer to oversee and enforce them. These officers, in addition to personally certifying and overseeing the policy's enforcement, should establish and implement training protocols for all employees on money laundering (by guests, players, or other employees), economic crime and fraud generally and enforce the policy accordingly. Strict record-keeping should be required for all trainings and actions taken pursuant to the policy. The

regulatory body should have influence over and input on the content of this policy, and should have unrestricted access to it and the records of its implementation. Local as well as state law enforcement must be provided with the legal tools and the personnel, equipment and funding to perform their jobs.

## **8. Strong, Well Developed Enforcement Mechanisms**

The Commission and regulatory body (with input from the Foundation) should establish the procedures and criteria for licensing. After an internal review of a license application, the body should hold public hearings, and seek public input. The regulatory body, in addition to its own staff, should be represented, upon request, by the Attorney General and be able, upon request, to obtain resources from any state public agency.

Rules and regulations relating to consumer protection and enforcement should be developed with input from the Attorney General and the Attorney General's office must certify that they are adequate for the purpose. Similarly, as to the public health, treatment, and social challenges, the agency should consult with, and obtain certifications from, the commissioner of public health and secretary of health and human services. Finally, as to law enforcement, the regulatory agency should seek guidance from state and local law enforcement officials, and certification by the Secretary of Public Safety.

The body should have the authority to enforce its rules and regulations administratively, civilly, and where appropriate, criminally. The Legislature must decide whether to prosecute licensee violations in the existing judicial system or create specialized gambling session courts.

Nevada chose the latter, where offenders are dealt with solely within the confines of the regulatory body. New Jersey, on the other hand, has established the Division of Gaming Enforcement within the Department of Law and Public Safety. A director – an Assistant Attorney General appointed by the Governor for the length of his or her term, and working under the direction and supervision of the Attorney General – supervises the division. New Jersey also outsources its investigative division to the State Police, unlike Nevada, which uses the internal Investigations Department within the Gaming Board.

This decision to use existing branches of government to serve in supervisory and

enforcement roles may be a reflection on the size of the gambling industry in New Jersey, as opposed to Nevada. However, this diffusion of power has serious potential for adverse consequences for enforcement and licensing. Bifurcated power bifurcates responsibility, allowing for interdepartmental finger-pointing and loss of accountability should the system fail, and both confusion and “divide and conquer” strategies by the industry. For this reason, Massachusetts should create a single regulatory body responsible for creating regulations, as well as investigating, and prosecuting them. This places accountability one agency, creating the incentive to carry out all responsibilities fully and completely. This body should have the authority to prosecute not only gambling specific laws and regulations, but also have the authority to pursue charges under new and expanded economic crime laws (e.g. RICO, enterprise crimes, and public corruption) that indirectly affect or are affected by gambling.

On a day-to-day basis, it is crucial that the enforcement and regulatory body maintain a presence at the gambling sites, in order to deter and identify irregularities or violations in addition to statutorily required comprehensive video surveillance system.

## **9. Strong, Well Developed Responsible Gambling Laws – Public Health and Safety**

Many states have enacted a broad array of statutes and regulations aimed at keeping the general public safe from predatory gambling equipment, technology, tactics and advertising, as well as from themselves. These laws address the following topics:

- **Alcohol Service:** These laws need to define whether alcohol is permitted in casinos, if so who can serve it, and prohibitions on gambling while visibly intoxicated.
- **Tobacco Use:** Similarly, prohibited or regulatorily limited.
- **Credit/Cash Access:** These regulations attempt to control access to cash by those with gambling dependencies, and include signage near ATM machines describing gambling addiction and help lines, prohibitions on withdrawing funds derived from certain public benefits, or maximum withdrawals, and may include prohibitions on ATMs on site.
- **Funding/Revenue Sharing:** In addition to taxes paid directly into the

Commonwealth's general fund, some portion of taxes from expanded gambling should be allocated, in amounts recommended by the commission and/or foundation, to an Escrow or Mitigation fund modeled on World Trade Center Victim Compensation, TARP, BP, and MSA Tobacco Settlement Funds. These will fund problem gambling programs, additional law enforcement, regional business impact mitigation, and any other costs/losses directly attributable to the expansion of gambling.

- **Self-Exclusion Programs:** Establish a database of individuals who are voluntarily or involuntarily barred from entry into gambling establishments due to gambling addictions. Once on the list, the legislature should establish a minimum duration before an individual may petition to be taken off. This length of time varies between states, anywhere from one year to a lifetime ban. In addition, some states require a medical release indicating that an individual is mentally fit to be removed from the list. To dissuade compulsive gamblers from entering casinos while on the list, most states with self-exclusion lists do not permit the individual to retain any winnings or recoup any losses they may incur while on the list.
- **Signage/Help Lines:** Just as the Legislature can mandate warning labels on cigarettes, it can and should require that casinos place various signage on their premises, noting odds of winning, signs of gambling addiction, toll-free number help lines, and a gambler's "Bill Of Rights."
- **Employee Training:** All casino employees should undergo mandatory training regarding problem gambling. They should be taught how to identify problem gambling, both in customers and in themselves.
- **Loss Limits:** The Legislature should also consider establishing a per day, per gambler loss limit. Because of the nature of gambling dependency (and because casinos disproportionately profit from compulsive and addicted gamblers), responsibility for identifying individuals who are close to the limit should fall to the casino. Because it is their

responsibility, the casino should absorb any losses suffered beyond the limit. As mentioned below, the use of “luck ambassadors” – casino employees who entice losing gamblers to continue playing with free accommodations, food, or drinks – should also be strictly prohibited. These practices, which can be viewed only as preying upon the vices and addictions of others, are contrary to the public interest.

- **Advertising:** As with alcohol and tobacco, the Legislature must restrict the manner in which casinos advertise. For example, most states have prohibitions against advertising to children or those on self-exclusion lists as well as strong consumer protection controls on misleading advertising.
- **Monthly Statements to Gamblers:** Monthly statements to all gamblers who register with VIP, or other customer loyalty programs, should be sent electronically or by postal service. This method of accountability is similar to a credit card statement that alerts gamblers to the status of their winnings and losses, thereby providing consumer protections and preventing pitfalls of customers from incurring excessive debt.
- **Mandated Reporting:** Reporting of violations of Responsible Gambling consumer credit and addiction prevention laws and rules.
- **Gambler’s Bill Of Rights:** Building on and incorporating the various obligations of licensees, a Bill Of Rights should be legislated, posted prominently in all sites, and be a basis for regulatory body and private rights of action.

## **10. Transparency in Enforcement and Application of Relevant Law**

Centralizing the approval and licensing powers does create the potential risk of undue, or external or other inappropriate influence. Therefore, statutory safeguards are essential to ensure independence in licensure decision making. For example:

- Place the burden upon applicants to demonstrate suitability for licensing
- Establish the threshold for fiscal solvency and sustainability for potential licenses including debt and capitalization ratings

- Require competitive proposals for licenses
- Articulate clear policy standards for deciding among competing applications, including businesses using Massachusetts vendors and residents for supplies and workforce.
- Require comprehensive disclosure of the financial and political relationships of all applicants including investors, shareholders, potential developers and suppliers, their affiliates and nationality
- Grant explicit power to review, investigate, and approve contractual relationships entered into by applicants and licensees
- Mandate appropriate public meeting and public record requirements
- Set forth in-depth and independent investigatory practices
- Prohibit, or at least restrict, campaign contributions by industry groups with full and timely disclosure of all financial interests and sources
- Restrict public officials and their immediate family/domestic partners from working in the gambling industry in Massachusetts or nationally for at least a 5-year “cooling off” period
- Establish licensing sunset provisions with the burden on the licensee to renew

### **11. Native American Casino/Slot Regulation**

Require compliance by every licensee with all laws, rules and regulations, including Native American tribes and include all of these in any compact or agreement by the Commonwealth. The statute or compact should ensure that the government has jurisdiction to enforce civil and criminal laws within casinos located on Native American land.

### **12. Gambling Industry Technology**

The Internet has created scarcely regulated, anonymous gambling that crosses state and national borders. Some casinos now “tweet” on Twitter more than five times per day,

and almost all major casinos have “profiles” on Facebook. Going forward, technology will continue to provide casinos and gambling licensees with more avenues into people’s lives as technology enables licensees, businesses and individuals to circumvent and avoid – with impunity – governmental oversight and regulation. As such, any gambling regulatory structure must be empowered to adapt to evolving technologies.

The Legislature must adopt regulations that are forward looking enough to remain relevant as technology progresses. At the very least, the state should periodically review of the various forms of gambling, and gambling advertising, to determine whether expansion continues to be in the public’s best interests, and require that all new gambling technology and media outlets be vetted for legality and fairness by an appropriately qualified, independent body. Specifically, the Regulatory Body and the Attorney General should both have standing to challenge and seek remedies for any business practice or instrument deemed to be predatory in nature and/or effect.

### **13. Casinos’ Internal Controls**

Casinos should be required to adopt a set of state designated procedures, as in Sarbanes-Oxley 4.01 Internal Controls, and typically referred to as the “Minimum Internal Control Standards” (MICS). These standards regulate risk management procedures, the conduct of games and machines, the handling of cash and cash equivalents, and all internal accounting procedures and controls. The casinos should be required to self-report any violations, with substantial penalties for failing to do so. Every casino should be subject to, and pay for, a regular external regular audit of its operations by an independent audit firm, under the review and direction of the regulatory body and the state auditor.

### **14. Gambling Industry Employee Regulations**

The Legislature should set minimum standards for gambling industry employee qualifications. Gambling in the United States was historically associated with organized crime, money laundering, and other illegal activities. While allegedly alleviated, the nature of the business makes it imperative that all licensees and employees of the gambling industry be suitable for licensure and employment at a casino. At a minimum, a felony conviction should preclude any potential employee or licensee from occupying a “key” role within a gambling operation. The licensing or hiring authority must be



authorized to conduct extensive background investigations, for all applicants and vendors.

The Legislature may choose to establish various employee standards, depending upon the license or position sought and its associated responsibility. For example, while managers and executives should be held to the highest standards, low-level employees and outside contractors or suppliers may have less stringent standards. Standards could include criminal record checks, inquiries into financial security and integrity, and character investigations. In New Jersey, these investigations are carried out by the Attorney General for its Commission.

The Legislature should use its good judgment in determining the extent of oversight desirable of contractors and companies doing business with casinos. While the regulatory body should heavily monitor companies that supply gambling equipment such as slot machines and roulette wheels, more discretion may be appropriate with less sensitive suppliers such as food and linen services.

Last, the Legislature must enact statutory “cooling-off” periods during which a former employee of any regulatory agency (or public agency) may not work for a gambling organization or entity – in Massachusetts or elsewhere. Doing so not only prevents casinos from luring public service employees into lucrative private practice jobs, but it allows the state to keep confidential information and practices out of the hands of the gambling industry. Five years is the recommended time period.

### **15. Advertising Restrictions: Underage Gambling and Problem Gambling**

As with alcohol, tobacco and the lottery, underage gambling and gambling addiction are two primary public health concerns for all gambling regulators. As such, the Legislature should prohibit marketing directed at minors and problem gamblers. The regulations should articulate standards setting forth the appropriate content and tone of advertising, with the goal of reducing teen gambling and gambling addiction.

### **16. Problem Gambling**

A 1997 Harvard Medical School meta-analysis estimated that, at that time, there were approximately 15 million problem or pathological gamblers in the United States. This

represented then one to one and one half percent of the population and if under the FDA, would, in any other public health arena, be deemed an epidemic – and result in product recall or prohibition of distribution! Given that the gambling licensees generate so much of their money from these problem gamblers, (just as tobacco and alcohol generate the majority of revenue from 10 percent of the users) it seems only fair that they bear some of the responsibility for mitigating and treating the problems. At the very least, licensees must post conspicuous documentation within their facilities describing problem gambling and its symptoms, and educate/train their employees. Such notice should also contain contact information for a social services group for help with gambling addiction.

As of 2007, 14 states had enacted legislation requiring licensees to provide funding for gambling treatment programs. Twelve states have statutes or regulations that create gambler self-exclusion programs. Many casinos already employ professional personnel to train their managers and employees to identify pathological gamblers. In addition, the Legislature should ban casino ATM machines and ban public welfare recipients from casino gambling, consistent with recent legislation prohibiting public beneficiaries from expending funds on the Lottery.

As noted previously, the Legislature should establish a Gambler's Bill Of Rights building on and incorporating the obligations outlined here and in prior sections, require that licensees post them conspicuously within any gambling location, and establish effective enforcement methods.

### **Conclusion:**

It is essential that Massachusetts establish the legal, regulatory and structural systems necessary to administer the gambling industry before expanded gambling takes place. We have identified the critical components of such systems, as well as examples of Best Practices drawn from the national experience, but it is the responsibility of the Governor and Legislature to establish the framework, boundaries and policies; delegate the powers of regulation and enforcement to the appropriate agencies; and obtain the funding necessary to run the entire program. If any of these elements are not in place in advance, then the legislation should include such elements.

For now, in Massachusetts, none of these elements is in place and are not being studied or

reviewed. With the exception of testimony by expanded gambling opponents, they were not addressed in the recent public hearing on expanded gambling legislation, and are apparently not being discussed in the closed-door conversations allegedly continuing at the State House. These facts raise serious questions about the motivations of the proponents of expanded gambling, since the absence of these elements reflects a rush to judgment that ignores the experience of other states and the best practices and standards of the industry itself.

Therefore, the first order of business and priority is to evaluate and propose a legislative and regulatory scheme that meets each and every one of these criteria. In the absence of that, the enactment of expanded gambling legislation and its implementation cannot be responsibly deemed to be in the public interest or a reasonable public policy.

### **About Us**

Citizens For A Stronger Massachusetts, Inc. is a 501 (c)(3) non-profit organization founded by Scott Harshbarger, former Attorney General of Massachusetts and national President of Common Cause. Its purpose is to educate the citizens of Massachusetts on issues of public policy in a sufficiently full and fair way so that they can form their own independent opinions or conclusions. We welcome your donations so that we can continue to fulfill our mission by either in mailing a check to the address below or online by [clicking here](#) or go directly to [www.networkforgood.org](http://www.networkforgood.org) and search for the giving page of Citizens For A Stronger Massachusetts. All donations are tax deductible.

Citizens For A Stronger Massachusetts, Inc.

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*Contributions to this Report – Situation Critical – included Edward V. Colbert, III, Kathleen Conley Norbut, Patrick M. Murphy, and Stephen Adams.*

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