

SENATE No. 184

The Commonwealth of Massachusetts

PRESENTED BY:

Richard R. Tisei

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to Stabilize Lottery Revenues to Provide Predictable Aid to Cities and Towns.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Richard R. Tisei	Middlesex and Essex
Bruce E. Tarr	First Essex and Middlesex
Michael R. Knapik	Second Hampden and Hampshire
Robert L. Hedlund	Plymouth and Norfolk
Scott P. Brown	Norfolk, Bristol and Middlesex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO STABILIZE LOTTERY REVENUES TO PROVIDE PREDICTABLE AID TO CITIES AND TOWNS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 **SECTION 1.** Section 39 of chapter 3 of the general laws, as appearing in the 2006
2 official edition, is hereby amended by inserting in line 63 after the words “Loan Authority” the
3 following words: - Massachusetts Gaming Control Authority, .

4 **SECTION 2.** Section 22B1/2 of chapter 7, is hereby amended by inserting in line 23
5 after the words “Massachusetts Educational Loan Authority” the words: - Massachusetts Gaming
6 Control Authority,.

7 **SECTION 3.** Section 22G of chapter 7, is hereby amended by inserting in line 54 after
8 the words “Massachusetts Educational Loan Authority” the following words: - Massachusetts
9 Gaming Control Authority, .

10 **SECTION 4.** The General Laws are hereby amended by striking out chapter 12B and
11 inserting in place thereof the following chapter: -

12 CHAPTER 12B. THE MASSACHUSETTS GAMING CONTROL AUTHORITY

13 Section 1. Definitions

14 As used in this chapter, the following words shall have the following meanings unless the
15 context clearly requires otherwise:

16 “Applicant”, a person who has applied for a license to operate a lottery as defined by this
17 chapter.

18 “Authority”, the Massachusetts gaming control authority, established pursuant to this
19 chapter.

20 “Board”, the board of the Massachusetts gaming control authority.

21 “Executive Director”, the executive director of the Massachusetts gaming control authority, as
22 established pursuant to this chapter.

23 “License”, a license issued for a terms of years to operate a lottery, subject to the terms and
24 conditions of the Authority.

25 “Licensee”, any person or party holding a valid license under this chapter.

26 “Lottery”, a lottery as defined by sections twenty-three to thirty-five, inclusive, sections
27 thirty-seven to forty, inclusive, and sections fifty-six to fifty-eight, inclusive of chapter 10, shall
28 be known and may be cited as the “state lottery law.”.

29 Section 2. Establishment of the Massachusetts Gaming Control Authority

30 (a) There is hereby created a body politic and corporate to be known as the Massachusetts
31 gaming control authority. The authority is hereby constituted a public instrumentality and the
32 exercise by the authority of the powers conferred by this chapter shall be deemed to be the
33 performance of an essential governmental function. The purpose of the authority is to provide to
34 license, regulate, and oversee the state lottery or any licensed lottery in the commonwealth.

35 (b) Board. The authority shall be governed and have its corporate powers exercised by a
36 board of directors consisting of the treasurer or his designee, the auditor or his designee, and 5
37 members to be appointed by the governor, 1 of whom shall have experience in legal issues with
38 respect to gaming; 1 of whom shall have experience in finance and financial markets; 1 of whom
39 shall have experience with the regulatory aspects needed for gaming establishments; 1 of whom
40 shall have experience in accounting; and 1 of whom shall have experience in public health.

41 With the exception of the treasurer and auditor, no board member shall hold or be a candidate
42 for elected political office. Each board member shall be a citizen of the United States and a
43 resident of the commonwealth. No person who has been convicted of a felony or of a
44 misdemeanor shall be eligible to serve on the board.

45 Three of the members appointed by the governor shall serve a term coterminous with that of
46 the governor. The other 2 members appointed by the governor shall serve a term of 5 years. Any
47 person appointed to fill a vacancy in the office of a member of the board shall be appointed in a
48 like manner and shall serve for only the unexpired term of such member. Any member shall be
49 eligible for reappointment but no member shall serve more than 2 terms of 5 years each. Any
50 member may be removed from his appointment by the governor for cause. The governor shall
51 from time to time designate a member or members of the board as its chairperson or co-
52 chairperson as applicable.

53 Five of the members shall constitute a quorum and the affirmative vote of a majority of
54 members present at a duly called meeting where a quorum is present shall be necessary for any
55 action to be taken by the board. Any action required or permitted to be taken at a meeting of the
56 board may be taken without a meeting if all of the members consent in writing to such action and

57 such written consents are filed with the records of the minutes of the meetings of the board. Such
58 consents shall be treated for all purposes as a vote at a meeting.

59 The members of the board shall serve without compensation, but each member shall be
60 entitled to reimbursement for his actual and necessary expenses incurred in the performance of
61 his official duties.

62 The board annually may elect 1 of its members as vice-chairperson, shall elect a secretary and
63 a treasurer, and may elect or appoint other officers as it may deem necessary, none of whom,
64 other than the vice-chairperson, are required to be members of the board. The secretary shall
65 keep a record of the proceedings of the board and shall be custodian of all books, documents, and
66 papers filed by the board and of its minute book and seal. The secretary shall cause copies to be
67 made of all minutes and other records and documents of the authority and shall certify that such
68 copies are true copies, and all persons dealing with the authority may rely upon such
69 certification. The treasurer shall be the chief financial and accounting officer of the authority and
70 shall be in charge of its funds, books of account and accounting records. The officers of the
71 board shall be subject to the same requirements as the members of the board under this act.

72 Meetings of the authority board shall be subject to sections 11A and 11A1/2 of chapter 30A,
73 provided, however, that any discussion or consideration of law enforcement or investigatory
74 information, trade secrets or commercial or financial information may be held by the board in
75 executive session closed to the public notwithstanding the provisions of section 11A1/2 of
76 chapter 30A, but the purpose of any such executive session shall be set forth in the official
77 minutes of the authority board and no business which is not directly related to such purpose shall
78 be transacted nor shall any vote be taken during such executive session. A public record of every
79 vote shall be maintained at the authority.

80 (c) Executive Director. The board shall have the power to appoint and employ an executive
81 director, and to fix the director's compensation and conditions of employment. The executive
82 director shall be the chief executive, administrative and operational officer of the authority and
83 shall direct and supervise administrative affairs and the general management of the authority.
84 The executive director may, subject to the general supervision of the board, employ other
85 employees, consultants, agents, including legal counsel, and advisors, and shall attend meetings
86 of the board.

87 (d) Board members, officers and members of the advisory committee who are not
88 compensated employees of the authority shall not be liable to the commonwealth, to the
89 authority, or to any other person as a result of their activities, whether ministerial or
90 discretionary, as such board members, officers, or advisory committee members except for
91 willful dishonesty or intentional violations of law. Neither members of the authority nor any
92 person executing bonds or policies of insurance shall be liable personally thereon or be subject to
93 any personal liability or accountability by reason of the issuance thereof. The board of directors
94 may purchase liability insurance for board members, officers and employees and may indemnify
95 these persons against claims of others.

96 (e) Any documentary materials or data whatsoever made or received by any member or
97 employee of the authority and consisting of, or to the extent that such material or data consist of,
98 enforcement or investigatory information, trade secrets or commercial or financial information
99 regarding the operation of any business conducted by an applicant for any form of assistance
100 which the authority is empowered to render or regarding the competitive position of such
101 applicant in a particular field of endeavor, shall not be deemed public records of the authority
102 and specifically shall not be subject to the provisions of section 10 of chapter 66.

103 (f) The Massachusetts gaming control authority board shall be the successor to the
104 Massachusetts gambling advisory board established by section 39 of chapter 60 of the acts of
105 1994.

106 Section 3. Powers and Duties of the Authority

107 The authority shall have all powers necessary or convenient to carry out and effectuate its
108 purposes, as defined in section 2(a), including, without limiting the generality of the foregoing,
109 the powers to:

110 (a) adopt an official seal;

111 (b) sue and be sued, to initiate or defend civil actions relating to its properties and affairs, and
112 to be liable in tort in the same manner as a private person; provided however, that the authority is
113 not authorized to become a debtor under the United States Bankruptcy Code;

114 (c) appoint officers and employees;

115 (d) execute all instruments necessary or convenient thereto for accomplishing the purposes of
116 this chapter;

117 (e) enter into agreements or other transactions with any person, including without limitation
118 any public entity or other governmental instrumentality or authority in connection with its
119 powers and duties under this chapter;

120 (f) appear in its own behalf before boards, commissions, departments or other agencies of
121 municipal, state or federal government;

122 (g) obtain insurance;

123 (h) apply for and accept subventions, grants, loans, advances and contributions from any
124 source of money, property, labor or other things of value, to be held, used and applied for its
125 corporate purposes hereinafter;

126 (i) provide and pay for such advisory services and technical assistance, including but not
127 limited to accountants, financial experts, architects, attorneys, engineers, planners, real estate
128 experts and other consultants as may be necessary in its judgment to carry out the purposes of
129 this chapter and fix their compensation;

130 (j) prepare, publish and distribute, with or without charge, as the authority may determine,
131 such studies, reports and bulletins and other material as the authority deems appropriate;

132 (k) investigate and determine the percentage of population of minority groups in the
133 commonwealth or in areas thereof from which the work force for the casino is or may be drawn;

134 (l) establish and adopt such percentages as guidelines in determining the adequacy of
135 affirmative-action programs submitted for approval pursuant to the provisions of this chapter;

136 (j) determine the types of conduct performed by licensees or applicants for licenses. The
137 authority may approve or disapprove transactions and events as provided in this chapter, take
138 actions reasonably designed to ensure that no unsuitable persons are associated with controlled
139 gaming, and take actions reasonably designed to ensure that gaming activities take place only in
140 suitable premises within licensed casinos;

141 (k) monitor the conduct of all licensees and other persons having a material involvement,
142 directly or indirectly, with a licensee for the purpose of ensuring that licenses are not issued to,
143 or held by, and there is no direct or indirect material involvement with a licensee by unqualified,
144 disqualified, or unsuitable persons, or persons whose operations are conducted in unsuitable
145 manner or in unsuitable or prohibited places, as provided (l) conduct hearings in accordance with
146 the provisions of chapter 30A;

147 (m) adopt regulations, pursuant to sections 2 and 3 of chapter 30A, to carry out the powers
148 and the provisions of this chapter

149 Section 5. Provisions for Applications of Lottery License

150 (a) Forms of Application. Any person desiring to operate a lottery in the commonwealth shall
151 make an application to the authority for a lottery license.

152 (1) Such application shall include, but shall not be limited to the following:

153 (i) the name of the applicant;

154 (ii) the post office address of the applicant, and if a corporation, the name of the state under
155 the laws of which it is incorporated, the location of its principal place of business and the names
156 and addresses of its directors and shareholders.

157 (iii) an independent audit report of all financial activities, including but not limited to the
158 disclosure of all contributions, donations, loans or any other financial transactions to or from any
159 gaming entity or operator in the past 5 years;

160 (iv) an independent audit report of all of the applicants' financial interests;

161 (v) a statement that the applicant will comply, in case such a license is issued, with all
162 applicable laws and with all applicable rules and regulations prescribed by the authority or any
163 other relevant entity;

164 (vi) answers to such other questions as the authority may prescribe.

165 (2) The authority may prescribe forms and additional information to be used in making such
166 applications.

167 (3) An applicant's request to receive a license under this chapter shall constitute a request for
168 a determination of the applicant's general character, integrity, and ability to participate or engage
169 in, or be associated with, gaming.

170 (4) Such applications shall be signed and sworn to, if made by an individual, by such
171 individual; if made by 2 or more individuals or a partnership, by 1 of such individuals or by a

172 member of such partnership; if made by a trust, by a trustee of such trust; and if made by an
173 association or corporation, by the chief executive and chief financial officers thereof.

174 (5) The authority shall investigate the qualifications of each applicant under this chapter
175 before any license is issued.

176 (6) With each application, there shall be delivered to the authority a certified check or bank
177 draft, payable to the authority, of a non-refundable deposit in the amount of \$1,000,000 for the
178 processing, analysis and review of the application.

179 Section 6 Bid Procedure

180 (1)The authority shall request bids for the purpose of a license for the operation of a lottery
181 within the commonwealth.

182 (2) The authority shall accept bids only from applicants who have met the initial eligibility
183 requirements pursuant to subsection (b) of this section 5.

184 (3) Before applications are received, the authority shall adopt regulations setting forth criteria
185 by which each bid shall be evaluated in each region.

186 (4) The bids shall be evaluated to determine which proposal provides the highest and best
187 overall economic value to the commonwealth, notwithstanding the Authority's right to reject any
188 such bid on the grounds that it reasonably finds that the bid has not made in good faith nor if
189 granting said license is determined by the authority to be detrimental to the current use of lottery
190 revenues.

191 Section 7. Storage of Documents and Non-Disclosure of Sensitive Documents and Materials.

192 The authority shall maintain a file of applications for licenses under this chapter, together
193 with a record of all action taken by the authority on those applications. Such applications shall be
194 open to public inspection; provided however, that the executive director shall prohibit access to

195 information that contains law enforcement or investigatory information, is a trade secret, or puts
196 the applicant for a license at an unfair disadvantage with other applicants; provided further, that
197 the executive director shall consult with the division on public records on the appropriate manner
198 of distributing or withholding of such information. The authority may maintain any other files
199 and records as it deems appropriate.

200 Section 8. Authority Operating Account

201 There shall be established upon the books of the commonwealth a separate fund to be known
202 as the Massachusetts gaming control authority trust fund to be expended, without prior
203 appropriation, by the Massachusetts gaming control authority. The fund shall consist of the
204 application fees collected pursuant to section 5(a)(6), and all assessment payments collected
205 from section 6. The executive director of the authority shall make necessary expenditures from
206 this account for the shared administrative costs of the operations and programs of the authority.
207 The executive director shall further direct that funds from the account shall be expended to
208 provide services in an amount reasonably related to the functions of the authority and the
209 comptroller may certify for payment amounts in anticipation of expected receipts; but no
210 expenditure shall be made from the fund which shall cause the fund to be in deficit at the close of
211 each fiscal year. The authority shall pay the attorney general the amount it requested under
212 section 14(b) by July first of each year.

213 Section 9. Lottery License Fee and Operating Trust Fund

214 (a) There shall be established and set up on the books of the commonwealth a separate fund,
215 to be known as the gaming license fee and operating trust fund, in this section called the license
216 fee trust fund. The license fee trust fund shall consist of all license fees received in consideration

217 of the award of licenses under section 6, and all other monies credited or transferred to the fund
218 from any other fund or source pursuant to law.

219 (b) The secretary of administration and finance shall be the trustee of the license fee trust
220 fund, and shall transfer monies in the fund, without further appropriation, as of June 30 of each
221 fiscal year, only as follows and in the following order:

222 (1) only if and to the extent determined by the secretary of administration and finance, initial
223 payments to the authority and to the division for start-up expenses,

224 (2) the remaining balance shall be utilized in the manner best suited to provide continued
225 fiscal support to the cities and towns of the Commonwealth through the state lottery fund, to be
226 distributed to cities and town in amounts, at minimum to those distributed to cities and towns
227 through the state lottery fund in fiscal year 2007.

228 **SECTION 5.** The Authority, within 180 days of the passage of this act, shall make
229 recommendations to the General Court for legislation necessary to transfer oversight and control
230 of the state lottery, as defined in sections twenty-three to thirty-five, inclusive, sections thirty-
231 seven to forty, inclusive, and sections fifty-six to fifty-eight, inclusive of chapter 10, to the
232 Authority in order that it either continues to operate the lottery as a state run lottery or may
233 accept bids for a license to operate said lottery. Said recommendations should be deposited with
234 the clerks of the House of Representatives and the Senate not later than six-months from the
235 passage of this act.