

COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS GAMING COMMISSION
PUBLIC MEETING #87

CHAIRMAN

Stephen P. Crosby

COMMISSIONERS

James F. McHugh

Gayle Cameron

Bruce W. Stebbins

Enrique Zuniga

October 31, 2013

BOSTON CONVENTION AND EXHIBITION CENTER

415 Summer Street, Room 151B

Boston, Massachusetts 02210

P R O C E E D I N G S

CHAIRMAN CROSBY: I will call to order public meeting No. 87, Thursday, October 31, 2013 for the Massachusetts Gaming Commission at the Boston Convention Center. First issue is Item 2, the approval of minutes. Commissioner McHugh --

COMMISSIONER MCHUGH: The minutes, Mr. Chairman, are in the book. I circulated them yesterday, although they may have been in the book before that. But, in any event, if everybody's had a chance to read them, I would move that they be approved in the form contained in the book. And if not, if everybody hasn't had a chance to read them, if they would read them.

CHAIRMAN CROSBY: I would just compliment Mr. Shtatnov for the minutes. And it just -- it's again, it's really helping. People are trying to follow what

1 we're doing in terms of creating a record
2 that's unusable, this is great. You know,
3 it's -- we didn't write pages and pages and
4 pages of everything, but you draw
5 everybody's attention to the things that
6 are critical. And it's -- you know, it's
7 part of the transparency effort and it's a
8 lot of work. I appreciate it, but it's
9 good.

10 COMMISSIONER MCHUGH: And it's a
11 great -- it's a great key into the
12 substantive stuff that people are
13 interested in.

14 CHAIRMAN CROSBY: Right. Right.

15 COMMISSIONER MCHUGH: Issues.

16 COMMISSIONER CAMERON: Second the
17 approval of the minutes.

18 CHAIRMAN CROSBY: Okay. Any further
19 discussion? All in favor? Aye.

20 COMMISSIONER CAMERON: Aye.

21 COMMISSIONER MCHUGH: Aye.

22 COMMISSIONER ZUNIGA: Aye.

23 COMMISSIONER STEBBINS: Aye.

24 CHAIRMAN CROSBY: Pass is unanimous.

1 That was a motion made sort of vaguely.
2 The Board is sluggish this morning.

3 All right. Director Jill from
4 Workforce, Supplier and Diversity
5 Development Report.

6 MS. GRIFFIN: Good morning,
7 Chairman, Commissioners.

8 COMMISSIONER CAMERON: Good morning.

9 CHAIRMAN CROSBY: Good morning.

10 MS. GRIFFIN: Good morning. You may
11 recall that on October 7th I was --
12 appeared before you regarding the need to
13 adopt a definition for the phrase small
14 business that is found in the Act
15 establishing expanded gaming in the
16 Commonwealth. And I'm here today to
17 recommend this specific definition, but I'd
18 like to talk to you a little bit more about
19 the goal and describe the public comment
20 period that we went through.

21 So to remind you that the goal of
22 adopting a specific definition for small
23 business is to ensure that the policy
24 objectives of Chapter 23K to positively

1 impact small business is realized. And to
2 clarify for the benefit of our license --
3 licensee applicants, that the important --
4 the importance the legislation plays on
5 ensuring small business receive a positive
6 economic impact as a result of the Expanded
7 Gaming Act, but I also want to note it's
8 also important to note that the goal is not
9 to negatively impact larger businesses,
10 but, rather, to have applicants think about
11 policies and procedures that do not rule
12 out smaller businesses in Massachusetts.
13 85.5 percent of the businesses across the
14 state are less than 20 employees so -- yes.

15 So we -- we put two definitions out
16 for public comment. And in your packet
17 there is information about the two options.
18 One was 50 employees or less, and the other
19 was a larger threshold of a hundred
20 employees or less. And during the public
21 comment period, which we extended for, it
22 was a period of two weeks, we received 10
23 responses with relatively equal support for
24 the two proposals.

1 The recommendation definition of 50
2 employees or less received slightly higher
3 support with five responses. Most
4 respondents agreed that the federal small
5 business definition of up to 500 employees
6 inadequately captured the Massachusetts
7 economy. Two individuals did support
8 retaining that definition, however.

9 So we received public comments from
10 across the state and from small business
11 entities like the National Federation of
12 Independent Businesses, the Economic
13 Development Council of Western
14 Massachusetts, the Office of Small Business
15 and Entrepreneurship for the state, the
16 Minority Business Development Agency, the
17 Center for Women and Enterprise, The New
18 Market Business Association, and the
19 Massachusetts Supplier Diversity Office.
20 So we had -- oh, and the Chamber of
21 Commerce of Greater Springfield and Harpoon
22 Brewery, to name a few.

23 So I am before you recommending that
24 we adopt the definition of small business

1 shall be defined as 50 or fewer full-time
2 employees having its principal place of
3 business in Massachusetts, having been in
4 business at least one year, and having
5 gross revenues of 15 million or less based
6 on the three-year average. And so, this is
7 consistent with definitions used by the
8 Office of Supplier Diversity for their
9 small business purchasing program, and also
10 used for the small business health
11 insurance program that the state offers.

12 COMMISSIONER ZUNIGA: I have a
13 couple of questions.

14 CHAIRMAN CROSBY: Yeah, please.

15 COMMISSIONER ZUNIGA: What do we
16 mean by -- you know, the second bullet of
17 the definition of small business combined,
18 "employs a combined"?

19 MS. GRIFFIN: Okay. What we mean is
20 if the business has multiple locations
21 across the state or, you know, that those
22 locations combined, we combine the total of
23 their employees. And we're not looking
24 just, for example, at one location. We're

1 look at all of their locations. We're
2 interested in the general size of the
3 business.

4 COMMISSIONER ZUNIGA: So it's --
5 it's nothing to do with, say, part-time
6 full-time employees, for example?

7 MS. GRIFFIN: Actually, so we're
8 looking for the combined total of
9 employees, of full-time employees in all of
10 their locations, all entities, yes.

11 COMMISSIONER ZUNIGA: And what about
12 subcontractors? Sometimes some of these
13 contracts are, you know, laid out to a main
14 entity that itself goes out and hires
15 subcontractors. For example, it could be a
16 national entity whose developers are based
17 in Massachusetts, and that could be a good
18 mechanism to get credit for employee,
19 Massachusetts-based small businesses. Have
20 we thought about that? We wouldn't want to
21 confuse that subcontracting relationship
22 and combine the two --

23 MS. GRIFFIN: We would --

24 COMMISSIONER ZUNIGA: -- numbers?

1 MS. GRIFFIN: No. We would support
2 the subcontracting situation that you
3 mentioned. And we're not intending to
4 count those subcontractor employees as in
5 this definition. So we would encourage
6 subcontracting to smaller firms.

7 CHAIRMAN CROSBY: I think the point
8 about combined -- is it a little
9 misunder -- you might say combined parents,
10 all sites, or something like that, all
11 locations or something like that. Because
12 I agree with Commissioner Zuniga that it's
13 a little confusing, or a little unclear
14 what that means.

15 MS. GRIFFIN: Okay. So we will
16 revise it combined at all locations.

17 COMMISSIONER ZUNIGA: And although
18 not explicit here, if we could later on
19 adopt, or be mindful that the
20 subcontracting relationship is -- is an
21 important tool to -- to, you know, to get
22 contracts laid out, and also at the same
23 time get credit for employing small
24 business. I think that's an important

1 consideration for us.

2 MS. GRIFFIN: I agree with you,
3 Commissioner. I think the subcontracting
4 relationship fulfills many goals of the
5 legislation, including contracting with the
6 minority business --

7 COMMISSIONER ZUNIGA: Yes.

8 MS. GRIFFIN: -- and small business.
9 So we'll make sure we clarify that.

10 COMMISSIONER ZUNIGA: Fine.

11 MS. GRIFFIN: And we'll post this
12 definition on the Web site when it's final.

13 CHAIRMAN CROSBY: So when you're
14 saying -- so when you're saying credit, you
15 mean if a big company hires --

16 COMMISSIONER ZUNIGA: Subcontractors.

17 CHAIRMAN CROSBY: So if we award --
18 in other words, if a bidder awards a
19 contract to a contractor --

20 COMMISSIONER ZUNIGA: Yep.

21 CHAIRMAN CROSBY: -- and they have
22 subcontractors --

23 COMMISSIONER ZUNIGA: That's
24 correct.

1 CHAIRMAN CROSBY: -- that qualify as
2 small businesses, then that should somehow
3 be --

4 COMMISSIONER ZUNIGA: Optical.

5 CHAIRMAN CROSBY: Yeah, go ahead.

6 COMMISSIONER ZUNIGA: I'll give you
7 a very -- a great example that I think
8 we're going to talk about a little bit more
9 that we're going through ourselves.

10 Somebody could hire Microsoft to do
11 to a big implementation of a big contract,
12 let's say a big software implementation,
13 Microsoft sells the software and then by
14 necessity they need -- they need to have
15 developers customize it and implement it or
16 integrate it with other things so they,
17 themselves, use a lot of contractors.
18 Those contractors -- those subcontractors
19 could be, say, here, and there ought to be
20 credit for the fact that, that mechanism is
21 implemented with support for small business
22 locally, as an example.

23 CHAIRMAN CROSBY: Yeah. Okay.
24 Good. Agreed.

1 COMMISSIONER MCHUGH: What -- what
2 is the purpose of the one-year requirement?

3 MS. GRIFFIN: So we adopted this
4 definition to be consistent because it is
5 the same definition that the state uses for
6 the small business purchasing program. But
7 the intent, really, is, if a business is
8 has been in business for a year, it's
9 stable, it's, you know --

10 COMMISSIONER MCHUGH: Okay, I get
11 that. But on the other hand, this is a
12 brand-new industry, and it is conceivable,
13 is it not, that the promise of contracts,
14 the promise of work, the promise of jobs,
15 that this is supposed to stimulate might
16 cause people to form businesses to take
17 advantage of that, particularly small
18 businesses, and particularly in areas where
19 there are underemployed groups. I don't
20 know that any of that is so but --

21 MS. GRIFFIN: Well, that's actually
22 -- that's actually a really good point.
23 There are some areas, for example, in the
24 gaming area that, I don't know of many slot

1 repair companies, and so there -- there
2 could be an instance, you're right, where
3 an existing entity or two entities combined
4 and form a new business or -- that is
5 right.

6 COMMISSIONER ZUNIGA: Sorry. This
7 sounds very self-congratulatory, but this
8 is where the subcontracting relationship
9 could be helpful. If somebody is a
10 subcontractor with not -- not with one year
11 experience to someone else, they could, by
12 virtue of being a subcontractor, develop
13 after one-year experience and ultimately
14 later be contracted directly. Joint
15 ventures a year old or two are also
16 helpful.

17 COMMISSIONER MCHUGH: But just take
18 an example. If it's not, I think,
19 farfetched, some chef, who's working with
20 somebody else now, see this as an
21 opportunity to start their own restaurant.

22 COMMISSIONER ZUNIGA: Or catering
23 business.

24 COMMISSIONER MCHUGH: Or catering

1 business. And gets five or six, 10 people
2 together, wants to start this, go after a
3 casino gig, I just would hate to exclude
4 those --

5 CHAIRMAN CROSBY: They could -- all
6 you would do is exclude them from being
7 credited as a small business.

8 COMMISSIONER MCHUGH: That's right.
9 I mean, they can still do it.

10 CHAIRMAN CROSBY: They could still
11 do it and they can still get the business,
12 yeah.

13 COMMISSIONER MCHUGH: But they get
14 an edge for being a small business.

15 CHAIRMAN CROSBY: Right.

16 COMMISSIONER CAMERON: If we didn't
17 have the one-year, though, couldn't others,
18 who have a relationship with some of these
19 - excuse me - applicants or licensees,
20 quickly come to Massachusetts, put a
21 business together because they know they
22 don't have to be here for a year, and end
23 up getting credit as well?

24 They have a business in another

1 jurisdiction, they could come here, they
2 have a relationship with the -- so that --
3 I think the one-year could help us that we
4 know they're here. They didn't just come
5 in and start the business, and there would
6 be no ability to say, okay, you meet the --
7 you meet the -- you know, every other piece
8 of this but, you know, you're not here for
9 a year.

10 So I would worry. And I know that,
11 that does happen sometimes, people come in
12 from other jurisdictions because they know
13 there's opportunity. So I think it could
14 work both ways. Your point is well-taken
15 as well.

16 CHAIRMAN CROSBY: Yeah. I agree
17 with that. And I think this also, sort of,
18 precludes this, sort of, phony throwing
19 together of a venture. You know, let's
20 kind of pretend, you know. It's a Joe and
21 quick, take out papers. And it also
22 becomes less and less a problem as time
23 goes by. We're adopting regs, which are
24 going to last for the next hundred years,

1 you know. It's this first year, that's
2 much more of an issue than it would be over
3 time. I kind of lean towards leaving it in
4 as a, sort of, a stabilizing factor that I
5 don't feel terribly strongly about that.

6 COMMISSIONER STEBBINS: I --

7 CHAIRMAN CROSBY: Commissioner
8 Stebbins --

9 COMMISSIONER STEBBINS: Yeah. I --
10 first of all, I think Jill did a pretty
11 thorough, diligent job reaching out to a
12 lot of the partners that we're -- we're
13 pulling into this effort. You know, I
14 think the definition as we have it laid
15 out -- again, it's not to -- it's not being
16 designed to deter our applicants away from
17 doing business with larger companies in
18 Massachusetts, but I think it gives us
19 protection that our applicants can't say,
20 well, we -- you know, we did go out and
21 recruit several small businesses to work
22 with us and they all have four to 500
23 employees. I think people would scoff at
24 that notion that they were actually working

1 in a small businesses so --

2 This -- I think the definition as
3 she has it -- I appreciate the comments
4 about, you know, the contractors, but I
5 think the definition is -- as it's lined up
6 in this initial startup period, will really
7 give our applicants some pause and make
8 them think strategically about working with
9 Massachusetts companies that are already
10 here.

11 I think Commissioner Cameron's point
12 gets us away from people who see an
13 opportunity to come in from other states.
14 But I think it gives us a solid direction
15 for our applicants to take in terms of
16 saying we're going to make an -- an all-out
17 effort to work with small businesses and
18 get credit for those that have already been
19 here in Massachusetts. And, certainly, are
20 looking to benefit from the potential
21 business relationship.

22 CHAIRMAN CROSBY: So you're in favor
23 of leaving the one-year?

24 COMMISSIONER STEBBINS: Yeah.

1 CHAIRMAN CROSBY: Yeah.

2 MS. GRIFFIN: Yeah. I think the
3 intent of the legislation to positively
4 impact homegrown Massachusetts businesses
5 was part of the thinking of leaving in the
6 one-year. Having a principal place of
7 Massachusetts -- place of business in
8 Massachusetts, we're really looking to
9 benefit those who are here currently so --

10 CHAIRMAN CROSBY: Do we need a vote
11 on this?

12 MR. DAY: Well, we were -- as a
13 matter of fact, are having some discussions
14 as we move forward. But I think it would
15 be, at least from my own perspective would
16 be a step to adopt, at least initially, as
17 a definition, but we were thinking we would
18 probably need to move it into our
19 regulations as we move forward, because it
20 would define the term in the statute, and
21 then the commission could actually revisit
22 it so --

23 CHAIRMAN CROSBY: So -- okay. So
24 the answer was yes, we do?

1 MR. DAY: Yes.

2 CHAIRMAN CROSBY: Thank you. So are
3 we ready? Do you have more to say,
4 Commissioner Mr. McHugh?

5 COMMISSIONER MCHUGH: No, no. I
6 have no facts.

7 CHAIRMAN CROSBY: Can we refer to
8 the statute about this somehow or other?
9 So do we want to put this into the formal
10 -- Commissioner Stebbins, do you want to
11 put this into --

12 COMMISSIONER STEBBINS: Sure. I
13 move that the commission adopt the
14 definition for the small business as
15 outlined in the recommendation from our
16 director of Workforce and Diversity and
17 Development as stated.

18 CHAIRMAN CROSBY: Second?

19 COMMISSIONER MCHUGH: Second.

20 MR. DAY: Commissioners,
21 Commissioner Stebbins, I think the
22 Commission did agree that we add all
23 locations.

24 CHAIRMAN CROSBY: After combined?

1 MR. DAY: After combined.

2 COMMISSIONER STEBBINS: Yep.

3 CHAIRMAN CROSBY: Do you amend your
4 motion?

5 COMMISSIONER STEBBINS: I do.

6 CHAIRMAN CROSBY: So amended?

7 COMMISSIONER STEBBINS: I do.

8 COMMISSIONER ZUNIGA: And include,
9 not necessarily the commission, but the
10 consideration relative to subcontractor
11 relationships.

12 CHAIRMAN CROSBY: Further
13 discussion? All in favor of adopting as
14 written in accordance with that amendment,
15 aye?

16 COMMISSIONER CAMERON: Aye.

17 COMMISSIONER MCHUGH: Aye.

18 COMMISSIONER ZUNIGA: Aye.

19 COMMISSIONER STEBBINS: Aye.

20 CHAIRMAN CROSBY: Opposed? Ayes
21 have it unanimously. Okay.

22 MS. GRIFFIN: Okay. And I'm also
23 here before you today to give you a brief
24 update on the subject of diversity and

1 inclusion.

2 Commissioners and Chairman Crosby,
3 as you know, diversity and inclusion is a
4 priority for the commission. And the
5 importance of diversity and inclusion has
6 been emphasized through the legislation of
7 both on the workforce and vendor side of
8 things through the regulations. And, also,
9 diversity and inclusion has been woven
10 throughout the application questions in
11 various topics. You know, including
12 emphasizing and asking applicants for a
13 workforce development plan and a diversity
14 plan, the application asks applicants
15 regarding minority equity and leadership
16 within their organization.

17 So I wanted to also just give you an
18 update that we have invited a group to
19 appear at the next public meeting on
20 November 7th that will focus on supplier
21 diversity. And in your packet is a letter.
22 The signatories include the Greater New
23 England Minority Supplier Development
24 Council, the New England Area Conference

1 with the NAACP, the Mass. Minority of
2 Contractors Association, the Mass. Business
3 Development Association, the business
4 center in Boston, The Center for Women &
5 Enterprise and Urban League, and the
6 Hispanic American Chamber of Commerce.

7 So they -- they have been invited
8 and requested a chance to talk to the
9 Commission and applicants, and general
10 public about supplier diversity and their
11 interested in highlighting best practices.
12 So I wonder --

13 Oh, also, I'll highlight that we've
14 been working closely with the Mass.
15 community colleges and the career centers
16 and others regarding workforce development
17 and ensuring that the -- the workforce will
18 be diverse, we hope. And I have contacted
19 applicants about a November 15th supplier
20 diversity conference that takes place in
21 Fenway Park in Boston, and it's sponsored
22 by some of the signatories of this letter.
23 So I thought I'd give you a chance to ask
24 questions, if you have them.

1 COMMISSIONER ZUNIGA: Yeah. I have
2 a couple too. The point that
3 Commissioner McHugh was -- was making, in
4 my opinion, applies perhaps a little bit
5 more heightened to the notion of MBE
6 participation, especially when we're
7 thinking about being MBE- or WBE-certified.

8 So the certification is, perhaps, a
9 higher threshold. And I know there's --
10 you know, there's a lot of requirements and
11 forms that businesses have to subscribe by
12 and -- and prove in order to be certified.
13 So how do we ensure that there's -- there's
14 a pipeline of 10 minority businesses that
15 the can benefit from this?

16 MS. GRIFFIN: So we have clarified
17 to applicants, and applicants asked for
18 clarification regarding some of the
19 application questions. And we have
20 clarified to applicants that the businesses
21 need to be certified. Minority businesses
22 specifically through the Office of Supplier
23 Diversity, or the Greater New England
24 Minority Supplier Development Council.

1 But events like the upcoming event
2 at Fenway Park that call businesses
3 together and offer a chance for businesses
4 to actually be certified by those agencies,
5 and by sponsoring business fairs and so
6 forth. And that's something I think the
7 commission will, working with some of these
8 entities, be able to do in the near future.
9 But it's vitally important that businesses
10 who qualify actually get certified, because
11 it's incumbent, you know, on them to do so.

12 COMMISSIONER STEBBINS: I think it's
13 a important note, I mean, not only have
14 this -- have the signatories on this letter
15 given us a lot to think in terms of not
16 only to make sure the goals in the statute
17 are being met, but that all of them have
18 put themselves forward as resources for the
19 applicants to assist them in meeting their
20 MBE and WBE goals.

21 I would also -- you know, I think
22 it's important to note that the statute
23 also talked about outreach to veteran-owned
24 businesses, which is more of a - I don't

1 want to call it a recent phenomena - but
2 has gained a lot more interest and focus
3 since the war still proceeds and our men
4 and women from the armed services coming
5 back.

6 It's been tougher to identify,
7 define, those resources that are available
8 to assist with -- our applicants with
9 finding veteran-owned businesses, and the
10 recent government shut down didn't help
11 because it canceled a couple of calls that
12 you and I had. But let's make sure that we
13 keep our focus on that as well.

14 MS. GRIFFIN: Right. And I'll just
15 mention that our vendor advisory board
16 is -- includes many of the organizations
17 that I've already mentioned, in addition to
18 Veterans' Affairs and the SBA veteran
19 contact so --

20 I just want to actually correct a
21 date that I mentioned. The date of the 5th
22 annual business opportunity expo is
23 November 21st at Fenway Park and not 15th.
24 So let the record show that.

1 COMMISSIONER ZUNIGA: What do we --
2 what do we think relative to the goals that
3 are here referenced in the first bullet?
4 We could take a page from the public works
5 goals that are in other statutes. Are we
6 -- are we thinking of a specific number?

7 MS. GRIFFIN: So --

8 COMMISSIONER ZUNIGA: 10 percent? I
9 forget the exact numbers for public works
10 at the end of the participation, but is
11 that what we're thinking about?

12 MS. GRIFFIN: So the legislation
13 refers specifically to goals during
14 construction. And I don't have those
15 numbers, but it's an administrative
16 bulletin No. 14 and it's -- I think it's
17 16-point-something for a minority, and
18 there's also a goal for women. You know,
19 and yes, we have talked about that. They
20 have posted that bulletin on our Web site.
21 And, you know, we are in discussion
22 regarding regulations, but we haven't come
23 out with a specific definition or a goal
24 during operations.

1 COMMISSIONER ZUNIGA: Okay. Also,
2 the fourth bullet, implement an internal
3 infrastructure to ensure adequate
4 compliance and rigorous enforcement, what
5 -- what do we -- do the signatories mean by
6 that?

7 MS. GRIFFIN: So I think the
8 signatories are concerned with applicants
9 meeting their promises and, you know,
10 ensuring that --

11 COMMISSIONER ZUNIGA: I am too but
12 what -- but what do we mean by
13 infrastructure? We are too. We all are as
14 well. What do we mean by that
15 infrastructure?

16 MS. GRIFFIN: Oh. Identify a
17 individual to, you know, to check and
18 enforce that those goals are met. And I
19 think that's --

20 COMMISSIONER ZUNIGA: We're looking
21 at her.

22 MS. GRIFFIN: -- something we're
23 looking at. Right.

24 COMMISSIONER ZUNIGA: No. We're

1 look at her.

2 MS. GRIFFIN: But I think,
3 additionally, you know, we're talking about
4 construction compliance as well, and I
5 think the commission is considering that as
6 well.

7 COMMISSIONER MCHUGH: I am fully in
8 favor of this, and this is a critically
9 important part of our exercise. But
10 enforcement and penalties have -- has the
11 appearance of converting goals into quotas.
12 And I think we have to be very careful to
13 -- to keep that in mind.

14 It's one thing, I think, to penalize
15 the failure to engage in effort and another
16 thing to penalize failure to achieve a
17 result. And I think in today's, sort of,
18 uncertain environment we have to keep that
19 in mind as we vigorously push forward with
20 this effort, which is an important part.
21 It has been from the beginning of our
22 overall undertaking.

23 COMMISSIONER CAMERON: I know I had
24 a conversation with Director Acosta about

1 this very -- this very issue, and he
2 believes the licensing system will be able
3 to -- we can, you know, put the fields in
4 place that will be -- we'll be able to
5 track this information, and we will have
6 this information in real time. And I
7 believe that when people know you're
8 looking and your collecting the data, they
9 do pay attention more to meeting the goals.

10 So I think us having that
11 information in real time will assist us in
12 letting the licensees know that it's
13 important and we want them to take it
14 seriously.

15 MS. GRIFFIN: You know, and although
16 we haven't finalized and are in the
17 beginning stages of talking about the
18 regulations, reporting, regular reporting
19 of many of these issues is something that
20 the commission can require and, you know,
21 whether it's quarterly. For example, in
22 Pennsylvania they publish diversity reports
23 and put them up on their Web site on a
24 quarterly basis, so, you know, that's

1 something that the commission could
2 entertain.

3 And the other thing that -- we have
4 this vendor advisory group. Many of the
5 individuals on this group are experts in
6 the best practices in terms of supplier
7 diversity, and we could potentially use
8 this group to review those reports and take
9 a look at whether the best efforts are
10 really being used so --

11 CHAIRMAN CROSBY: Others? You know,
12 our moment of greatest leverage is right
13 now, obviously, relative to the Category
14 1s. Category 2 applications are in. They
15 have done what they have on this, and we
16 were -- are evaluating them as we speak.
17 But the Category 1 are still to come. So
18 I'm not exactly sure, you know, how much
19 you have linked up with, particularly,
20 Commissioner Stebbins, his economic
21 development group, you know, the evaluation
22 group so that we are looking to see who
23 has -- who will propose real meat like some
24 of these recommendations are.

1 Is that where -- where are you two
2 in making sure that the evaluation criteria
3 have real bite to it?

4 MS. GRIFFIN: Well, it's certainly
5 something that we're considering during the
6 application process for the Category 2.
7 But also, you know, I think by inviting
8 groups in like the one on November 7th will
9 highlight the importance. It is something
10 that we're discussing.

11 We have -- we're -- we have planned
12 on November 12th many of these -- actually,
13 I think all of these individuals have been
14 invited to review regulations to ensure
15 that recommended or draft licensing
16 regulations don't impact small businesses,
17 some negatively, unintendedly. We will
18 talk to the groups about this. But it is
19 something that we're considering also in
20 the application phase as well.

21 CHAIRMAN CROSBY: Yeah. We just --
22 we just need the applicants to know what
23 that -- their -- the more specific and the
24 more aggressive these are, the more credit

1 they're going to get in the evaluation.
2 And once they're in the applications, then
3 we can hold people accountable for what
4 they've committed to. So the less warm and
5 fuzzy and the more specific they can -- the
6 evaluation or the analysis can be the
7 better it is.

8 We also, in the overview section, in
9 my section, and I'm not sure whether it
10 appears in some of the economic develop
11 ones as well, we ask the applicants as you
12 mentioned, about whether there is -- what
13 is the diversity in the makeup of their
14 leadership structure and ownership
15 structure. And that goes a long way to
16 giving some reliability in the warm and
17 fuzzy part where they're saying we're going
18 to do this that and the other thing.
19 Because I think, and our own experience
20 demonstrates this, that if you have a
21 diverse leadership structure and ownership
22 structure, per force you're going to have
23 diversity within your employer base and
24 your supplier because your leadership team

1 understands the value of having multiple
2 and diverse perspective on this.

3 In our own experience, we have one
4 of our commissioners who was born in
5 another country and who is bilingual, and
6 who has helped us make smarter decisions.
7 Better, more informed decisions about a lot
8 of the things that we deal with. It
9 happens from time to time. And it's a
10 perspective we would not have, if we didn't
11 have Commissioner Zuniga part of this team.

12 So I just want to reinforce that and
13 make sure that you're reinforcing that,
14 because there's a link between leadership
15 and ownership, and performance on these
16 critical variables that we care about. So
17 I just wanted to emphasize that, make sure
18 that you're emphasizing that as well.

19 One other thing, which is
20 different -- a different topic, but I was
21 -- spoke to Cape Cod Community College
22 yesterday, and one of the groups that was
23 attending, my talk was the casino
24 management class, which is being offered

1 for the first time, which is great. You
2 know, it's exactly what this was all about,
3 was economic development and new job
4 generation.

5 But, also, the students in Cape Cod
6 Community College represent, in one -- one
7 aspect of the target audiences that we're
8 trying to reach, the harder to employ, the
9 underemployed, the under-resourced
10 workforce market, and they brought up the
11 issue of CORI, credit and drug testing.
12 And they are aware of those issues and how
13 that can become a barrier to accomplishing
14 the public policy objective that's set out
15 in targeting these kinds of workforce
16 groups.

17 So I know you're working on this.
18 But, again, this is something where we --
19 we really need to wrestle hard. I know,
20 you know, with Director Acosta you're
21 talking about this too, but how are we
22 going draw these lines? How are we going
23 to protect the integrity of our facilities
24 on the one hand but not -- not make it

1 impossible to accomplish other public
2 policy objectives of reaching important
3 demographics groups?

4 So I just wanted to throw that out
5 there too, to remind you and Director
6 Acosta, and everybody, that we need to make
7 some careful, thoughtful nuance decisions
8 about how we can manage those checks to
9 accomplish those two. Not necessarily
10 compatible objectives.

11 MS. GRIFFIN: So one of the things
12 that we're doing is, Director Acosta and --
13 and also Deputy Counsel Grossman and I have
14 hosted workforce stakeholders, members of
15 community college, the local unions and
16 nonprofits that work with the
17 underemployed, unemployed, talking to them
18 about the requirements of the legislation,
19 and also potential licensing regulations.
20 And so, we're making sure that we get
21 feedback early on. And we can certainly
22 discuss this later on, but I think that's
23 certainly the intent of the commission and
24 -- and the staff as well.

1 CHAIRMAN CROSBY: Okay. Other
2 issues, questions, any comments for
3 Director Griffin?

4 COMMISSIONER MCHUGH: I don't have
5 any other issue, but I -- I just did want
6 to reinforce the comment you made a minute
7 ago, Mr. Chairman, about the importance of
8 diversity and leadership.

9 There is an -- in the current issue
10 of Commonwealth Magazine there's a long
11 article about this that's worth reading,
12 worth everybody reading. And the nexus
13 between diverse leadership and a diverse
14 employee group and a diverse supplier group
15 is clear. And it's a critically important
16 -- something that I'm going to be looking
17 for, and I think all of us are going to be
18 looking for as we review the applications
19 we'll pay attention to that. We're
20 spending a lot of time right on the -- on
21 the workforce development on the supplier
22 development, the diversity of that. But
23 having a diverse leadership is probably the
24 best way to ensure that goals are pursued

1 relentlessly and with enthusiasm and
2 creativeness so --

3 CHAIRMAN CROSBY: Right.

4 MS. GRIFFIN: Well, I think the
5 commission -- the commission has made it
6 clear that diversity is important at all
7 levels from, you know, the rank of all the
8 employees all the way up to the top, so
9 thank you for clarifying that for our
10 applicants and for the public.

11 CHAIRMAN CROSBY: Okay. Anything
12 else? Thank you, Director.

13 MS. GRIFFIN: Thank you.

14 CHAIRMAN CROSBY: And now Item 4,
15 Administration, Executive Director Day.

16 MR. DAY: Mr. Chairman, members of
17 the commission, I just can't resist to have
18 to start off with a congratulations to the
19 Red Sox --

20 COMMISSIONER CAMERON: Thank you.

21 MR. DAY: -- and then, of course, a
22 Happy Halloween which -- to the commission,
23 as well.

24 CHAIRMAN CROSBY: Thank you.

1 MR. DAY: And you know what I'm
2 about to say, but worth -- I thought it was
3 worth mentioning because it puts it all in
4 perspective in short of one sentence, but
5 since our last meeting the commission has
6 held three public input meetings, the
7 responsible gaming forum, a gaming policy
8 advisory meeting, a suitability hearing and
9 special meeting of the commission. Besides
10 that, and General Counsel Blue stepped --
11 stepped in and held three additional
12 horseracing hearings in preparation for --
13 for consideration by the commission on
14 November 7th. So I think congratulations
15 are in order for maintaining that pace.

16 CHAIRMAN CROSBY: That was a very
17 busy two weeks. And the Word Series.

18 COMMISSIONER ZUNIGA: And we had to
19 pick -- to read a very large report.

20 MR. DAY: Yes.

21 COMMISSIONER ZUNIGA: A 900-page
22 report.

23 CHAIRMAN CROSBY: A 900-page report,
24 right. So we're congratulating ourselves.

1 COMMISSIONER STEBBINS: Are we
2 taking credit for the Red Sox win too?

3 COMMISSIONER MCHUGH: I think we
4 should.

5 CHAIRMAN CROSBY: Absolutely.

6 COMMISSIONER STEBBINS: It's all
7 about team work.

8 MR. DAY: And so -- and it's been
9 partially it's set up for our new --
10 November 7th meeting, which will be here,
11 of course, in the convention center. One
12 of the items that will be on that is the
13 racing licensing hearings.

14 Since our last meeting, though, I
15 want to update the commissioners just on a
16 few things. Since our last meeting our
17 chief financial and accounting officer,
18 Derek Lennon and our chief information
19 officer, John Glennon, have joined our
20 staff. They have been very busy, and I
21 think -- I think you've probably all had
22 some exposure to them moving around very
23 rapidly in their short time here.

24 Derek has hired a fiscal analyst to

1 join our staff to replace Bill Curtis.
2 Bill, as you know, was a key member of the
3 fiscal staff, and we were fortunate that he
4 selected to move into licensing as a
5 supervisor. I wish him the best in that --
6 that section. He's done great for the
7 commission so far.

8 In addition, Derek is developing key
9 financial policies and preparing to play a
10 role in our plan to present the quarterly
11 budget report November 7th, so we look
12 forward to that.

13 John, as well, has jumped in to
14 guide our acquisition of the document
15 management and licensing system. We'll
16 hear more from John here a little later.
17 While he's developing a schedule, though,
18 to visit several gaming labs, which is a
19 critical step to our process in developing
20 electronic gaming equipment standards and
21 approval process as we move toward our
22 discussion of that topic in early December.
23 That's our target, I guess I would say, at
24 this point.

1 I just want to note, too,
2 Trutti Banda, our human resources manager,
3 or starting at least in early October, who
4 is has completed -- completed training with
5 state HR, and among other daily paths,
6 she's also been working with directors and
7 has began -- actually drafted a proposed
8 staffing needs and position descriptions to
9 support that here as we move forward. I'll
10 be discussing that with her in more detail
11 as we get into next week. And, of course,
12 our investigations and enforcement bureau
13 is working to include our three remaining
14 casino license suitability investigations
15 by mid -- mid December.

16 I would like to take just a minute
17 to make some introductory comments about a
18 couple of the items on our agenda as we
19 move forward. Thanks to Director Acosta
20 and his team and licensing, and, of course,
21 Deputy Counsel Grossman, we have an initial
22 draft of proposed licensing regulations in
23 the commission packet. I will join David
24 and Todd for discussion for the first

1 review of these drafts with the commission.

2 Between now and the Commission
3 meeting on November 7th, we plan discussion
4 and additional revisions so we're ready to
5 request approval to move forward with the
6 formal process, if at all possible, on
7 November 7th. Of course, the commission's
8 aware we're marching forward to try to
9 accommodate the process requirements plus
10 our ability to have effective regulations
11 as we begin -- project to begin licensing
12 in at least around mid January.

13 In addition, we have discussion here
14 for you today, information regarding --
15 recommendation information regarding our
16 acquisition of the document content
17 management and licensing systems. Our
18 procurement teams have identified their
19 successful proposals and we have some
20 initial cost estimates. These systems are
21 the backbone of our operational
22 infrastructure, and to that degree we look
23 forward to the discussion. And, of course,
24 I'm requesting that the commission consider

1 delegating us the ability to negotiate the
2 final contract and work to get us
3 operational by mid January. I wanted to
4 briefly touch on those before we got
5 involved in our discussion here later.

6 With that sight, I'd like to refer
7 commissioners, if I may, unless there's any
8 questions on those areas, to tab 4B --

9 CHAIRMAN CROSBY: Let me just --
10 before you do, the last time we talked at
11 length about the master schedule and you
12 made some decisions about what you were
13 going to target as the day we have to be
14 ready for operations, and then were you
15 going to ripple that back through all the
16 other critical path categories.

17 Where are you in giving us a final,
18 interim critical path chart?

19 MR. DAY: I anticipate -- I actually
20 scheduled to meet with our consultant
21 tomorrow morning, so we'll continue the
22 process there. And as long as we're here,
23 but what I am leaning towards is working
24 toward a schedule that involves a deadline

1 of about six months after award.

2 CHAIRMAN CROSBY: Right. And by the
3 7th would you have a -- a new master
4 schedule that we could look at where the
5 impact of that on everything would have
6 been rippled back?

7 MR. DAY: I -- I should at least --
8 we should be able to at least -- I will
9 take an initial look at that, so I'll just
10 add that to the agenda.

11 CHAIRMAN CROSBY: I think that would
12 -- that would be really helpful. And is,
13 you know, that surfaces scary points when
14 you do that so -- and you were also adding
15 in a couple of other categories. You were
16 adding, I think, supplier development or
17 workforce development or the -- and also
18 the problem gambling?

19 MR. DAY: Correct. We've
20 actually -- Jill has met -- we've got
21 supplier development added to the chart
22 already. I'm in the process of looking
23 over what we have there.

24 CHAIRMAN CROSBY: Okay.

1 MR. DAY: And I know we've submitted
2 additional information as well on problem
3 gambling. Hopefully, we'll have at
4 least -- at least activity alliance started
5 for that.

6 CHAIRMAN CROSBY: Well that -- it
7 would great if we could see that the night
8 before the 7th and have a chance to talk
9 about that on the 7th.

10 MR. DAY: The goal, we'll have it in
11 the packet.

12 CHAIRMAN CROSBY: Right. All right.
13 Great. Thank you.

14 MR. DAY: Any other questions on
15 those general administration? What I would
16 like to do is refer you to the
17 recommendation in the packet. This is the
18 item that's reflected on the agenda
19 relative to general consulting contracts.
20 And I won't go through the entire
21 recommendation, but I think it's important
22 just to note some points covered in that
23 recommendation.

24 As you may recall, we amended

1 this -- our general consulting contract on
2 August 16, 2013. The idea was to reduce
3 the retainer, require a quarterly review of
4 services under the contract. Since then we
5 have been only able to review some
6 preliminary information, but based on what
7 we've seen and the apparent activity under
8 the consulting retainer, we've proposed to
9 further amend contract as follows:

10 Beginning November 1 we'll eliminate
11 the monthly retainer described in the
12 agreement. Commissioner Zuniga and I will
13 replace Eileen Grovsky as the commission
14 project manager. We will work under the
15 general consulting contract, which needs to
16 be reviewed internally by either
17 Commissioner Zuniga or myself prior to
18 initiation. The services will go,
19 basically, from the current retainer level
20 to those supported by a -- excuse me -- a
21 scope of services, and in particular, an
22 hourly rate as well. The idea under this
23 recommendation is that the hourly rate will
24 just be standardized around the hourly rate

1 used for investigation services at this
2 point. And the consultants have been
3 notified about the proposed change and --
4 or at least we've had the ability to. We
5 have had discussions about that with the
6 consultants.

7 The other point I would make is,
8 once the commissioners actually take action
9 on this, which, hopefully, will this
10 morning, I think it's important for us,
11 Commissioner Zuniga and I, and Derek to
12 kind of work together, and then circulate a
13 guide, really, to the staff about future
14 consultant commitments so that we make sure
15 that our budget doesn't go unnecessarily
16 rapid as we move forward and make sure that
17 we're aware what's -- what's being asked
18 and what the least estimates are for those
19 services as we move forward.

20 COMMISSIONER ZUNIGA: Can I make a
21 couple of general comments?

22 CHAIRMAN CROSBY: Yeah, sure,
23 anytime. Go ahead.

24 COMMISSIONER ZUNIGA: I think this

1 gives us flexibility. You know, I'm not
2 entirely sure that we will end up needing
3 both sets of consulting -- gaming
4 consulting contracts. But, nonetheless,
5 given the framework that you recommend
6 allows us to, you know, based on the scope
7 prior to engaging -- prior to a go-ahead,
8 you know, to analyze where or who or how
9 long it's going to take. So I think it's a
10 good recommendation and I'm glad that we're
11 moving forward in a more cost-effective
12 manner, now that we have more staff and
13 many other consultants as well, by the way.

14 COMMISSIONER MCHUGH: The guidelines
15 or the thing that you are planning to
16 circulate for staff with respect to how to
17 interface with the consultants would apply
18 to the commissioners as well, I take it?

19 MR. DAY: That would be my
20 recommendation and why there's the
21 combination of Commissioner Zuniga and
22 myself and Derek trying to come forward
23 with these. And I think it's important
24 that we really, to the best we can, we

1 touched all three areas, the general
2 contract, the investigative contract and
3 the evaluation team expenses for.

4 CHAIRMAN CROSBY: I'm not sure this
5 is what you were getting at, one of our --
6 one of the real benefits of having these
7 consultants on board, particularly early on
8 but it's continued throughout, has been our
9 ability to turn to them at a moment's
10 notice and get them to either just get on
11 the phone and give us advice about
12 something, or to do real quick turnaround
13 projects.

14 And as Commissioner Zuniga was
15 talking to me about this, it was clear that
16 this will not preclude that. And it's
17 important -- some of us -- I know,
18 particularly, Commissioner Cameron likes to
19 do outreach and this will not preclude
20 that. If we need to pick up the phone and
21 get some expertise, they can simply keep
22 track of how long they talk us and bill us
23 for that.

24 If there are real work products that

1 aren't, you know, immediate, time
2 sensitive, we really want them to do a
3 little project, it's perfectly appropriate
4 to give them a couple of lines scope, at
5 least and -- a few lines scope and get a
6 note -- get a bid back, or a proposal back,
7 or an estimate back what it's going to
8 cost, which is entirely appropriate. But
9 that's not incompatible with the kind of
10 use we've made of these folks going
11 forward.

12 COMMISSIONER MCHUGH: No. And I
13 wasn't suggesting otherwise.

14 CHAIRMAN CROSBY: No, I know. I was
15 reinforcing what you said, yeah.

16 COMMISSIONER MCHUGH: But I do think
17 it's important, as we move forward, to keep
18 track -- in a -- on an ongoing, real-time
19 basis of what we're -- of what we're asking
20 to do at all levels, at our level as well
21 as everybody else's.

22 CHAIRMAN CROSBY: Right. Right.

23 COMMISSIONER MCHUGH: Just so we
24 have control of this.

1 CHAIRMAN CROSBY: This is absolutely
2 the right way to go. It's just one in many
3 examples of us trying to, you know,
4 systematize, now that we're beginning --
5 beginning to mature a little bit, beginning
6 to flush out a little bit, beginning to get
7 full-staffed, we're professionalizing and
8 standardizing our operations, so that makes
9 all the sense in the world.

10 MR. DAY: Any other questions or
11 suggestion as we move forward?

12 COMMISSIONER ZUNIGA: No. Do we
13 need a vote to -- I mean, we have a
14 existing contract amendment that takes us
15 through, in terms of time, time extension.
16 I don't know that we need a vote for this.

17 MR. DAY: I think we need a vote
18 because we would actually go forward and
19 leave the timeline, but we would amend the
20 contract as we did before.

21 CHAIRMAN CROSBY: Okay. Do you want
22 to -- Commissioner Zuniga, do you know what
23 the vote would be?

24 COMMISSIONER ZUNIGA: Sure. I can

1 try to put it together based on this memo,
2 but I would recommend that this commission
3 authorize Director Day and myself to
4 execute amendment to the existing contracts
5 with our gaming consultants on an as-needed
6 basis based on a scope to be determined
7 prior to each of those amendments, and
8 continue an hourly rate in case of
9 miscellaneous tasks.

10 COMMISSIONER CAMERON: Second.

11 CHAIRMAN CROSBY: Any further
12 discussion?

13 COMMISSIONER MCHUGH: Has this been
14 taken up with the consultants; are they
15 aware that this is going to happen
16 effective tomorrow?

17 MR. DAY: Yes. It has been taken up
18 with the consultants.

19 COMMISSIONER MCHUGH: And are they
20 in agreement with this, or is that yet to
21 be worked out, the details yet to be worked
22 out?

23 MR. DAY: I would say yes they are.

24 COMMISSIONER MCHUGH: Okay.

1 CHAIRMAN CROSBY: You know, this is
2 the -- I think the transferring this, the
3 implementation of this and these kinds of
4 stuff to our new chief financial
5 administrative officer ASAP. And we want
6 Commissioner Zuniga out of it as soon as
7 possible, and we really want you out of it
8 as soon as possible. This is the kind of
9 thing that we can pretty soon delegate
10 down, I think, to our -- to our new CFAO.

11 MR. DAY: Mr. Chairman, as a matter
12 of fact, he was involved in this --

13 CHAIRMAN CROSBY: Right.

14 MR. DAY: -- recommendation.

15 CHAIRMAN CROSBY: Right. Good. Any
16 further discussion on the motion? All in
17 favor signify by saying aye.

18 COMMISSIONER CAMERON: Aye.

19 COMMISSIONER MCHUGH: Aye.

20 COMMISSIONER ZUNIGA: Aye.

21 COMMISSIONER STEBBINS: Aye.

22 CHAIRMAN CROSBY: Opposed? The ayes
23 have it unanimously.

24 MR. DAY: Thank you. I believe that

1 that's all I have for this morning. I
2 believe that brings us to the license
3 issue.

4 CHAIRMAN CROSBY: Item No. 5,
5 licensing division, Director Acosta.

6 MR. ACOSTA: Good morning,
7 Commissioners.

8 COMMISSIONER MCHUGH: Good morning.

9 COMMISSIONER STEBBINS: Good
10 morning.

11 CHAIRMAN CROSBY: Good morning.

12 COMMISSIONER CAMERON: Good morning.

13 MR. ACOSTA: Before you is a draft,
14 and I must emphasize the word draft, of the
15 licensing regulations. This is the
16 initial, and hopefully we can work from
17 this document going on forward.

18 This document was put together with
19 the assistance of the legal staff and
20 executive director. It is a document that
21 will have some significant implications in
22 licensing in the data management system and
23 how we're going to do business from this
24 point on forward. I cannot emphasize

1 enough that this is a draft. There will be
2 some changes, obviously, that will be made.
3 This is a startling point, and we're here
4 to present and hopefully start a discussion
5 as it relates to the licensing regulations.

6 MR. GROSSMAN: Good morning. We
7 thought it would be helpful to present this
8 to you here today so you could get a flavor
9 of the direction this has taken. We could
10 take any input, and the hope was, over the
11 course of the next week we could meet
12 individually. In fact, David and myself,
13 and Rick and Catherine hope to meet with
14 certain of our staff, including Jill and
15 folks like Bruce, where certainly workforce
16 and the conversation you had earlier is
17 very relevant to these issues here, and
18 ensure that those issues are part of this
19 plan as well.

20 And just to -- as David said, it's
21 important to note that to some degree some
22 of those issues are not in this present
23 draft, so we would just make note of that
24 fact, and we plan to incorporate some of

1 those issues. And a lot of those are
2 policy-based, though, so it's -- we'll turn
3 to the commission in our individual
4 conversations to ensure that the
5 regulations reflect the will of the
6 commission.

7 With that being said, we thought it
8 would be helpful today for you to just take
9 a look at the model we're working off of
10 here. This is based upon a number of
11 different other jurisdictions' models.
12 Both New Jersey and Ohio. There are some
13 elements of Delaware baked in here.
14 There's a lot of Mr. Acosta's expertise
15 baked in here, and some other points that
16 we brought in as a matter of Massachusetts
17 law looking at the statutes.

18 Primarily, the statutes we're
19 looking at are included in Chapter 23K.
20 Section 30 is the primary licensing
21 statute. It also makes reference to
22 Sections 12 and 16, which deal with
23 disqualification and unsuitability. All
24 of -- we've made an effort to, at this

1 stage, ensure that we kind of have
2 placeholders here for all of the important
3 subject matters.

4 So that -- that's what this draft
5 reflects. And we can certainly go through
6 it in any method you think would be
7 helpful, or we can just walk through it
8 section by section so you can get a sense
9 as to what we've done here.

10 And as Mr. Day mentioned, if
11 possible, I think the hope would be to be
12 able -- at your next meeting next week, to
13 be able to move this forward through the
14 process. And that is, have a draft that
15 we're satisfied with, though, understanding
16 that it will be subject to public comment
17 and further change as we move through the
18 process.

19 And the reason that's important is
20 that, given all of the statutory
21 requirements in the public hearing process,
22 in the public notification process, in the
23 filing process with the Secretary of
24 State's office, there are certain time

1 periods that we need to recognize. And in
2 order to have these regulations become
3 effective by mid January, we would need to
4 have them really approved and signed off
5 on, in their initial stage anyway, by next
6 week. And that would allow us to have them
7 in effect by January 17th. Those are our
8 preliminary calculations.

9 And as you'll recall from our past
10 promulgation of regulations, the Secretary
11 of State's office publishes the
12 Massachusetts Register every two weeks, so
13 we're working, basically, on two-week
14 blocks. Every two weeks we put it off, we
15 put it off another two weeks until they can
16 become effective.

17 So with that in mind, we'd be happy
18 to go through some of the regulations. We
19 can flag some of the policy considerations
20 we think the commission will have to
21 consider. Some of them you've already
22 discussed, but we thought it would be
23 helpful to have them here in written form
24 so you can see what it would actually look

1 like in regulation form. The first thing
2 that we've done --

3 COMMISSIONER ZUNIGA: Can I ask
4 something before that?

5 MR. GROSSMAN: Sure.

6 COMMISSIONER ZUNIGA: In the
7 timeline that you briefly summarized, are
8 we -- are we allowing for public comment,
9 not just what's required once they are
10 published in the central register, but
11 we've made a practice in the past of
12 putting out a lot of our drafts in our Web
13 site for public comments early on. Is
14 there any of that given some thought?

15 MR. GROSSMAN: There has been. And
16 I think our sense was that we would utilize
17 the same practice the commission has in the
18 past. And that is, though we can't
19 formally elicit public comment after
20 November 7th, if you were to vote, we would
21 post the regulations on the commission's
22 Web site, allow people to submit comments.
23 That would give people five weeks or so to
24 submit written comments leading up to the

1 public hearing, at which point people could
2 come in and comment as well. Whether there
3 will be time after the public hearing to
4 submit written comments, I don't think so,
5 given the schedule we've discussed.

6 We can talk about the schedule
7 further. We can come up with a written
8 proposal for you so you can see the time
9 frames, and we can adjust them, as I said,
10 on those two-week intervals, if we think it
11 would be helpful to allow more time for
12 public comment. But, ultimately, I think
13 they'll be a solid five weeks anyway for
14 public comment on the initial draft.

15 COMMISSIONER MCHUGH: That's what
16 we've done in the past, isn't it?

17 MR. GROSSMAN: That's right.

18 COMMISSIONER MCHUGH: We haven't --
19 we haven't left it open after the public
20 hearing for very long. Really, just the
21 amount of time it takes us to turn it
22 around, absorb the public comments that we
23 agree with into the regulations and get
24 them off to the Secretary of State. But

1 this process that you're talking about
2 is -- is will allow for plenty -- plenty of
3 public comment.

4 MR. DAY: I might -- I might add, as
5 Director Griffin stated, staff is still
6 reaching out to stakeholder groups to in
7 that process to continue to fine tune the
8 document.

9 COMMISSIONER MCHUGH: Right.

10 COMMISSIONER ZUNIGA: Thank you.
11 And what about the other sections that are
12 in this table of contents? We only have
13 134, the ones relative to licensing. Are
14 we anticipating -- we'll get into the
15 schedule, probably, as early as next week,
16 but are we anticipating a rolling basis or
17 next block of the other regulations?

18 MR. GROSSMAN: I think that's right,
19 and I would defer to Mr. Day on this point.
20 But I think the sense was we need to kind
21 of move forward on a priority basis to
22 ensure we're ready within the six-month
23 time frame after the issuance of license to
24 get the process up and running. I think

1 that the licensing regulations were
2 identified as one of the key areas, and
3 then, certainly some of the others will be
4 equally as key and we'll start moving
5 forward with those as well.

6 MR. DAY: I just might add, an
7 example of that thought process we'll be
8 able to discuss a little bit more as we --
9 we do the critical path discussion. But
10 with a six-months possibility of a
11 temporary facility, the standards, machine
12 standards in that process, that means we've
13 got to move that up. So that -- that will
14 be, likely, one of the next items that the
15 commission sees moving forward in the
16 formal process.

17 Internal controls as a result of
18 that process can probably move, but we want
19 to make sure we get those things where we
20 know that when the businesses are ready to
21 open that they can access the equipment
22 that they need to do business.

23 COMMISSIONER ZUNIGA: Thank you.

24 COMMISSIONER STEBBINS: You have --

1 again, not to -- to dwell on this point,
2 but the table of -- you have two sections
3 for gaming equipment?

4 MR. GROSSMAN: There is -- yes.
5 That could very well be, if we've done
6 that. Yeah, that was -- that was a
7 mistake.

8 This actually came together fairly
9 quickly so we're just trying to get
10 everything in place. And there's
11 definitely going to be typos and other
12 stuff in here that needs attention. Some
13 of the internal citations need to be
14 tweaked. The numberer has changed a couple
15 of times over the course of the past week.
16 So we certainly recognize that it needs
17 some editing.

18 But the table of contents you
19 reference was just kind of a -- a first
20 shot at trying to figure out how this will
21 all look. And as we draft a template to be
22 able to have numbers assigned to it so we
23 can start getting the citations together.
24 But, obviously, we will only have one

1 gaming equipment section.

2 COMMISSIONER STEBBINS: Sorry.

3 MR. GROSSMAN: No, no. That's okay.

4 So we started off --

5 CHAIRMAN CROSBY: You earned your
6 salary today, Commissioner.

7 COMMISSIONER STEBBINS: The late
8 hour I was up, I wanted make sure everybody
9 knows I'm still on top of my game.

10 MR. GROSSMAN: That was a good
11 catch. We'll make a note of that.

12 The first thing we've done here --
13 well, the first thing I guess I would point
14 out is that the approach that we took in
15 the drafting process was to capture all of
16 the types of licenses and regulations in --
17 under one section, as opposed to having a
18 section for key gaming employees, a section
19 for gaming employees, a section for gaming
20 service employees, a section for vendors.

21 Instead of doing that what we've
22 done, and this was an approach taken in New
23 Jersey, was that they basically put it all
24 under one umbrella and they have a number

1 of provisions that apply to each of those.
2 So -- and I'll explain a little more about
3 what I mean by that as we walk through.
4 But as you'll see in this section, 134, we
5 capture, basically, all of the areas in
6 which licenses or registrations will have
7 to be issued.

8 So the first five or so sections
9 identify all of those areas. They come in
10 the form of the three employee-type
11 licenses and registrations. And that is
12 key gaming employees, gaming -- gaming
13 employees and gaming service employees, and
14 then the vendors. There are two types of
15 vendors. There are gaming vendors and
16 nongaming vendors.

17 We'll -- I'll point out one other
18 area that we've called out that I think the
19 commission will have to take a look at, and
20 that is gaming vendor qualifiers. Those
21 are essentially individuals who have
22 influence and control over a gaming vendor.
23 That's not specifically identified in the
24 statute, but that's an area we thought that

1 we would need to somehow recognize. And
2 then, finally, the labor organizations.

3 CHAIRMAN CROSBY: One second. Are
4 the labels showing on the on the Web site,
5 the labels of who's speaking?

6 THE AUDIO TECHNICIAN: Sometimes,
7 yes.

8 CHAIRMAN CROSBY: Okay. I just -- I
9 haven't noticed them.

10 THE AUDIO TECHNICIAN: Okay. I've
11 put everyone's name up at least once.

12 CHAIRMAN CROSBY: Okay.

13 THE AUDIO TECHNICIAN: I can keep
14 doing it.

15 CHAIRMAN CROSBY: Keep them going
16 because people come back and forth, yes.

17 MR. GROSSMAN: So I'll just kind of
18 start it at the beginning. I'll make a few
19 points, certainly welcome any comments, or
20 if I can move quicker or slower, or however
21 you think would be most helpful here.

22 In the arena of gaming employee --
23 excuse me, in key games employee licenses,
24 we've broken that down into two subsets.

1 We have key qualifiers and then key -- what
2 do we call them?

3 MR. ACOSTA: Just keys.

4 MR. GROSSMAN: Regular keys. And
5 the distinction is one of title -- maybe,
6 David, you can just explain a little bit
7 about why that distinction was made.

8 MR. ACOSTA: In last meeting when we
9 were discussing policies issues with
10 respect to licensing, one of the concerns
11 that we had, or one of the policies that we
12 discussed was what -- what is it that the
13 commission wants to review in a public
14 meeting. And if I recall, Mr -- chairman
15 McHugh or Commissioner McHugh, I'm sorry.

16 COMMISSIONER MCHUGH: Careful.
17 Careful.

18 MR. ACOSTA: Chairman McHugh asked
19 about considering just certain levels of
20 keys, and I mention the practice in
21 New Jersey, where keys are actually
22 separated in two categories. Those are the
23 key qualifiers, the real principal,
24 top-level individuals who actually need a

1 license because they are part of a payroll
2 staff, and those that are keys necessary
3 because of the operation. They are the
4 supervisors of the security department at a
5 particular shift, the security -- the
6 credit supervisors, anybody who can issue
7 credit over \$5,000, that's a bar that's
8 been set.

9 So we divided it into those areas
10 modeled after New Jersey. The key
11 qualifiers will be the ones that will be
12 recommended for consideration before the
13 commission at a public meeting. The keys
14 will be done through the approval process
15 that's established in 30G. And those
16 individuals do not necessarily need to come
17 before the commission for consideration.

18 MR. GROSSMAN: So that's where --
19 that's the distinction between the two
20 types of keys. The other note I would just
21 make here that I would invite everyone to
22 take a closer look is -- are the positions
23 that we've identified as fitting under each
24 of these categories.

1 So we've made efforts -- and this
2 was an approach that the state of Ohio has
3 taken, and we've modified some of their
4 classifications. But under each of these
5 categories we've actually listed the
6 positions that would fit under there, as
7 opposed to just going with a broad
8 definition so people have to try to figure
9 out where they fit. We've actually listed
10 the positions there.

11 MR. ACOSTA: And I just want to
12 emphasize that these are responsibilities
13 that, if a person has the responsibility of
14 what is commonly known as an audit manager
15 it requires a key, that doesn't mean that
16 the title of that person has to be audit
17 manager. It's the responsibilities that
18 are generally associated with that title.

19 MR. GROSSMAN: The next page we
20 talked about gaming employee licensees,
21 that's our second category where again we
22 essentially identify folks who would
23 require such a license.

24 There are a few areas you'll observe

1 that we've highlighted in here. And those
2 are areas that were essentially put in as
3 placeholders, these -- based upon some
4 statutory references that we weren't able
5 to quite wrap our arms around how it -- we
6 should word it, how it would fit in. We
7 can talk a little bit more about that in
8 the coming week.

9 But some of the highlighted areas
10 here deal with language that's included
11 both in Section 30 and in the definitions
12 of what a gaming employee is versus a
13 gaming very service employee. So -- and
14 it's not necessarily a neat fit based upon
15 some experiences that David's had at
16 overseeing this process. We need to try to
17 tighten up the definition so we're not
18 either over inclusive or underinclusive,
19 and that we kind of hit it in a sweet spot
20 while at the same time capturing what the
21 statue talks about. So these are areas
22 that need a little bit more work and that's
23 the reason we've highlighted them here.

24 Gaming service employees, which is

1 on page five of this draft, is basically a
2 catchall. It's essentially everyone who is
3 not a key or a gaming employee and who
4 works at the gaming establishment as a
5 gaming service employee. So that's
6 essentially the statutory definition and
7 that's what we talk about here. That's why
8 there are no specific positions listed
9 there.

10 COMMISSIONER ZUNIGA: So this
11 includes everyone. And I was going to ask
12 whether we need to define the gaming
13 establishment or it really means
14 everything. But the definition as you just
15 described it would include food and
16 beverage, housekeeping, parking attendants,
17 et cetera?

18 MR. GROSSMAN: Yes.

19 MR. ACOSTA: Yes. That's correct.

20 COMMISSIONER ZUNIGA: And what we're
21 asking about is that we're generally saying
22 they will be registered with the
23 commission, all of those people. And would
24 they need to be -- what does the

1 registration mean? Help me understand.

2 MR. ACOSTA: Registering will still
3 require the individual to file an
4 application --

5 COMMISSIONER ZUNIGA: Yep.

6 MR. ACOSTA: -- to be credentialed,
7 to meet a -- a standard. The standard will
8 be identified as a standard that is lower
9 than a key or a gaming employee. We're
10 recommending that a registrant, upon
11 registration or within a short period of
12 time, like 48 hours, they can commence
13 employment. They will automatically be
14 registered. And if it is discovered after
15 registration that they have some
16 questionable background and may not meet
17 suitability, at that point investigation or
18 enforcement can initiate action to revoke a
19 registration.

20 But at a minimum, the individual
21 will need to file an application. We would
22 need to establish the person's
23 identification. A person will be issued a
24 credential. There is a nominal fee. We

1 were suggesting that registration be for a
2 period of five years, after which time they
3 would have to reregister.

4 COMMISSIONER ZUNIGA: So registrant
5 is going to go through some sort of
6 suitability examination?

7 MR. ACOSTA: I believe by statute,
8 we're required to do that.

9 CHAIRMAN CROSBY: And what would
10 that be?

11 COMMISSIONER ZUNIGA: And what would
12 that -- yeah. What is that?

13 MR. ACOSTA: What would be the
14 requirement?

15 COMMISSIONER ZUNIGA: Yep.

16 MR. ACOSTA: In other words, what's
17 the bar that they have to set?

18 COMMISSIONER ZUNIGA: Yep.

19 MR. ACOSTA: That is subject of
20 discussion. We met with a number of
21 groups. There's been discussion as to
22 whether or not they will be required to be
23 fingerprinted. There's been discussion of
24 not whether they need to have a credit

1 background check. Even if we do obtain
2 fingerprints and credit background, will
3 they be used to determine suitability?

4 There is some specific language in
5 the statute that we must follow. These
6 regulations, again, are reflective to that.
7 So to ignore that they are -- that they do
8 not have to be investigated or to meet
9 certain standards would be ignoring some of
10 the language that currently exists in the
11 statute.

12 And I know you're trying to say,
13 where is the bar? Is the bar a two or
14 three, you know, a number sequence versus a
15 five? If I was to give a number or
16 sequence, the bar for a key would be a 10,
17 the bar for a gaming employee would be a
18 five, but a registering may be a two.

19 COMMISSIONER ZUNIGA: What does 10,
20 five and two mean in this context, just a
21 relative comparison?

22 MR. ACOSTA: Just the relative --
23 just to give you some -- some appreciation
24 of the level of standards that we're

1 looking at for these individuals to make.

2 COMMISSIONER ZUNIGA: Well, if it
3 isn't obvious, you know, this -- this is
4 certainly what the Chairman was alluding --
5 not just -- Chairman Crosby, Chairman
6 McHugh, but the chairman, they were both --
7 they were both alluding to these other goal
8 of --

9 COMMISSIONER MCHUGH: That's not
10 cool.

11 MR. ACOSTA: I'm going to have a
12 hard time living that one down.

13 COMMISSIONER ZUNIGA: One day we
14 will all be chairmen and women.

15 CHAIRMAN CROSBY: Right.

16 COMMISSIONER ZUNIGA: Relative to
17 the other goals of the -- of the statute to
18 providing, you know, gainful employment to
19 people who need it the most, and if we set
20 that bar too high, whether it's a two
21 relative to a 10, you know, we may be too
22 strict. So I'm really interested -- we're
23 always interested in just flushing out just
24 what that registrant or requirements will

1 be.

2 MR. ACOSTA: As Todd has indicated,
3 I mean, these regulations, this is a first
4 go-around, this is a first draft. And we
5 are hoping that we can meet with you
6 individually and together as staff to try
7 to define this a little further.

8 We have met with -- with other
9 groups already, and they have expressed
10 that same concern to us. And we're trying
11 to draft regulations that at one hand it
12 comports with the -- what's in the statute,
13 and at the same time to be cognizant of
14 individuals who are intending to get
15 employment.

16 One of the things that I'm
17 recommending is that registering be allowed
18 to commence employment right away.
19 Whereas, gaming employees and keys must go
20 through an investigatory background check
21 before they're deemed appropriate for
22 licensure. There will be a process where
23 they can get a temporary license, but
24 unlike registering, which is done right

1 away, they can commence employment. That's
2 one -- one step that we are hoping would
3 address or alleviate some of the concerns
4 with respect to registrants.

5 COMMISSIONER ZUNIGA: Right. No. I
6 look forward to those discussions. And I,
7 myself, need to go back to those particular
8 sections of the statute. But when we first
9 talked about registrants I, perhaps,
10 wrongly had in my mind that people would
11 just register, not be the subject to a
12 background investigation. And I understand
13 the nuances but -- which is why I look
14 forward to these discussions.

15 CHAIRMAN CROSBY: So you do plan to
16 put into the regs what the standards are?
17 Is that going to be in the regs?

18 MR. GROSSMAN: There is a section
19 that talks about this that we'll get to in
20 a moment. It's difficult to capture the
21 10, five and two concept that David was
22 talking about. So where we'll probably
23 have to capture it is in what information
24 we require, what's going to be in the

1 application, what we're going to check.

2 For example, the statute talks about
3 disqualification for certain criminal
4 offenses, even for gaming service
5 employees. So, of course, the natural
6 extension of that is that we have to check
7 people's CORIs. So there are some minimum
8 things we have to do. Credit checks is
9 obviously a big issue that everyone talks
10 about. That's, you know, I think subject
11 to your discretion, whether that's
12 something you want to do or not.

13 One of the messages we've tried to
14 put out there, at least in some of our
15 discussions, is that, just because we've
16 checked something doesn't necessarily --
17 and because you may have something, doesn't
18 necessarily mean you'll be excluded from
19 being issued a license or a registration.
20 Sometime -- and you may decide that it will
21 be helpful to check things so we can gauge
22 where the needle is and when you're
23 disqualified or when you're not
24 disqualified. Or, we may decide that we

1 don't even want to check certain things for
2 certain people. And that's really going to
3 be the issue we have to take a look at
4 here.

5 So that's captured in -- in here in
6 a future -- in a later section that we'll
7 get to in a moment. But that -- that's
8 really the most difficult part of this
9 whole thing, is figuring out where the line
10 is for the different licensees and
11 registrants.

12 COMMISSIONER MCHUGH: But we have to
13 figure that out. We can't -- we can't just
14 have a we'll get all this information and
15 then we'll make up our minds kind of
16 approach to this, right. So, hard as it
17 is, we've got to come up with a
18 qualification requirements and -- and lay
19 them out.

20 CHAIRMAN CROSBY: Yeah. I totally
21 agree with that, but I wasn't sure what the
22 answer to the question was. Are you
23 planning on proposing regs that will set
24 out the standards; is that where we'll come

1 to grips with these issues?

2 MR. GROSSMAN: Well, we can. And
3 that seems to be --

4 CHAIRMAN CROSBY: Well, it has to be
5 somewhere; it's got to be somewhere.
6 Whether it's --

7 MR. GROSSMAN: Well, right now,
8 basically, the rule is there has to be
9 clear and convincing evidence that you meet
10 the requirements of the statute. That's
11 kind of a broad approach to this. We
12 haven't found, and I'm not aware of any
13 other jurisdictions that kind of make that
14 distinction in writing. So that's the --

15 COMMISSIONER MCHUGH: What
16 distinction?

17 MR. GROSSMAN: Well, being -- being
18 able to kind of capture this discussion in
19 a regulation.

20 COMMISSIONER MCHUGH: But it seems
21 to me that we have to -- if we're going to
22 have -- we have to have a regulation that
23 says something like, in order to be
24 registered as a key qualifier you have to

1 meet requirements A, B and C. In order to
2 be registered as a key, you have to meet
3 requirements C, D and A. And we can't have
4 a regulatory scheme that simply gathers in
5 all this information and then we'll decide
6 whether you qualify. The statutory piece
7 is a baseline, but that can be reflected in
8 the regulation. But what we want to add on
9 top of that, it seems to me, has to be in
10 the regulation as well.

11 MR. GROSSMAN: I think that's right.

12 COMMISSIONER MCHUGH: I think -- and
13 I think it has to be there, not only to let
14 the public know, and educators and
15 screeners and people in the workforce
16 development side, be able to look at
17 something and help guide people in their
18 efforts to move forward. But if a
19 registration is denied or a license is
20 denied and somebody takes an appeal, the
21 appellant, the body to whom it's appealed,
22 has to know what standards it's applying
23 and what -- whether the evidence meets the
24 standard or not. So, hard as it is, I

1 think we really need to do that.

2 CHAIRMAN CROSBY: How do other
3 jurisdictions decide who gets registered or
4 not?

5 COMMISSIONER CAMERON: I understand
6 that this is not that simple. It's hard to
7 put all of this in black and white because
8 there are -- with every case there are
9 extenuating circumstances that we need to
10 consider. And that's with employment in
11 every occupation, especially those that
12 require background checks.

13 So I hear what you're saying. It's
14 very hard to put in writing, everything
15 that we will consider. And -- but I agree
16 we do need basic standards -- people have
17 to know the disqualifiers, for example.
18 That's critical. But to put everything in
19 writing is basically impossible. You know,
20 I could give you example after example of
21 areas that you'd consider alarming, or
22 because of the number of events that may
23 have occurred in someone's background and
24 there may not be convictions, so it's hard

1 to quantify what is the standard.

2 COMMISSIONER MCHUGH: That, quite
3 frankly, is precisely the kind of thing
4 that -- that I'm concerned about. I think
5 whether and to what extent we consider an
6 arrest, for example, is a policy decision.
7 Whether -- whether, you know, an arrest for
8 shoplifting is going to be different from
9 an arrest for attempted murder, just to
10 take two possible examples.

11 If we are going to do that kind of
12 thing, then we ought to say something about
13 how we're going to deal with arrests. You
14 may not be able to set out what the
15 criteria are, i.e., you're arrested for
16 attempted murder you can't get a license,
17 shoplifting is okay. But we ought to have
18 some piece of the regulation that says
19 arrest will be considered in the following
20 fashion, or we're not going to consider
21 arrests without a conviction.

22 Otherwise, particularly when we're
23 trying to attract people from the
24 underemployed communities and create a

1 diverse group and encourage diversity,
2 allowing a lot of discretion or appearing
3 to allow a lot of discretion is going to be
4 a counterforce in the entire effort, it
5 seems to me.

6 MR. GROSSMAN: I agree. We are,
7 however, guided by what the statute
8 includes. So section --

9 COMMISSIONER MCHUGH: No question.

10 MR. GROSSMAN: -- Section 16 talks
11 about some of the disqualifiers. And some
12 of them are fairly open-ended. And one of
13 them talks about whether someone has
14 committed prior bad acts -- prior acts,
15 which have not be prosecuted, or in which
16 the applicant was not convicted, which
17 would seemingly go to the issue you just
18 talked about.

19 So I supposed the commission could
20 decide that we're not going to -- I don't
21 know. I mean, that's something we have to
22 talk about. I mean, the statute would seem
23 to suggest that we do have to look at
24 everything.

1 COMMISSIONER MCHUGH: I'm not -- I'm
2 not quarreling with that. We have to look
3 at that. But that's precisely the kind of
4 really open-ended statutory mandate that
5 regulations are designed to clarify. So
6 that, to the extent it can be clarified,
7 and you can't, I think, have a laundry list
8 of every act that's conceivable, that some
9 are okay, some are not okay. But at least
10 what criteria we're going to use when it
11 comes time to implement that broad,
12 open-ended statutory mandate. I think we
13 can do that, and I think we need to do
14 that, to confine our discretion in ways
15 that are intelligible even though the
16 regulation can be entirely precise.

17 COMMISSIONER STEBBINS: To pick up
18 on that, David, in your experience in
19 New Jersey and Ohio, have you ever seen a
20 situation where you work with a potential
21 applicant to see whether their internal
22 hiring policies mirror or follow a statute
23 so that there's no confusion between what a
24 regulatory body was requiring and what the

1 -- the operator is requiring?

2 MR. ACOSTA: In both states we would
3 meet with employers and set some parameters
4 as to, this would be a disqualifying
5 offense, this would not be a disqualifying
6 offense. This would be an offense that may
7 require review, maybe determined at a
8 hearing because the offense are not so
9 clear and there's some, you know, further
10 investigation that may need.

11 In both states, through the hearing
12 process, there was an establishment of past
13 practice of case law that was used in
14 future cases. How do we consider an arrest
15 that occurred 10 years ago, or prior to 10
16 years ago for this offense? But it was
17 dismissed because of some, you know,
18 procedural reason. Does that make a person
19 suitable?

20 Those were all kind of decisions
21 that were made through a hearing officer.
22 It was heard, and it was brought before the
23 commission. It was decided from that point
24 on forward, anybody with similar -- in a

1 similar situation would then meet this --
2 this task.

3 I mean, here we're new, we haven't
4 established that. Obviously, we can go
5 back to the other states and see how they
6 dealt with some of these -- some of these
7 cases and try to come up with something.
8 But, yes, once we established that we did
9 meet on a regular basis with the employers
10 to try to ensure that the workforce was
11 reflective of what's required in both
12 statute and regulation.

13 COMMISSIONER STEBBINS: To
14 Commissioner McHugh's point about, you
15 know, the focus of the statute being on the
16 -- encouraging of hiring unemployed and
17 underemployed individuals, obviously,
18 through the recent years and the economic
19 times, some people have leveraged their
20 financial resources or lack thereof.

21 So, I mean, when we sit down and
22 chat I'm going to be keeping an eye towards
23 individuals' credit situations. I mean,
24 we're trying to help some people pull some

1 people out of adverse financial conditions
2 but I would think those may have some
3 more --

4 MR. ACOSTA: In New Jersey --

5 COMMISSIONER STEBBINS: They might
6 be more tight than, maybe, some of the
7 other criminal issues or legal issues an
8 applicant might face.

9 MR. ACOSTA: My experience in
10 New Jersey and Ohio was that a credit score
11 was not a reason to prohibit a person from
12 being issued a registration or a gaming
13 license. It came more into question
14 respect to individuals applying for a key,
15 but for those two levels credit scores did
16 not.

17 However, in New Jersey for
18 registrants, and even gaming employees, if
19 an individual had an outstanding debt of
20 child -- child support where they had
21 arrearages above a certain limit, let's say
22 1,500 -- \$1,500 in arrearages, they would
23 get a registrant or a license with a
24 condition that they would affirmatively

1 address those debts.

2 CHAIRMAN CROSBY: David, excuse me.
3 This is -- I don't think we want to be
4 talking about the particulars at this
5 point. This is -- what you're talking
6 about now is exactly what we're talking
7 about. You know, what are the standards
8 that people can know upfront, in exactly
9 the kinds of things you're talking about.
10 And I think we've made it clear that we
11 have to do this as best we possibly can.
12 Understanding there's going to be some
13 discretion and there's going to be grey
14 areas.

15 But we -- you know -- and, Jill, you
16 need to be involved. You and your people
17 need to be right involved in this. There's
18 going to be no more critical place that
19 will determine the extent at which we can
20 meet this public policy objective than in
21 these regs. So you and your advisors need
22 to be right into this conversation.

23 So I think we've made a point, that
24 we need to define what are the standards as

1 best as we possibly can in our regs as part
2 of this exercise. We can debate where the
3 line should fall once you guys give us some
4 drafts, but we can't debate that we need to
5 try to do this.

6 MR. DAY: Well, I think -- I think
7 they have taken a personal shot at it at
8 134 and 10, page 27. So I think it
9 provides the structure to move forward from
10 that point as we continue our discussions
11 regarding the standards.

12 And I understand what the Chairman's
13 saying. I think the difficulty is, it
14 really, from the applications and from my
15 years from the licensing side too is,
16 you're really looking at the whole person,
17 particularly in some areas. So we have a
18 discussion about an arrest. So one arrest
19 as the licensing agent is sitting down to
20 take a look at it, they're going to apply
21 the standards of what's reflected in the
22 codes and what the goals are. They may --
23 you know, may have one arrest and two
24 arrests, maybe nothing else. But on the

1 other hand, you may have something where
2 you have a credit report that says the
3 individual has \$200,000 debt problem
4 reported to all the credit agencies,
5 possibly they'll have three, four or five
6 arrests, no convictions for theft, may have
7 some other judgments we've identified on
8 top of them. When you look at that whole
9 record then as you're applying these
10 standards, then that may very well pose an
11 increased risk to the operation of the
12 gaming establishment? So that's where I
13 think -- I do think, as we work on 134, 10
14 we may come forward --

15 CHAIRMAN CROSBY: Yeah. I see that.

16 MR. DAY: -- with some more -- some
17 more even -- even, I don't know if I call
18 them guidelines, but some broader terms.

19 So the key is, I think, from the
20 commission's aspects, that develop those
21 terms that serves to guide those kind of
22 decisions, but to also allow that
23 flexibility in being able to weigh that
24 entire -- entire person's history as

1 opposed to just one thing. Obviously,
2 there's disqualifiers but --

3 CHAIRMAN CROSBY: No. I agree with
4 that.

5 COMMISSIONER CAMERON: And I know
6 the hearings in New Jersey, a lot them, you
7 know, eight, 10 domestic violences, charges
8 get dropped in those cases, but you do want
9 to consider the amount, the severity?
10 Those are the kinds of hearings that I know
11 it's hard to -- to put that in black and
12 white.

13 MR. DAY: Correct. That's a
14 particular area that's very challenging in
15 each process.

16 CHAIRMAN CROSBY: Okay. I just -- I
17 think the first answer to the questions
18 we've been asking should have been 134, 10
19 is a significant step in this direction. I
20 mean, this is the right -- the right
21 direction. There is some serious content
22 at 134, 10. So, anyway, I think enough on
23 this topic.

24 MR. GROSSMAN: Okay. So we were on

1 page six.

2 CHAIRMAN CROSBY: Yeah. Tell
3 Janice, quick, go get some lunch.

4 MR. GROSSMAN: No. That is -- that
5 was really the meat of the conversation, as
6 I mentioned, I think. That is the
7 trickiest part to this whole thing, is
8 figuring out what the standard is because
9 everything else is fairly administrative
10 and mechanical and that will be the trick.

11 So in any event, we have the vendor
12 sections, and as with the employees'
13 sections, we've attempted to identify
14 which -- which people who performed certain
15 services would fit into which category. As
16 you recall, the statute talks about folks
17 who provide, perhaps, the nongaming
18 services, but who provide a certain amount
19 of business, or do a certain amount of
20 business with a gaming establishment
21 switching into the gaming categories. We
22 capture those folks here.

23 There has been -- it's been pointed
24 out that there may be a typo in the

1 statute, and that's where we've highlighted
2 the word we have there. The statute talks
3 about an entity that conducts over a
4 quarter of a million dollars of business
5 with a gaming licensee within a 12-month
6 period, or conducts over a \$100,000 of
7 business with the gaming licensee within,
8 it says a three-year period in the statute.
9 I thought --

10 CHAIRMAN CROSBY: Oh.

11 MR. GROSSMAN: -- perhaps it's
12 supposed to say month, so we have to talk
13 about that as well.

14 CHAIRMAN CROSBY: Well, are we
15 keeping a file of legislative fix things?
16 Remember way back consultants, in their
17 original strategic plan, had a bunch of
18 proposed legislative fixes and we -- we've
19 been reluctant to do anything about
20 legislative fixes, because the
21 legislature's reluctant to reopen this, but
22 there may be a time when we do want to file
23 legislation that does things like that, at
24 least. So we ought to keep -- be keeping a

1 tabular file somewhere. If the time comes,
2 we want to file legislation to clean up
3 things like this legislation we remember
4 what they are.

5 MR. GROSSMAN: Right. There's
6 actually one other area that I'll point out
7 in a moment but -- I'd like to draw your
8 attention to along those lines. But one of
9 the other things we captured in here is the
10 Labor Organization Registration. We hadn't
11 initially talked about that. But this, in
12 part, comes from the state of New Jersey.
13 It also captures what Chapter 23K talks
14 about. So you have a section on Labor
15 Organizations, and that's just the
16 registration piece.

17 COMMISSIONER ZUNIGA: Can I go back
18 to just briefly, nongaming vendors. Is
19 there a threshold for nongaming vendors; in
20 other words, \$10 makes -- of business makes
21 somebody a nongaming vendor?

22 MR. ACOSTA: Yes.

23 MR. GROSSMAN: Any one of those
24 businesses.

1 MR. ACOSTA: Any one of those
2 businesses.

3 COMMISSIONER ZUNIGA: Any one?

4 MR. ACOSTA: Yes. And there's just
5 a basic registration -- there will be just
6 a basic registration form with a copy of
7 the agreement, and we will then monitor the
8 level of business. And if they reach the
9 threshold as described above, then at that
10 point we would notify them that you've
11 reached this threshold and you would then
12 need to qualify as a gaming vendor.

13 MR. GROSSMAN: That would be great
14 if we could --

15 CHAIRMAN CROSBY: Excuse me. It's
16 the volume that takes you from being
17 nongaming to gaming, whether or not you're
18 doing -- you're actually working in the
19 gaming facility; is that right?

20 MR. GROSSMAN: That's right. If
21 you're working in the gaming facility it
22 requires --

23 COMMISSIONER ZUNIGA: I took it -- I
24 took it -- well, I actually took it

1 differently. I guess it may be both, but I
2 took the discipline to be nongaming vendor.
3 So if you're a garbage handler and you do a
4 million dollars worth of business, are you
5 a nongaming vendor or a gaming vendor?

6 MR. ACOSTA: It would be a gaming
7 vendor.

8 COMMISSIONER ZUNIGA: Oh.

9 CHAIRMAN CROSBY: F and G --

10 COMMISSIONER ZUNIGA: Yep.

11 CHAIRMAN CROSBY: On the next page,
12 F and G, these make you, pull you out of
13 this.

14 COMMISSIONER ZUNIGA: Regardless
15 of --

16 CHAIRMAN CROSBY: Regardless of
17 where you do business or what you're
18 business is. If you're a flower supplier
19 and you only supplied flowers to the hotel,
20 if you do \$250,000 a year you're a gaming
21 vendor, right? That would make sense to
22 me. That was a good way to do that, from
23 my standpoint.

24 COMMISSIONER ZUNIGA: That's not how

1 I understood it, but I'm glad I asked the
2 question.

3 CHAIRMAN CROSBY: Am I right; is
4 that what you're saying?

5 MR. GROSSMAN: That's my
6 understanding, yes.

7 CHAIRMAN CROSBY: Yeah, okay.

8 MR. GROSSMAN: I guess it would be
9 worthy of note as to what this does not
10 cover, and that is employees of the
11 vendors. And this has come up in the
12 context of construction companies most
13 specifically.

14 This does not -- with the exception
15 of, perhaps the qualifiers of a
16 construction company, to the extent they're
17 doing over a quarter million dollars in
18 business, which presumably many of them
19 would, the people on site building in the
20 trades and whatnot, would not be required
21 to be licensed or registered in any way, as
22 long as the vendor is. So I think that's
23 just an important point.

24 On page eight we have a section set

1 aside for junket enterprises and junket
2 representatives. There is, of course, a
3 statute that governs that. Junket
4 representatives are covered under the
5 gaming employee section. By statute
6 they're considered gaming employees.
7 Junket enterprise we classify as gaming
8 vendors, but there are specific
9 requirements for junkets as well that we've
10 intended to capture in this section.

11 MR. ACOSTA: I just want to make one
12 thing clear. The junket representative
13 could be an individual who's employed by
14 the casino licensee. It could also mean a
15 junket representative who's employed by the
16 Junket Enterprise. So when looking at
17 this, we need to consider is the junket
18 representative employed by the casino
19 licensee or by the junket enterprise. And
20 we'll try to work that in to make sure
21 that's clear.

22 MR. GROSSMAN: The next section is
23 the form section, and this takes up the
24 bulk of this draft here. And the intent

1 here is to be able to set out each
2 application that will ever be -- have to be
3 filed here for every position and
4 articulate what information will be
5 contained in it. And I think some are
6 coming back to the last discussion, about
7 the standards. Some of that will have to
8 be captured here, what will be required in
9 applications themselves. So there's
10 intended to be an application here for
11 every position. And this -- this we'll
12 have to look at carefully too.

13 Some of this is taken from our
14 existing regs. Of course, we have a
15 multistate personal history disclosure form
16 and a supplement, so those will be similar.
17 I don't know if we made any tweaks on that.
18 But then there'll, you know, be a form for
19 gaming service, employee registration,
20 vendor -- nongaming vendor registrations,
21 et cetera.

22 COMMISSIONER STEBBINS: Is there any
23 need to ask an applicant to give them --
24 give us the name, address and occupation,

1 and phone numbers of people who are happy
2 to talk about how wonderful they are?

3 MR. GROSSMAN: References?

4 COMMISSIONER STEBBINS: Yeah.

5 MR. GROSSMAN: I guess that's a
6 policy decision. There's no requirement.

7 CHAIRMAN CROSBY: I've been lobbying
8 to get rid of that references thing. You
9 know, it's absurd. We ask for three
10 references from the people who we're
11 investigating, every single qualifying
12 report I've -- background report I've read,
13 the three people say the guy is -- the
14 person is wonderful. You know, it's
15 ridiculous. It's a waste of time, you know.
16 So I -- it's too late to get them out of
17 the application form for the licensees, but
18 we can certainly get it out here. If we
19 want to get it references that are
20 independently found, that's a whole
21 different story. But the way that we've
22 done it in the past is utterly pointless.

23 COMMISSIONER MCHUGH: Well, it's not
24 always -- it's not -- nevermind.

1 MR. ACOSTA: I think references are
2 only being asked from the multijurisdiction
3 application. I don't believe that we
4 included that in the other applications.
5 And that application is one that's being
6 used by multiple jurisdictions.

7 CHAIRMAN CROSBY: Right.

8 MR. ACOSTA: So I don't know --

9 COMMISSIONER STEBBINS: Well, we do
10 ask for it in a Massachusetts supplemental
11 form. It's down there too.

12 MR. ACOSTA: We can take that one
13 out.

14 CHAIRMAN CROSBY: It's just a pet
15 peeve for me.

16 COMMISSIONER CAMERON: Is it? I've
17 actually learned a lot from references.

18 CHAIRMAN CROSBY: Really?

19 COMMISSIONER ZUNIGA: I have too. I
20 have too.

21 COMMISSIONER CAMERON: Yes. But I
22 ask appropriate questions.

23 CHAIRMAN CROSBY: Well, you're
24 calling --

1 COMMISSIONER CAMERON: No, I'm
2 kid -- I mean, seriously they'll tell you
3 about the operation and more about the
4 person.

5 CHAIRMAN CROSBY: Have you read the
6 section within our background reports that
7 is you thought was useful in the reference
8 checks?

9 COMMISSIONER CAMERON: Well, I'm
10 talking about personally conducting
11 reference checks, right?

12 CHAIRMAN CROSBY: Oh, that's a whole
13 different story.

14 COMMISSIONER CAMERON: You're just
15 talking about reading the letter?

16 CHAIRMAN CROSBY: I'm just talking
17 about the ones that are called for in our
18 standard forms that asks for three
19 references, and they're in the background
20 reports that we get.

21 COMMISSIONER CAMERON: Okay.

22 CHAIRMAN CROSBY: No. References
23 under the right circumstances is totally
24 valuable. But the way we do it in our

1 standard forms and the multijurisdictional
2 personal form, and I guess also in the
3 supplement, is to simply go talk to the
4 three people that the person gives us and
5 then write that up. And the ones I've read
6 are a waste of time. But it's no point in
7 beating this horse. I don't care whether
8 you put that in there or not. I just don't
9 read them, that's all.

10 MR. GROSSMAN: Along those lines,
11 though, certainly everything we ask for
12 should be asked for, for a reason and
13 should be meaningful. So I think it is,
14 certainly, worthwhile to go through
15 everything we say that's going to be in the
16 form to make sure there's a reason for it.

17 CHAIRMAN CROSBY: Yeah, I agree.

18 COMMISSIONER MCHUGH: I know a
19 person who can't come up with three.

20 COMMISSIONER ZUNIGA: Red flag.

21 MR. ACOSTA: You'd be surprised how
22 often we've discovered that.

23 COMMISSIONER CAMERON: Really?

24 MR. ACOSTA: How people will be

1 coming new into this country and I don't
2 have any friends or whatever. I always
3 used to ask them if they had a cell phone,
4 and if they did, do you have three contacts
5 in there, we'll put those three?

6 MR. GROSSMAN: All right.

7 Fast-forwarding, and we'll go over to page
8 25 real quick, talks about the submission
9 of the application, what has to be
10 included. We talked the fact that you have
11 to include a form from the section we just
12 talked about. You have to include a
13 photograph, fingerprinting, so we'll have
14 to go through and figure out which
15 categories we want to require
16 fingerprinting for. Identification
17 documentation, we have a section coming up
18 that goes through how you prove your
19 identity, the fee.

20 And then No. 6 here in -- on page
21 25, talks about a proof of an offer of
22 employment from a gaming licensee, pending
23 licensure or registration of the applicant,
24 that's one of the policy considerations

1 that came up. That was put in there as a
2 placeholder.

3 There are a number of states -- in
4 fact, I would even say, perhaps, a majority
5 of the states, though, I haven't done a
6 full survey of every state, but it seems
7 like everyone I look at seems to have a
8 provision like that in there. So this
9 would not be unique. It is certainly a way
10 to filter out some of the applications at
11 the beginning of the process anyway, and
12 perhaps we look to pull back on that as we
13 move forward. But that's -- that's
14 something that warrants further attention,
15 for sure.

16 COMMISSIONER CAMERON: Oh, oh.

17 COMMISSIONER MCHUGH: I thought
18 we -- I'm sorry.

19 COMMISSIONER CAMERON: You first.

20 COMMISSIONER MCHUGH: I thought we
21 already decided that?

22 MR. GROSSMAN: Well, my recollection
23 of the conversation was that we did kind of
24 get there, and then we took a right-hand

1 turn at the very end. And it wasn't
2 clear -- I'm not going to identify which
3 commissioner --

4 COMMISSIONER STEBBINS: But you're
5 looking at me.

6 COMMISSIONER ZUNIGA: You're looking
7 at the right-hand side.

8 CHAIRMAN CROSBY: Speaking of the
9 right --

10 COMMISSIONER STEBBINS: The
11 right-hand turn and --

12 MR. GROSSMAN: So, anyway, I think
13 it's still on table for discussion, and
14 there it is.

15 COMMISSIONER CAMERON: I had a
16 couple of questions with regard to this
17 topic. First thing, the fees, we talked
18 about the fees. And I know the last time
19 you had fees before us there -- there was a
20 laundry list of fees from every
21 jurisdiction, and they were significantly
22 different. How did we decide on some of
23 the things listed here as, or are those not
24 final decisions? I was looking at page --

1 MR. GROSSMAN: Is it 30?

2 COMMISSIONER ZUNIGA: Yeah, page 30.

3 COMMISSIONER CAMERON: Yes. Yes.

4 Where we had, what, \$1,000 application, we
5 had \$4,000 -- the amount of the fee shall
6 not exceed 4,000 with -- so there was a
7 couple fees in there, and I just wondered
8 where we -- where we came down on --

9 MR. ACOSTA: This was actually me
10 and my past experience.

11 COMMISSIONER CAMERON: Okay.

12 MR. ACOSTA: And, actually, since
13 this was drafted we've had a number of
14 conversations. For example, not to exceed
15 the 4,000 may be something that we're going
16 to come back and take out and just simply
17 say there's a \$1,000 deposit and you'll be
18 billed for anything that's additional.

19 Like I said last time, the state of
20 Ohio set a particular fee for a category
21 because they were, by statute, unable to
22 build. State of New Jersey was able to
23 identify, by statute, able to identify a
24 positive and then established that they

1 would be billed for any additional costs.

2 The other fees for service
3 registration and employees is based on my
4 experience, and also looking at the chart
5 and seeing what it costs in other states.
6 And, again, it's my recommendation and --

7 COMMISSIONER CAMERON: Okay.

8 MR. ACOSTA: -- obviously it's
9 subject to --

10 COMMISSIONER CAMERON: I assumed
11 these were your best practices, things that
12 you thought were appropriate, based on your
13 licensing experiences?

14 MR. ACOSTA: Correct.

15 COMMISSIONER CAMERON: The other
16 question I had was with regard to CJIS and
17 fingerprinting, we initially had problems
18 here because we didn't have our own portal.
19 Even though we are a law enforcement agency
20 we are relying on the state police and
21 their portal when they were -- there were
22 meetings with the FBI. I just don't know
23 if we resolved -- and you may not know
24 this. Have we resolved some of those

1 issues that we're easily able to access the
2 systems we need to get that information
3 back in a timely manner?

4 MR. ACOSTA: That's still in the
5 works.

6 COMMISSIONER CAMERON: Okay.

7 MR. ACOSTA: I have reached out to a
8 company from Ohio that provided those
9 services, the actual fingerprint machines
10 and the service, the software to connect
11 to --

12 COMMISSIONER CAMERON: The live
13 scan?

14 MR. ACOSTA: The live scan to
15 connect to the FBI and to the state level.
16 And I've asked to -- to get some costs --

17 COMMISSIONER CAMERON: Okay.

18 MR. ACOSTA: -- so that we can make
19 some recommendations and also meet with the
20 enforcement people and the state police
21 here to figure out how that works, but
22 that's something we're currently working
23 on.

24 COMMISSIONER CAMERON: Thank you.

1 MR. GROSSMAN: Page 26 is also an
2 important piece of the scheme here. And
3 this talks about how the licenses and
4 registrations will be issued, by whom they
5 will be issued, and what involvement the
6 commission wants to have. So this is a
7 section that needs some fine tuning without
8 a doubt. But this is where we will address
9 how the licenses physically get issued.

10 The statute talks about some of this
11 stuff, but it doesn't take us the whole way
12 there. So we've broken it down into the
13 keys and the separate licenses because we
14 may take a separate approach depending on
15 the type of license it is. And as David
16 mentioned, we've split up the types of keys
17 into two types in anticipation of the fact
18 that the commission may want to have more
19 of an active role in the formal issuance of
20 a license to key qualifiers versus regular
21 keys and, perhaps, even with gaming
22 employees. So we need to talk about what
23 level of involvement that we think is
24 appropriate for the commission versus the

1 issuance of the license by whether it's the
2 bureau or the division of licensing.

3 And as David mentioned, also, in
4 paragraph two here, on page 26, we -- we
5 added in the provision you mentioned
6 earlier, which is that a gaming service
7 employee registrant will be issued the
8 registration upon essentially completion of
9 the application, subject to revocation if
10 anything comes up in whatever level of
11 background check performed, which would
12 allow individuals in that category to get
13 to work immediately, as opposed to having
14 to wait from word from the commission.

15 So that's -- that a policy
16 consideration that's -- that's before you
17 as well. That's not a done deal. That's
18 not set up in the statute or anything along
19 those lines.

20 CHAIRMAN CROSBY: Using
21 Jennifer Durenberger's words, are these
22 proposed standards of review harmonized
23 with the racing division's standards of
24 review for the various kinds of issues that

1 come before them and hearing officers?

2 COMMISSIONER CAMERON: I can answer
3 that question. They are not.

4 CHAIRMAN CROSBY: All right.

5 COMMISSIONER CAMERON: And the
6 racing division will, I think, be looking
7 for this information to help them
8 strengthen what's done now.

9 CHAIRMAN CROSBY: Okay. So --

10 COMMISSIONER CAMERON: That's an
11 area that needs work with regard to racing.

12 CHAIRMAN CROSBY: Okay. So your
13 think is what we decide here would help
14 inform --

15 COMMISSIONER CAMERON: Yes.

16 CHAIRMAN CROSBY: Okay. Fine. I
17 thought it might be the other way around,
18 but okay, good.

19 MR. GROSSMAN: So over the course of
20 the next week I think we'll have to kind of
21 distill the direction the commission wants
22 to go with reference to the final issuance
23 of the license for the separate categories.

24 We will also have to take a look at

1 the hearing process and how that will work.
2 There are hearing regs in place in the
3 present version of the commission's
4 regulations that we should just take a look
5 at to make sure that that is the manner in
6 which you'd want to go.

7 We presently say that these hearings
8 have to be conducted in accordance with the
9 formal rules. We should just kind of
10 review that to see that's the way you want
11 to keep it, or whether we want to move into
12 the informal rules or what have you. But
13 that's why that's highlighted there in the
14 middle of the page 27.

15 Oh. And then, again, as we've
16 discussed earlier, 134.10 talks about the
17 affirmative standards. That's where we
18 have to build in any different standards or
19 for different types of licenses or what
20 have you.

21 I would just draw your attention to
22 a couple of things. It's in paragraph B.
23 I'm still on page 27 at the bottom. A
24 number of those items in the list come

1 right out of the statute. I think it's
2 Section 12. They're the same for the
3 gaming licensees. They also apply to the
4 other types of licensees. They're
5 referenced in Section 30. But we actually
6 added a few onto the list there.

7 One of the ways we can consider
8 looking at some of these prior bad acts, if
9 you will, is by inclusion of this -- No. 6,
10 discusses convictions for crimes of moral
11 turpitude. That's not anywhere in the
12 statute. That's something we added in
13 there for your consideration. Certainly,
14 we would have to be clear on what we mean
15 by a crime of moral turpitude. But that is
16 something we wanted to put on the table to
17 talk about, because otherwise the statute
18 only talks about convictions for felonies,
19 and then crimes related to things like
20 embezzlement, theft and perjury. So that
21 excludes, obviously everything else.

22 COMMISSIONER ZUNIGA: This
23 Section 134, 10, does it apply to key
24 employees, keys, and service employees; in

1 other words, everybody?

2 MR. GROSSMAN: As it's presently
3 written it does, but that's something we
4 need to talk about, is whether it should,
5 or whether there's some other approach we
6 should take for registering this person.

7 COMMISSIONER ZUNIGA: Yeah. Maybe
8 from an earlier point and a lot of
9 discussion we may need to tier that
10 differently, or at least break it down into
11 the three groups that we have to the extent
12 that they're different. I think there's
13 some --

14 MR. GROSSMAN: I think that's right.
15 This is where we would do it, right in this
16 section.

17 COMMISSIONER ZUNIGA: Yeah.

18 MR. GROSSMAN: We talk about, on the
19 next page, rehabilitation. I think this is
20 an important point as well. This gets into
21 one of the areas that has come up a number
22 of times in discussion, it's in Section 16
23 of Chapter 23K, where it talks about the
24 reasons why the commission has to deny a

1 license, talks about the rehabilitation --
2 demonstrated rehabilitation for certain
3 convictions. And the section of -- it's
4 Section 16B, talks about the 10-year
5 look-back period. It only applies to
6 gaming employees and gaming service
7 employees. It does not apply to key gaming
8 employees.

9 So the read from that would be a key
10 gaming employee, who has been convicted of
11 certain crimes, is not able demonstrate
12 rehabilitation for anything. Where a
13 gaming service employee, or a gaming
14 employee, could demonstrate rehabilitation.

15 One of the areas of inconsistency,
16 just to get back to one of the points you
17 made, Mr. Chairman, about possible
18 inconsistencies with the statute is that,
19 in Section 16 it says that the commission
20 shall deny a license for anyone who's been
21 convict of certain crimes, and it allows,
22 though, as we -- I just mentioned, for the
23 demonstration of rehabilitation for crimes
24 that occurred more than 10 years ago.

1 Whereas, in Section 30 it talks
2 about rehabilitation, but it doesn't put --
3 have a limitation on, A, who can petition
4 and, B, for what period of time. So we
5 need to take a close look at that to the
6 extent we wanted to allow for
7 rehabilitation for categories of crimes
8 that don't fit within the 10-year thing.
9 There may be a window to do that, but it
10 will all come down to the commission's read
11 of the statute. So I'll be able to point
12 that out to you a little more closely,
13 perhaps, on an individual level, but I just
14 wanted to point that out.

15 And then we have a section for
16 fingerprinting and identification. These
17 are all based upon the methods used in
18 other jurisdictions. We have a fee section
19 that we will tighten up a little bit just
20 to clarify what the fees and the renewal
21 fees are.

22 We have the terms of licenses on
23 page 32, again, that's something we need to
24 take a look at. There are only a handful

1 of areas where the statute sets out what
2 the term of the license or registration
3 shall be. When it comes to vendors I think
4 they say it has to be three years. But,
5 otherwise, I think the commission has a
6 great deal of discretion. I think in your
7 previous policy discussions you said that
8 you wanted all the licenses to be three
9 years and revisit the renewals at a later
10 time, so we just put in three years for
11 everything.

12 And then at the end it's -- starting
13 on page 34 we put in draft disciplinary and
14 hearing provisions just for you to take a
15 look at. As it presently stands, there may
16 be some conflict between this and what
17 exists in your present regulations, so we
18 obviously need to make sure that those are
19 aligned. But this is one way to go about
20 doing it. There are other models that
21 follow this approach as well.

22 And that basically sums up where we
23 were are with these draft regulations on
24 the licensing.

1 CHAIRMAN CROSBY: Great.

2 COMMISSIONER MCHUGH: Great start.

3 CHAIRMAN CROSBY: It's a good job.

4 Yeah. Good job.

5 COMMISSIONER CAMERON: Yeah.

6 CHAIRMAN CROSBY: Are you finished?

7 MR. GROSSMAN: Mm-hmm.

8 CHAIRMAN CROSBY: Director, we'll
9 take a little, quick break, come back in
10 five minutes or so.

11

12 (A recess was taken)

13

14 CHAIRMAN CROSBY: Okay. I think
15 we're ready to convene. And we're at
16 Item No. 6 -- or, no, sorry, we're still on
17 five. 5B, Director Day.

18 MR. DAY: Yes. And the next item
19 is, in particular, the system discussion
20 with Mr. Glennon.

21 MR. GLENNON: Thank you, Rick.
22 Thank you, Mr. Chairman, members of the
23 commission. I appear before you today to
24 talk about the procurement process and the

1 team recommendations for the selection of
2 two applications, which will be critical to
3 the business processes of the commission
4 going forward.

5 The commission identified the need
6 for an enterprise content management
7 system. And if I -- I will try not to use
8 acronyms, but that's what we do in
9 technology, is we use acronyms. Some of
10 you may know it as a document management
11 system, and also a licensing management
12 system. And suffice to say, the licensing
13 management system will be the automation of
14 the process around taking the regulations,
15 which you just discussed, and making them
16 part of a business process for taking any
17 applications, reviewing those applications
18 and approving them.

19 So following the Commonwealth's
20 process for procurement, two teams made of
21 up of members, both of the commission and
22 staff employees, conducted procurements for
23 a content management system, and for a
24 license management system. And that was

1 done over a number of months. The reports
2 of both of those procurement teams are in
3 your packet and -- as well as the
4 recommendation.

5 I would say, you know, this is week
6 two, day three for me, but I was invited
7 early on to participate, even before I came
8 on board, in some of the processes and the
9 deliberations, and the due diligence around
10 looking at these vendors, their solutions,
11 and how they met the needs that were
12 defined by the teams.

13 So, you know, I'm here today to
14 support the recommendations of both of
15 those teams. They were made independently.
16 And so, you know, that's -- that's
17 basically where we are. We have a budget,
18 which we are going to recommend that we
19 move forward with, and project plans which
20 we will also discuss. So that's what I'm
21 looking to cover today. Can we now move to
22 the next page, please?

23 So I put this chart in here just to
24 demonstrate. This is a Gartner chart. I

1 call it the magic quadrant. Up in the
2 upper corner, upper quadrant, the right
3 quadrant, are the leaders in the industry
4 in the area of document and content
5 management. And my point here is that the
6 vendor that we selected, as well as a
7 number of the vendors that we looked at are
8 in this quadrant. So I think you can have
9 confidence that the recommendation of the
10 team is for -- the vendor which we've
11 chosen is one that is a leader in the
12 industry and is well-established. The next
13 slide, please.

14 So we can -- let me take a step
15 back. So both procurements, while done
16 independently, came to a conclusion to
17 select a platform that was provided for --
18 by both vendors of a -- excuse me, a
19 platform for enterprise content management
20 and licensed management by the same vendor.
21 So we're lucky enough to have chosen EMC as
22 the foundational platform for the software
23 to put the content management on top.

24 In addition, the licensing

1 management system, the case management
2 system is also an EMC product. So, in
3 total, I think we have a solution that we
4 can build upon.

5 So this -- what you have before you
6 here is the financial recommendations for
7 the expenditure in order to undertake this
8 project, the two projects. And as you can
9 see, there's a licensing cost. There's a
10 cost for the infrastructure and the
11 hardware to put that software on, and
12 there's a cost for the engagement of a
13 consultant to help with the configuration
14 of the licensing management system only.

15 I would emphasize that we are
16 procuring a platform here, which is
17 configurable, and work needs to be done in
18 order to make it fit the needs of
19 commission. And so, we are partnering with
20 a vendor on the state contract to help us
21 do that configuration.

22 COMMISSIONER ZUNIGA: And the cost
23 of the configuration are included in this
24 chart, correct?

1 MR. GLENNON: So the cost of the
2 configuration of the initial functionality
3 of the license management system is what
4 you see at the bottom of the chart. That's
5 \$622,000 for that configuration work. The
6 document management -- the work around the
7 document management system --

8 COMMISSIONER ZUNIGA: You mean, 625
9 over the four-year period?

10 CHAIRMAN CROSBY: 625.

11 MR. GLENNON: So on the bottom of
12 chart it's 622, I believe.

13 COMMISSIONER ZUNIGA: Yes.

14 MR. GLENNON: 222,000 and 400,000.

15 COMMISSIONER ZUNIGA: So before the
16 end of the fiscal year we'll be looking at
17 622,000 plus 696,000?

18 MR. GLENNON: That is correct.
19 Although, the capital cost could be -- the
20 \$300,000 in hardware is an estimate. And
21 it could be a capital outlay, or we could
22 work it out to be part of the operating
23 cost. But the initial investment in total
24 that we're looking for, excluding the

1 additional consulting work that's going to
2 be necessary for the document management
3 system, because that's TBD, and the
4 integration, the complex integrations
5 necessary for the licensing system, that is
6 also TBD.

7 So if you take this piece by piece,
8 the first piece is the licenses. Okay. So
9 we're purchasing a number of licenses to be
10 able to use the application. That's the
11 \$400,000 along with maintenance and
12 training in the out years. That's the --
13 that's the seats to be able to use the
14 document management system and the
15 licensing management system. The costs are
16 combined. The second piece is the hardware
17 necessary to put the software on and run
18 it. Okay. So those are -- you can
19 consider that the software and the
20 infrastructure cost.

21 And then, consulting, we're still
22 figuring out some of the work that needs to
23 be done. For the document management
24 system, we know what functionality we need,

1 but in order to customize it or to
2 configure it, I should say, to meet the
3 needs of the commission, work is going to
4 need to be done.

5 We've targeted two areas that we
6 want to initially use the document
7 management system for. One is for the
8 ingestion of all e-mails so that there's a
9 -- a foyable archive and forensically
10 discoverable of all communications that the
11 agency has. Secondly, would be to replace
12 the current SharePoint system and use the
13 documents management system to take in the
14 applications as we move into the next
15 phase.

16 So those two pieces are TBD. Again,
17 we have a platform. We're trying to figure
18 out the amount of work necessary to do
19 that. We think those two things can be
20 done in relatively short order. More
21 complex use of a document management system
22 for things such as putting resumé in and
23 creating business processes around hiring,
24 those things are to be determined.

1 COMMISSIONER MCHUGH: How about just
2 regular storage retrieval and sharing of
3 documents among the commission and the
4 commission staff, is that to be TBD too?

5 MR. GLENNON: So I think it is TBD.
6 Currently, we use what many businesses use.
7 It's a share drive of -- you know, it's a
8 basic or common repository with no
9 security, no levels of delineation. So I
10 think the answer is yes, we will look to
11 structure the document management system.
12 And my analogy here would be, it's a filing
13 cabinet so we will structure it to contain
14 content in the various areas that we need
15 to share information, and also areas that
16 we don't.

17 For instance, human resources, they
18 would have an area where information
19 related to HR could be stored, you know,
20 without other people having access to it.
21 So I think we would transition from using a
22 shared content area, such as we do now, to
23 using the document management system.

24 COMMISSIONER MCHUGH: And would the

1 document management system be also the
2 repository for the individual's -- for each
3 individual's documents that were created?

4 MR. GLENNON: I think that's to be
5 determined. Right now, we currently use a
6 secure folder that's related to e-mail that
7 is assigned to each individual, and it's
8 only available to that individual because
9 of the way that it's set up. So I'm not
10 sure that we get to -- I think we will use
11 the content management system for
12 enterprise content. Maybe individual
13 people will continue to store on what we
14 call the shared drive.

15 COMMISSIONER MCHUGH: Okay. But
16 that's TBD. But for foyer purposes, search
17 ability of individual files, none-mail
18 files, is likely to be a helpful thing.
19 Any way, we can talk about that.

20 MR. GLENNON: I would look to the
21 general counsel to determine what documents
22 would need to be indexed and searchable,
23 and we would look to repose those in the
24 document management system as opposed to

1 the share drive.

2 COMMISSIONER MCHUGH: Right. One
3 other question, have we looked at having --
4 have we looked at having somebody else host
5 this -- these systems --

6 MR. GLENNON: We have.

7 COMMISSIONER MCHUGH: -- and the
8 cost of that?

9 MR. GLENNON: So we are in the
10 process. We have defined the hardware
11 requirements, and we are in the process of
12 talking with a number of companies that do
13 this type of service, and we also plan to
14 talk with Commonwealth, which has services
15 also in the colocation and hosting.

16 COMMISSIONER ZUNIGA: So is that --

17 COMMISSIONER MCHUGH: And if we --
18 if we got somebody else to host it, would
19 we replace the -- would the hardware cost
20 disappear and be replaced by a -- by a
21 servicing cost, a service cost?

22 MR. GLENNON: I don't want to get
23 too technical but -- so there's a number of
24 options for hosting. We can buy the

1 hardware, and what we would pay for would
2 be space in somebody's data center, and the
3 hardware would reside there. We would have
4 access to it. So we would own the hardware
5 and we would be paying an ongoing operating
6 cost for electricity and the space, and the
7 security and the access for
8 telecommunications so --

9 COMMISSIONER MCHUGH: Could --

10 MR. GLENNON: And there's also the
11 option of using a vendor to -- to fully
12 configure the software. They would do
13 everything. My initial review of the offer
14 of one of our vendor partners, that cost is
15 not a reasonable cost at this time.

16 MR. DAY: But that answer to the
17 question is yes. And John's put in an
18 estimated infrastructure cost, but the cost
19 whether it's for store it or to purchase it
20 outright, but that cost will still be there
21 in some form.

22 COMMISSIONER MCHUGH: In some --
23 yeah.

24 COMMISSIONER ZUNIGA: I believe that

1 purchasing a hundred licenses for content
2 management and 75 for licensing management
3 are too many at this point. You're also
4 projecting another, on year three to double
5 that. And I'm not sure that everybody that
6 needs access to these -- first of all, I
7 don't know that everybody in the commission
8 will need access to these systems. It may
9 be more for content management, but even so
10 I'm not going to -- I'd like to understand
11 why we need so many licenses, first of all,
12 let me put it that way.

13 MR. GLENNON: So I think for
14 document management, every person who is
15 going to use the system is going to require
16 a seat on a user basis. And so that's the
17 way we did the matrix that you see there,
18 in terms off allocating the licenses.

19 I can tell you in discussions over
20 the last week with EMC, the cost of
21 spreading out the procurement of the
22 licenses of over a period of years is
23 significantly more than buying a number of
24 licenses we think we're going to use over

1 the ensuing four years, to the tune of over
2 \$200,000.

3 So I think we've looked to moderate
4 the cost, Commissioner, but I think what
5 I'm saying is, if we buy less now it's not
6 going to save us money in the long run in
7 terms of managing it. If we think we're
8 going to use a hundred licenses in the out
9 years, it's smart to make that decision for
10 the next couple of years or three years.

11 COMMISSIONER ZUNIGA: I'm -- that
12 may be the case, but I'm not even convinced
13 that we need to have a hundred licenses.
14 Whether it's year one, or year one, two,
15 three, or four.

16 MR. GLENNON: Okay.

17 COMMISSIONER ZUNIGA: That's what I
18 really would like to -- to test. That's
19 also -- that's certainly true for
20 licensing. I don't know. I'd really like
21 to understand just how many people will
22 have access to the licensing system. It
23 occurs to me that many of us,
24 commissioners, other people in

1 communications, et cetera, by design will
2 not have access to that system. So --

3 MR. GLENNON: I think --

4 COMMISSIONER ZUNIGA: -- we may get,
5 hopefully, reports and appeals and things
6 like that, but it occurs to me that 75
7 licenses to be doubled on year three may be
8 too many.

9 MR. GLENNON: So I think we're still
10 working out the finalization of the
11 contract. It's prudent, I think, to go
12 back to David and to work with Rick to look
13 at the -- the license counts. I can tell
14 you that as we reduce the number we
15 purchase, the cost will go up. That's just
16 the model of the way the vendor is. I'm
17 not saying that we shouldn't -- I think
18 what we tried to do was, the chart below,
19 the 175 shows the -- the allocation over
20 the four years of the licenses what we
21 thought we were going to use. But I'm
22 perfectly willing to go back and look at
23 utilization again and try to reduce the
24 numbers.

1 COMMISSIONER ZUNIGA: Yeah. No. I
2 -- I don't want to belabor a point. But
3 the cost per license might go up, but the
4 overall cost, I hope, does not go up by
5 reducing the number of licenses. I think
6 the overall cost should go down. It's just
7 like, you know, quick marketeers would like
8 to have us believe, the more you buy, the
9 more you save, I've never taken that to be
10 the case.

11 MR. GLENNON: I'm agreeing with you,
12 and I think we'll take another pass at
13 trying to estimate the utilization and get
14 the vendor to provide us pricing based on
15 that.

16 CHAIRMAN CROSBY: It's pretty
17 straightforward, just to see what's behind
18 these 100 and 75 numbers and to see if that
19 seems to make sense or not. Pretty easy to
20 figure that out.

21 COMMISSIONER ZUNIGA: We don't have
22 a hundred people in the whole commission at
23 this point, so I don't know why we're
24 buying a hundred licenses on year one.

1 CHAIRMAN CROSBY: Okay. So we'll
2 check it out.

3 COMMISSIONER ZUNIGA: Which is --
4 what's getting me to the larger point,
5 which I would like to bring up. So we're
6 looking at a one million -- \$1.3 million in
7 this fiscal year, plus additional costs to
8 be determined; is that correct, for e-mail
9 and Category 1 applications, document
10 management?

11 MR. DAY: That's what my math has as
12 well. And -- and I think that's important.
13 But at this point it's a 1.3 estimate --
14 it's an estimate.

15 COMMISSIONER ZUNIGA: Yeah but --

16 MR. DAY: And there would be -- if
17 we continued to move forward with the
18 document management system, there would be
19 an additional configuration cost.

20 COMMISSIONER ZUNIGA: Right. All
21 right. The budget that we have from last
22 few months had us, I assumed a lot less --
23 number a lot smaller for that figure. Just
24 wanted to kind of bring you up to date on

1 that on that matter.

2 CHAIRMAN CROSBY: Well, and we are
3 going to take a look next week at the
4 overall situation so -- the overall cash
5 situation in the budget before next week.

6 COMMISSIONER MCHUGH: Well, that's
7 what I was going to say. The last -- last
8 budget we looked at was for the year, and
9 now we've made a series of assumptions.
10 And even with those assumptions there are
11 some issues down the road so -- and if this
12 is higher, as it strikes me it is --

13 COMMISSIONER ZUNIGA: It is higher.

14 COMMISSIONER MCHUGH: Substantially
15 higher.

16 MR. DAY: And it's both systems,
17 though.

18 COMMISSIONER MCHUGH: No, no. I
19 understand that. I'm not -- I'm not being
20 critical of this in isolation. This is --
21 it is what it is and we've got a good
22 vendor, and understood we've got a vendor
23 that can do both, but the dollar piece
24 still remains.

1 COMMISSIONER ZUNIGA: Yeah. You
2 know, the fee that I assumed was 750,000
3 for this fiscal year for both systems. And
4 to some degree, we've already spent a
5 little bit when we wrote the requirements.
6 So we're looking -- we're looking at a --
7 at a good enough delta, that we need to
8 consider whether purchasing a hundred
9 licenses up front may be prudent with our
10 cash flow.

11 MR. DAY: I guess this is one thing
12 where my perspective I'm -- I'm
13 recommending, and hopefully the commission
14 will delegate us authority to proceed and
15 negotiate, because I think what the
16 commission would want and I know what we
17 do, is whatever breakdown gives us the best
18 cost in the product itself. And I think
19 there is a question with the licenses,
20 exactly how much money we're going to save
21 or lose and how fast we move forward, but I
22 do think there's -- there's room to move,
23 but I think it's ultimately in that final
24 contract negotiation with the providers.

1 COMMISSIONER ZUNIGA: And, you know,
2 my experience with some of these --
3 perhaps, what's not a very good experience,
4 but some of these costs tend to escalate
5 from additional estimates because there's
6 additional configuration that we didn't
7 anticipate, additional integration. You
8 know, the more users we have, the more user
9 requirements we will likely get.

10 So I would be a lot more in favor of
11 stipulating and thinking about a
12 contingency, say, with less licenses. We
13 might be -- we may end up in the same
14 overall dollar amount, but understanding
15 that some of these costs could escalate by
16 their very nature, some of them are even
17 not determined at this point. But I -- my
18 intention is to have a status -- budget
19 status report by next week, along with the
20 help of our CFO.

21 COMMISSIONER MCHUGH: So do you need
22 some authorization today?

23 MR. GLENNON: So we have already --

24 MR. DAY: Yeah. The answer to the

1 question is yes. And, again, I think to
2 keep this project moving forward and trying
3 to keep it on a timeline at all, we need to
4 begin final discussions with these
5 contractors, and continue to allow them to
6 help us here in the meantime so we can keep
7 moving forward without too much delay.
8 We're already off a few days as we move
9 forward.

10 CHAIRMAN CROSBY: So what are you
11 looking for specifically, Rick?

12 MR. DAY: I'm looking for a approval
13 of the acceptance of the providers. And
14 then, hopefully, delegated authority from
15 the commission to move forward with
16 negotiations on a final contract with --
17 with the provider.

18 CHAIRMAN CROSBY: Okay. Well, my
19 take of this conversation is that we're
20 completely comfortable with the decision on
21 the provider, and we're completely
22 comfortable with going ahead and
23 negotiating with them.

24 There is at least one outstanding

1 question about some of the suppositions in
2 here, particularly having to do with the
3 licenses. And I think before that decision
4 gets done we'd like to see the backup. You
5 know, what's the thought process behind the
6 number of licenses that we're paying for,
7 cost and number? And that's something you
8 could put together pretty quickly. And the
9 commission would like to be able to make
10 sure that we're comfortable with the
11 assumptions behind that.

12 But beyond that one particular
13 thing, I think we're perfectly ready to
14 authorize you to get moving as quickly as
15 possible. That might sound like a motion.
16 Did that sound right?

17 COMMISSIONER MCHUGH: Yes.

18 COMMISSIONER CAMERON: It did, yes.

19 COMMISSIONER ZUNIGA: Correct.

20 CHAIRMAN CROSBY: But I think the
21 license thing is something -- there's some
22 assumption behind this, we can see that
23 quickly. But we can doublecheck it, see if
24 it makes sense, work it out, and then,

1 other than that, you guys are good to go.
2 Do we need a motion for that effect?

3 MR. DAY: I think we need a motion
4 from the commission, yes.

5 CHAIRMAN CROSBY: Okay.
6 Commissioner Zuniga, do you want to --

7 COMMISSIONER ZUNIGA: Sure. So in
8 that case, I'll make a motion that this
9 commission authorize Director Day and
10 Director Glennon to accept the proposal
11 submitted by EMC for delivery of their
12 electronic content management and licensing
13 management systems, and begin negotiations
14 towards executing a contract with some of
15 the feedback that we have given them
16 already.

17 MR. GLENNON: I want to note that
18 EMC's implementation partner on licensing
19 management system is NTT Data. For the
20 record, they will be doing the system
21 integration and configuration.

22 COMMISSIONER ZUNIGA: Thank you.

23 CHAIRMAN CROSBY: EMC and its
24 partners, then, in the motion. And in --

1 and then, are you -- are we authorizing
2 John and Rick to not only to enter into
3 negotiations, but conclude negotiations
4 subject to the one issue on the table about
5 anything based on what's beyond the
6 licenses?

7 COMMISSIONER ZUNIGA: (Commissioner
8 Zuniga nodding up and down)

9 CHAIRMAN CROSBY: I think we are.
10 So it's more than enter into. We're
11 authoring you to execute an agreement
12 subject to that one critical data point
13 that the commission would like to look at.
14 So as amended.

15 COMMISSIONER MCHUGH: Well --

16 CHAIRMAN CROSBY: Go ahead.

17 COMMISSIONER MCHUGH: I'm reluctant
18 to -- I'm perfectly free with everything up
19 to and including negotiations. But I'm
20 troubled by the numbers here because the
21 numbers, there's no context for the
22 numbers. And that's -- that's not only the
23 where did these -- where did these
24 assumptions come from, but how does that

1 number fit into our ability to pay for
2 them?

3 And so, I would really like to take
4 another look at this when we have the
5 assumptions, and when we have the budget
6 that you have worked through and are
7 comfortable with. It may be that we wind
8 up that this is -- this is a greater
9 priority than some other things. But we --
10 but maybe it's not.

11 COMMISSIONER ZUNIGA: Well, the one
12 thing that I would note is there's --
13 there's -- of the two systems there's one
14 with a high priority, and that is the
15 licensing system. They are not only
16 working hard on the regulations, but
17 working on a tight time frame to be able to
18 receive requests for licensing as early as
19 January. Is that -- or, you know, after
20 award of license for -- say, for a Category
21 2.

22 So I am in the same position. I'm
23 really looking at the numbers and how that
24 fits with our current cash flow and ability

1 to assess our applicants. So there's a
2 very short time frame that we need to
3 analyze and we need to do that by next
4 week. But if we hold both licenses --
5 executing a contract with both licensing
6 systems for another week, we lose a
7 valuable week in terms of developing that
8 particular system. Is that a fair
9 statement, Director?

10 MR. DAY: It is. And, you know, I
11 think -- so we have proposed, because we've
12 had a long process with the document
13 management system too and trying to get it
14 up and running, so I've been telling the
15 crew, keep that -- keep document
16 management, let's get it going. And so, I
17 think it's possible, if we needed to do it,
18 is separate that to a certain degree. But
19 we have -- the licensing system is a
20 backbone infrastructure system for the
21 commission to actually operate on, issue
22 licenses and eventually investigations and
23 the whole process.

24 So that's why I'm trying to --

1 trying to convince everybody that we really
2 need to be able to move forward with this
3 negotiation, keep these people working on
4 that process and be able to negotiate a
5 final contract.

6 MR. GLENNON: I would add that
7 there's crossover in the licensing. So
8 even though there was two separate
9 procurements, the facts that we've chosen
10 EMC as a platform, some of the licenses for
11 license management system are licenses to
12 use the document content management system
13 as well. So we've saved some money by dual
14 purpose here. So I'm not sure you can
15 separate and say we're going to negotiate
16 the cost of procuring the license
17 management, licenses, user seats and the
18 enterprise content management user seats
19 because the economy is partly having them
20 together.

21 COMMISSIONER ZUNIGA: I should also
22 mention one thing, even before next week,
23 which I can also highlight for next week,
24 our overall budget assumptions included a

1 large number for a performance management
2 effort that we have not yet executed, and
3 that may still be in the horizon in the --
4 perhaps even as far as the next fiscal
5 year.

6 So there is -- from a budgetary --
7 from a budgetary standpoint, there is
8 enough capacity to pay for these systems at
9 this point, if we only postponed that
10 performance effort for a later date. I
11 can -- I'll be able to highlight that in more
12 detail you know, at next meeting.

13 CHAIRMAN CROSBY: I think you're --
14 we've talked about, Commissioner Zuniga and
15 I, and I know you and some of the staff
16 talked about the overall cash -- we're not
17 in a cash position where we're running the
18 risk of not being able to do what we need
19 to do. You know, we're going to have to be
20 careful, we know that. But the difference
21 between, you know, reconciling a little
22 more carefully next week versus now is
23 not -- there's no crisis here that we need
24 to worry about. And I think that the

1 crisis we do have is the time crisis. And
2 worse comes to worse, we can always tell
3 vendors to stop work, you know, but you
4 can't make up time you lose.

5 So in the context of what the points
6 that you've made about time and the fact
7 that there are some offsets financially, we
8 know there are tools to deal with -- with
9 cash issues, if we have them. I think it's
10 very important to authorize them, to
11 empower them to not lose any time. If we
12 need to look backwards, we can always do
13 that but --

14 COMMISSIONER ZUNIGA: So did I hear
15 correctly, that there's not an economy of
16 scale or time by proceeding with one
17 licensing system versus both?

18 MR. DAY: And I think that's what
19 we've -- thanks to John's addition, that's
20 what we've been trying to convey too
21 regarding the licensing, is what we're --
22 what we're attempting to do is find a best
23 economy of scale for the commission from
24 these -- from these providers. And John,

1 if I understand what he said, is that, by
2 separating the two we may lose some of
3 that -- that economy of scale.

4 So then I have -- to answer the
5 question on the performance management
6 project, at least in planning-wise we
7 touched on a little bit in the critical
8 chart. We're not even going to be able to
9 start that until the spring, from that
10 prospective, but be helpful on that. But I
11 think this system is one of those things
12 that's a -- that is a critical path.

13 And part of the question is, I don't
14 know how else to put this so I'll try this,
15 if we're able to negotiate this, and the
16 license thing, we're able to save 100,000
17 or on the flip side would not save 100,000
18 is this something that we would say don't
19 move forward with? And from my
20 perspective, I think it's something we have
21 to. You have to move forward to get the
22 agency up and running.

23 And so, we're committed on this end
24 to negotiate, possibly in cooperation with

1 the commissioners, if they want to be part
2 of that process, to come up a
3 cost-effective proposal we can in the end
4 for these two -- for these two systems and
5 -- but allow us to move forward and
6 accomplish this part of the process.

7 COMMISSIONER MCHUGH: Well, I'm
8 fully on board -- since I started this
9 detour. I'm fully on board with the
10 necessity and the high priority we have to
11 assign to both of these functions. That's
12 clear in my mind. And I'm hearing from
13 you, Commissioner, that we've got the money
14 to pay for it, though that may mean we
15 don't do something else. So with that
16 assurance, I'm on board.

17 CHAIRMAN CROSBY: Okay.

18 COMMISSIONER MCHUGH: Because I do
19 think we have to do this.

20 COMMISSIONER ZUNIGA: This is
21 probably -- I know it was a little while
22 ago, but I -- probably the motion stands as
23 I made it.

24 CHAIRMAN CROSBY: Right.

1 COMMISSIONER MCHUGH: As you made
2 it, right?

3 CHAIRMAN CROSBY: But amending --
4 authorizing them to go forward subject to
5 one significant issue of a number of
6 licenses. So it's not just negotiating,
7 it's concluding, if you need that.
8 Whatever you need to do to get the work on
9 track and not stop that's what we're
10 authorizing you to do.

11 COMMISSIONER ZUNIGA: Right.

12 CHAIRMAN CROSBY: Subject to this
13 one condition. Thank you. Okay. Any
14 further discussion? You have a frown on
15 your face?

16 COMMISSIONER CAMERON: No. I have a
17 handle on all the issues. I was just
18 wondering if I needed to second that --

19 CHAIRMAN CROSBY: Oh, yeah. Second
20 that restatement?

21 COMMISSIONER CAMERON: Yes.

22 CHAIRMAN CROSBY: Go ahead.

23 COMMISSIONER CAMERON: That was the
24 frown. I'll second that.

1 CHAIRMAN CROSBY: All right. Thank
2 you. I'm sure we can find a motion in
3 there somewhere. All right. Any further
4 discussion? I think the intent is pretty
5 clear. All in favor? Aye.

6 COMMISSIONER CAMERON: Aye.

7 COMMISSIONER MCHUGH: Aye.

8 COMMISSIONER ZUNIGA: Aye.

9 COMMISSIONER STEBBINS: Aye.

10 CHAIRMAN CROSBY: Opposed? The ayes
11 have it, five zero.

12 MR. GLENNON: Mr. Chairman,
13 Commissioners, thank you very much.

14 CHAIRMAN CROSBY: Yep.

15 COMMISSIONER ZUNIGA: Thank you.

16 COMMISSIONER CAMERON: Thank you.

17 COMMISSIONER MCHUGH: Yes. Thank
18 you.

19 CHAIRMAN CROSBY: Okay. Now we're
20 going to Item 6, I believe. I think the
21 commissioners are getting crabby because
22 it's lunch time.

23 MR. ZIEMBA: Mr. Chairman,
24 obviously, the Commission, I will be brief.

1 I will. On October 3rd the commission
2 extended the deadline for petitions of
3 surrounding community petitions on the
4 Category 2 licenses, and I'm here to report
5 that, that extension has had very
6 significant, positive impacts. The
7 applicants and communities have taken that
8 time to -- to work together and have
9 numerous conversations to try to reach
10 agreements, rather than time spent coming
11 up with the best petition for an
12 adversarial process.

13 As a result, and in a number of
14 different areas, we have -- we have
15 agreements that have been reached, or
16 agreements that are about to be reached,
17 and -- and/or that we've had a designation
18 or designations of a new surrounding
19 community. We've had situations where a
20 community that wanted to become a
21 surrounding community has since learned
22 more data and has now determined that it
23 would not become a surrounding community.
24 And so I think that extension has served --

1 served the applicants and the communities
2 very well.

3 While that is the case, we are
4 expecting, and we have receive a number of
5 surrounding community petitions. Some of
6 those petitions may potentially be resolved
7 in the 10-day period under which applicants
8 can respond to surrounding community
9 petitions. So even though the communities
10 have determined they need to protect their
11 rights by filing those surrounding
12 community petitions, a number of those
13 potentially could be resolved within that
14 10-day period and conversations continue.

15 I just will note for both applicants
16 and communities that an adversarial process
17 is just that, as in at least one of the
18 side's is likely to be upset with the
19 result that comes from a adversarial
20 process. So all sides should continue to
21 consider the significant impacts of going
22 for that adversarial process. And I know
23 that they're doing so.

24 So in regard to this -- the

1 Category 2 process, I think that there's
2 some very significant lessons learned. The
3 commission knows that we have asked our
4 Category 1 applicants to appear before the
5 commission next week. It was originally
6 scheduled for -- for this week, but there
7 are a number of very significant events
8 that are occurring over the next week where
9 we thought it would make much more sense
10 for the Category 1 applicants to come to
11 appear before the commission next week. Of
12 note, we've received a number of
13 communities that have asked for extensions
14 of our deadlines of the 180 days. I think
15 that the testimony by the time --

16 CHAIRMAN CROSBY: Say -- which
17 deadline is that, of 180 days?

18 MR. ZIEMBA: So a number of
19 communities have asked for just an
20 extension of our application deadline, our
21 180 days. So -- so I think that the
22 presentations next week will be very
23 instructive as to how applicants are
24 dealing with the very legitimate needs for

1 data by communities and how they are trying
2 to have these conversations with
3 communities in order to avoid the, sort of,
4 the issues that we experienced with the
5 Category 2 application deadline.

6 And, hopefully, our Category 1
7 applicants will learn from our Category 2
8 applicants in that, to the degree that
9 there's uncertainty, that there's
10 uncertainty regarding data, there's lack of
11 independent evaluation of whatever --
12 whatever impact analysis they have, that
13 the Category 1 applicants should know that
14 many communities might be in a place where
15 they might otherwise file just to protect
16 their legal rights because they don't know
17 for certainty or near certainty what those
18 -- what those impacts may be.

19 And so, to the degree that our
20 Category 1 applicants can continue to try
21 to work and provide those independent data
22 streams that communities can be in a
23 position of understanding, I think that,
24 that might go a long way to making this

1 upcoming process one that is more
2 manageable and works for both applicants
3 and communities.

4 So one thing that -- second item on
5 our agenda is there -- when we extended the
6 October 31st deadline for surrounding
7 community petition status, there are a
8 number of corollary items that probably
9 also need to be considered. We -- in
10 our -- in our regulations, if a community
11 reaches a surrounding community agreement
12 with a -- an applicant by the application
13 deadline, that community is determined to
14 be a surrounding community.

15 Similarly, our regulations also
16 require if one has been -- if a community
17 has been designated as a surrounding
18 community, basically, by our application
19 deadline, they have 10 days after our
20 application deadline to submit their letter
21 of assent.

22 And so, even though we've extended
23 our surrounding community petition deadline
24 to October 31st, there are these other

1 categories that are being tied to the
2 application date that they are now in the
3 way of us being able to continue the
4 conversations between applicants and
5 communities.

6 And so, I'll let Catherine give you
7 a little bit more. But what we are
8 requesting, is that we allow for a variance
9 in our regulations, such that, if a -- an
10 agreement is reached between an applicant
11 and a surrounding community, but that
12 agreement is reached after our application
13 deadline, that we have the ability to
14 receive that agreement, and that the
15 community that has reached that agreement
16 is a surrounding community. I think that's
17 everyone's intent. You take a look at the
18 legislation and I think that follows what
19 we should be doing as well.

20 In regard to the assent, some
21 communities may be designated as
22 surrounding communities, either after the
23 application deadline or over the next
24 couple of weeks. And what we're hoping for

1 is that we can allow for those letters of
2 assent to come after that 10-day period
3 after the application deadline, such that,
4 if we receive them now we can say, you have
5 assented to that designation, and the
6 commission, that is satisfactory under our
7 regulations.

8 MS. BLUE: What Mr. Ziemba's saying
9 is true. I think the statue -- the spirit
10 of the statute and regulations is that the
11 applicant in the surrounding communities,
12 or in the case of the impacted live
13 entertainment venues, arrive at the best
14 agreement between them. And we want to be
15 able to accept those agreements after
16 they've been negotiated, because as long as
17 the parties can work that out, I think
18 that's the best possible outcome.

19 Our regulations tie the timing of
20 some of our receipt to the submission of
21 the RFA2 application. And so, what we
22 would propose is a variance from the timing
23 of that regulation to allow the commission
24 to receive both designation and assents

1 within a certain period after today. And,
2 also, to receive completed agreements
3 between applicants and surrounding
4 communities as the process unfolds. We
5 just think that, that covers, really, what
6 the spirit of the statute and regulations
7 provide.

8 MR. ZIEMBA: And for the third
9 category, we will receive a number of
10 surrounding community petitions today, and
11 we have received those. Our regulations
12 already take care of those. In our
13 regulations, if one submits a surrounding
14 community petition, there's a process
15 whereby the applicant can assent to that
16 surrounding community petition, and once
17 they assent to that surrounding community
18 petition, then that community can become a
19 surrounding community. So that process for
20 that, sort of, third category of positions
21 is already contemplated by the regulation.
22 I don't believe a variance is necessary.

23 COMMISSIONER MCHUGH: And by the
24 same token, if they do not assent to it --

1 if the applicant does not assent to it, our
2 regulation's provided procedure, that gets
3 kicked into place at the end of that 10-day
4 period that requires us to take some
5 action?

6 MR. ZIEMBA: That's exactly right.
7 And then the final matter, I'm going to
8 divert for the discussion that
9 Counselor Blue will talk to you about, the
10 impacted live entertainment venues. There
11 is a section in our regulations in
12 surrounding communities that prevents the
13 commission from holding a hearing until
14 after the satisfaction of the surrounding
15 community petition status at a hearing.
16 It's tied into a matter that will be
17 discussed in a second, which is a parallel
18 provision for impacted live entertainment
19 venues.

20 MS. BLUE: Well, I think just to put
21 it in put it out there, both the -- the
22 regulations for both surrounding
23 communities and for impacted live
24 entertainment venues has a provision that

1 you can't hold the statutory required
2 hearing sooner than 30 days after those
3 designations are made for both surrounding
4 communities and impacted live entertainment
5 venues.

6 CHAIRMAN CROSBY: We can't have the
7 mandated host community agreement?

8 COMMISSIONER ZUNIGA: No. Hearing.

9 MS. BLUE: No, no, no. The hearing.
10 The hearing and the host community under
11 Section 17C.

12 CHAIRMAN CROSBY: About the live
13 entertainment?

14 MS. BLUE: For live entertainment
15 and for surrounding communities sooner than
16 30 days after the Commission has either
17 designated or made determinations on the
18 surrounding communities, and in the same
19 parallel manner for impacted live
20 entertainment venues.

21 So that would -- that would extend
22 out, significantly, some of our timelines.
23 So I would propose that the commission
24 grant itself a waiver to that 30-day

1 period, allowing it to have those hearings
2 within a 30-day period, but perhaps making
3 the designations or making the
4 determinations, you know, between now and
5 in a sooner time frame. Maybe now and the
6 next couple of weeks, whichever makes the
7 most sense.

8 COMMISSIONER MCHUGH: Is that -- is
9 that 30-day requirement as opposed to the
10 30 days after the statutory hearing, is the
11 30-day requirement you just talked about
12 purely a matter of our regulations?

13 MS. BLUE: Yes. Yes. I believe so.

14 COMMISSIONER MCHUGH: Thank you,
15 Ellen.

16 CHAIRMAN CROSBY: Sounds fine to me.
17 I mean, it's just sort of housekeeping.
18 The latter point is a little more
19 substantive thing, but generally speaking
20 this is just kind of housekeeping, just
21 kind of neatening up --

22 COMMISSIONER MCHUGH: I'm not sure
23 it is housekeeping, because that statutory
24 hearing -- this would allow the statutory

1 hearing to go forward, if I understand you
2 correctly, before a surrounding community
3 or a live -- impacted live entertainment
4 venue agreement had been reached, right?

5 MS. BLUE: It could be -- yes, or a
6 determination made by the commission. That
7 is possible, yes.

8 COMMISSIONER MCHUGH: Or even a
9 determination made by the commission as to
10 whether a community was -- was a
11 surrounding community. But that statutory
12 hearing, I've always viewed, and I may be
13 wrong, was the opportunity for the
14 commission to hear from -- and the
15 applicant to respond to -- hear the
16 concerns of surrounding communities and
17 impacted live entertainment venues, and for
18 the applicant to respond to those concerns
19 in a setting in the host community. Now,
20 maybe we solve that if we adopt this
21 regulation by not closing the hearing after
22 we started it.

23 But that -- I've always viewed that
24 hearing as a big deal in which -- in which

1 all the parties got together and had an
2 opportunity to talk and to respond to
3 commission's questions and for the
4 commission to really get a feel for what
5 was going on, and not as some statutory
6 formality.

7 MS. BLUE: The way the regulations
8 are currently drafted, I believe that is
9 what was contemplated.

10 CHAIRMAN CROSBY: I'm not sure that
11 I'm following which hearings we're talking
12 about now so take this -- take this from
13 the stop. So the earlier stuff that John
14 was talking about was what I thought was in
15 the nature of housekeeping. This one is
16 more substantive, but I'm not sure I
17 understand how substantive so run -- run
18 this by me again.

19 MR. ZIEMBA: Maybe I can just read,
20 actually, the language from surrounding
21 communities. So pursuant to 205 CMR 12501
22 2A, this is regarding surrounding community
23 petitions. "The commission will make a
24 determination on the petition at an open

1 meeting at which it may allow presentations
 2 or information from the applicant in the
 3 proposed surrounding community at least 30
 4 days prior to the public hearing on the
 5 application held pursuant to MGL Chapter
 6 23K, Section 17C. So that is the statutory
 7 host community hearing.

8 CHAIRMAN CROSBY: That's the hearing
 9 on whether to decide somebody's a
 10 surrounding community or not.

11 COMMISSIONER ZUNIGA: It's for
 12 determination.

13 MR. ZIEMBA: You have to have -- you
 14 have to make your determining of
 15 surrounding community status at a hearing
 16 30 days prior to being able to have your
 17 host community hearing.

18 CHAIRMAN CROSBY: Right. So the
 19 hearing that he's talking about moving is
 20 not a statutory hearing, is it?

21 COMMISSIONER MCHUGH: Yes.

22 MS. BLUE: Well, it would be, if you
 23 don't have the 30 days in between so --

24 CHAIRMAN CROSBY: Right.

1 COMMISSIONER MCHUGH: You're talking
2 about a waiver that would allow us to
3 ignore the 30 days between the designation
4 of surrounding community and the statutory
5 public hearing.

6 MS. BLUE: Yes, that's correct.

7 COMMISSIONER MCHUGH: But that 30
8 days came from the statutory requirement
9 that the surrounding community and the
10 applicant reach an agreement within 30 days
11 of designation of the surrounding
12 community, because the statutory
13 requirement has to have statutory space for
14 that. And then, if they can't, a statutory
15 requirement, that the commission make a
16 resolution of their -- of their inability
17 to come together.

18 CHAIRMAN CROSBY: Within 30 days.

19 COMMISSIONER MCHUGH: Within another
20 30 days. So that's where the 60 days comes
21 from. The reason for reciting that is that
22 all of that was designed to have the
23 host -- the surrounding community
24 identification and agreement issues

1 resolved before the statutory hearing, so
2 that, to have the statutory hearing the
3 commission could deal with facts and not he
4 expectancies.

5 You'd have the -- the application
6 completed, you'd have the impacted live
7 entertainment venues issues completed,
8 you'd know who they were, you'd know what
9 the agreement was, and you'd have the
10 surrounding community issues resolved.
11 You'd know who they were, and you'd know
12 what their agreement was so you could put
13 all of those pieces together in front of
14 community where the establishment was to be
15 located and have a discussion that took
16 into account all of those facts, not
17 expectancies.

18 This -- and that's just by way of
19 highlighting the implications of that
20 waiver, because with that waiver we would
21 be throwing out all of those staging
22 pieces, if you will, potentially, that
23 would not have to be in place with the
24 waiver before we had that statutory

1 hearing, and I'm, frankly, troubled with
2 that.

3 CHAIRMAN CROSBY: How can we -- can
4 we waive the statutory hearing?

5 COMMISSIONER ZUNIGA: No. No.

6 COMMISSIONER CAMERON: No.

7 CHAIRMAN CROSBY: How can we -- how
8 can we waive the 30 days?

9 COMMISSIONER ZUNIGA: We're not
10 going to do that.

11 COMMISSIONER MCHUGH: The 30 days --
12 the 30 days is in aid of, but not mandated
13 by the statutory requirement that the host
14 community, the surrounding community once
15 designated by us, and the applicant come to
16 an agreement, or the commission has to step
17 in. But there's no statutory mandate
18 that -- for those 30 days. Those 30 days
19 were put into the regulation to accommodate
20 that --

21 MS. BLUE: That larger process.

22 COMMISSIONER MCHUGH: -- statutory
23 -- that larger process.

24 MR. GROSSMAN: If I may, I

1 believe -- I'm sorry to interrupt. There's
2 actually another 30-day period in the
3 statute that's important to recognize here.
4 And I think it's actually the reason we put
5 those provisions into the surrounding
6 community and impacted live entertainment
7 section.

8 And that is -- I don't have the
9 statute in front of me here, but the
10 statute requires that all surrounding
11 communities, host communities and impacted
12 live entertainment venues be given 30 days'
13 notice of the public hearing in the host
14 community. So we said, in order to
15 accommodate that notice requirement, the
16 determination has to be made 30 days in
17 advance.

18 So what Catherine and John are
19 talking about would not compromise that, if
20 we provide notice to all of the applicants
21 for surrounding community status, and for
22 impacted live entertainment venue status.
23 Even before they're formally designated
24 they'll still be provided with the

1 statutory notice, even though they've not
2 been formally designated.

3 And that was, I believe, one of --
4 in addition to what Commissioner McHugh has
5 just articulated, one of the reasons we put
6 that provision in the regulations, upon
7 further review it doesn't seem as essential
8 as perhaps it did at the time, because
9 we're still achieving what the statute
10 really wanted. And that is to make sure
11 that all of these entities had adequate
12 notice of this public hearing, which is --
13 which is a quintessential part of the
14 process, and to make sure that they're able
15 to prepare.

16 So, for example, one of these
17 applications that comes in, you may not be
18 prepared to designate one of these
19 municipalities as a surrounding community
20 for some period of time, because as we've
21 discussed, once that designation is made,
22 the clock starts. But, if we provide the
23 municipalities with notice of the public
24 hearing that we've already scheduled, and

1 we provide them with more than 30 days'
 2 notice and we say, hey, look there's going
 3 to be a public hearing in 30 days, you
 4 know, get ready. Get ready to answer
 5 questions, to ask questions, to
 6 participate, then I believe we satisfy that
 7 provision of the statute and achieve,
 8 really, what the provision of the
 9 regulation that we're talking about waiving
 10 was set out to achieve. I don't know if
 11 that --

12 COMMISSIONER ZUNIGA: Yeah.

13 MR. GROSSMAN: -- helps or muddies
 14 the waters.

15 COMMISSIONER ZUNIGA: No, no. That
 16 helps a lot, which takes me back to what --

17 COMMISSIONER MCHUGH: I disagree
 18 with that?

19 CHAIRMAN CROSBY: You disagree with?

20 COMMISSIONER MCHUGH: I disagree
 21 with that being the purpose for that for
 22 which we created the 30 days, but that's --
 23 that's ancient history.

24 COMMISSIONER ZUNIGA: Well, could we

1 still -- you know, in addition to that,
2 could we still accomplish the goal that
3 we're after with what you said,
4 Commissioner, relative to not closing the
5 hearing at the time that it takes place?

6 COMMISSIONER MCHUGH: We could -- we
7 could do that, but we're basically creating
8 a potential for two separate hearings. One
9 of which is -- we could do it. We could do
10 it.

11 COMMISSIONER ZUNIGA: Without the
12 waiver?

13 COMMISSIONER MCHUGH: No. Not
14 without the waiver. We have to have the
15 waiver in order to have -- to eliminate
16 that 30-day holding period.

17 COMMISSIONER CAMERON: Yes.

18 COMMISSIONER MCHUGH: 30-day spacer
19 between -- between the --

20 COMMISSIONER ZUNIGA: Designation
21 and the hearing.

22 COMMISSIONER MCHUGH: -- between the
23 designation and the -- and the hearing.
24 But we can not, even though they get

1 notice, everybody gets notice, but we can't
2 deal with the kinds of specifics that
3 haven't occurred by the time the first
4 hearing is held.

5 In other words, to put it concrete,
6 you have a designation of town X as a
7 surrounding community, you have the
8 statutory hearing 15 days later. Fifteen
9 days later community X and the applicant
10 have not reached a surrounding community
11 agreement. You have no way at the -- and
12 they got proposals on the table, and they
13 may or may not already reached the
14 agreement, they may have to go to
15 arbitration. You won't know that for some
16 period of time.

17 So at that statutory hearing,
18 there's really no way you can deal with the
19 specifics of the interchange between the
20 surrounding community and the applicant,
21 which various factions in the town
22 community and surrounding areas may have
23 something to say about it, once they hear
24 the details.

1 And so, all of that would have to be
2 reserved for a second hearing and could
3 come as late as -- may have to come as late
4 as 60 days or 70 days after the first
5 hearing. Makes sense to me you don't do
6 the first hearing.

7 COMMISSIONER ZUNIGA: So that
8 assumes that 30 days is the minimum
9 required for a surrounding community to
10 really negotiate and understand the details
11 after they had been designated a
12 surrounding community.

13 COMMISSIONER MCHUGH: The statute --
14 no. They could negotiate a host community
15 agreement and be done within five days. I
16 mean, they have 30 days to do it before the
17 commission has to step in, but that's the
18 outset.

19 This -- this waiver simply permits
20 the commission to go forward with this
21 statutory hearing, even if that surrounding
22 community and impacted live entertainment
23 venue agreement hasn't been -- hasn't been
24 negotiated. And, you know, if it works out

1 so it is, that they all are done, fine.
 2 But if it works out that they aren't done,
 3 then it's -- then I'm troubled by --

4 CHAIRMAN CROSBY: Haven't we -- this
 5 issue isn't just now coming up. We've,
 6 long ago, crossed the bridge of having the
 7 possibility of surrounding community, and
 8 also live entertainment venue agreements
 9 not be executed by the time of our host
 10 community hearings.

11 COMMISSIONER MCHUGH: I must have
 12 been sick that day because I don't
 13 remember.

14 CHAIRMAN CROSBY: Well, we've now
 15 set up a situation where there's the -- a
 16 petition comes in at the end of the day
 17 today, and we then have an infinite amount
 18 of time, we agreed, during which we can
 19 start -- before which we start the 60-day
 20 clock going of the two arbitration periods.

21 COMMISSIONER MCHUGH: Right.

22 CHAIRMAN CROSBY: But if we started
 23 the arbitration period, you know, one day
 24 later, it would still be January 2nd that

1 the applications are due after -- the
2 31st -- so I mean we've --

3 COMMISSIONER MCHUGH: And that's why
4 I say I may have been -- I was being a
5 little facetious. But I may have
6 misunderstood, because I always assumed
7 that if those contingencies happened, the
8 host community, the statutory host
9 community agreement -- host community
10 meeting would be pushed back until all that
11 had been done.

12 COMMISSIONER ZUNIGA: I'm --

13 CHAIRMAN CROSBY: Well we -- let me
14 just finish my -- where I was going on
15 this.

16 COMMISSIONER ZUNIGA: Okay.

17 CHAIRMAN CROSBY: I was -- I had --
18 I thought, in my mind, we had crossed this
19 bridge. That we know there's the wild card
20 of the surrounding communities, and it's
21 always been a factor that could delay our
22 whole schedule.

23 COMMISSIONER MCHUGH: Right. That's
24 right. That's right.

1 CHAIRMAN CROSBY: Because at some
2 point or another we might decide that we
3 have to stop evaluation or stop making a
4 decision because we don't have some of
5 these agreements done.

6 It had never felt to me that the
7 consequence of a -- of a unsigned
8 surrounding community agreement, or an
9 unsigned live entertainment agreement was
10 so substantive that it would defeat the
11 purpose of the host community hearing. You
12 know, to me that's a big jump.

13 I mean, if you just think about --
14 the host community -- the live
15 entertainment and the surrounding community
16 agreement are going to get executed by an
17 arbitrator, worse comes to worse, and
18 neither we nor anybody else can change that
19 outcome. It may be that some people like
20 it and some people don't, which does have
21 some minor -- modest impact on, you know,
22 our assessment of community support.

23 But, A, we're going to know that
24 anyway, because the pros and cons are going

1 to be debated. We're going to know about
2 them, we're going to hear about them in all
3 kinds of different media. And, B, in the
4 big picture, it's very marginal in its
5 impact.

6 So that's all a long way of saying,
7 in my mind, yes, we do run the risk that
8 you have suggested, of having a host
9 community -- mandated host community
10 agreement hearing prior to a handful of
11 these decisions being -- these agreements
12 being executed. But that is, in my mind,
13 something we've already anticipated and
14 absolutely not fatal to the process.

15 COMMISSIONER MCHUGH: Well, I hear
16 that, Mr. Chairman, and -- but -- and I
17 apologize because I didn't realize this
18 issue was going to come up in this fashion
19 today. I should have, I guess. But I
20 thought there was also a statutory
21 provision that says the commission can't
22 consider an application until that 30 days
23 for the surrounding community agreement to
24 be executed had occurred, something along

1 those lines. Am I wrong about that?

2 MS. BLUE: There is a provision in
3 the impacted live entertainment regulation
4 that says -- and it somewhat conflicts.

5 COMMISSIONER MCHUGH: I'm talking
6 about the -- I'm sorry, Counsel, I'm
7 talking about the statute. And I thought
8 that was another basis for what we were
9 doing.

10 MR. GROSSMAN: I think it says you
11 can't issue a license until the
12 determinations have been made. I don't
13 know.

14 CHAIRMAN CROSBY: Should we ask
15 Kevin?

16 MR. GROSSMAN: He probably knows.

17 COMMISSIONER MCHUGH: Well, I mean
18 this is --

19 COMMISSIONER ZUNIGA: Why is this --

20 MR. ZIEMBA: The reason why we're
21 bringing it today, and perhaps we can -- I
22 don't know if the executive director is
23 going to kick me. Perhaps we could talk
24 about this next week. We anticipated

1 December 3rd, 4th and 5th for host
2 community hearings. In order to get to
3 December 3rd, 4th and 5th for those
4 hearings, we have to provide 30 days'
5 notice of those hearings. And given the
6 timetable, we would have to provide notice
7 to communities to satisfy the statutory
8 requirement tomorrow.

9 COMMISSIONER ZUNIGA: Right.

10 MR. DAY: Tomorrow.

11 MR. ZIEMBA: So what we were
12 anticipating we were going to do, is that
13 we are going to provide the hearing notice
14 to all of these communities that have been
15 designated, all that have reached
16 agreement, and any surrounding community
17 petitions that we receive today, we would
18 provide notice to those communities that,
19 that hearing will take place on December
20 3rd, 4th and 5th.

21 And so, by having that December 3rd,
22 4th and 5th, I think what was anticipated
23 is that we would have to basically reach a
24 decision on whether or not the surrounding

1 petition communities are actually
2 surrounding communities before
3 December 3rd, 4th or 5th, or else we would
4 have to postpone that hearing.

5 So I believe that there, perhaps, is
6 some flexibility on December 3rd, 4th or
7 5th, given some of the recent decisions
8 regarding January 10th so that
9 December 3rd, 4th and 5th would not
10 necessarily need to occur.

11 CHAIRMAN CROSBY: But it seems to me
12 that the issue is -- we've come across a
13 bigger issue. The issue of the 30 days, I
14 mean, as far as I'm concerned we can waive
15 the 30 days. But the issue is whether or
16 not, at least whether the commission is
17 comfortable having the host community
18 hearings without there being some possibly
19 executed surrounding communities, whether
20 there's a policy or statutory reason not to
21 have the host community hearing while some
22 of those agreements are still unexecuted.
23 That's the bigger question right now.

24 COMMISSIONER ZUNIGA: But we

1 anticipated that some of them would not by
2 virtue of the arbitration.

3 CHAIRMAN CROSBY: We did, but Jim
4 hadn't focused on that, at least. I mean,
5 it's clearly been implicit for months, but
6 he was asleep at more than one meeting.

7 COMMISSIONER ZUNIGA: Well, in my
8 mind -- no, no, we looked at -- the-- the
9 alternative schedule line took us well
10 into --

11 CHAIRMAN CROSBY: Yep.

12 COMMISSIONER ZUNIGA: -- you know, a
13 later date from a decision when we went
14 through the arbitration process.

15 CHAIRMAN CROSBY: I agree, but it's
16 just something that Jim hadn't focused on.

17 COMMISSIONER MCHUGH: Well, I mean,
18 if I hadn't focused on it, I hadn't focused
19 on it.

20 CHAIRMAN CROSBY: Yeah. No, no
21 that's totally fine. That's what I'm
22 saying, it's a bigger issue. You know,
23 it's a nontrivial issue. You know, there
24 could be some open data points. And should

1 they --

2 COMMISSIONER MCHUGH: Well, here's
3 the -- let me just go back to the statutory
4 section. Section 17A, if the commission
5 determines a city or town to be a
6 surrounding community and the applicant has
7 not finalized negotiations with that
8 community," in its application, pursuant to
9 Section 15, that's by the time the
10 application is filed, "the applicant shall
11 negotiate a signed agreement with what
12 community within 30 days, and no action
13 shall be taken on its application prior to
14 the execution of that agreement."

15 That's where I was coming from, and
16 that's what I understood, and perhaps
17 misunderstood from the drift of our
18 conversation. That was sort of an unstated
19 assumption, that -- that we could not take
20 action on the application prior to the
21 execution of the agreement.

22 Now, in fact, we were going to do
23 work on the agreement, but I certainly
24 thought that, that formal statutory mandate

1 -- statutorily-mandated host community
2 hearing was the kind of formal action that
3 was contemplated by this section. And
4 that's where, I must confess, that was part
5 of --

6 CHAIRMAN CROSBY: The application
7 wouldn't even be in yet when we have the
8 host community hearing.

9 COMMISSIONER ZUNIGA: No. We're
10 talking about Category 2 here.

11 MS. BLUE: These are Category 2.

12 COMMISSIONER CAMERON: Or did you
13 understand action on the application to
14 mean you couldn't decide on an award?

15 COMMISSIONER ZUNIGA: Yes.

16 MS. BLUE: On an award.

17 COMMISSIONER CAMERON: Yeah.

18 That's --

19 MS. BLUE: That was my
20 interpretation.

21 COMMISSIONER ZUNIGA: Well, yeah,
22 action as in deliberating or in awarding?

23 MS. BLUE: Yes. And I thought that
24 was what we were considering, when we

1 considered that there was an arbitration
2 time frame that could be passed, the date
3 that we had discussed.

4 CHAIRMAN CROSBY: Well, I think this
5 is the issue we need to talk about, rather
6 than the 30 days. You know, the 30 days
7 will be a subset of this question, so let's
8 talk about this question.

9 Either as a matter of the statute,
10 we could interpret the statute to mean
11 takes no action means we can't have the
12 host community hearing and really can't
13 begin the evaluation process, or we could
14 say take action means the post -- you know,
15 when we are starting our deliberation
16 process. When all the evaluation stuff is
17 being done it comes to the commission and
18 we deliberate and make a decision. That
19 are probably the two logical break points
20 for definitions of this.

21 For what it's worth, in my mind's
22 eye I've been interpreting it as the more
23 permissive definition. But if you forget
24 what we thought ex-post -- in the past.

1 Let's just think about it now going
2 forward. You know, how big a barrier is it
3 to our ability to do a good job of
4 evaluating these proposals, and of
5 conducting that important, mandated host
6 community hearing; how big of an impediment
7 is it to our ability to do those two things
8 well, to not have some number, probably, of
9 surrounding community agreements and
10 possibly live entertainment venue
11 agreements executed? That's the question.

12 COMMISSIONER ZUNIGA: Yeah. And I'm
13 sorry, I have it in my mind, but not
14 clearly enough. In the schedule, I believe
15 we always contemplated -- within that
16 particularly, pinpoint a date of hearings,
17 but we always contemplated the arbitration
18 process would take us further.

19 CHAIRMAN CROSBY: But that's --
20 remember, but that's history now. We agree
21 that -- that, that was sort of what the
22 problem was.

23 COMMISSIONER ZUNIGA: I get you.

24 CHAIRMAN CROSBY: But we never

1 really looked at it from this standpoint,
2 particularly with reference to the fact
3 that there's a statutory section, which
4 could be argued to take something -- to
5 make -- to dictate a schedule different
6 from what we've been contemplating. So
7 whatever we all thought before, let's
8 rethink it.

9 COMMISSIONER ZUNIGA: It was a
10 subject of a lot of discussion on regs when
11 we plotted that schedule, but -- but I
12 understand your point. Could we come back
13 to this next week?

14 COMMISSIONER CAMERON: Tomorrow is
15 the date they'd have to --

16 CHAIRMAN CROSBY: Well, if we're
17 going to -- we could, yes. I mean, it's
18 not the end of the world if we -- if we
19 don't do it 2nd, 3rd and 4th, we do it 9th
20 10th and 11th, or whatever else it would
21 be. We can do that. But if we can resolve
22 this issue right now, it just keeps us more
23 flexible. It just gives us -- gives them
24 the opportunity to do the 2nd, 3rd and 4th,

1 if we want to. But I -- so let's talk
2 about it -- Commissioner Stebbins,
3 Commissioner Cameron, does any of you have
4 thoughts on this?

5 COMMISSIONER CAMERON: So the legal
6 team interpreted that to mean action,
7 meaning deliberation and/or -- and/or a
8 finding or an award; is that accurate; is
9 that how you've interpreted that?

10 MS. BLUE: That is how I viewed it,
11 yes. And that would be based on the statute
12 and in conjunction with the schedule that
13 we had originally put together.

14 MR. GROSSMAN: Although, certainly,
15 I mean, Commissioner McHugh has a revote.
16 So I think we need to take a step back and
17 look at the section of the statute. That's
18 a very important section, an important
19 decision that has to be made and goes to
20 the heart of what we're doing here. So,
21 you know, I don't think it's really a
22 voting situation for us.

23 COMMISSIONER MCHUGH: Well if we --
24 I'm sorry --

1 COMMISSIONER STEBBINS: No, no. Go
2 ahead.

3 COMMISSIONER MCHUGH: I was just
4 going to -- thinking through a practical
5 solution to this, because I wasn't fully
6 prepared for this and maybe haven't been
7 fully prepared for this discussion for
8 months. But suppose we gave the notice
9 tomorrow, which is what -- what we'd have
10 to do, and then took a look at this over
11 the ensuing week and really thought it
12 through and looked at it against the chart,
13 and then at next week's meeting either
14 postpone the hearings or decided that
15 interpretation that apparently has been in
16 existence is the proper one and don't do
17 anything and leave those dates in place,
18 wouldn't that be a practical solution to
19 this?

20 CHAIRMAN CROSBY: And in the --

21 COMMISSIONER MCHUGH: Give us some
22 time to think about it.

23 CHAIRMAN CROSBY: And in the
24 meantime, we can ask for comment too. I

1 mean, as long as we're at this about this
2 we might as well ask parties to comment if
3 they want to. That does give us a week.

4 The only -- the only negative with
5 that, and I think it's utterly
6 surmountable, would be that we would
7 announce the 2nd, 3rd and 4th, people would
8 start to make plans and a week later we
9 might change it. But such is it life.
10 Probably, Ms. Reilly might have a different
11 view of that, but what does she know?

12 So that would be -- so I think
13 that's an adequate solution. And I --
14 although we have discussed -- it's clearly
15 been implicit all the way. I, for one,
16 have never thought about it in terms of the
17 statute. I've just thought about it what I
18 thought was common sense the way we were
19 going. So I think it's worth -- it's worth
20 taking a fresh look. And I think the way
21 Commissioner McHugh suggested, you know, is
22 relatively cost free and let's do that.

23 COMMISSIONER ZUNIGA: And the
24 notification will go will go to everybody

1 who has -- obviously, everybody who has
2 been designated, that's a no-brainer.

3 MR. ZIEMBA: Yeah.

4 COMMISSIONER ZUNIGA: But everybody
5 who has petitioned.

6 MR. ZIEMBA: Yeah.

7 COMMISSIONER ZUNIGA: And what about
8 those who have not?

9 MR. ZIEMBA: So I think that's the
10 universe. We have people who have been
11 designated, people who have reached
12 agreements, we have people who have
13 petitioned. And that would be the totality
14 of who is provided notice tomorrow.

15 CHAIRMAN CROSBY: Well, everybody --
16 the whole world's going to get noticed, but
17 it's going to include these people.

18 COMMISSIONER ZUNIGA: Right. But
19 the notice was formal, and that's also
20 statutory language, isn't it?

21 MR. GROSSMAN: That's correct.

22 MR. ZIEMBA: Just to be clear, so
23 what I had anticipated, which was, if you
24 had hearings on December 3rd 4th or 5th, we

1 would have had to determine who is a
2 surrounding community before the 3rd, 4th
3 and 5th.

4 CHAIRMAN CROSBY: No. We got you.

5 MR. ZIEMBA: And if we couldn't do
6 it, then it would have to be postponed.

7 CHAIRMAN CROSBY: No, we got you.
8 Yeah. We got you. And this all came in
9 the context -- or largely of live
10 entertainment context, but it's all --
11 everything we've discussed here applies to
12 live entertainment venues equally?

13 MS. BLUE: Yes. It has a similar --
14 similar process.

15 CHAIRMAN CROSBY: So I'm going to
16 suggest that we take Commissioner McHugh's
17 suggestion, let's do tee this up to discuss
18 it.

19 Michael Sangalang, you back there?
20 We need to put out a notice of request on
21 the Web site for input on this topic, and
22 we will -- but we will go ahead and give
23 the announcement for the 2nd, 3rd and 4th,
24 but understanding we may rethink that

1 based -- based on what we come up with next
2 week.

3 COMMISSIONER ZUNIGA: So how many
4 communities -- remind me, this was part of
5 your remarks, I believe, but how many
6 communities have petitioned but not been
7 determined to be a --

8 MR. ZIEMBA: I don't know. I
9 anticipate I'll get more than a handful by
10 the end of the day. I've received three or
11 four -- one or two in the context of this
12 meeting.

13 COMMISSIONER ZUNIGA: Say, a couple
14 per applicant?

15 MR. ZIEMBA: Yeah. More for some.

16 CHAIRMAN CROSBY: You made reference
17 to this, but I just want to bring it up,
18 we've received, and I've received at passed
19 around at least two communities saying that
20 they felt that there was not -- potential
21 surrounding communities saying they felt
22 there was not enough time to do the
23 adequate study, peer review, whatever work
24 had to be done, and requesting that our

1 entire process be postponed by six months.
2 Your reaction to that -- to those requests
3 is what?

4 MR. ZIEMBA: I think what we should
5 hear from the applicants on how they are
6 prepared to deal with our deadlines next
7 week. I think that, if you take a look at
8 a six-month delay, we would be here next
9 October making decisions on the license.
10 And just the rule of thumb, if we're
11 expecting 300 to \$500 million of revenues
12 for the Commonwealth for a year, a
13 six-month delay might result in excess of
14 \$100 million in revenues that is not
15 available to the Commonwealth or to cities
16 and towns. In addition, there would be
17 thousands of jobs that would be delayed by
18 six months.

19 That said, I certainly do understand
20 out there that there is a tremendous amount
21 of pressure between now and December 31st
22 on conducting the studies, getting the
23 studies and trying to figure that out.
24 Pressure that regional planning agencies

1 have said this may not be able to be
2 possible by December 31st, there's some
3 periods after our December 31st application
4 date by which agreements could be reached.
5 But I think that we do need to hear, very
6 clearly, from our applicants to see where
7 they are in providing information to
8 communities so that they can have a
9 reasonable period of time to understand
10 that. Because what we've learned is, if
11 the information is not available to those
12 communities, what will happen is that we
13 have a lot surrounding community petitions
14 and that delays our process.

15 And one of the recommendations, why
16 we're focusing on this 30 days, is because
17 every day that the process, after our
18 application, that we have to allocate for
19 that process after our application, it
20 prevents flexibility before the application
21 to allow parties to have those
22 conversations. We can't add here and add
23 here. It just doesn't work unless we
24 extend our deadlines and our award of

1 licenses very, very significantly,
2 resulting in the loss -- opportunities for
3 employment and revenues.

4 CHAIRMAN CROSBY: Right. Well, I'm
5 painfully aware of the costs of delaying.
6 But apropos of these two letters, the real
7 issue is, you know, what's your informed
8 judgment about whether there is the time?
9 We know it's tight. We've been dealing
10 with this now for months. But in good --
11 in good faith, is it a possible to get
12 these done, if people go at it with good
13 faith?

14 MR. ZIEMBA: I don't think we'll
15 have agreements concluded by December 31st
16 for all communities, given our certain
17 timetable, given that a number of the
18 studies have not even started yet.

19 COMMISSIONER ZUNIGA: But we have a
20 proactive role in that in the terms of
21 designating or not --

22 MR. ZIEMBA: Yes.

23 COMMISSIONER ZUNIGA: -- a
24 surrounding community?

1 CHAIRMAN CROSBY: You mean, sooner
2 than later, you mean?

3 COMMISSIONER ZUNIGA: Well,
4 eventually. Whenever. I mean, you're only
5 talking about those communities that we
6 determined to be a surrounding community
7 and not have reached an agreement; is
8 that -- is that a fair statement?

9 MR. ZIEMBA: Well, I think there are
10 a number of communities that have been
11 designated by the applicants, or will soon
12 be designated by the applicants.

13 COMMISSIONER ZUNIGA: Yep.

14 MR. ZIEMBA: And even with those, it
15 may be difficult to reach some conclusions
16 by December 31st.

17 Now, one thing that Counsel Blue and
18 I have been talking about is that, there
19 are things that are known or are knowable
20 and things that are not knowable by
21 December 31st. And what you'll see from
22 even the agreement that you see in front of
23 you, is that one of the applicants is
24 trying to make an agreement that says, hey,

1 even though by our application deadline we
2 won't know certain things, within a year we
3 can come back and say, what were the actual
4 impacts, and can we mitigate those actual
5 impacts, rather than trying to predict the
6 future right now because, even though with
7 a traffic study it is a lot more concrete
8 in being able to predict things. But from
9 a housing situation, a lot of those social
10 impacts, it is very, very difficult to make
11 these predictions of what you need to do
12 for mitigation.

13 And so, I think what we've been
14 trying to counsel people is, know as much
15 as you can know now so you can address
16 those impacts now, but there will be
17 certain things that you just cannot predict
18 with -- with a degree of certainty that
19 would lead to a really good agreement. And
20 perhaps there are measures that lawyers can
21 take to find ways to mitigate those
22 impacts.

23 CHAIRMAN CROSBY: I mean, that's --
24 to me that -- excuse me.

1 COMMISSIONER ZUNIGA: Well --

2 CHAIRMAN CROSBY: I'm sorry.

3 COMMISSIONER ZUNIGA: I'm not as
4 worried on those because the designation
5 has already -- you know, the applicant has
6 acknowledged --

7 MR. ZIEMBA: Yeah. Right. Yeah.

8 COMMISSIONER ZUNIGA: -- that
9 they're a surrounding community. And it's
10 important details, but I think it occurs to
11 me that, you know, going back after a year
12 is a very reasonable approach.

13 MR. ZIEMBA: Yeah.

14 COMMISSIONER ZUNIGA: I guess I keep
15 thinking of the ones that have petitioned
16 and the applicant has not agreed to --

17 MR. ZIEMBA: Yes.

18 COMMISSIONER ZUNIGA: -- because
19 they're looking at different studies or in
20 existing studies --

21 MR. ZIEMBA: Right.

22 COMMISSIONER ZUNIGA: -- and we have
23 to make a determination that they are or
24 are not a surrounding community.

1 MR. ZIEMBA: Yes.

2 COMMISSIONER ZUNIGA: If we
3 determine that they are not, the issue is
4 gone. But if we determine that they are,
5 then -- then there really needs to be this,
6 you know, time clock that starts. That's
7 critical.

8 MR. ZIEMBA: So if we determine that
9 they're are, they have 30 days after the
10 October --

11 COMMISSIONER ZUNIGA: That's right.
12 That's right. And the longer that we don't
13 determine, you know, the longer that our
14 decisions are ultimate -- really need to
15 award the license gets being postponed.

16 CHAIRMAN CROSBY: I agree with that,
17 but I think we can see an impending risk
18 here on January 10th, clearly. But I do
19 also think that both for schedule purposes,
20 but also -- but and for substantive
21 purposes, the idea of, in effect,
22 postponing the arbitration process for a
23 year -- you know, if the surrounding
24 community and an applicant are of

1 loggerheads and times a wasting and other
2 problems being created by them not
3 resolving, having there be a new
4 negotiation a year later, which includes a
5 binding arbitration feature that is in
6 place now, is a really good solution. I
7 mean, it's a really good way out to both
8 making sure there's much more facts on the
9 table and that we don't get our schedule
10 screwed up.

11 So I think the idea of encouraging
12 surrounding communities and applicants who
13 are having trouble coming to an agreement
14 in a timely fashion, encouraging with some
15 force the idea of a let's do this a year
16 later with a binding arbitration clause is
17 very powerful, very persuasive and
18 reasonable, and serves everybody's
19 interest, including ours and the
20 Commonwealth's.

21 MR. ZIEMBA: What Counsel Blue and I
22 have been talking about is, perhaps, having
23 our outside counsel just provide us a
24 little more independent advice of how those

1 clauses could be structured --

2 CHAIRMAN CROSBY: Can be structured,
3 yeah.

4 MR. ZIEMBA: -- to -- to give the
5 benefits that we're thinking about to the
6 communities. That might be a way. And,
7 again, I think you should try to know what
8 is knowable as soon as you can so you
9 construct a better agreement, but there's
10 certain things you just won't be able to
11 know.

12 CHAIRMAN CROSBY: And particularly
13 in the ones where there is hostility, or
14 there isn't good-faith negotiations going
15 on, or when it's at least modified by
16 passion -- I think is modified by passion,
17 having this kind of a system alternative in
18 place would help to -- I think it's a great
19 idea. If we could come up with a template,
20 and including the binding arbitration
21 feature, I think it's really important
22 because the operator -- no operator is
23 going to like the idea of, you know, an
24 unknown factor out there that's going to be

1 bound on them that's going to change their
 2 cash flow calculations 30 days down the
 3 road -- I mean, a year down the road, but
 4 they're stuck with it now, they've got it
 5 now. So if they just postpone it for a
 6 year, it's really not a big difference.
 7 But in putting together a template that we
 8 can give to applicants and surrounding
 9 communities to address these is a really
 10 good idea, sooner than later, I think.

11 COMMISSIONER ZUNIGA: Was that the
 12 brevity of your remarks, John?

13 MR. ZIEMBA: My remarks were pretty
 14 short.

15 CHAIRMAN CROSBY: Do you serve lunch
 16 with your brevity? Okay. Was that it,
 17 John.

18 MR. ZIEMBA: That's it.

19 CHAIRMAN CROSBY: Then we move on to
 20 Item No. 7, General Counsel, Blue.

21 MS. BLUE: I think we addressed the
 22 impact of live entertainment venues. Did
 23 we cover what you wanted, John?

24 MR. ZIEMBA: Well, I think so.

1 Todd, there was an issue regarding our
2 impacted live entertainment venues do not
3 have a 10-day period specified for
4 responses by the applicants. Is that what
5 you were going to bring up?

6 MR. GROSSMAN: That's right. I was
7 just note that you have actually gotten two
8 petitions for impacted live entertainment
9 venue status. One has been resolved, one
10 is still outstanding. So at some point,
11 you know, the commission will have to
12 address that, but that kind of factors into
13 the rest of the conversation.

14 COMMISSIONER ZUNIGA: Which are
15 those petitions; were they in the packet?

16 MS. BLUE: No, no.

17 MR. GROSSMAN: No. No. You may not
18 have even seen them at this point. They
19 were -- they came from the Massachusetts
20 Performing Arts Coalition, who represents
21 two venues, the South Shore Music Circus in
22 Cohasset and Hanover Theater in Worcester.
23 The Hanover Theater has entered into an
24 agreement with Cordish and they have

1 withdrawn their petition.

2 There is an outstanding petition
3 from the South Shore Music Circus relative
4 to Raynham, we've discussed that with the
5 representatives from Raynham and they will,
6 been told, reach out to the petitioner to
7 see what the headway can be made along
8 those lines. So, hopefully, we'll be able
9 to get some kind of update on that shortly.
10 So you really only have one outstanding
11 petition that I'm aware of.

12 CHAIRMAN CROSBY: Director Day,
13 we -- I talked about this with somebody, I
14 forget who it was, but we don't have
15 in-house capacity to help us make a
16 decision about whether somebody -- expert
17 capacity, whether a venue is -- should be a
18 live entertainment venue or not, impacted
19 live entertainment venue or not. Unlike,
20 the surrounding community agreements, where
21 with our regional planning agencies and
22 state agencies, and our consultants, we
23 have a lot of capacity to do that.

24 So I don't quite know where we turn

1 for help in determining whether somebody
2 should be an impacted live entertainment
3 venue or not. And thinking about just who
4 is out there, either, you know, just as a
5 citizen who might be willing to help, or a
6 consultant who might be willing to help.
7 We might need that help.

8 COMMISSIONER ZUNIGA: We may, but
9 what I recall from the main concerns from
10 the coalition was that this was a supply
11 side problem, not a -- not necessarily a
12 number of seats or the number of the
13 characteristics of the venue and that, that
14 could easily be addressed via a memorandum
15 of understanding or some kind of other
16 document by agreement.

17 CHAIRMAN CROSBY: Yeah. But we
18 don't know, you know, how much they pay is
19 too much. I mean, there were -- it might
20 be we don't need the help, but we might
21 need help. And if we need help, we don't
22 have any place to turn at this point so --

23 COMMISSIONER ZUNIGA: I guess I
24 always thought of it as some kind of

1 noncompete agreement, you know, for those
2 acts of -- you know, that will be described
3 in some kind of contract.

4 CHAIRMAN CROSBY: Well, we'll see.
5 I don't know -- I don't know what the dates
6 will be, but it's just something you can
7 think about. All right. That's live
8 entertainment venues, and we have racing
9 license format.

10 MS. BLUE: So in your package under
11 Section 7 there is a template for racing
12 license application decisions. We talked,
13 I don't think it was last meeting but the
14 meeting before, that the commission
15 preferred a decisional type of a license
16 agreement as opposed to what currently
17 exists, which is a kind of wall plaque of
18 number of days and, you know, a few other
19 determining issues.

20 This decisional format is based upon
21 the formats we've use for suitability and
22 other decisions out of the commission.
23 It's designed for the commission to have
24 this, but you would also receive a

1 memorandum of recommendation from Director
2 Durenberger as to what she recommends in
3 terms of your action on the racing license
4 application. You would also have a summary
5 of the public hearings that we held on the
6 racing license applications, and those
7 would be our exhibits that you would use to
8 make your decision.

9 Racing license applications are
10 awarded, as I understand from the past, not
11 in a adjudicatory proceeding, but in a
12 public meeting. So the commission would
13 vote on whether to award. And I believe
14 the next step in the process would be for
15 us to document in your vote in a decision
16 it looks like this. So I wanted to make
17 sure you had this format before next week.

18 Now, at November 7th, the next
19 meeting, I have asked each of the racing
20 license applicants to appear. The question
21 before the commission would be, you know,
22 you can ask them questions. If you have
23 specific questions, you can ask them to be
24 prepared in advance. But they will all be

1 here next week so that if you choose to ask
2 them questions about their racing
3 applications you can do so.

4 CHAIRMAN CROSBY: I've heard
5 Jennifer referring to issues like we've
6 never dealt with a conditional application
7 before. You know, that we want a license
8 to operate, but it will only use it if we
9 get a gaming license. I think one of them
10 is applying for a fewer number of racing
11 days than have been typically licensed in
12 the past. Do we have a context for making
13 those decisions, or will we have a context?

14 MS. BLUE: You will have Jennifer's
15 recommendation memo that should address
16 some of those issues.

17 CHAIRMAN CROSBY: All right.

18 MS. BLUE: She should be making a
19 recommendation to you on that.

20 CHAIRMAN CROSBY: Okay. Because
21 it's one we've sort of known has been
22 coming, but in the preoccupation of the
23 gaming license, I haven't spent time
24 thinking about this yet. Go ahead.

1 COMMISSIONER MCHUGH: So this is
2 just the format you're seeking?

3 MS. BLUE: Yes.

4 COMMISSIONER MCHUGH: And does this
5 format contemplate that a license of the
6 old type will also issue?

7 MS. BLUE: It will because that's
8 the type that has to be posted at the
9 location. So, yes, the old type will go
10 out. But this would allow you to -- allow
11 you to place conditions.

12 COMMISSIONER MCHUGH: This will back
13 it up?

14 MS. BLUE: Yes. That's right.

15 COMMISSIONER MCHUGH: I think it's a
16 good idea. It's a good format.

17 CHAIRMAN CROSBY: Okay. Anything
18 else. Counselor?

19 MS. BLUE: No, that's it.

20 CHAIRMAN CROSBY: Okay, Item 8,
21 anything else that we missed?

22 COMMISSIONER MCHUGH: I don't want
23 to decide this today, but I do want to
24 raise it for consideration for next week.

1 And that is a recurring issue for our
2 evaluation team, and maybe others have run
3 into it as well. And that is, variances
4 between material that was included in the
5 public presentations of a development and
6 material that's in the application.

7 In some cases there are things
8 presented in the -- that were presented in
9 the public meeting and contained in the
10 slide shows that are not contained in the
11 application. In other cases, there are
12 things in the -- for example, the host
13 community agreement, that are different
14 from the things in the application.

15 How do we deal with those kinds of
16 variances? I would very much like to
17 discuss that next week because it
18 impacts --

19 CHAIRMAN CROSBY: It sure does.

20 COMMISSIONER MCHUGH: -- on not only
21 the ultimate award, but it impacts on the
22 analysis that goes into what was supposed
23 to be analyzed and what hypotheticals it
24 takes into account. So I think we need to

1 come up with a policy.

2 CHAIRMAN CROSBY: Yeah. That's a
3 really good point.

4 COMMISSIONER ZUNIGA: Yeah. That's
5 a good topic that I had raised and I had in
6 mind for the next meeting relative to a
7 couple of policy decisions that we have to
8 make based on what's included in some of
9 the projects, at least on the finance piece
10 as well.

11 CHAIRMAN CROSBY: Yes. And so, I'm
12 glad you brought this up. And it's
13 really -- it's complicated. The one of the
14 most dramatic examples is the Leominster
15 proposal where we're getting people
16 complaining that the HCA and referendum may
17 not have been appropriate because it wasn't
18 on this 26-acre site, the extra 10 acres,
19 and then I find out, I didn't even realize
20 that the application doesn't have the extra
21 10 acres in it. So -- or whatever.

22 But anyway, so we've got to figure
23 out what we can -- what are we
24 entertaining, and what do we do with this,

1 you know, ad hoc information that comes in
2 over the transom? But, also, there's
3 debates about the -- if you do accept the
4 ad hoc then there's debates about that. So
5 it's a complicated issue. So are you guys
6 going to give us some advice on that?

7 MS. BLUE: We can do that, yes.

8 CHAIRMAN CROSBY: Okay. Anything
9 else? Do I have a motion to adjourn?

10 COMMISSIONER ZUNIGA: So moved.

11 CHAIRMAN CROSBY: Second?

12 COMMISSIONER CAMERON: Second.

13 CHAIRMAN CROSBY: All in favor?

14 COMMISSIONER CAMERON: Aye.

15 COMMISSIONER MCHUGH: Aye.

16 COMMISSIONER ZUNIGA: Aye.

17 COMMISSIONER STEBBINS: Aye.

18 CHAIRMAN CROSBY: Unanimous.

19
20 (Proceedings concluded at 1:17 p.m.)
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24

1 GUEST SPEAKERS:

2
3 MASSACHUSETTS GAMING COMMISSION STAFF:

4 Jill Griffin, Director of Workforce Supplier and
5 Diversity Development

6 Rick Day, Executive Director

7 John Glennon, Chief Information Officer

8 David Acosta, Licensing Division

9 Todd Grossman, General Counsel

10 John Ziemba, Ombudsman

11 Catherine Blue, General Counsel
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C E R T I F I C A T E

I, Brenda M. Ginisi, Court Reporter, do hereby certify that the foregoing is a true and accurate transcript from the record of the proceedings.

I, Brenda M. Ginisi, further certify that the foregoing is in compliance with the Administrative Office of the Trial Court Directive of Transcript Format.

I, Brenda M. Ginisi, further certify that I neither am counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken and further that I am not financially nor otherwise interested in the outcome of this action.

Proceedings recorded by verbatim means, and transcript produced from computer.

WITNESS MY HAND THIS 4th of November 2013.

Brenda M. Ginisi



BRENDA M. GINISI
Notary Public

My Commission expires:
July 11, 2014