

**The Commonwealth of Massachusetts**  
**Massachusetts Gaming Commission**

**Meeting Minutes**

**Date:** November 6, 2012

**Time:** 1:00 p.m.

**Place:** Division of Insurance  
1000 Washington Street  
1<sup>st</sup> Floor, Meeting Room 1-E  
Boston, Massachusetts

**Present:** Commissioner Stephen P. Crosby, Chairman  
Commissioner Gayle Cameron  
Commissioner James F. McHugh  
Commissioner Bruce Stebbins  
Commissioner Enrique Zuniga

**Absent:** None

**Call to Order:**

Chairman Crosby opened the 34<sup>th</sup> public meeting.

**Approval of Minutes:**

See transcript pages 2-3.

Chairman Crosby stated that the minutes of the October 30 meeting were ready for review.

*Motion made by Commissioner McHugh to approve the October 30, 2012 minutes as submitted.  
Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.*

**Massachusetts Environmental Protection Agency (MEPA) Presentation:**

See transcript pages 3-29.

Ombudsman Ziembra introduced Maeve Vallely-Bartlett, Director of MEPA, who was present to provide the Commission with information on the MEPA process. She stated that the MEPA process is an informal administrative process designed to examine environmental issues created by large projects. Projects that receive state financial support, require one or more state permits or approvals or exceed other MEPA thresholds are required to file an Environmental Notification Form (ENF) with MEPA. Some projects will only require this form and other projects will meet thresholds that require a Draft Environmental Impact Report, which includes an extensive description of the project, the project alternatives, permits required and potential mitigation. MEPA has no time requirement for the filing of this report; the proponent has complete control over when the report is filed. The Secretary will review

this report, make recommendations, and then the proponent will file a Final Environmental Impact Report. Once that report is reviewed and the Secretary gives approval, the proponent can obtain necessary permits. She stated that the MEPA process assesses and describes the environmental impact of projects in a public manner for public comment but neither issues nor denies the permits that are necessary for construction. Those permits must be obtained from permitting authorities with jurisdiction over the project or over the area for which the project is planned.

Ms. Valley-Bartlett stated that MEPA thresholds include traffic, air, solid waste, wetlands, waterways, and historic sites. It is her understanding that the major casino projects will be large enough to pass a MEPA threshold. She stated that MEPA's jurisdiction is limited to environmental concerns and issues.

Chairman Crosby stated that discussions surrounding the Taunton casino location include the National Environmental Policy Act (NEPA). He asked how NEPA and MEPA relate. Ms. Valley-Bartlett stated that the Taunton project required NEPA review because the developers were utilizing a federal process to have lands placed into trust. She stated that the MEPA and NEPA processes for Taunton are ongoing simultaneously. She also said that the proposed Planeridge project for a possible slots facility has been identified as one that will require a Draft Environmental Impact Report based on traffic projections.

Chairman Crosby asked if it would be reasonable to require MEPA approval before a project comes to the Commission for Phase-2 approval. Mr. Ziemba stated that he would have to give that some consideration before commenting. Ms. Valley-Bartlett stated that proponents cannot get necessary state permits until they have completed the MEPA process.

### **Project Work Plan:**

See transcript pages 29-56.

Consultant Status Report – Consultants Guy Michael and Robert Carroll addressed the Commission. Mr. Michael stated that they have begun meeting with interested applicants to initiate the process of identifying those persons and entities whose qualification are necessary for the qualification of the applicant itself. He stated that the statute and regulations give the Commission the authority to waive qualification for people whom the applicant shows have no control over the project planned for Massachusetts. He stated that they identified people as to whom qualification could be waived and have set up a process requiring the interested parties to submit written justification for the waiver to the Commission no later than Friday, November 16. The consultants will then meet to evaluate these requests and make a recommendation to the Commission as to whether the waiver request should be granted or denied.

Mr. Carroll stated that they have met with the following groups: the Plainridge Racecourse, the Caesar Suffolk team, Mohegan Sun, Ameristar, Massachusetts Gaming and Entertainment, LLC and its affiliate Rush Street Gaming, MGM Springfield, and Penn National. Commissioner McHugh stated that these meetings were completely voluntary and an entity is free to file an application by January 15 without having this type of meeting. Commissioner Zuniga stated that the Friday, November 16, waiver deadline is only for those applicants who have met with the consultants and does not affect any

other applicant. Commissioner Stebbins asked if the consultants had a sense that the local development partners are aware of the licensing requirements. Mr. Carroll stated that all potential applicants came in with a thorough understanding of the requirements. Commissioner Cameron asked if discussions were held on the application process. Mr. Carroll stated that potential applicants were informed they could complete and submit their Phase 1 applications at any time before the deadline and they understood that they could do so.

Mr. Michael stated that once the applications are filed, they will be sent to the Investigation and Enforcement Bureau (IEB), background investigations will begin, and, if necessary, individuals may be called in for interviews. An overall evaluation then will be made by a supervising investigator. The Deputy Director of IEB will then make a determination on qualifications. For those found not qualified, there will be an appeal process in which the Commission will, if necessary, have the final decision.

Chairman Crosby stated that the Commission is in the process of interviewing for a Deputy Director of IEB and recommended Commissioner Cameron be appointed interim Director of the IEB in the meantime so the investigatory process can begin. Commissioner Zuniga stated that he supported this idea as it is incumbent upon the Commission to have something in place for the possibility of receiving applications for early qualifiers. Commissioner Cameron stated that in her judgment, the Commission is very close to identifying finalists for the IEB position and that person will be able to conduct investigations through a third party contractor. Nevertheless, she said, she would be willing to assume the role of interim Deputy Director of the IEB until the permanent Deputy Director is hired. Commissioner McHugh expressed reservations about making this appointment, as the IEB will be making decisions that may be appealed to the full Commission, which would put Commissioner Cameron in the position of being disqualified from hearing those appeals and leave the Commission without her expertise in making necessary decisions as well as leaving Commission with only four members who can.

*Motion made by Commissioner Zuniga to designate Commissioner Cameron to be the Interim Director of the Investigations and Enforcement Bureau until such time as the Commission hires a permanent Director, and authorize her to take such steps with the State Police, consultants and others as are necessary to move the investigations process forward and report to the Commission accordingly. Motion seconded by Commissioner Stebbins. The motion passed by a 4-1-0 vote with Commissioner McHugh voting no.*

A brief recess was taken after which Chairman Crosby reconvened the 34<sup>th</sup> meeting.

#### **Administration:**

See transcript pages 56-68.

Report from Director of Communications and Outreach – Director Driscoll introduced the team from Jackrabbit Design. The Team consisted of Dave Belyea, Cara Ogar, and Lynn Spooner. Ms. Driscoll stated that she would like to do one final round of design reviews, with a goal of selecting a logo next week. Mr. Belyea reviewed four concepts for a logo. Discussion was held on the best icon to

incorporate above the Mass Gaming name on the logo. Mr. Belyea stated that he will incorporate the feedback received today and work on some concepts that can be presented at the next Commission meeting so a final decision can be made.

Director Driscoll stated that she will be determining what the community outreach strategy will be with respect to solicitation of feedback on the policy questions. She is working on a draft press release and will also be promoting upcoming speaking engagements.

**Project Work Plan (Continued):**

See transcript pages 69-108.

Mr. Michael stated that the RFA-2 process is dependent upon completion of the policy questions. Chairman Crosby stated that he would like to outline a timeframe for answering the policy questions. Mr. Ziembra recommended that the Commission formalize a process for municipalities and the development community to provide input on policy questions and do set a deadline for submission of that input. After discussion, the Commission decided to set a deadline of November 27 for submission of comments, with the goal of holding public Commission meetings during the week of December 10 to make policy decisions. Chairman Crosby recommended that each Commissioner prepare position papers for these meetings covering the policies for which he or she is responsible.

Commissioner McHugh asked for clarification on how the Commission would approach the decision-making for category one, two, and three policy questions and what the Commission would do if all levels were not completed during the December meetings. Commissioner Zuniga stated that he envisioned discussing the questions on a rolling basis. Commissioner McHugh recommended starting on the category one questions, moving onto category two, and if category three was not completed in December, work could nevertheless begin on regulations in areas where policy decisions had been made and the remaining policy questions could be addressed in January.

Commissioner Zuniga stated that some of the policy questions could be thought of as adding additional criteria to prerequisites the Gaming Act requires. He cited the example of appropriate debt-to-equity ratios. Mr. Carroll stated that in establishing the regulatory framework it is important to assure the fundamental soundness of a proposal while allowing applicants maximum creativity. A discussion was held among the Commissioners and the consultants regarding approaches to achieving a balance between issuing regulations containing specific criteria the Commission concluded were essential to a sound project while leaving room for creativity in the proposals the applicants submitted.

Mr. Carroll recommended coordinating with Janice Reilly to establish individual conference calls with each of the Commissioners to discuss their individual concerns in preparation for the upcoming December meetings.

**Administration (Continued):**

See transcript pages 108-130.

Personnel Searches – Chairman Crosby asked for clarification on the process of conducting background checks for finalists for a Commission position. Commissioner Cameron stated that for some positions there may be only one final candidate and a background check would be conducted prior to conducting the final interview before the full Commission. In other instances, there may be more than one final candidate and she clearly recalled the Commission deciding that background checks would be conducted on all candidates before any candidate appeared before the full Commission. Commissioners McHugh and Zuniga agreed that this was the policy the Commission had adopted in order to create a fair and transparent process.

Chairman Crosby asked the Commission to consider hiring a Director of Local Business and Workforce Development to ensure the local workforce and suppliers are encouraged to maximize their participation with gaming operators. Commissioner Cameron stated that she would like to see a job description in order to better understand what the responsibilities of this position would be. Commissioner McHugh stated that this is worth pursuing but he would like to consider this position in the context of an overall organizational chart. Commissioner Zuniga stated that hiring such a Director should be considered in the context of the strategic plan relative to other positions and financial implications of the salary the Director would receive.

Commissioner Stebbins stated that from a training perspective, the community colleges have a stake in workforce development and thought they ought to be encouraged to reach out to their regional allies, particularly community action groups. He stated that on the supplier and vendor side he had had a follow-up conversation with the Institute for Competitive Inner Cities (ICIC), which has initiated vendor-supplier programs with large institutions. He stated that, if there is an organization with which the Commission can partner and share financial resources, doing so may be preferable to hiring someone for the Commission staff. He stated that ICIC is definitely interested in giving the Commission a project proposal. He also recommended looking at Pennsylvania, which annually collects information on suppliers to gaming facilities in order, in part, to assess the extent of minority participation.

Employee Manual, Chapter Two – Commissioner Zuniga stated that he has provided a revised version of Chapter Two and recommended its adoption. Commissioner McHugh stated that this document is thorough and complete and recommended its approval. Chairman Crosby had questions on several policies, which were discussed and clarified.

*Motion made by Commissioner Stebbins to adopt Chapter Two of the Massachusetts Gaming Commission Employee Handbook. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 5-0-0 vote.*

**Racing Division:**

See transcript pages 130-148.

Report from Director of Racing Division – Director Durenberger addressed the Commission. She introduced project consultant David Murray whom the Commission has hired to review various racing statutes in preparation for making recommendations to the Legislature. She stated that she has conducted stakeholder meetings at Suffolk Downs and Plainridge and reported that both are dedicated groups and a pleasure to work with. The first working group meeting has been scheduled for November 19 at Suffolk Downs, with a follow-up meeting on November 28 at Plainridge. She stated that they have been working on the legislative review process and soon will present to the Commission issues that will have to be addressed. Mr. Murray stated that they are looking at pari-mutuel and simulcast laws and how they can be harmonized with the Gaming Act. He outlined some of the challenging issues that are being addressed and stated that they will have recommendations for the Commission to consider in the coming weeks.

Director Durenberger stated that the Racing Division is in the process of finalizing its piece of the table of organization and will present its proposal to the Commission at the next meeting. She stated that she is in the process of developing an RFP for laboratory testing services and anticipates release of that RFP next week. She is in agreement with the consultant's report that the laboratory the Commission is now using does not meet Racing Commissioners' International accreditation standard 17025 and the Commission should seek a new laboratory that does meet this standard or is in the process of doing so.

*Motion made by Commissioner Cameron that the Commission approve release of an RFP for laboratory testing services and that Commission conclude that use of an accredited lab is in the best interest of racing in the Commonwealth. Motion seconded by Commissioner Zuniga. The motion passed unanimously by a 5-0-0 vote.*

Director Durenberger informed the Commission that the current lab is leasing space from U. Mass Medical Center in Jamaica Plain and the lease expires December 31. The last racing samples would be arriving at that laboratory on November 29 and testing will continue through the first week of December. This will give the Commission two weeks to vacate the laboratory and dispose of the equipment. She stated that she would like to gather additional information before recommending a final vote on closing the laboratory.

**Public Education and Information:**

See transcript pages 148-153.

Report from the Ombudsman – Mr. Ziemba addressed the Commission. He stated that he has either spoken to or met with all of the identified potential host communities, as well as some of the key state agencies. He has reached out to each of the regional planning agencies in affected areas and has met with or spoken to representatives from most of the potential applicants. In the coming weeks he will identify and work with some of the surrounding communities. He stated that he has been working with Commissioner Zuniga regarding municipal finance and has a meeting scheduled with the Department

of Revenue's Division of Local Services to explore funding of consultants and vendors that work with municipalities.

**Research Agenda:**

See transcript page 153.

Status Report – Chairman Crosby stated that work has begun on drafting an RFP and a draft has been sent to the informal advisory group for comments. He stated that the goal is to issue the RFP by next week.

**Internet Gaming:**

See transcript pages 153-162.

Chairman Crosby stated that there is still a lingering question relative to the Reid-Kyl legislation on internet gaming. The State Treasurer has requested the Commission join him in publicly declining to support the legislation as written. Commissioner McHugh stated that he has not reviewed the entire legislation but what he has read indicates the legislation does give an initial preference to gaming regulators who have been operational for some period of time and creates a federal agency that will decide who the initial regulators will be. The statute also gives a preference to large brick and mortar entities and says that they initially will be the only entities that qualify for an internet gaming licenses. The legislation prohibits all internet scratch tickets and internet keno, so Massachusetts would not be at a disadvantage competitively with other states.

Commissioner Cameron asked if Commissioner McHugh saw the legislation as adversely affecting the Commonwealth. Commissioner McHugh stated that he does not, principally because the two-year period will have expired by the time a Category 1 gaming facility is up and running. Commissioner Zuniga stated that the problem for the Commission is that the landscape of those bidding for licenses in Massachusetts includes operators who are licensed in Nevada, and operators who are not, and that question needs to be considered.

Chairman Crosby stated that he will contact the gaming consultants and get their opinion on Reid-Kyl. In addition he will contact attorneys for the Lottery Commission to obtain a better understanding of their concerns.

*Motion made to adjourn, motion seconded and carried unanimously.*

**List of Documents and Other Items Used at the Meeting**

1. Massachusetts Gaming Commission November 6, 2012 Notice of Meeting & Agenda
2. October 30, 2012 Massachusetts Gaming Commission Meeting Minutes
3. Massachusetts Gaming Commission Framework for Addressing Policy Questions.
4. October 26, 2012 UAW Memorandum
5. Massachusetts Gaming Commission Employee Handbook, Section 2

6. November 5, 2012 Memorandum Regarding Recommendations Regarding the Current Equine Drug Testing Laboratory

/s/ James F. McHugh  
James F. McHugh  
Secretary