SENATE DOCKET, NO. 673 FILED ON: 1/20/2011

SENATE . . . . . No. 136

The Commonwealth of Massachusetts

PRESENTED BY:

Bruce E. Tarr

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:

An Act to stabilize lottery revenues to provide predictable aid to cities and towns..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Bruce E. Tarr	☐ *[District]* ☐
Michael R. Knapik	☐ *[District]* ☐
Richard J. Ross	*Norfolk, Bristol, and Middlesex*
Richard Bastien	*2nd Worcester*

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SENATE . . . . . No. 136

By Mr. Tarr, a petition (accompanied by bill, Senate, No. 136) of Bruce E. Tarr, Michael R. Knapik, Richard J. Ross and Richard Bastien for legislation to stabilize lottery revenues to provide predictable aid to cities and towns. Consumer Protection and Professional Licensure.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
SENATE
, NO. *184* OF 2009-2010.]

The Commonwealth of Massachusetts

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:

SECTION 1. Section 39 of chapter 3 of the general laws, as appearing in the 2008 official edition, is hereby amended by inserting in line 63 after the words “Loan Authority” the following words: - Massachusetts Gaming Control Authority, .

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

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

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

CHAPTER 12B. THE MASSACHUSETTS GAMING CONTROL AUTHORITY

Section 1. Definitions

As used in this chapter, the following words shall have the following meanings unless the 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
22 authority, as established pursuant to this chapter.

23 “License”, a license issued for a terms of years to operate a lottery, subject to the terms
24 and 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
31 Massachusetts gaming control authority. The authority is hereby constituted a public
32 instrumentality and the exercise by the authority of the powers conferred by this chapter shall be
33 deemed to be the performance of an essential governmental function. The purpose of the
34 authority is to provide to license, regulate, and oversee the state lottery or any licensed lottery in
35 the commonwealth.

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

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

46 Three of the members appointed by the governor shall serve a term coterminous with that
47 of the governor. The other 2 members appointed by the governor shall serve a term of 5 years.
48 Any person appointed to fill a vacancy in the office of a member of the board shall be appointed
49 in a like manner and shall serve for only the unexpired term of such member. Any member shall

50 be eligible for reappointment but no member shall serve more than 2 terms of 5 years each. Any
51 member may be removed from his appointment by the governor for cause. The governor shall
52 from time to time designate a member or members of the board as its chairperson or co-
53 chairperson as applicable.

54 Five of the members shall constitute a quorum and the affirmative vote of a majority of
55 members present at a duly called meeting where a quorum is present shall be necessary for any
56 action to be taken by the board. Any action required or permitted to be taken at a meeting of the
57 board may be taken without a meeting if all of the members consent in writing to such action and
58 such written consents are filed with the records of the minutes of the meetings of the board. Such
59 consents shall be treated for all purposes as a vote at a meeting.

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

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

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

81 (c) Executive Director. The board shall have the power to appoint and employ an
82 executive director, and to fix the director's compensation and conditions of employment. The
83 executive director shall be the chief executive, administrative and operational officer of the
84 authority and shall direct and supervise administrative affairs and the general management of the
85 authority. The executive director may, subject to the general supervision of the board, employ

86 other employees, consultants, agents, including legal counsel, and advisors, and shall attend
87 meetings of the board.

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

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

104 (f) The Massachusetts gaming control authority board shall be the successor to the
105 Massachusetts gambling advisory board established by section 39 of chapter 60 of the acts of
106 1994.

107 Section 3. Powers and Duties of the Authority

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

111 (a) adopt an official seal;

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

115 (c) appoint officers and employees;

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

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

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

123 (g) obtain insurance;

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

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

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

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

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

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

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

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

151 Section 5. Provisions for Applications of Lottery License

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

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

155 (i) the name of the applicant;

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

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

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

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

166 (vii) answers to such other questions as the authority may prescribe.

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

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

172 (4) Such applications shall be signed and sworn to, if made by an individual, by such
173 individual; if made by 2 or more individuals or a partnership, by 1 of such individuals or by a
174 member of such partnership; if made by a trust, by a trustee of such trust; and if made by an
175 association or corporation, by the chief executive and chief financial officers thereof.

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

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

181 Section 6 Bid Procedure

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

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

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

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

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

195 The authority shall maintain a file of applications for licenses under this chapter, together
196 with a record of all action taken by the authority on those applications. Such applications shall be
197 open to public inspection; provided however, that the executive director shall prohibit access to
198 information that contains law enforcement or investigatory information, is a trade secret, or puts
199 the applicant for a license at an unfair disadvantage with other applicants; provided further, that
200 the executive director shall consult with the division on public records on the appropriate manner
201 of distributing or withholding of such information. The authority may maintain any other files
202 and records as it deems appropriate.

203 Section 8. Authority Operating Account

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

216 Section 9. Lottery License Fee and Operating Trust Fund

217 (a) There shall be established and set up on the books of the commonwealth a separate
218 fund, to be known as the gaming license fee and operating trust fund, in this section called the

219 license fee trust fund. The license fee trust fund shall consist of all license fees received in
220 consideration of the award of licenses under section 6, and all other monies credited or
221 transferred to the fund from any other fund or source pursuant to law.

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

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

227 (2) the remaining balance shall be utilized in the manner best suited to provide
228 continued fiscal support to the cities and towns of the Commonwealth through the state lottery
229 fund, to be distributed to cities and town in amounts, at minimum to those distributed to cities
230 and towns through the state lottery fund in fiscal year 2011.

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