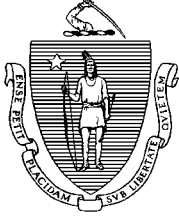


# SENATE, NO. 2506

[SIMILAR MATTER FILED DURING PAST SESSION  
SEE NO. OF ]



## The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND SEVEN

### **AN ACT** TO STABILIZE STATE 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
- 3 Authority" the 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
- 6 Gaming 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: -

9 Massachusetts 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  
15 unless the context clearly requires otherwise:

16 “Applicant”, a person who has applied for a license to operate a lottery as defined by  
17 this 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  
24 terms 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,  
27 sections thirty-seven to forty, inclusive, and sections fifty-six to fifty-eight, inclusive of  
28 chapter 10, shall 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  
33 shall be deemed to be the performance of an essential governmental function. The  
34 purpose of the authority is to provide to license, regulate, and oversee the state lottery or  
35 any licensed lottery in the commonwealth.

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

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

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

53 by the governor for cause. The governor shall from time to time designate a member or  
54 members of the board as its chairperson or co-chairperson as applicable.

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

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

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

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

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

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

98 The board of directors may purchase liability insurance for board members, officers and  
99 employees and may indemnify these persons against claims of others.

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

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

### 111 Section 3. Powers and Duties of the Authority

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

115 (a) adopt an official seal;

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

120 (c) appoint officers and employees;

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

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

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

128 (g) obtain insurance;

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

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

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

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

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

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

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

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

#### 159 Section 5. Provisions for Applications of Lottery License

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

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

163 (i) the name of the applicant;

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

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

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

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

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

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

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

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

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

187 (6) With each application, there shall be delivered to the authority a certified check or  
188 bank draft, payable to the authority, of a non-refundable deposit in the amount of  
189 \$1,000,000 for the processing, analysis and review of the application.

190 Section 6 Bid Procedure

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

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

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

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

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

204 The authority shall maintain a file of applications for licenses under this chapter,  
205 together with a record of all action taken by the authority on those applications. Such  
206 applications shall be open to public inspection; provided however, that the executive  
207 director shall prohibit access to information that contains law enforcement or  
208 investigatory information, is a trade secret, or puts the applicant for a license at an unfair  
209 disadvantage with other applicants; provided further, that the executive director shall

210 consult with the division on public records on the appropriate manner of distributing or  
211 withholding of such information. The authority may maintain any other files and records  
212 as it deems appropriate.

#### 213 Section 8. Authority Operating Account

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

#### 227 Section 9. Lottery License Fee and Operating Trust Fund

228 (a) There shall be established and set up on the books of the commonwealth a separate  
229 fund, to be known as the gaming license fee and operating trust fund, in this section  
230 called the license fee trust fund. The license fee trust fund shall consist of all license fees  
231 received in consideration of the award of licenses under section 6, and all other monies  
232 credited or transferred to the fund from any other fund or source pursuant to law.

233 (b) The secretary of administration and finance shall be the trustee of the license fee  
234 trust fund, and shall transfer monies in the fund, without further appropriation, as of June  
235 30 of each fiscal year, only as follows and in the following order:

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

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

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

250