

June 21, 2010

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The Honorable Therese Murray, President  
Massachusetts State Senate  
State House, Room 330  
Boston, MA 02133

Dear Senate President Murray:

Many seem to accept the reality that expanded gambling will bring new and significant social, economic, public health, criminal justice, regulatory, public and consumer protection costs and risks. Even with the hoped-for economic and entertainment benefits that are the only public policy justifications for casinos and slots, surely we should do all we can to prepare for all of the identifiable and quantifiable consequences, and do so before, not after, the fact. We should also surely try to mitigate any predictable, albeit unintended consequences of the actions you are considering this week.

To date, in spite of all the rosy press releases, media cheerleaders, promises, pledges and projections, we have done very little to ensure this kind of public protection. This is a surprise to anyone familiar with this issue, especially because there is so much from major state and national studies (beginning with the [1999 National Gambling Commission Impact Report](#)), on all of these matters. Far more relevant to us are the real life experience of states throughout the country and the best practices of the industry leaders and standard setters themselves.

In order to ensure we reap all the net benefits pledged and promised, I wonder why those who so vigorously support expansion have not done more to minimize the risk that this expansion will not become our own mini-version of the British Petroleum oil spill, let alone a Big Dig redux. We can learn from history – and need not be doomed to repeat it.

Therefore, I challenge and urge supporters of casinos to ensure that before you vote to expand gambling in the Commonwealth, you will ensure that the following key elements (in detail and consistent with best practices) are firmly in place:

**1. An Independent, External, Fully Funded Overseer.** The legislation should establish and endow a foundation to serve as an advocate for the public interest and to ensure that implementation of the legislation is transparent, accountable, open and honest. Drawing on the model of the Legacy Foundation or the TARP Congressional Oversight Committee, the foundation should consist of an independent, five-person board of trustees (and staff) empowered to conduct an annual review of the benefits and costs of expanded gambling. The foundation should be charged with making a report and recommendations to the gambling commission, the

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Governor, Attorney General and Legislature for legislative, regulatory, and budgetary changes, including, if appropriate, the elimination, expansion, and/or sun-setting of the legislation.

**2. A Centralized, Coordinated Regulatory/Enforcement Body.** The gambling commission should be responsible for, and empowered to, oversee all aspects of the implementation of the 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. At least one member, in addition to the Attorney General or his/her appointee, should have significant expertise in the regulation/prosecution of public corruption and white collar/financial crimes.

**3. Upfront, in Trust, Funding of Oversight and Implementation.** The foundation and the commission should, initially, be funded by a Fiscal Year 2011 appropriation of \$100 Million – to be allocated 20 percent to the foundation and 80 percent to the commission – and, a similar amount guaranteed for 2012. The allocation should be placed in a public trust exclusively to be used for this purpose – which amounts may, of course, be carried over, if not expended. Thereafter, funding for the foundation and commission trust should be derived from revenues obtained from fees/taxes/other revenues collected from expanded gambling operations.

**4. Expanded Gambling Commences the Later of One Year or Certification of the Commission.** No expanded gambling activities should commence, be licensed, authorized or commence operations until the commission certifies that all necessary and appropriate systems, personnel and regulations are in place to enable them to fulfill their operational responsibilities. This would include consumer and public protections, regulatory and law enforcement, and contractual provisions ensuring and protecting promises/pledges/guarantees made to the Commonwealth, including appropriate indemnification provisions.

**5. Use of Gross Gambling Revenue to Fund Escrow Accounts to Mitigate the Impact of Costs.** In addition to funding the foundation and the commission annually, the gross revenue/fees/taxes from expanded gambling should be allocated in amounts recommended by the commission/foundation to an escrow or mitigation fund such as those utilized for the World Trade Center victim compensation, BP or MSA tobacco settlement funds. These funds would be for use, if needed, to compensate business, lottery, problem gambling/addiction, law enforcement, local aid, and any other costs directly attributable to the expansion of gambling.

**6. Open, Accountable, Transparent, Processes, Procedures, and Policies for Decision-Making.** In the first instance, the commission should establish the procedures and criteria for applications, review, selection processes – as well as the location and numbers of various expanded gambling facilities – after issuing proposals, holding public hearings, and seeking public input. The commission, 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. The commission should have the power to enforce its rules and regulations administratively, civilly, and, if appropriate, criminally. In regard to rules/regulations relating to consumer protection and

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enforcement, the commission should seek the input and certification of the Attorney General that they are adequate for the purpose; similarly, as to the social issues/challenges, the input of the Commissioner of Public Health and Secretary of Health and Human Services; as to law enforcement, the Executive Office of Public Safety.

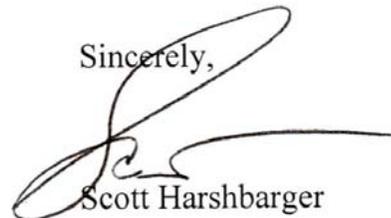
**7. Enhanced White-Collar, Public Corruption, Ethics, Campaign Finance and Lobbying Laws and Penalties.** The Attorney General and the Secretary of Public Safety should be required to certify that the Commonwealth's regulatory and enforcement powers are equal to the best state and industry practices.

Obviously, the devil is in the details, to be sure, but these seven principles offer a reasonable, evidence-based template for evaluating the merits of any gambling proposal.

The details used as examples may be questioned or challenged and there may be other options and principles to consider. But surely we need to address the potential and predictable consequences and costs with a far greater sense of seriousness and urgency. After all, prevention is our best and cheapest form of public protection.

Respectfully, I once again urge you to delay any enactment until you have appropriate evidence-based data that demonstrates that the benefits of expanded gambling will, in fact, outweigh the costs.

Sincerely,

A handwritten signature in black ink, appearing to be "Scott Harshbarger", written over the typed name.

Scott Harshbarger

Cc: Governor Deval Patrick  
Speaker Robert DeLeo  
Attorney General Martha Coakley  
Members of the Senate