



Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

Official Audit Report – Issued December 31, 2012

State Racing Commission

For the period July 1, 2011 to May 20, 2012



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INTRODUCTION AND SUMMARY OF FINDINGS AND RECOMMENDATIONS

On May 20, 2012, pursuant to Chapter 194 of the Acts of 2011, the Massachusetts Gaming Commission (MGC) assumed all duties and responsibilities formerly carried out by the State Racing Commission (SRC). MGC adopted emergency regulations, 205 Code of Massachusetts Regulations CMR 13.00, under the authority of Chapter 23K, Sections 4 and 5; Chapter 128A, Section 9; and Chapter 128C, Section 8, of the Massachusetts General Laws to provide for the orderly transition of the regulation of horse racing; harness horse racing; dog racing; pari-mutuel wagering; simulcasting; the humane handling, care, treatment, and transportation of racing greyhounds; and related subject matters from the SRC to the MGC. In addition, the MGC entered into an Interdepartmental Service Agreement (ISA) with the Office of Consumer Affairs and Business Regulation's Division of Public Licensure (DPL) under which personnel employed by the SRC will continue to carry out all of the operating functions they performed before May 20, 2012. This agreement extends through December 31, 2012, the end of this calendar year. Prior to the transition to the MGC, the DPL had provided oversight of the SRC since January 1, 2010.

In accordance with Chapter 11, Section 12, of the General Laws, and at the request of the MGC, the Office of the State Auditor (OSA) conducted a transition audit of the status of financial activities, accounts and functions and the related systems and control environment of the SRC for fiscal year 2012 through the transition date of May 20, 2012. In addition, we examined fiscal year 2012 transactions subsequent to the transition date for appropriateness and reasonableness. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence that provides a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our conclusions based on our audit objectives.

The purpose of our audit was to inform the MGC of the status of fiscal and administrative operations as of May 20, 2012 to enhance the transition from the prior administration to the new administration and to identify systems and internal accounting and administrative controls needing corrective action and improvement. As a result of our audit, we have concluded that, during the period July 1, 2011 through May 20, 2012, the SRC adequately administered its operations; had adequate controls in place to safeguard its assets; had adequate and complete accounting and

contractual documentation; and complied with applicable laws, rules, and regulations for the areas tested.

OVERVIEW OF AUDITED AGENCY

Pursuant to Chapter 194 of the Acts of 2011, the State Racing Commission (SRC) ceased operations on May 20, 2012 and the Massachusetts Gaming Commission (MGC) assumed oversight responsibility for horse racing, pari-mutuel wagering, and simulcasting in the Commonwealth. The Expanded Gaming Act, Chapter 23K, Sections 7, 37, 38, and 40, of the Massachusetts General Laws, substitutes the MGC for the former SRC as the agency with the power to administer and enforce the provisions of Chapters 128A and 128C of the General Laws.

The MGC entered into an Interdepartmental Service Agreement (ISA) with the Division of Professional Licensure (DPL), the agency that provides administrative services within the Office of Consumer Affairs and Business Regulation, on May 20, 2012. This ISA was signed to assist in the effective transition of the oversight of racing to the MGC by having DPL perform, for a transitional period, the day-to-day activities that support Massachusetts horse racing, harness horse racing, pari-mutuel wagering, simulcasting, and related activities. These efforts are supported by an administrative office, racing inspectors, accountants, laboratory personnel, veterinarians, judges and stewards, and State Police investigators. In addition, former SRC personnel are to remain DPL and not MGC employees while carrying out the operating functions they performed before May 20, 2012. During this transition period, the MGC will take steps to develop the capacity to directly perform these activities by December 31, 2012. DPL will be responsible for all hiring, personnel management, and administrative needs of the SRC and will keep the MGC informed of any changes or actions during this period. In addition, the MGC will be responsible for all adjudicatory functions previously performed by the SRC and policy decisions and approvals required for DPL to perform these activities required within the ISA.

Under the current ISA, DPL is charged with the supervision of all conduct relating to the business of racing in Massachusetts and ensuring the integrity of the racing industry. This is accomplished through the regulation of pari-mutuel racing at the one thoroughbred racetrack, Suffolk Downs; one harness track, Plainridge Racecourse; and a simulcasting facility at Raynham/Taunton (the former Greyhound Park). Current operations include the issuance of licenses to all persons who participate in racing. Upon request by the Chief Steward at the racetracks, officers of the State Police investigate the backgrounds of new license applicants, racing officials, and trainers. The State Police also enforce all state regulations at each track conducting scheduled racing operations, including special

investigations related to the violation of racing rules. In addition, testing is performed on racing animals for the detection of prohibited drug usage, and inspections of stables at the racetracks and off-site locations are performed to detect safety violations.

Massachusetts racing receives a significant amount of its revenues from such sources as commissions from racing operations, referred to as the “handle,” assessments on live races, and license fees from associations operating racetracks and from staff such as trainers and jockeys who work at the racetracks. The SRC also receives revenue from fines and penalties assessed on track workers and money due from unpaid winning tickets. Total revenues collected in accordance with Chapter 128A of the General Laws for fiscal year 2012 was approximately \$5.2 million (see Appendix III).

AUDIT SCOPE, OBJECTIVES, AND METHODOLOGY

In accordance with Chapter 11, Section 12, of the General Laws and at the request of the Massachusetts Gaming Commission (MGC), the Office of the State Auditor (OSA) conducted a transition audit of the status of financial activities, accounts, and functions and the related systems and control environment of the State Racing Commission (SRC) as of the transition date of May 20, 2012, which included a review of transactions prior to and subsequent to the transition date for the fiscal year 2012. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our conclusions based on our audit objectives.

The purpose of our audit was to inform the MGC of the status of fiscal and administrative operations as of the date of transfer, to enhance the transition from the prior administration to the new administration, and to identify systems and internal accounting and administrative controls needing corrective action and improvement.

To accomplish our audit, we first assessed the management controls established and implemented by the SRC over its operations. We reviewed organizational charts, annual reports, internal policies and procedures and applicable laws, rules and regulations, including the implementation of the aforementioned Chapter 194 of the Acts of 2011. We also examined pertinent documentation to determine whether operational and contracted expenses incurred were reasonable, allowable, properly authorized and recorded, and in compliance with the scope and mission of the SRC's enabling legislation and regulations. Specifically, we:

- Interviewed SRC and DPL staff to gain an overall understanding of the entire financial and operational environment at the SRC.
- Reviewed and examined fiscal operations to determine the status of accounts, activities, and records.
- Evaluated the controls in place in order to determine the types of revenue derived and how they are collected, safeguarded, reported, and reconciled.
- Reviewed and examined fiscal year 2012 spending from July 1, 2011 through the date of transition and performed a comparison of budget to actual expenditures.

- Analyzed and tested agency expenditures and documentary evidence to ensure proper review, approval, and classification as the expenditures relate to the scope and mission of the SRC.
- Reviewed the SRC's internal control plan to determine whether it is up-to-date, suitably designed and implemented to safeguard Commonwealth assets, and in compliance with the Office of the State Comptroller's Internal Control Guide for Departments and Chapter 647 of the Acts of 1989.
- Reviewed inventory controls over supplies and equipment and vehicle usage policies to determine their adequacy.

As a result of our audit, we have concluded that, during the period July 1, 2011 through May 20, 2012, the SRC adequately administered its operations; had adequate controls in place to safeguard its assets; had adequate and complete accounting and contractual documentation; and complied with applicable laws, rules and regulations for the areas tested.

APPENDIX I

**Schedule of Appropriation Accounts under the State Racing Commission
Fiscal Year 2012**

State Racing Commission Appropriation Number	Appropriation Title	New Massachusetts Gaming Commission Appropriation Number	Appropriation Title	Appropriation Amount	Expenditures as of May 20, 2012	Unexpended Balance as of May 20, 2012	Percentage Expended as of May 20, 2012	Transfer to New Massachusetts Gaming Appropriation As of May 20, 2012	Appropriations As of June 30, 2012 ⁽¹⁾	Expenditures as of June 30, 2012 ⁽¹⁾	Balance as of June 30, 2012 ⁽¹⁾	Percentage Expended as of June 30, 2012
7006-0001	Mass. Racing Development and Oversight Fund	1050-0003	Mass. Racing Development and Oversight Fund	\$3,194,501	\$1,799,999 ⁽³⁾	\$1,394,502	56.35%	\$1,453,677	\$3,509,347	\$1,805,800	\$1,703,547	51.46%
7006-0012	Plainridge Racecourse Promotional Trust	1050-0012	Plainridge Racecourse Promotional Trust	87,449	0	87,449	0.00%	87,449	101,619	0	101,619	0.00%
7006-0013	Plainridge Racecourse Capital Improvement Trust	1050-0013	Plainridge Racecourse Capital Improvement Trust	227,007	142,417	84,590	62.74%	84,590	266,078	222,504	43,574	83.62%
7006-0018	Massasoit Promotional Trust	1050-0018	Massasoit Promotional Trust	76,295	71,422 ⁽⁴⁾	4,873	93.61%	4,873	85,017	78,362	6,655	92.17%
7006-0019	Massasoit Capital Improvement Trust	1050-0019	Massasoit Capital Improvement Trust	56,470	53,175 ⁽⁴⁾	3,295	94.17%	3,295	62,621	57,915	4,706	92.48%
7006-0021	Sterling Suffolk Promotional Trust	1050-0021	Sterling Suffolk Promotional Trust	229,089	171,000	58,089	74.64%	58,089	259,057	171,000	88,057	66.01%
7006-0022	Sterling Suffolk Capital Improvement Trust	1050-0022	Sterling Suffolk Capital Improvement Trust	1,753,921	500,063	1,253,858	28.51%	1,253,858	1,861,813	500,063	1,361,750	26.86%
7006-0027	Wonderland Greyhound Park Promotional Trust	1050-0027	Wonderland Greyhound Park Promotional Trust	9,967	9,244 ⁽⁴⁾	723	92.75%	723	11,413	10,187	1,226	89.26%
7006-0028	Wonderland Greyhound Park Capital Improvement Trust	1050-0028	Wonderland Greyhound Park Capital Improvement Trust	9,967	9,244 ⁽⁴⁾	723	92.75%	723	11,413	10,187	1,226	89.26%
7006-0110	State Racing Commission Services and Operations ⁽²⁾	1050-0110	State Racing Commission Services and Operations	1,600,253	1,101,950	498,303	68.86%	498,303	1,600,253	1,257,881	342,372	78.61%
7006-0140	Payments to Cities/Towns for Local Share of Racing Tax Revenue ⁽²⁾	1050-0140	Payments to Cities/Towns for Local Share of Racing Tax Revenue	1,150,000	782,729	367,271	68.06%	367,271	1,150,000	782,729	367,271	68.06%
9200-0711	Racing Stabilization Trust Fund	1050-0002	Racing Stabilization Trust Fund	<u>2,565,450</u>	<u>2,565,450</u> ⁽⁵⁾	<u>0</u>	<u>100.00%</u>	<u>2,565,450</u>	<u>2,607,939</u>	<u>0</u>	<u>2,607,939</u>	<u>0.00%</u>
	Totals			<u>\$10,960,369</u>	<u>\$7,206,693</u>	<u>\$3,753,676</u>	<u>65.75%</u>	<u>\$6,378,301</u>	<u>\$11,526,570</u>	<u>\$4,896,628</u>	<u>\$6,629,942</u>	<u>42.48%</u>

⁽¹⁾ May 21, 2012 through June 30, 2012 expenditures were not audited.

⁽²⁾ SRC Services and Operations Appropriation (7006-0110) and Payments to Cities/Towns for Local Share of Racing Tax Revenue (7006-0140) are lapsing (expire June 30 of each year) appropriations of the Commission.

⁽³⁾ Expenditures include Operating Transfer of \$1,126,760 to the General Fund.

⁽⁴⁾ Expenditures are Operating Transfers to Racing Stabilization Trust Fund.

⁽⁵⁾ Operating Transfer to MGC Account 1050-0002

APPENDIX II

**Schedule of Expenditures under
the State Racing Commission
Administration Appropriation Number 7006-0110
Fiscal Year 2012**

	<u>July 1, 2011 to May 20, 2012⁽¹⁾</u>	<u>July 1, 2011 to June 30, 2012⁽²⁾</u>
Appropriation	<u>\$1,600,253</u>	<u>\$1,600,253</u>
Expenditures	\$1,101,950	\$1,257,881
Balance	<u>498,303</u>	<u>342,372</u>
	<u>\$1,600,253</u>	<u>\$1,600,253</u>
 <u>Analysis of Expenditures</u>		
Regular Employee Compensation	\$669,332	\$757,677
Regular Employee-Related Expenses	4,287	5,212
Special Employees/Contracted Services	155,940	204,074
Pension and Insurance-Related Expenditures	16,319	17,836
Administrative Expenses	35,073	35,266
Facility Operational Supplies and Related Expenses	33,514	47,515
Energy Costs, Utilities and Space Rental Expenses	88,999	88,999
Operational Services	69,474	70,828
Equipment Leases-Purchase, Lease/Rental Maintenance and Repair	10,906	10,907
Information Technology Expenses	<u>18,106</u>	<u>19,567</u>
Total Expenditures	<u>\$1,101,950</u>	<u>\$1,257,881</u>

(1) Through May 20, 2012, the State Racing Commission expended 68.86% of its fiscal year 2012 administrative appropriation.

(2) May 21, 2012 through June 30, 2012 expenditures not audited and are presented for reporting purposes, only.

APPENDIX III

Schedule of the State Racing Commission Revenue by Revenue Type⁽¹⁾ Fiscal Year 2012

<u>Revenue Type</u>	<u>July 1, 2011 through May 20, 2012</u>	<u>July 1, 2011 through June 30, 2012⁽³⁾</u>
Commissions	\$1,428,002	\$1,634,823
Fines and Penalties	4,050	5,350
Association License Fees	388,500	435,900
Licenses and Regulations	51,395	76,045
Assessments	679,941	769,757
Unpaid Tickets	710,589	710,589
Miscellaneous	10,801	13,631
Trust Funds ⁽²⁾	1,213,738	1,427,416
Racing Stabilization Funds	<u>125,942</u>	<u>141,909</u>
Total Revenues	<u>\$4,612,958</u>	<u>\$5,215,420</u>

(1) Information obtained from the Commonwealth of Massachusetts Information Warehouse.

(2) Trust Fund Revenues are derived from eight separate trust funds, including Capital Improvement and Trust Funds for the following racetracks and applicable associations: Plainridge Racecourse, Massasoit, Sterling Suffolk, and Wonderland.

(3) Revenues received from May 21, 2012-June 30, 2012 were not audited and are presented for reporting purposes, only.

OTHER MATTERS

As part of obtaining reasonable assurance about whether the State Racing Commission's (SRC) financial activities were free of material misstatement, we performed tests of the SRC's compliance with certain provisions of laws, regulations, contracts, and grant agreements where noncompliance could have a direct and material effect on the determination of the ending balances in SRC's accounts. As previously noted, the results of our audit testing disclosed no issues of noncompliance. However, an issue requiring further legal review and resolution was identified. Specifically, the state's Fiscal Year 2012 Budget language included a \$1.15 million appropriation to the SRC in Account No. 7006-0140, Payments to Cities and Towns for Local Share of Racing Tax Revenues. The SRC was to use this funding to make quarterly payments to cities and towns that hosted a racing venue under Chapter 58, Section 18D, of the Massachusetts General Laws, which states:

The state treasurer, upon certification by the state racing commission, shall quarterly distribute to each city and town within which racing meetings are conducted, including racing meetings conducted in connection with a state or county fair, under licenses issued under the provisions of chapter one hundred and twenty-eight A, the sum of .35 percent of the total pari-mutuel wager for each such racetrack within said city or town for the three months ending two quarters prior to the quarter for which said distribution is being made, which sum shall be allocated from the commonwealth's share; provided, however, that if the parcel of land containing such racetrack is located in two cities or towns, said sum shall be divided so that two-thirds shall be distributed to the city or town in which the major portion of said parcel is located, and one-third shall be distributed to the other city or town.

Chapter 194, Section 26, of the Acts of 2011 repealed Chapter 58, Section 18D, of the General Laws regarding these distributions to cities and towns effective November 22, 2011. However, the Division of Professional Licensure (DPL), which had provided oversight of the SRC since January 1, 2010 under Chapter 6, Section 48, of the General Laws continued to process distributions to the cities and towns in question, which included Boston, Revere, Raynham, and Plainville, during fiscal year 2012, two of which occurred after the repeal of the legislation.

The payments made to these cities and towns during this period, which totaled \$782,728, are detailed in the following table:

Quarter Covered	Ending Period Covered	Ending Period of Payment	Amount of Payment
Quarter 1	3/2011	9/2011	\$166,598
Quarter 2	6/2011	12/2011	257,520
Quarter 3	9/2011	3/2012	<u>358,610</u>
Totals			<u>\$782,728</u>

With the May 20, 2012 transfer of the SRC to the Massachusetts Gaming Commission (MGC), a member of the MGC raised certain questions to OSA staff, including whether DPL and the SRC were authorized to make the 2nd and 3rd quarter payments based on the repeal of the law, whether cities and towns should be required to reimburse the funds they received under these payments and whether those funds, if reimbursed, should be returned to the General Fund or MGC's account. It should be noted that, although Chapter 58, Section 18D, of the General Laws was repealed, the state's Fiscal Year 2013 Budget includes a \$1.15 million appropriation to make such payments, and Outside Section 164 of this budget directs the State Treasurer to quarterly distribute the payments to the designated cities and towns upon the MGC's certification.

In addition to clarification on the 2nd and 3rd quarter DPL payments in question, further clarification is needed to determine what the MGC's legal responsibility is relative to these payments to cities and towns in the future. Consequently, the MGC may want to obtain a legal opinion on this matter from the State Attorney General.