



Meeting Minutes

Date: March 12, 2013

Time: 1:00 p.m.

Place: Division of Insurance
1000 Washington Street
1st 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 56th public meeting.

Approval of Minutes:

See transcript page 2.

Chairman Crosby stated that there are no minutes to review.

Administration:

See transcript pages 2-8.

Master Schedule – Commissioner Zuniga reviewed the key dates on the Master Schedule that the Commission has updated. He stated that the Commission will start rolling out the Phase 2 regulations between March 30 and April 12, 2013. He stated that the Commission will soon update the schedule to reflect the second phase of the Phase 2 regulations, which he would like to refer to as Phase 2B.

Category 2 Licensing Schedule – Commissioner Zuniga stated that the current forecast is to have applicants submit all applications for a Category 2 license to the Commission by October 5, 2013. The Commission hopes to make a decision by December 2, 2013, or sooner if possible.

He stated that the Commission must still determine how to proceed if applicants do not execute surrounding community agreements by the deadline.

Commissioner Zuniga stated that he would like to prequalify the firm of Morgan, Brown, and Joy as a labor and employment law firm for the Commission. This firm has done a substantial work for the Lottery and other state agencies and is highly recommended.

Motion made by Commissioner Zuniga that the Commission prequalify the law firm of Morgan, Brown, and Joy as its employment and labor counsel for miscellaneous and ongoing advice relative to employment and labor law for the Commission. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.

IEB Report:

See transcript pages 8-9.

Investigations Status Report – Commissioner Cameron reported on behalf of Director Wells who was unable to attend. She stated that the IEB is continuing the investigations and having daily contact with the applicants.

Public Education and Information:

See transcript pages 9-20.

Report from the Ombudsman – Ombudsman Ziembra stated that he continues to have numerous conversations with host communities and applicants regarding the potential RPA planning process and he anticipates conducting a presentation at the Commission's meeting on Thursday. He stated that the Commission received two requests for community disbursements, one from the Town of Plainville and one from the City of Everett, and the Commission is processing those request.

Chairman Crosby asked about the status of Category 2 applicants picking a location and finalizing their qualifier lists. Ombudsman Ziembra stated that he and Director Wells have had conversations with the four applicants for Category 2 facilities and they have each reported on: their progress in the application process, what information they need to determine additional qualifiers, whether they will be able to meet any deadlines set for qualifiers, and where they stand in the development process. Two applicants have identified sites and have indicated that they will be able to meet an aspirational target of September 1 for Category 2 license issuance. He stated that two applicants have not identified sites and he believes that it would be very difficult for them to complete the tasks necessary to meet a September 1 target.

Chairman Crosby stated that in order to meet the September 1 target these two applicants would have to schedule the referendum prior to passing the Phase 1 qualification. He stated that if the Commission wants to continue to pursue the earlier deadline it will have to determine whether applicants can request elections before finishing the Phase 1 qualification process and set a target date by which time the applicants would have to inform the Commission where their sites are located.

Commissioner McHugh recommended that, to avoid being governed by the readiness of the applicants, the Commission should consider setting a date by which an applicant must identify its site and a second date by which an applicant must submit its RFA-2 application. He stated that, for efficiency purposes, the Commission should allow applicants to set election dates prior to passing the Phase 1 qualification stage. Commissioner Cameron stated that she agrees that prior to being qualified the applicants may set a date for the referendum, but the date set should be after the determination of qualification. Commissioner Zuniga also agreed and recommended that the Commission reflect in the schedule the process that would occur if an applicant schedules an election and the Commission then finds the applicant unsuitable or suitable with conditions.

Preparation for Region C Discussion – Chairman Crosby stated that the Commission is holding its March 21 meeting in Region C to discuss whether or not to open Region C to commercial applications. He stated that several people have requested to speak at the meeting and he has invited any public official or representative of an interested party to let the Commission know via the Commission website if he or she would like to speak.

Regulation Update:

See transcript pages 20-65.

Review of Draft Regulations – Commissioner McHugh stated that the Commission is continuing to draft the Phase 2 regulations. The legal team met with the consultants to review the draft regulations, which Todd Grossman will distribute to the other Commissioners within the next two days. He stated that the draft regulations currently contain a placeholder for the evaluation criteria, the evaluation process, and the hearing process. He anticipates scheduling time in two weeks to go through the regulations and approve them, with a goal of meeting the March 29, 2013 deadline to send the regulations to the Local Government Advisory Committee. Ombudsman Ziemba stated that he spoke to representatives of the City of Springfield and they intend to hold the election for both applicants on the same date, but they did note that the statute may prevent an election on the same date if applicants do not request the referendum within an overlapping 30 day period. Chairman Crosby stated that enforcing a single day for the referendum would be within the Commission's control, and if one applicant was not ready then the other applicant would have to wait to hold its vote. After discussing many scenarios Chairman Crosby stated that the Commission agrees with the officials in Springfield that a host community should hold all of its host community agreement elections on the same day.

Motion made by Commissioner McHugh that the Commission require that elections for multiple host community agreements in the same city or town be held on the same day. Motion seconded by Commissioner Zuniga. The motion passed unanimously by a 5-0-0 vote.

Commissioner McHugh asked whether the Commission should similarly require that two host communities, with a single applicant located in both communities, hold their election on the same day. Commissioner Zuniga stated that imposing such a requirement would be impractical. The Commission agreed not to impose this requirement.

Chairman Crosby stated that the Commission discussed last week the extent to which an applicant must disclose requests for, or delivery of, anything of value to municipalities or public officials. He stated that the Commission posted a request for comments but received none. Commissioner McHugh agreed that the Commission should require disclosure, from November 21, 2011 until the date the application is filed, for any requests for, or delivery of, anything of value to an official of a host or surrounding community. Commissioner Zuniga recommended that the requirement only apply to contributions that are actually made, not also to requests for contributions. Commissioner Stebbins stated that he agreed with Commissioner Zuniga that asking for every request an applicant gets would be burdensome, but asking applicants to report when they have actually made an investment would be helpful information.

Based on the Commission's discussion, Commissioner McHugh outlined what the Commission will require an applicant to report between the period of November 21, 2011 and the date the application is filed: any political contributions; any requests for political contributions; anything of value donated to a person or entity in a host community or surrounding community; any request by a public official for a donation of a thing of value within a host or surrounding community; any requests by anybody for donation of a thing of value to a person or entity within a host or surrounding community. Chairman Crosby stated that if the Commission is in agreement in principle then the general counsel can draft specific language.

Racing Division:

See transcript pages 65-96.

Administrative Update – Director Durenberger stated that the Racing Division rules do not take effect in accordance with the traditional Massachusetts rulemaking process because there is an additional statutory requirement with which the old Racing Commission, and now the Gaming Commission, must comply as part of the rulemaking process. Rather than approving the regulations, filing with the Secretary of the Commonwealth, and having the Secretary publish the regulations in the Register, the Commission must file the proposed regulations with the Clerk of the Senate, which adds some time to the rulemaking process. The regulations will then go to the Joint Committee on Government Regulations for review. If approved, the rules will take effect within 60 days. She stated that this timeline would mean that the regulations would not become effective until some time after the new racing season began. She recommended adopting the rules on an emergency basis on March 14 when they are before the Commission. Adoption on an emergency basis may be done when necessary to protect the health or safety of the public, participants, or animals.

Legislative Review Update – Director Durenberger provided the Commission with a proposed Chapter 128D and a comment received from the New England Horsemen's Benevolent Protective Association. Commissioner McHugh asked for clarification on the concerns of the Horsemen's Association. Danielle Holmes stated that this concern relates to premiums paid. The premiums presently are deposited into the purse accounts, which essentially go back to the owners and horsemen. She stated that they could find no other jurisdiction that statutorily mandates disposition of these premiums. The Racing Division believes that the money coming into the purse accounts from gaming would be greater than amounts received from the current

premium structure. She stated that certain tracks have exceptions to the premiums so the Horsemen have proposed a flat premium rate with no exceptions. The Racing Division's proposal is to do away with the premium structure and rely entirely on gaming money to fund the purse accounts.

Director Durenberger stated that this issue is a significant bone of contention. In the current structure there are negotiated premiums and exemptions to the premiums, so depending on when a track is simulcasting it may or may not be paying the premiums. She stated that this new policy adds simplicity going forward. Chairman Crosby stated that he respects the work that the Racing Division has done and is inclined to go with Director Durenberger's recommendation, however, if he were debating this point he would have a hard time arguing for the intrinsic value of this simplification over the intrinsic value of putting more money in the purses. This change may create negative consequences for the racehorse industry in the state. Director Durenberger stated that there are other ways to put money into the purses, such as increasing percentages that go to the Racehorse Development Fund.

Commissioner McHugh stated that the Commission is simply making a recommendation to the Legislature. The legislature will hold a legislative proceeding and make a judgment on whatever the Commission recommends. Commissioner McHugh also recommended removing Section 20 of the proposed legislation because the proposed legislation needs to replace each reference to the provisions of Chapter 128A and 128C appearing in the general Laws with a new reference to the appropriate section of Chapter 128D rather than the broad catch-all provision now set out in proposed section 20.

Commissioner Zuniga made reference to Section 5b, the assessment for operations of the Commission. The language states that the Commission will not make assessments on a licensee that exceed \$750,000. He recommended that, because the Commission intends to have this statute in place for a number of years, the number should be something that is either a percentage of amounts wagered, or at the discretion of the Commission. Director Durenberger stated that hard numbers are littered throughout the statute and there could be two approaches: tie it into a percentage or index, or include language stating that the Commission will periodically set the fee as it deems appropriate.

Chairman Crosby stated that if he had to pick a solution he would leave the amount to the discretion of the Commission. Commissioner McHugh recommended using an inflation adjusted value. Steve O'Toole of Plainridge Racecourse stated that to use inflation in this particular case would be inflation downward because the handles have dwindled. Director Durenberger suggested using a percentage rather than a cap, but preferred not to rush the proposed language. Commissioner McHugh stated that if the Commission agrees in principle not to have a cap, then the Racing Division could draft language to achieve this goal.

Commissioner Zuniga made reference to c. 128D, §(6) which states that the Commission shall at all reasonable times have access to the records and books of any licensee. He recommended striking out the word "reasonable" to preserve the Commission's discretion. The Commission agreed that the word "reasonable" does not unduly limit the Commission's discretion.

A brief recess was taken.

Chairman Crosby reconvened the 56th public meeting. **Research Agenda:**

See transcript pages 96-97.

Chairman Crosby stated that the Commission has scheduled a conference call for 4:00 p.m. to receive more advice regarding the RFP responses to the Commission's research proposal.

Motion made to adjourn, motion seconded and carried unanimously.

List of Documents and Other Items Used at the Meeting

1. Massachusetts Gaming Commission March 12, 2013 Notice of Meeting and Agenda
2. March 6, 2013 Massachusetts Gaming Commission Memorandum Re: Recommendation to Prequalify Morgan, Brown & Joy as Labor and Employment Law Firm
3. March 12, 2013 Massachusetts Gaming Commission Memorandum Re: Correction to Rulemaking Process Timeline for Racing Division
4. March 5, 2013 Letter from New England Horsemen's Benevolent and Protective Association, Inc.
5. Proposed New Chapter 128D – Horse Racing Meetings and Simulcast Wagering
6. Report of the Massachusetts Gaming Commission to the Senate and House of Representatives Pursuant to Chapter 194, Section 104, of the Acts of 2011

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