

**Meeting - Key Policy Questions
December 13, 2012**

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1 THE COMMONWEALTH OF MASSACHUSETTS

2 MASSACHUSETTS GAMING COMMISSION

3
4
5 OPEN MEETING

6
7
8 CHAIRMAN

9 Stephen P. Crosby

10
11 COMMISSIONERS

12 Gayle Cameron

13 James F. McHugh

14 Bruce W. Stebbins

15 Enrique Zuniga

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17
18 December 13, 2012, 1:00 p.m.

19 OFFICE OF THE DIVISION OF INSURANCE

20 First Floor, Hearing Room E

21 1000 Washington Street

22 Boston, Massachusetts

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P R O C E E D I N G S :

CHAIRMAN CROSBY: I think we are ready to call to order the 42nd public meeting of the Massachusetts Gaming Commission on December 13, 2012. This is the third day of addressing key policy questions. We have a chance that we might be able to get through everything before the day is out and not have to meet tomorrow. We'll just see how it goes and play it by ear. I'm sure everybody will be happy if we can make that happen.

So let's start right off the bat with a series of questions beginning with number 9 from Commissioner Zuniga.

COMMISSIONER ZUNIGA: Thank you, Mr. Chairman. I submitted a paper, like everyone else has been doing, on the question number 9. The question reads: Should the Commission increase the minimum licensing fee and/or the capital investment requirements? And so it's a three-part question. Should the Commission encourage bidding on the license, and if the amounts are modified, should they vary by region?

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1 I'll just go over briefly some of
2 the considerations, some of the answers and
3 comments that we received, and my recommendation.
4 The licensing fee capital investment and tax on
5 gaming revenues are all items that are really and
6 closely correlated. Isolating or affecting one
7 without regard to others could really have
8 unintended consequences but that's part of the
9 analysis.

10 Spectrum's report from 2008 says a
11 series of recommendations that balance the goal of
12 creating large destination resorts, and that's
13 really behind the capital investment question
14 relative to the tax on gaming revenues as well as
15 the licensing fee. Spectrum's report also
16 cautions against licensing fee as a criterion for
17 evaluation and rather suggests that the capital
18 investment be what applicants essentially compete
19 on.

20 CHAIRMAN CROSBY: Is that because
21 the point about the capital investment has a
22 longer term impact?

23 COMMISSIONER ZUNIGA: Yes. That's
24 essentially right. So just let me stay on that

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1 piece of the question, if you will. The way I
2 think about it and the way I believe developers
3 will think about it is they will assess the market
4 and make assumptions about the revenue. They will
5 require some kind of profitability because, you
6 know, that's the business they're in, and thus,
7 they would leave the rest, all the costs, as the
8 variable, if you will.

9 Within that cost, there's two
10 components. There's the licensing fee clearly,
11 and that's known at this point, and there's any
12 number of costs that are known to them, some of
13 which have to be assumed. But these analyses
14 essentially leaves or suggests that fixing the
15 revenues -- rather understanding that the revenues
16 are going to be what the market can bear and
17 understanding that they will have certain
18 requirements of profitability, would inherently
19 incentivize a larger capital investment. Or
20 perhaps said another way, if we were to effect or
21 change the licensing fee, for example, it could
22 come at the expense of the capital investment
23 because they are essentially competing for the
24 same sort of range.

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1 I make the argument here as it's
2 been made by others, and there's also anecdotal
3 evidence, that the licensing fee is short-term
4 gain from the Commission's perspective, whereas
5 capital investment is clearly a longer lasting
6 benefit. Also, capital investment has the ability
7 to have those -- to have a portion of that come
8 from amenities. A larger capital investment could
9 also come in the form of larger amenities, which I
10 would argue are perhaps some of the better in
11 terms -- benefits in terms of economic
12 development.

13 So for all these reasons -- Let me
14 also state what some of the comments received.
15 Sterling Suffolk says takes no position, but
16 alerts the Commission of the background by
17 providing some of the legislative history, and
18 they did, indeed, struggle with these and consider
19 bidding the license and rejected that.

20 Shefsky & Froelich --

21 CHAIRMAN CROSBY: They did --
22 Interestingly though, they did make it not less
23 than.

24 COMMISSIONER ZUNIGA: That's right.

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1 CHAIRMAN CROSBY: They didn't say
2 it is this. They said it's not less than.

3 COMMISSIONER ZUNIGA: Which is the
4 whole reason why we're contemplating this
5 question.

6 CHAIRMAN CROSBY: Right.

7 COMMISSIONER ZUNIGA: Shefsky &
8 Froelich from the City of Springfield suggests
9 that because the capital investment will be well
10 above the 500 million minimum, as reported by the
11 proposals that we see in the media, that it might
12 not be necessary. And bidding the license may
13 actually come at the expense of the host community
14 agreement -- rather, the host and surrounding
15 communities. They also suggest that there's a
16 finite amount of dollars, if you will, in the cost
17 side whereas, you know, changing one may affect
18 another.

19 Foley Hoag, Mohegan also suggested
20 that we should not. And they get to the point
21 that I made previously which is that increasing
22 the effective tax rate directly impacts negatively
23 the capital investment, because they're inversely
24 correlated.

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1 And MGM in Springfield makes
2 perhaps the same -- a similar comment but with the
3 nuance of the fact that in a competitive region
4 versus a noncompetitive, the question may be
5 slightly different, and I guess that's a valid
6 thing to consider. They suggest that increasing
7 the licensing fee may be suitable for one region
8 if there were only one bidder.

9 Other citizens, Mr. Vignoli and
10 Mr. Levin, suggest that, yes, the license should
11 be bid and the license fee should be increased.

12 So as part of my recommendation, I
13 state that while it may be tempting to think that
14 the minimum capital investment is currently being
15 surpassed, as recorded by some of the preliminary
16 proposals, and while there may be still the
17 potential for the Commission to capture more value
18 for the Commonwealth in terms of licensing fees, I
19 believe that those are, by definition, short term
20 in nature and whereas -- And if we believe and
21 accept that the licensing fee and the capital
22 investment are inversely correlated, that they
23 would come at the expense of the capital
24 investment, which is longer lasting and a more

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1 desirable from an economic development standpoint.

2 So hence, my recommendation to not
3 increase the licensing fee, to not bid the license
4 either, and allow for competition as the Gaming
5 Act provides, that proponents suggest or propose
6 the most beneficial amount of capital investment.

7 CHAIRMAN CROSBY: So you're
8 actually -- you're suggesting that we go further
9 than the law and say this is the license, this is
10 the fee, don't even leave it open to have people
11 bid more if they want to.

12 COMMISSIONER ZUNIGA: Yes, that's
13 correct.

14 COMMISSIONER MCHUGH: Well, why is
15 that going further? That is the minimum set by
16 the law.

17 COMMISSIONER ZUNIGA: Yes.

18 COMMISSIONER MCHUGH: But it's not
19 accepting our mission the law gives us to go by.

20 CHAIRMAN CROSBY: He's saying fix
21 the effective tax rate.

22 COMMISSIONER MCHUGH: Right.

23 COMMISSIONER ZUNIGA: I'm saying
24 fix the effective tax rate by virtue of doing --

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1 establishing the minimum.

2 COMMISSIONER MCHUGH: Right.

3 COMMISSIONER ZUNIGA: And the tax
4 rate comes only from the licensing fee and the tax
5 on gaming revenue.

6 CHAIRMAN CROSBY: And other
7 assessments.

8 COMMISSIONER ZUNIGA: And other
9 assessments, right.

10 CHAIRMAN CROSBY: So are you saying
11 we would say we do not want people to bid higher?

12 COMMISSIONER ZUNIGA: Yeah, that's
13 my suggestion. That's effectively what I'm
14 suggesting. I guess I hadn't thought of it that
15 way, but that's effectively what I'm saying.

16 CHAIRMAN CROSBY: Right.

17 COMMISSIONER ZUNIGA: That the most
18 benefit to the Commonwealth, in my opinion and
19 view, would be derived from a larger -- as larger
20 as possible capital investment, which is also the
21 longest lasting benefit.

22 CHAIRMAN CROSBY: All right.

23 COMMISSIONER ZUNIGA: This creates
24 a level playing field. Let me also talk perhaps a

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1 little bit to varying them by region. I think the
2 question recognizes that there could be different
3 value, and, indeed, there is. The studies show
4 that the metro, Region A, has potentially more
5 value, it's a more valuable license. But I would
6 think it would be very difficult to ascertain how
7 much that variability should be proportional in
8 terms of the license fee, one analysis that I
9 don't suggest we should start to begin. That --
10 the same approach, letting the market and the
11 developers determine the size of the capital
12 investment captures all of those differentials in
13 my view.

14 CHAIRMAN CROSBY: Thoughts,
15 reactions?

16 COMMISSIONER MCHUGH: I think this
17 is a very thoughtful and comprehensive analysis,
18 and I agree that the \$85 million fee applied to
19 some of the numbers that we've been hearing about,
20 reading about -- we don't know whether they're the
21 real numbers or not, we won't until we get the
22 application -- are between about nine and ten and
23 a half percent of the total investment for
24 region -- for category one, and the 25 million

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1 dollars is 20 percent of 125 million for the slots
2 parlor. That's a big piece of the investment, and
3 surely is taken into account by the applicants in
4 determining what they can afford to invest given
5 their target and return on investment.

6 And if there's to be bidding in the
7 competitive area, it seems to me that the bidding
8 ought to be in terms of investment, capital
9 investment, not the fees which are not going to be
10 income producing payments. So it seems to me that
11 this analysis is right on the money, and we ought
12 to, particularly given the numbers that are way
13 above those that were projected, the minimum
14 numbers that were talked about in the statute, we
15 ought to stick with the set fees of 85 and 25.

16 COMMISSIONER STEBBINS: I would
17 agree. I also appreciate the background and the
18 study, the work that was done. And yesterday, I
19 kind of looked back to see where this 85 million
20 goes from, and it goes into a couple of different
21 funds. And they are funds that I believe continue
22 to be capitalized by gaming revenue once a license
23 is awarded. You know, it's a simple basic of the
24 economic development. You don't look at the

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1 capacity of the business coming into your area or
2 your city by their ability to pay by how much
3 you're going to charge them for a license for
4 whatever reasons they may need a license. And
5 understanding that an operator is still going to
6 have to pay some pretty hefty probably building
7 permit fees to a local municipality, I subscribe
8 to the fact that I prefer to see the money
9 invested in the project as opposed to creating any
10 sort of imbalance or any type of bidding process
11 for the license fee.

12 COMMISSIONER CAMERON: Yes. This
13 made perfect sense to me in reading it. You wrote
14 it in a way that, for us non-financial folks, it
15 was easy to understand and it made a lot of sense,
16 so I'm in complete agreement.

17 CHAIRMAN CROSBY: Well, I also like
18 the analysis, and I think your basic point looking
19 at it holistically makes a lot of sense. And if
20 you push here, something happens over here.
21 That's definitely right. And pursuant to the
22 conversations we've been having about questions --
23 about Sections 1, 9, 15, 18, we're all going to be
24 giving thoughts about what we think the evaluation

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1 criteria are and probably talking about the kinds
2 of amenities we hope to see included in the
3 destination resort. And so I think all that makes
4 sense, and I agree with you that that is where we
5 would rather -- if there's a clear trade off,
6 that's where we'd rather see the money go.

7 On the other hand, you know, we are
8 -- look like we're moving towards increasingly
9 getting a pretty competitive environment, and
10 there seems to be increasing interest in all of
11 the licenses.

12 So if we have really robust
13 competition, I don't know that -- I think it does
14 make sense, and we will be doing this to
15 articulate this is our -- we're going to be
16 weighing very heavily the capital investment and
17 where the capital investment's going to go and
18 what the amenities and associated tourist benefits
19 and so forth are going to be. That should be
20 clear. But to say don't increase the amount seems
21 a little counter something or other. I mean,
22 there's no -- I don't know that it's such a
23 precise action. If you're really competitive, and
24 if you read the stories about competition in other

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1 markets, the competition gets pretty hot and
2 heavy, and I don't know that there's an exact
3 trade off if I bid 100 million, I'm going to take
4 15 million out of my capital.

5 So I would think I would -- I don't
6 know. I hear the point. We're sort of forcing --
7 in effect, we're trying to force investment into
8 the best long-term investment and that makes sense
9 to me. But, you know, to have Western Mass. be 85
10 and Eastern Mass. be 85, we know they're not
11 similar in the licenses of similar value, albeit
12 it's hard to quantify the difference. I don't --
13 I don't see why we would want to actually cap it
14 at 85. Why wouldn't we just say that's one of the
15 things and it's a minimum. We're not going to
16 talk a lot about encouraging that to go up. We're
17 not going to -- you know, as we put our evaluation
18 criteria, that will be relatively low on the --
19 you know, relative to some other things, but why
20 take it off. If people are really going at it,
21 and they're trying to throw everything against the
22 wall to win, why not give them a chance to jack
23 that one up, too?

24 COMMISSIONER ZUNIGA: Let me take

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1 -- It becomes a question of -- at least purely
2 from an economic standpoint, a question of a
3 short-term gain versus one that is in the future.
4 And in order to compare them, by definition,
5 compare the two, if somebody, let's say, says we
6 have 5 million more up front, we're willing to bid
7 80 million -- it's 85 the licensing fee, right --
8 we're willing to put in 90 million just because we
9 want to be competitive, that 5 million would have
10 to be compared against a difference that's in the
11 future in capital investment. And by definition
12 you would then have to -- In order to bring it to
13 today, you'd have to figure a discount rate and
14 that discount rate is really a subject of a lot of
15 economic projections that are never quite, you
16 know, on point. The discount rate, you know, is
17 we could look at interest rates, we could look at
18 projections, we could look at any number of
19 others. It's not going to be an exact measure.

20 And part of that -- part of the
21 analysis in here is fix the things we know and
22 allow everybody else to -- at least, you know, one
23 that we can control, and allow everyone else
24 competing in one dimension, which is the future

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1 benefits. We'd still have to analyze how soon
2 those benefits get realized, and this, I think,
3 should be part of the criteria. But that's going
4 to come, I believe, in the phasing plan, in the
5 construction plan, in the readiness, et cetera.
6 But introducing yet another variable in that
7 analysis, I suggest, would be too complex.

8 COMMISSIONER MCHUGH: There's also
9 -- I subscribe to that analysis. But there's also
10 another -- isn't there another piece to this, and
11 that is the glitter piece. Somebody comes in and
12 doesn't go up 5 million, may go up 30 million.
13 And then the Commission -- Let's just put a bid on
14 the table that's going to stand out there and
15 glitter. That money would have to come from some
16 place, and yet it would be a number that, to the
17 public consciousness, would look much bigger than
18 the other numbers and have the Commission, if it
19 chose to reject that, having the criticism of
20 turning down the large bid and going with some
21 subpar bidder who was bidding a lot less. And it
22 seems to me it would put an outsized pressure or
23 an outsized set -- has the potential for putting
24 an outsized pressure or an outsized setting on the

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1 expectations on the outcome of the application
2 process. And it would be much better to channel
3 competition into the more difficult to define but
4 much better in the long term process of the
5 economic investment that was going to go into the
6 facility.

7 COMMISSIONER CAMERON: I agree. I
8 think going on money alone -- I'm sorry. I didn't
9 let you finish. Go ahead.

10 COMMISSIONER MCHUGH: No.
11 Finished.

12 COMMISSIONER CAMERON: Again, just
13 bidding up the process doesn't seem to be the way
14 we should be making this determination. And I
15 don't know that it will be that difficult to
16 differentiate between projects where one may have
17 substantially more money, but with that money are
18 amenities, obviously. That's what you're saying.

19 So I don't know that it will be
20 that difficult to really differentiate between a
21 couple of bids if one is offering substantially
22 more than the other, and we think that will
23 attract more people.

24 COMMISSIONER ZUNIGA: Well, I would

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1 argue that the fact that this number has been out
2 there since the legislation was passed has given,
3 you know, proponents a basis for making all the
4 assumptions relative to the capital investment
5 that they would be willing to put out there or
6 even the proposals or even the attractiveness of
7 Massachusetts. I suggest changing that could have
8 a disruption in that basis as well.

9 CHAIRMAN CROSBY: Do you guys have
10 any thoughts in particular?

11 MR. MICHAEL: I would harken back
12 to the discussion we had yesterday -- Oh. My only
13 thought would be to harken back to the discussion
14 we had yesterday about over promising, and I think
15 Commissioner McHugh was hinting at that that I'm
16 not sure this is so much different from promising
17 to build a school or promising to build a
18 hospital, promising to pay a little more in
19 license fee.

20 All of that is encompassed in the
21 whole picture of what the financial liability of
22 those promises are. And then your evaluation
23 would be can they afford what they've promised,
24 and if they can't, if they've promised too much,

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1 if they say they're going to pay \$30 million more
2 than anybody else for their license, but they
3 really aren't going to be able to be financially
4 viable by doing that, that's an important thing to
5 know and evaluate.

6 If they say they're going to build
7 a hospital, but they can't really afford to do
8 that, to me, they're kind of equivalent. And to
9 not permit someone who maybe can't afford to pay
10 for more for the license fee, to do that, I'm not
11 sure that's necessarily the best approach.

12 MS. GLOVSKY: Can I ask you all to
13 introduce yourselves before you speak as we have a
14 new person doing the stenography for us.

15 MR. MICHAEL: Okay. Well, we've
16 already introduced ourselves, but I'm Guy Michael
17 of Michael & Carroll.

18 MR. POLLOCK: And Mike Pollock,
19 Spectrum Gaming.

20 MR. MICHAEL: That would just be my
21 impression.

22 MR. POLLOCK: We did warn in our
23 2008 report against the possibility of being
24 overly dependent or leaning towards bids that did

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1 place an undue emphasis on a license fee and/or
2 the tax rate precisely for the scenario that
3 Commissioner McHugh did delineate. Part of the --
4 We're aware of the arguments in favor of going for
5 the highest license fee and the highest -- and/or
6 highest tax rate. And they usually are
7 essentially based on the fact that you've got a
8 limited number of licenses to be issued. There is
9 inherent value in that. Consequently, why give
10 that away. But I would caution that that's not
11 necessarily applicable in this instance because
12 you do have -- or have developed a robust
13 competitive bidding process. That it may -- that
14 argument would more likely hold water in a
15 scenario, for example, as occurs in many states
16 where there's a racetrack the you're going to be
17 issuing a license to, there's not a competitive
18 bidding process, why give that away. And I would
19 caution that there are --

20 CHAIRMAN CROSBY: Why give what
21 away? I don't quite follow you.

22 MR. POLLOCK: Why give that license
23 away in the absence of a license fee. And I would
24 caution that there are examples to be -- Indiana

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1 as one example. There were two licenses issued in
2 the Indianapolis market, and the fee, my
3 recollection, \$250 million per license. And
4 consequently, as a result, both of those ultimate
5 operators went through bankruptcy, and my
6 recollection is in both instances, that they were
7 not arguably able to construct or build what they
8 otherwise perhaps would have or could have built.

9 CHAIRMAN CROSBY: We're going to
10 have to go through that analysis anyway, right?
11 That's whether they bid 85 or 112, that is part of
12 our analysis, whether they can afford to put in a
13 billion dollars. So I don't see why that bears on
14 this. If it suggests not -- like we talked about
15 yesterday, not trying -- not putting bidders into
16 the mode that the cable companies were in the
17 early days of bidding on cable franchises, and we
18 agreed with that. I totally agree with that.
19 That's not what we're talking about.

20 It's more if you've got -- you
21 know, for a bidder, I'm not sure if glitz is a bad
22 thing. If you've got a bidder who can afford it,
23 which is an important question, they do everything
24 they can, they go as high on the capital side.

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1 The difference on the capital side, if one guy is
2 1.1 billion and the other person goes 1.3 billion
3 isn't really material, but if you take your
4 licensing fee from 85 to 115, you add 30 million
5 to your licensing fee, I think that is material.
6 It would be perceived as material.

7 And I think you're overestimating
8 the precision of the analysis. You know, this is
9 a subjective bidding process. I've been in many
10 of these bidding processes. You go in and you
11 think at first I need to get my 20 percent return
12 on capital, but, you know, all of a sudden the
13 competition starts getting stiff, and you say,
14 well, you know what, we can do it for a little
15 less. If we can get 17 out of this, we'll be
16 okay, and pretty soon you're down to 12 and happy
17 to have it.

18 COMMISSIONER ZUNIGA: But there's
19 many --

20 COMMISSIONER MCHUGH: Why wouldn't
21 you -- I understand it, but why -- if the bidding
22 got that tough, why wouldn't you prefer to channel
23 people into throwing in a hospital as opposed to
24 throwing in 30 million bucks?

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1 CHAIRMAN CROSBY: Well, you can't
2 build a hospital for 30 million bucks. That's
3 what I'm saying.

4 COMMISSIONER MCHUGH: I don't mean
5 a hospital, an outpatient clinic.

6 CHAIRMAN CROSBY: A hospital is a
7 hospital. A wing.

8 COMMISSIONER ZUNIGA: Well, I --
9 the calculation --

10 CHAIRMAN CROSBY: I don't think
11 it's an either/or. That's what I'm saying. It's
12 not such a precise either/or, and if we really get
13 hot bidding -- Look what's going on in
14 Springfield. Are they going to be turned off?
15 Are they going to nickel and dime on 10 or 15
16 million dollars on a license fee? Is that going
17 to get snuck out of the capital, I mean, out of
18 their billion, out of their 900 million? It just
19 doesn't -- So to just -- I'm with you, just to
20 voluntarily take it off the table --

21 MR. MICHAEL: I'm not suggesting
22 that will be the determining factor at all. It's
23 not going to be whoever offers the highest --

24 CHAIRMAN CROSBY: No. I --

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1 MR. MICHAEL: -- license fee gets
2 the license. It's just the whole package -- part
3 of the package.

4 MR. POLLOCK: In our 2008 analysis,
5 we did not -- my recollection, and I believe it's
6 accurate, we did not recommend capping it per se,
7 but considering as one of the factors but not
8 necessarily giving undue emphasis to it.

9 CHAIRMAN CROSBY: That I would
10 totally agree. It's the capping it that I'm
11 having trouble with.

12 COMMISSIONER ZUNIGA: I want to
13 pick up on something you may be alluding to,
14 Michael, which is, it is possible -- I wasn't
15 there for when they drafted it, but it is possible
16 that no less than 85 million could apply for the
17 time of the renewal because these licenses are
18 15-year, if I'm --

19 MR. MICHAEL: Correct.

20 COMMISSIONER ZUNIGA: -- not
21 mistaken. So at the time of renewal, which is the
22 example that you were saying that comes in to
23 bear, if we were to renew it -- somebody after
24 us were to renew that license, it should not be

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1 less than 85 million, but it could go a lot more
2 because the circumstances would be totally
3 different at that time.

4 So to no less, I would suggest that
5 this could be at least one scenario in which that
6 may have been.

7 CHAIRMAN CROSBY: Well, it could
8 be, but I think it's pretty clear that the
9 legislature meant what they said. They said it's
10 no less than 85, and they were talking about now.
11 They might have been talking about it then, too.
12 But I don't -- I think it's pretty hard to argue
13 that they didn't mean to make it potentially
14 higher.

15 All right. Well, so any other?

16 MR. MICHAEL: No, I have nothing
17 else.

18 CHAIRMAN CROSBY: Okay. Thank you.
19 I would be very much in favor -- I appreciate the
20 analysis. I agree with it. I'm very much in
21 favor as we lay out the evaluation criteria that
22 Commissioner McHugh is going to be working on and
23 we're all going to be pitching into on making it
24 clear that amenities, destination, international

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1 travel, et cetera, capital investment, long-term
2 investment, jobs, those are the high priorities.

3 I would not take a higher one-time
4 fee off the table. I would strongly urge that we
5 leave it on the table as yet another thing they
6 can do if they want to on the theory that we will
7 tell them where the high value investment is, but
8 an aggressive competitor, we give them the tools
9 to use everything that they have, every tool in
10 their arsenal.

11 Any other comments? Do you want to
12 move your --

13 COMMISSIONER ZUNIGA: Yes. Well, I
14 do recommend that the Commission do not increase
15 the licensing fee and thus allow competition in
16 the investment amount, in the capital investment
17 amount, recognizing that the two may be inversely
18 correlated and that's it.

19 CHAIRMAN CROSBY: The critical
20 thing being, and thus which, you know, you're
21 saying cap the investment fee, is what you're
22 saying?

23 COMMISSIONER ZUNIGA: Do not
24 increase the licensing fee.

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1 CHAIRMAN CROSBY: And do not
2 permit. Do we have the right to not permit people
3 to bid more? Can we preclude them?

4 COMMISSIONER MCHUGH: Well, we can
5 certainly set that figure. We can set a fixed
6 fee, or we can set a fee that, you know, that we
7 -- we can do either one.

8 CHAIRMAN CROSBY: So by the
9 legislature saying not less than, it gives us the
10 authority --

11 COMMISSIONER MCHUGH: Right.

12 CHAIRMAN CROSBY: -- to cap it if
13 we want to?

14 COMMISSIONER MCHUGH: Right.

15 CHAIRMAN CROSBY: That's the
16 essential point.

17 COMMISSIONER ZUNIGA: Well, I would
18 go -- my recommendation is cap it to set it as --
19 my recommendation is that the Commission set the
20 fee, as currently stated in the statute, 85
21 million and 25 million for Type 1 is Type 2
22 respectfully.

23 CHAIRMAN CROSBY: Second?

24 COMMISSIONER MCHUGH: Second.

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1 CHAIRMAN CROSBY: Anymore

2 discussion? All in favor?

3 COMMISSIONER MCHUGH: Aye.

4 COMMISSIONER ZUNIGA: Aye.

5 COMMISSIONER CAMERON: Aye.

6 COMMISSIONER STEBBINS: Aye.

7 CHAIRMAN CROSBY: All opposed?

8 Nay? The ayes have it.

9 Commissioner Zuniga.

10 COMMISSIONER ZUNIGA: Okay. Policy
11 question number ten. How should the Commission
12 determine a suitable debt-to-equity ratio for
13 applicants for a gaming license? I reference a
14 section, Section 4(14), that specifically states
15 in the Gaming Act that the Commission shall have
16 the powers necessary to determine a suitable
17 debt-to-equity ratio for applicants. I suggest
18 that these things could be interpreted as having
19 the authority to determine different
20 debt-to-equity ratios for different types of
21 licenses, perhaps even for different levels of
22 investment and perhaps even at different times.
23 I also suggest in some of the
24 conversations here that debt-to-equity ratio is

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1 clearly just one factor in determining financial
2 stability and financial suitability. There's many
3 others. I just picked up a couple here mostly
4 having to do with cash flow, free cash flow from
5 operations. The financial and operational
6 strength of subsidiaries, parent companies, other
7 partnerships are also going to bear in mind here,
8 complicating the equation on financial
9 suitability.

10 I also suggest that not all debt,
11 or equity for that matter, is going to be the same
12 across applicants. Some applicants may be able to
13 finance these projects with higher rated debt than
14 others just by virtue of, you know, how their
15 balance sheets look.

16 And I do go on to say that Section
17 10 of the Gaming Act -- Section 10(a) requires
18 that the applicant deposit ten percent of the
19 investment into an interest-bearing account either
20 as cash or as a bond for the benefit of the
21 Commission. And I suggest that, you know,
22 something like this would have to come into the
23 mix when determining equity participation. It
24 occurs to me that we could get the question on how

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1 would we count those moneys when depositing, as
2 equity or as debt, if we were to determine a
3 debt-to-equity ratio.

4 I touched on the notion that
5 this -- our understanding and our consultants tell
6 us these projects are recently being put together
7 with a very complex set of financing structure,
8 different levels of debt. There's going to be
9 senior and subordinate positions to all of the
10 debt that they enter into. They're going to have
11 very different equity participation. These are
12 multiple partners that come in at different times
13 with seniority on the equity payouts, and some of
14 them come with in-kind participation. There will
15 be operators whose assets comes from their ability
16 and their branding, their ability to operate,
17 which is in-kind and in the future.

18 So all those things start to come
19 as part of the analysis if we were to determine a
20 priori a suitable debt-to-equity ratio.

21 We received a couple of comments on
22 this notion. Sterling Suffolk suggests no.
23 They're really silent. They do suggest, however,
24 that the ratio in a vacuum would be arbitrary, and

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1 by itself, not determinative of financial
2 stability, which I argued just a little while ago.

3 Shefsky & Froelich with the City of
4 Springfield as a qualified yes, and the qualified
5 notion comes from the fact that they recognize and
6 suggest that each one of these determinations will
7 have to be made on a case-by-case basis because of
8 many of the factors that I just spoke about.

9 These are different structures in terms of equity
10 participation, just to name one complicating
11 factor.

12 So as my recommendation, I suggest
13 that given that the debt-to-equity ratio is just
14 one of the several factors to determine financial
15 stability and given at that the mandate of the
16 Commission really is to ensure financial stability
17 on an ongoing basis, not just at the time of
18 receipt of obligations, the Commission should
19 really think about these as an ongoing effort and
20 should establish procedures relative to a
21 financial risk assessment. This risk assessment
22 could be made at any time, certainly at the time
23 of the receipt of proposals. It could be done by
24 experts in the financial and debt structuring

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1 arena. We could also put an onus on the applicant
2 to report to the Commission when they believe that
3 their operations, their financial operations, may
4 be reaching areas of stress or what have you. And
5 thus, I recommend against a preemptive number, but
6 perhaps in regulations, certain tests like what
7 New Jersey has, and there's others that have that,
8 that are -- perhaps come from all different
9 angles. Are you able to meet your payroll? Are
10 you able to meet your obligations, your wagering,
11 first of all, your taxes, certainly your payroll,
12 your debt, and is there enough reserves? Are you
13 funding your reserves adequately? In other words,
14 a host of financial risk assessments rather than
15 one ratio at any given time.

16 CHAIRMAN CROSBY: So the net is?

17 COMMISSIONER ZUNIGA: The net is
18 that we do not determine a debt-to-equity ratio.
19 We allow ourselves -- We do put in place and this
20 should be in regulations, certain tests like I
21 suggest here. Mostly they come from New Jersey.
22 I added one relative here, number F, a
23 satisfactory completion of a financial risk
24 assessment as determined by the Commission. This

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1 is something that we have the authority to do at
2 any given point and that's very powerful. We
3 could, again, ask applicants to, on a quarterly
4 basis, certify to a number of things like that
5 they have adequate reserves, that they have
6 adequate comfort in terms of meeting obligations.
7 We could ask and will be asking for all of their
8 financial statements, et cetera. But I believe we
9 could place the onus on reporting on the applicant
10 and which could, by itself, trigger a financial
11 risk assessment at any given point.

12 And so I recommend that as my
13 approach. I recommend that -- that's my
14 recommendation, too, in terms of approach.

15 CHAIRMAN CROSBY: Comments?

16 COMMISSIONER MCHUGH: That makes
17 sense to me. I'm not sure what you learn from
18 just looking at it debt-to-equity ratio. This is
19 not my area of expertise. But you have two
20 companies, and they both have \$25 million of
21 equity and \$100 million of debt, but one of the
22 debts is sort of paying a junk bond interest rates
23 and the other is paying triple A interest rates.
24 You get the same debt-to-equity ratio, but you've

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1 got vastly different operating costs and,
2 ultimately, viability.

3 So it seems to me an overall
4 picture as to which the debt-to-equity ratio as
5 one factor would be the better approach.

6 COMMISSIONER ZUNIGA: And only that
7 debt to -- It comes really from a snapshot coming
8 from the balance sheet. And it's important to
9 take snapshots necessarily from time to time, but
10 I would argue that other ratios like cash flow
11 from operations to net income is one that gives a
12 much better idea as to solvency and their ability
13 to meet obligations on an ongoing basis -- on a
14 slightly more ongoing basis, so. That's not to
15 say do not apply the debt-to-equity ratio. We
16 have the ability to do that at any point. I just
17 don't --

18 CHAIRMAN CROSBY: I just want
19 to make it clear.

20 COMMISSIONER ZUNIGA: -- want to do
21 in it a vacuum.

22 CHAIRMAN CROSBY: Yes. Others?

23 COMMISSIONER CAMERON: Again, well
24 written, well thought out. It makes a lot of

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1 sense.

2 CHAIRMAN CROSBY: Yes. I think the
3 comments to doing what I think we'll do here,
4 which is say no, is, as you suggested, we should
5 publish pretty soon what the financial evaluation
6 tools are. If we're going to adopt New Jersey
7 plus, whatever it is, but maybe we can have a
8 follow on, if you will do that, take the follow on
9 responsibility of taking the lead on it maybe in
10 collaboration with the consultants taking the lead
11 on figuring out what is the financial evaluation
12 mechanism that we're going to use because people
13 will want to know that pretty soon.

14 Any other discussion? Do you want
15 to make a motion?

16 COMMISSIONER ZUNIGA: Yes. So I
17 recommend that this Commission do not establish a
18 debt-to-equity ratio at this point, but in lieu of
19 that, research and established in regulations a
20 series of tests designed to assess the financial
21 risk of our applicants at any given point in the
22 future.

23 COMMISSIONER CAMERON: Second.

24 COMMISSIONER STEBBINS: Second.

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1 CHAIRMAN CROSBY: Discussion? All
2 in favor?

3 COMMISSIONER STEBBINS: Aye.

4 COMMISSIONER ZUNIGA: Aye.

5 COMMISSIONER CAMERON: Aye.

6 CHAIRMAN CROSBY: Aye.

7 COMMISSIONER MCHUGH: Aye.

8 CHAIRMAN CROSBY: Opposed? Ayes

9 have it.

10 Okay. Rolling right along. Number
11 11.

12 COMMISSIONER ZUNIGA: Yes. Thank
13 you. Policy question number 11 states that should
14 the Commission allow a facility to open in stages
15 with the casino opening prior to the hotel and/or
16 other facilities; and if so, under what
17 constraints and conditions?

18 In the same venue, I have placed a
19 couple of considerations for discussion, the
20 comments we received, and the recommendations. A
21 couple of relations perhaps stating the obvious,
22 the state generates direct value in allowing a
23 casino to generate a gaming revenue as quickly as
24 possible.

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1 There would be -- If we were to
2 allow for the opening in stages like the Gaming
3 Act does allow, there would clearly be a number of
4 conditions articulated with it relative to
5 certificate of occupancy, completion of all the
6 permitting requirements, assurances that the
7 building is safe and secure, and that the
8 completion of the phases complies with all the
9 operation regulations and conditions set forth by
10 the statute.

11 I make an argument here that like
12 in policy question number nine, in proposing a
13 strict restriction on phasing may result in a
14 lower level of capital investment because there's
15 an additional cost that goes with opening a very
16 large casino project in one phase, which is a
17 carried interest cost. If the Commission or if
18 the operator is not able to start getting cash
19 flow at some time prior to completion of all its
20 phases, the level of investment would have to
21 include carried interest. They would have to
22 borrow that much more money to complete it all,
23 and because they recoup, the revenues are further
24 out in the future, there's a higher cost of

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1 capital, and thus have a direct adverse effect on
2 capital investment. How much, I don't know, but
3 the point is made.

4 There's also another less financial
5 aspect, but I think relevant, which is that there
6 will be at least two known -- there's at least two
7 known proponents, but perhaps more, where they
8 will have an operation while building something in
9 the same site. That could very well be a racing
10 operation and that racing operation, the
11 Commission would be in a position to perhaps have
12 an interest in furthering those racing operations
13 as much as possible in our dual role of a racing
14 regulator. But even if this weren't a racing
15 operator, anybody with an existing site or an
16 existing hotel, let's say, would, by definition,
17 have to entertain phasing, in my view. I mean,
18 this is just a hypothetical, but it's an informed
19 one.

20 So needless to say that, as the
21 Gaming Act allows, the Commission could place on
22 applicants the burden of demonstrating that the
23 phasing plan satisfies all the criteria in the
24 statute, and it could place all the conditions

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1 articulated there as well.

2 We could also further impose
3 statutory penalties on the applicant's inability
4 to meet any of the interim milestones if there
5 were to be a phasing plan. We need not wait until
6 the final milestone is done.

7 So we received a couple of
8 responses here. Sterling Suffolk says this should
9 be analyzed on a case-by-case. The Gaming Act
10 does specifically allow it and imposes penalties
11 for non-completion. There may be argument that
12 I've made before, allowing stagings would generate
13 economic benefits earlier. And this could also be
14 considered in the context of other requirements
15 like MEPA, permitting, and local requirements.

16 Shefsky & Froelich and the City of
17 Springfield say it's really up to the Commission.
18 The city, however, intends to require it all in a
19 single phase. Foley Hoag, Mohegan suggests that
20 yes, we should react specifically authorizing the
21 facility to open the gaming prior to completion of
22 the entire facility.

23 And MGM Springfield suggests no.
24 The Commission runs the risk of the winning

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1 applicant delaying completion of the project and
2 frustrating a major goal of the statute.

3 My recommendation is recognizing
4 that the Commonwealth stands to derive the most
5 economic benefit in the game of -- in the form of
6 gaming revenues and investment amounts if it
7 allows phases, mostly from a timing perspective.
8 It all depends as to how we do that.

9 By their very nature, these are
10 very large projects. These are of mixed use.
11 Large real estate projects are bulky, and they
12 effectively are designed and constructed in
13 phases. There's -- What we're really talking
14 about is opening. They will be built in different
15 phases. They cannot really be built everybody at
16 the same time.

17 So a key aspect of phasing, I
18 suggest, is what gets built first, what is
19 operational first, and whether that makes sense to
20 open at what stage in the phasing in the
21 construction period.

22 So my recommendation is that we do
23 allow the phasing of projects, we do look at them
24 on a case-by-case basis. We could impose

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1 penalties for non-completion on interim
2 milestones. If we have different phases, each
3 phase, if you will, will have an interim
4 milestone. We need not wait until non-completion,
5 let's say, of the final phase to impose penalties
6 and that will make everybody act to the best of
7 their abilities in a phasing plan.

8 CHAIRMAN CROSBY: Comments?

9 COMMISSIONER CAMERON: Are you
10 saying we could or should impose penalties?

11 COMMISSIONER ZUNIGA: Well, this
12 goes back to the case-by-case basis, I suspect.
13 I'm suggesting we should not just look at the
14 statute and agree that the penalty comes at the
15 end. We have to talk about that, decide whether
16 the \$50 million penalty would be adequate on an
17 early stage. I'm going to suggest that it's not.
18 And there are ways in every schedule, if you miss
19 the first milestone, there is ways to mitigate in
20 a later stage. So I'm not suggesting that we
21 should be punitive, let's say, or preemptively
22 punitive, but I'm suggesting that the ability to
23 impose penalties is a big, big incentivizer in
24 meeting all the stages in a phasing plan.

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1 COMMISSIONER MCHUGH: Here's my --
2 I'm really torn on this one, and I'd like to hear
3 more discussion and then hear from the
4 consultants. It seems to me that the
5 enforceability of the phasing commitment is the
6 biggest concern. Put to one side for a minute
7 what you said that these things can't be built
8 together, they have to be built in phases. I'd
9 like to come back to that. But the phasing -- the
10 enforceability of the phasing commitment depends
11 on the ability of the developer to pay the
12 monetary fee, the force -- you could forfeit the
13 license, but that is not an economic advance of
14 the type we're looking for, right.

15 So you could enforce the phasing
16 requirement by requiring a big upfront bond, but
17 if you acquired a big upfront bond, the premium
18 for the bond or the cash set aside, the lost
19 opportunity cost would perhaps be as large as the
20 cost of the economic cost of building out the
21 casino, the rest. And if you do it in -- If you
22 don't do that, but you have penalties that accrue
23 for missing various phases, you're likely to run
24 into a situation where the phases aren't being

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1 completed on time because there is no financial
2 ability to complete the phases, and if there's no
3 financial ability to complete the phases, how are
4 you going to collect? Is there going to be a
5 financial ability to pay? I'm sure there's
6 answers to all these questions, but those are the
7 things that I'm considering.

8 COMMISSIONER ZUNIGA: The argument
9 is the same whether you have phases or you have
10 one large project. If you don't have -- The
11 penalty comes if you don't complete. It's 50
12 million as per the Gaming Act, and if you -- if
13 you're not going to complete your project, let's
14 say, there's reasons behind it. Probably you're
15 running out of money. That's the usual suspect.
16 How are you really going to collect the 50
17 million?

18 It really comes from the ten
19 percent that they deposit in the beginning and
20 that is going to happen regardless of whether we
21 allow phases or whether we allow one phase.

22 CHAIRMAN CROSBY: And we wouldn't
23 have done our job of the initial vetting if
24 there's a chance that they could not finish the

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1 phases. The whole point of the financial
2 evaluations we're going to be doing is to make
3 sure they can deliver on their promises.

4 COMMISSIONER MCHUGH: Well, I
5 understand that, but it's -- but if they need --
6 if the proposal is that we need to do it in phases
7 because we need the operating income in order to
8 deliver what we promised, we are -- and we approve
9 that, we're taking necessarily a higher risk of
10 non-completion than if we say you've got to show
11 us a financing plan that will get you through this
12 without the operational income, right.

13 COMMISSIONER ZUNIGA: Could you
14 repeat that? In what scenario is the higher risk
15 of non-completion?

16 COMMISSIONER MCHUGH: The higher
17 risk of non-completion is if you need operating
18 income in order to complete the project.

19 COMMISSIONER ZUNIGA: I would make
20 the argument against that for the same reason
21 actually.

22 COMMISSIONER MCHUGH: Why?

23 COMMISSIONER ZUNIGA: You're going
24 to build something that cost 800 million.

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1 COMMISSIONER MCHUGH: Right.

2 COMMISSIONER ZUNIGA: You either
3 borrow the 800 million at different points in
4 time, or you could borrow a little less. If you
5 are, at any given point prior to all its
6 expenditures, able to fund from your operations
7 some of the ongoing capital requirements; in other
8 words, phase three or five, my up front cash need
9 is lower and thus my risk is a little lower.

10 Now, there are many risks that
11 remain in both settings.

12 COMMISSIONER MCHUGH: Right.

13 COMMISSIONER ZUNIGA: There's
14 completion risk for all kinds of technical
15 reasons. If there's all kinds of unsuitable
16 materials in the site, or you know, whatever it
17 may be, but my risk is mitigated because I don't
18 have to borrow as much up front.

19 COMMISSIONER MCHUGH: I hear you.

20 COMMISSIONER ZUNIGA: Now, we are
21 not in that position. We're in the position of
22 benefitting from -- but I guess that argument is
23 already made -- from the revenues that will come
24 to the state because we do have 25 percent of

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1 those revenues. Now, all of these, and I think
2 this has been made in the past, the casinos will
3 have to weigh, and this is part of their branding
4 and part of their strategy, how much do they want
5 to open, perhaps, on temporary -- I don't want to
6 call it temporary -- permanent space, but on a
7 temporary location, let's say, and give away the
8 impression that this is it, perhaps, where the
9 larger and better came in afterwards. Some first
10 impressions consideration will be if this is
11 really their business. And what I'm suggesting is
12 let them propose. Let them be creative. Let them
13 tell us what is their strategy if they do want to
14 open all in one phase, because they want to have
15 one big opening, the grand opening.

16 COMMISSIONER CAMERON: And I think
17 it's incumbent upon us if we allow phasing to make
18 sure it's appropriate, to make sure what gets
19 opened first is an attractive piece of the
20 property that will continue to exist. It's not
21 temporary. For example, if you open, you know, a
22 casino floor that may not be the end all, but it's
23 attractive, it'll eventually be a concert hall,
24 whatever, and you don't open a water park or a

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1 golf course immediately, but you do, it would be
2 important that we approve something that is very,
3 very attractive and we think has value in opening
4 in phases. You know, you are bringing revenue to
5 the economy much sooner also that way in allowing
6 phases.

7 And in learning about this, it can
8 be done well, and penalties, I think, are a part
9 of that though, that really significant penalties
10 helps folks keep on track.

11 COMMISSIONER ZUNIGA: Right. It's
12 a tremendous incentive. Again, from what I
13 understand just because I'm familiar with
14 Massachusetts, certain sites may not be, you know,
15 all that easy to say let's just get everybody in
16 here. There may be some demolition. There may be
17 some mediation. There may be existing use,
18 existing operations on a number of them. And
19 those -- the way to deal with those things from a
20 logistical standpoint is to do it in phases.

21 COMMISSIONER STEBBINS: I think
22 we've definitely seen anecdotal evidence of
23 phasing and where phasing has worked well. You
24 just got back from New Orleans where that seemed

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1 to be a phased-in approach for the casino that was
2 selected there.

3 CHAIRMAN CROSBY: Which didn't go
4 very well.

5 COMMISSIONER MCHUGH: Yes. But
6 that was a phasing dictated by a lot of -- we
7 wouldn't want that kind of phasing, let me put it
8 that way.

9 COMMISSIONER STEBBINS: Well, let
10 me find another wonderful anecdotal comparison of
11 phasing. I mean, reading about the opening of the
12 casino in Cincinnati, that they decided not to
13 build a hotel until area hotels were 60 percent
14 occupancy. So I qualify that with having not been
15 to Cincinnati. I can't tell you how well it's
16 working.

17 COMMISSIONER MCHUGH: Right.

18 COMMISSIONER STEBBINS: I would
19 also speculate that we may not actually get a
20 project that is a phased-in project before this
21 Commission. I would harbor a guess at the local
22 level that the difference between a project that's
23 going to do it all at once or a project that's
24 going to phase in may be kind of decided at the

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1 local level. Local voters may choose a project
2 that is not going to be phased in over one that is
3 going to be phased in.

4 CHAIRMAN CROSBY: Which was one of
5 the comments that Commissioner Zuniga read, that
6 the Springfield mayor is saying there won't be any
7 phasing in Springfield.

8 COMMISSIONER STEBBINS: Yes. And
9 that could drive what we see. I guess, and
10 finally, my last point is as we look to the
11 evaluation criteria in Section 18, you know, just
12 we're going to evaluate somebody on, a particular
13 example, estimated recapture of gaming related
14 spending by residence. Well, a phased-in project
15 is not going to probably meet that standard better
16 than a complete project.

17 So I'm not necessarily saying we
18 shouldn't allow phased in. Again, I think a
19 phased-in project, if done correctly, could, in
20 the long run, have a maximum benefit, give us the
21 project that we want. I would just want us to be
22 considerate of our evaluation criteria in
23 evaluating one license where it's a complete
24 project done versus an applicant who comes before

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1 us with a phased-in project to at least understand
2 that we're going to evaluate them and not make our
3 criteria, I guess, discriminatory towards the
4 phased-in approach.

5 COMMISSIONER ZUNIGA: Let me make
6 sure I understand a little. I think by their very
7 nature, any phasing, and, frankly, a lot of the
8 details relative to construction on these
9 projects, are going to be substantially different
10 among them because they're going to be in
11 different places and different communities and
12 with different types of use. And I don't think we
13 should attempt to evaluate a phasing -- the merits
14 of a phasing -- of the phasing of one project
15 against another one without phasing in a different
16 community. Is that what you're suggesting?

17 COMMISSIONER STEBBINS: If we get
18 three license applicants, two license applications
19 from Region 1, one is not a phased-in project, one
20 is a phased-in project. I completely understand
21 and validate all the reasons that might come up
22 for someone who suggests a phased-in approach. My
23 concern, and maybe as we go through it and look
24 through Section 18 and we begin to think about how

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1 we will rank and score that evaluative process,
2 that we be fair as we lay out that evaluative
3 process, it won't favor a phase -- it won't favor
4 a complete project over a phased-in project.

5 COMMISSIONER ZUNIGA: I understand.
6 Well, I think the way to compare those really
7 comes from the economic benefits. If -- And this
8 is certainly part of the criteria, the highest and
9 best value of the Commonwealth. If because of a
10 phasing plan one project derives revenues quicker
11 than one without phasing because the revenues are
12 further out in the future, well, forget the
13 phasing. It's the revenues that are really making
14 this one a lot more valuable to the Commonwealth.

15 COMMISSIONER MCHUGH: That may be.
16 That be may. But if the non-phasing one was built
17 hypothetically with cash on hand as opposed to
18 borrowed money and therefore was a safer bet to
19 come to completion, that might be a factor that
20 could cut slightly the other way. But I hear your
21 point. But I'm not sure that you couldn't take
22 into account in some way, but we don't have to
23 decide that today.

24 COMMISSIONER STEBBINS: Right.

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1 COMMISSIONER MCHUGH: Could we hear
2 the consultants' view on this issue?

3 CHAIRMAN CROSBY: Sure.

4 MR. GUSHIN: Just to average an
5 experience -- and this relates to Singapore --
6 whereby those projects opened two and a half years
7 ago and are just now being completed. The
8 government essentially required a certain minimum
9 opening situation where the casino and other
10 amenities opened, but the museums, the gardens,
11 the Universal, the aquarium, all those things
12 phased in over the last two and a half years.

13 And I think from a licensing
14 respective, you're going to be looking at the
15 financial stability and financial integrity of
16 these companies on an ongoing basis, both from the
17 licensing perspective and from the second phase
18 perspective. And you can balance all of these
19 issues by requiring a mix of amenities and
20 non-gaming versus the gaming to -- as the projects
21 are being phased in. These are all balances, the
22 jobs, the revenues, the phasing, the complete
23 projects. At the end of the day, though, there
24 should be a commitment and a commitment that's

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1 supported by regulation and by the Commission that
2 what they say they're going to build and what
3 you're basing your licensing and the decisions on
4 is going to happen in realtime in the real word.
5 So that's how we would recommend you approach
6 this.

7 COMMISSIONER MCHUGH: And how did
8 the Singapore -- What was the Singapore insurance
9 policy, if you will? Was it bonds? Was it --

10 MR. GUSHIN: Well, I believe the
11 projects were essentially funded at the time --
12 the commitments to fund the projects were made at
13 the time the licenses were awarded. I could be
14 wrong on that, but that's what my recollection is.

15 COMMISSIONER MCHUGH: But the
16 financing was all in place?

17 MR. GUSHIN: Essentially. And they
18 did use operating revenues in the time they opened
19 other the last two and a half years to help fund
20 these projects as well, as you've indicated. But
21 I believe and I know there was a commitment that
22 was given at the time the licenses were awarded
23 that the projects as estimated would be built.
24 There was no give on that whatsoever. In fact,

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1 the properties opened. They were required to open
2 by the government within the time frame that they
3 submitted. So the government held them
4 accountable to what was submitted by the licensees
5 at the time.

6 COMMISSIONER CAMERON: And
7 significant penalties.

8 MR. GUSHIN: Yes, as you recall.

9 COMMISSIONER CAMERON: Significant,
10 which caused them to work very quickly to
11 complete.

12 MR. GUSHIN: Yeah. Fast tracked
13 the projects.

14 COMMISSIONER MCHUGH: Yes. Beating
15 a dead horse, but the penalties aren't as good the
16 ability of the penalized to meet them. I wondered
17 if there was a bond or what it was.

18 MR. GUSHIN: I don't recall if
19 there was a bond or not. I wouldn't be surprised.
20 I don't recall, but that went into, in part, the
21 financial --

22 COMMISSIONER MCHUGH: Soundness of
23 the project.

24 MR. GUSHIN: -- soundness of the

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1 project and the entities comprising the project.
2 Remember, these are not just one entity. They are
3 a combination, a consortium.

4 MR. CARROL: I just wanted to add
5 to that, Commissioner McHugh. Your approval
6 eventually would be on the whole project as a
7 whole anyway, and you can add conditions to that
8 license that would contain both progress
9 requirements and disincentives for interfering
10 with that progress.

11 You know, we've been involved with
12 a lot of the phased-in projects over the years.
13 As Commissioner Zuniga has mentioned before, it
14 gives developers additional tools in terms of
15 their plans from a capital investment point of
16 view to have anticipated revenues at an earlier
17 stage by phasing, and you can build in a
18 sufficient safeguard system which would be
19 composed of both penalties from the punitive point
20 of view, conditions in terms of, hey, you can lose
21 the whole license unless you show, you know, what
22 you -- complete what you've said you're going to
23 complete.

24 And that can be reviewed in

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1 conjunction with a constant monitoring of their
2 financial status along with the type of things we
3 talked about before in the earlier question that
4 would give you sufficient presence to monitor and
5 be able to have assurances that it's not going to
6 be something that's going to be built and they
7 complain that, well, we've run out of money, we
8 can't go any further. The penalties would be
9 severe in that regard.

10 COMMISSIONER MCHUGH: Thank you.

11 CHAIRMAN CROSBY: Thank you. My
12 sense is we definitely should not preclude
13 phasing. This is totally one of the situations of
14 the devil's in the details. My concern would be
15 that we could end up opening three or four slots
16 parlors and have three or four slots parlors in
17 Massachusetts for two years and that's not, I
18 think, what this was meant to do.

19 So, you know, what phasing --
20 whether and what we would approve is a question
21 that way remains to be seen, but we clearly
22 shouldn't preclude it as a possibility.

23 COMMISSIONER ZUNIGA: Right. Yes.

24 No, and it's, again, in the details.

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1 CHAIRMAN CROSBY: Right.

2 COMMISSIONER ZUNIGA: If it is
3 presented with a plan that only opens slots parlor
4 gaming without any amenities, I would suggest that
5 that would not be approved by this Commission. Of
6 course, that time is a hypothetical in the future.

7 CHAIRMAN CROSBY: Right. So do you
8 want to bring your motion?

9 COMMISSIONER ZUNIGA: Yes. So I
10 therefore move that this Commission do not
11 preclude facilities to be opened/constructed in
12 phases and allow proponents to present as part of
13 their submission any information afterwards,
14 details, plans as to the construction and
15 operations and opening of the facilities.

16 CHAIRMAN CROSBY: Right. But this
17 implies neither an approval nor a disapproval --

18 COMMISSIONER ZUNIGA: That's right.

19 CHAIRMAN CROSBY: -- of the
20 phased-in program, only that we would not preclude
21 that possibility.

22 COMMISSIONER ZUNIGA: Right.

23 CHAIRMAN CROSBY: Right.

24 COMMISSIONER ZUNIGA: We will do

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1 what the Gaming Act does, which is allow for the
2 possibility.

3 CHAIRMAN CROSBY: Right.

4 COMMISSIONER STEBBINS: Second.

5 CHAIRMAN CROSBY: Any further
6 discussion? All in favor?

7 COMMISSIONER STEBBINS: Aye.

8 COMMISSIONER ZUNIGA: Aye.

9 CHAIRMAN CROSBY: Aye.

10 COMMISSIONER CAMERON: Aye.

11 COMMISSIONER MCHUGH: Aye.

12 CHAIRMAN CROSBY: Opposed? Ayes
13 have it.

14 COMMISSIONER MCHUGH: Could I just
15 raise one question there, and we need not resolve
16 it today. But the Springfield comment raises a
17 question that may have to be resolved at some
18 point and that is what if a local community says
19 no phasing and we are prepared to allow phasing.
20 I'm not prepared to debate that today to come to a
21 decision on it today, but it does seem to me in
22 line with some of the discussions we had before
23 that we have three sets of concerns here. We've
24 got a concern with respect to the host community,

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1 which is largely the host community's
2 responsibilities; we've got a concern for
3 surrounding communities, which is a little bit
4 more in our ballpark; and we've got a concern with
5 the region, which is entirely in our ballpark.
6 And it may be that there is a regional benefit
7 from an earlier opening that results from a phased
8 approach that a delay for a complete build out
9 wouldn't serve.

10 I just raise that hypothetically.
11 I think it's worthwhile having further discussions
12 about that at some point. I don't think there's
13 any reason to get into it.

14 CHAIRMAN CROSBY: Yes. I had
15 raised the same questions, can we override an HCA
16 on this issue. I actually do think this is as key
17 policy a question as there is, because we know
18 Springfield is going down the road pretty quickly
19 on this very point. So maybe we shouldn't talk
20 about it. I don't see --

21 COMMISSIONER MCHUGH: Well, I
22 would -- I think we should talk about it in the
23 early stage. I would like to talk further with
24 the Springfield folks about that and about the

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1 issue and see before we took a position that we
2 couldn't find out more about the approach and the
3 reasons for it and see if there is an issue and
4 then talk if there is about what the remedies
5 might be. The remedies might be we say we can
6 override it and play that out. The remedies might
7 also be in the competitive district that we will
8 perhaps favor a proposal that's built in phases
9 over one that's built all at once.

10 CHAIRMAN CROSBY: Or the other way
11 around.

12 COMMISSIONER MCHUGH: Or the other
13 way around, that's right.

14 COMMISSIONER ZUNIGA: I believe the
15 teeth as far as I can ascertain them here come
16 from the ability of the Commission to allow for
17 gaming, open the gaming floor, and that ability
18 resides only with the Commission. So we have the
19 ability to say now you can conduct games or you
20 cannot yet. But that doesn't take away from your
21 point, and I understand it.

22 COMMISSIONER MCHUGH: I'm not sure
23 that we have the power to issue an occupancy
24 permit.

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1 COMMISSIONER ZUNIGA: No, we do
2 not, and we would not -- we would not -- No, we
3 would not do that.

4 COMMISSIONER MCHUGH: Right. So
5 our ability to say now you can play games may be
6 games in a park, but maybe not games in a
7 building.

8 COMMISSIONER ZUNIGA: No. I did
9 speak to subject to all conditions like safe and
10 secure, certificate occupancy, whatever.

11 COMMISSIONER MCHUGH: Right.

12 CHAIRMAN CROSBY: Just for the
13 record, my predisposition on this is this would be
14 something that would be within the HCA. You know,
15 if the community wants to negotiate, the mayor
16 feels strongly that he wants to negotiate an HCA
17 with -- that requires that no phasing, you know,
18 my instinct would be that's well within their
19 authority.

20 COMMISSIONER MCHUGH: That's my
21 default as well, but I would just like to pursue
22 that through conversation.

23 COMMISSIONER ZUNIGA: For the
24 record, me too. I'm only suggesting at this point

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1 that if they suggest, if they agree.

2 CHAIRMAN CROSBY: Right.

3 COMMISSIONER MCHUGH: Right.

4 CHAIRMAN CROSBY: Well, would one
5 or the other of you pursue that, because I do
6 think we should make a decision on that in the
7 next two or three weeks if we possibly can, so
8 maybe between you and Commissioner Zuniga --

9 COMMISSIONER MCHUGH: All right.

10 CHAIRMAN CROSBY: -- do whatever
11 you want to do to tee that up for a decision.

12 COMMISSIONER STEBBINS: Also of
13 benefit to reach out to the folks in Holyoke as
14 well.

15 CHAIRMAN CROSBY: And the mayor of
16 Boston has said he doesn't want any phasing too.
17 So there's a lot of people who are already
18 invested in this.

19 COMMISSIONER ZUNIGA: Should I
20 continue to policy question number 15?

21 CHAIRMAN CROSBY: Yes. Oh, no. We
22 didn't vote. Yes, we did vote.

23 COMMISSIONER MCHUGH: We did.

24 COMMISSIONER ZUNIGA: Policy

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1 question number 15. What degree of building
2 design completion will be required before the
3 licensing selection? I don't know if you saw my
4 attachment to this memo. It was a little printout
5 from American Institute of Architect's website.

6 CHAIRMAN CROSBY: I didn't know
7 what that was for. I did see it, but I didn't
8 know what it was for.

9 COMMISSIONER ZUNIGA: It
10 essentially defines the basic services of the
11 architect in the three major phases that I go here
12 to articulate, which is the schematic design,
13 design development, and construction documents
14 phases. Perhaps in addition to these, prior to a
15 schematic design, and I'm sorry this is not in the
16 memo, there's conceptual level design and that can
17 have many meanings from just a pre-drawing to a
18 lot more detail thus getting close to a schematic
19 design. And the difference that I would stress
20 between a conceptual design and schematic design
21 is that schematic design starts to have dimensions
22 that are very important for certain things that
23 will have a lot of bearing to communities and to
24 this Commission, height, area, things that start

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1 to affect communities, storm water runoff, et
2 cetera.

3 So I suggest as part of the
4 considerations that at a minimum, the
5 specifications, plans, and drawings would have to
6 be at a level that would facilitate the initial
7 MEPA reviews, and we've talked a little bit about
8 that. There's an environment identification form
9 that these projects will have to start filing as
10 part of the mitigation efforts, and the design has
11 to allow -- the studies have to allow for that
12 sort of -- it will actually require that there's
13 enough information to proceed with that process.

14 I also go on to suggest that
15 applicants will have a track record of casino
16 design and construction, and this Commission could
17 look at that and will likely have the ability to
18 see design criteria, user material, and that sort
19 of thing that is usually referred to and helpful
20 if we were looking only at conceptual designs.

21 One of the comments that we
22 received were from Sterling Suffolk. The
23 Commission has the authority to defer agencies
24 with statutory authority, other various issues:

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1 transportation, environmental protection, and
2 permitting. Applicants should demonstrate that
3 they have met the statutory requirements and
4 evaluative criteria while filing for permit in
5 parallel. The comments --

6 COMMISSIONER MCHUGH: What does
7 that mean?

8 COMMISSIONER ZUNIGA: In my view,
9 the comment really didn't address the question
10 relative to the level of design. They're loosely
11 alluding to the fact that it would have to be
12 such, the level of design, that it allows for all
13 of those things to happen, some of which might
14 have to be done in parallel.

15 COMMISSIONER MCHUGH: But it should
16 demonstrate to -- the applicant should demonstrate
17 to us that it has the capacity to meet whatever
18 DOT, DEP, MEPA requirements exist.

19 CHAIRMAN CROSBY: That's really
20 conflating with the licensing -- with the
21 permitting question that we talked about
22 yesterday.

23 COMMISSIONER MCHUGH: Right.

24 COMMISSIONER ZUNIGA: Right.

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1 CHAIRMAN CROSBY: But there's a
2 little bit of overlap.

3 COMMISSIONER ZUNIGA: Shefsky &
4 Froelich and the City of Springfield state that
5 concept designs drawn to scale, floor plans,
6 detailed finishes, building elevations,
7 landscaping, and surrounding areas will have to be
8 part of the submission.

9 COMMISSIONER MCHUGH: Now, does
10 that fit -- I'm sorry, to keep interrupting. But
11 your analysis is sort of open. The format is not
12 familiar. Does that comply with the schematic
13 design stage?

14 COMMISSIONER ZUNIGA: Not
15 necessarily. Not necessarily. And hence, perhaps
16 our need to have to define what stage --

17 COMMISSIONER MCHUGH: I see.

18 COMMISSIONER ZUNIGA: -- of the
19 design.

20 CHAIRMAN CROSBY: The concept would
21 be a precursor to the schematic.

22 COMMISSIONER ZUNIGA: The concept,
23 yeah. Now, the concept has varying degrees of
24 detail. I could draw up a concept in five minutes

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1 and that's wholly inadequate. There could be a
2 lot of work, including studies, behind a
3 conceptual design and, of course --

4 COMMISSIONER MCHUGH: Well, they're
5 talking about floor plans, detailed finishes,
6 elevations, where elevations are opposed to
7 landscaping.

8 COMMISSIONER ZUNIGA: Correct.

9 COMMISSIONER MCHUGH: So they're
10 talking about something more than just the fact of
11 the invoice, the concept.

12 COMMISSIONER ZUNIGA: Absolutely.
13 The thing is that schematic design is a widely
14 accepted -- it's widely accepted as a first formal
15 phase in architectural design, which is what I'm
16 going to argue is the level that we should be
17 looking for.

18 COMMISSIONER MCHUGH: Okay.

19 COMMISSIONER ZUNIGA: Several
20 citizens, Vignoli, Robinson, and Cataldo,
21 submitted comments relative to saying that the
22 design should be complete, and I don't believe
23 they appreciate the nuance between the different
24 phases of the design: design development,

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1 schematic design, and construction drawings.

2 I'm coming at it -- I'm going to
3 come at this from the back end, if you will. It
4 will be impractical and unnecessary for us to
5 require construction drawings. I think that's
6 clearly stated. There is a lot of detail that
7 goes above the ceilings and behind the walls that
8 we don't need to know for the award of license.
9 We could keep working ourselves backwards from
10 that or -- yeah, backwards. And there's a lot of
11 detail that does go on in the design development
12 as well that I don't believe is necessary.

13 I believe the question is between a
14 schematic design and even an earlier concept
15 design. I'll discuss more about that, but I
16 suggest two things that are not really part of the
17 question, which is that we should have a process
18 to review the design progress regardless of
19 whether we get a concept design or a schematic
20 design. And it is very important that, and I
21 think this point was made well in our forum
22 yesterday by the architects, that establishing a
23 process to review the design progress is going to
24 be paramount to this Commission and for the public

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1 benefit.

2 CHAIRMAN CROSBY: Are you talking
3 post licensing?

4 COMMISSIONER ZUNIGA: Yes, even
5 post licensing. Because the design will progress.
6 There will be instances where unforeseen costs
7 appear, and the design team has all the incentives
8 at that time to value engineer, to change the
9 design, to eliminate certain things where that may
10 not be acceptable to this Commission or the host
11 community. The only way to do that is by having
12 that protocol.

13 Now, along with the drawings, there
14 are two very important pieces of information that
15 go perfectly well in that design review and that
16 is a cost estimate and, I argue, a statement of
17 work. And a statement of work is simply a
18 narrative that compliments the pictures of either
19 a conceptual design or a schematic design where
20 they articulate in detail what are going to be the
21 goals. The architects yesterday were referring as
22 the goals, but they could articulate and
23 superimpose in both a cost estimate, a narrative,
24 and a design will give the most tools, really, the

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1 only tools there are, to cross reference anything
2 that may be misunderstood and later taken out.

3 So I'm making the argument that
4 whether we allow for conceptual level or whether
5 we require a schematic design level, which, by the
6 way, I understand from the architects that this
7 would be entirely feasible and not all that
8 expensive for proponents, that they be
9 complimented with a detailed cost estimate as well
10 as a narrative or a statement of work. Those
11 three components, as they progress through time,
12 as they change, we will be able to ascertain if a
13 cost has diminished significantly or increased
14 significantly. We cross reference back to the
15 design component that is driving that cost and
16 that's how we, or our experts really, because I
17 don't suggest we do this, will be able to
18 ascertain major changes in the design. Does that
19 make sense?

20 COMMISSIONER CAMERON: It does make
21 sense.

22 COMMISSIONER MCHUGH: Does that
23 formula that you just arti- -- does the formula
24 that we're looking for in terms of the

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1 completeness of the plans or the desirable -- the
2 necessary completeness of the plans, does that
3 compare with the kind of detail that's necessary,
4 for example, to get state funding for a building?
5 You've had a lot of experience in that area.

6 COMMISSIONER ZUNIGA: Yes.

7 Actually -- Thank you. At the school building
8 authority, there was a lot of discussion about
9 when we set up the program initially. The prior
10 administrator of that program accepted conceptual
11 design level of drawings, and those had a tendency
12 of going way over budget and those -- And so the
13 intention was clearly as a funder, as a grantor of
14 money, the intention was we need you to do as much
15 work as possible prior to any commitments from a
16 grant.

17 So they wanted to pay their
18 architect, cities and towns wanted to not spend a
19 lot of money paying the architect because there
20 was no promise for grant.

21 COMMISSIONER MCHUGH: Right.

22 COMMISSIONER ZUNIGA: There's a
23 parallel here. A developer may be incentivized to
24 not spend a lot of the money prior to award of a

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1 license or from a design perspective, but there's
2 other working -- other forces working in our
3 favor, if you will, mostly relative to permitting
4 and host and surrounding community agreements that
5 will force, really, an applicant to spend money on
6 studies and design type work even prior to the
7 promise of -- prior to the assurances of a
8 license.

9 So -- But the intention is, I
10 think, clear. The more level of design that we
11 were to require, the more uncertainty because
12 there's no award of license whereas the developer
13 may be pulling in the other direction.

14 So because of that, I believe --
15 And back to your question about the school
16 building authority. They settled essentially with
17 the schematic design but a robust schematic design
18 level of design. And the way to really compliment
19 it, which proved to be very useful, were these two
20 other pieces, not just the design, but the cost.

21 And so you can tell me all of these
22 components of cost. Where do they relate to the
23 drawing? And when you show me in a narrative and
24 when you show me a later design with a

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1 differential in cost, I'm going to be able to call
2 out what you may have been value engineering. In
3 other words, if you price the pool at \$10 million
4 and now it's costing five, tell me why, which is
5 the design process.

6 COMMISSIONER MCHUGH: But we're not
7 funding this project. We are concerned -- so it's
8 not our money that's going -- it's not our money
9 that's at risk, it's the developer's money that's
10 at risk, but we're still concerned with the
11 financial viability of the project that's being
12 proposed.

13 So I guess my question is, does
14 this formula that you're proposing, which sounds
15 good, does that suffice to ensure our ability to
16 assess the financial viability of the project
17 without doing the kind of extra step that probably
18 would be necessary if it was our money that was
19 going to be used to build it?

20 COMMISSIONER ZUNIGA: In other
21 words, would we allow a conceptual design level,
22 an earlier, if you will, supplemented by a cost
23 estimate and a narrative?

24 COMMISSIONER MCHUGH: Would we --

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1 Yeah. In other words, would we allow -- would we
2 allow -- is somewhat less information than a
3 funder would require sufficient for our purposes
4 in determining the viability of the project?

5 COMMISSIONER ZUNIGA: Yes. Yes.
6 Technically, yes.

7 COMMISSIONER MCHUGH: And is this
8 proposal that your making, to complete that
9 question, somewhat less than a funder would
10 require?

11 COMMISSIONER ZUNIGA: Yes.

12 CHAIRMAN CROSBY: I thought you
13 were saying the same thing you used at the SBA.

14 COMMISSIONER ZUNIGA: No. I'm
15 saying it can be a conceptual, a robust
16 conceptual.

17 CHAIRMAN CROSBY: You said robust
18 schematic.

19 COMMISSIONER ZUNIGA: Or a
20 schematic.

21 CHAIRMAN CROSBY: Oh. I thought
22 you said robust schematic.

23 COMMISSIONER ZUNIGA: No.

24 COMMISSIONER CAMERON:

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1 Commissioner, the schematic -- I'll use that word,
2 and I'm not sure it's correct -- that we looked at
3 earlier in the week of a proposed casino project
4 which included landscaping and detailed floor
5 plans, elevations, all of those things, is that --
6 would you consider that as a concept?

7 COMMISSIONER ZUNIGA: It was a
8 robust concept, I would call it. I mean, they
9 were labeled conceptual design.

10 COMMISSIONER CAMERON: Okay. But
11 that's what you're referring to?

12 COMMISSIONER ZUNIGA: Yes.

13 COMMISSIONER CAMERON: Something of
14 that level of detail?

15 COMMISSIONER ZUNIGA: That's right.
16 A key component here is dimensions. It's one
17 thing to look at perspectives. They are what they
18 are. But it's another to say 24 floors and hence
19 this height and this much area with square feet of
20 roof and of floors, et cetera, et cetera.

21 So I don't want to split hairs
22 necessarily, but what I'm really talking about is
23 either a very robust conceptual or a schematic
24 design. My recommendation on a schematic design

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1 because that is widely understood in the industry.
2 Show us a schematic design level.

3 CHAIRMAN CROSBY: But don't change,
4 because you're recommending a schematic design?

5 COMMISSIONER ZUNIGA: Yes.

6 CHAIRMAN CROSBY: Because earlier
7 on, it sounds if not just a concept design, but a
8 robust one.

9 COMMISSIONER ZUNIGA: Yes.

10 CHAIRMAN CROSBY: But you're going
11 with the industry definition?

12 COMMISSIONER ZUNIGA: Yes.

13 CHAIRMAN CROSBY: You're talking
14 about a pretty substantial schematic design along
15 with these two add-ons?

16 COMMISSIONER ZUNIGA: Correct.

17 CHAIRMAN CROSBY: Is there a -- Is
18 there any sort of SOP in the industry? Is
19 Commissioner Zuniga talking about what's standard
20 for the decision making?

21 MR. GUSHIN: I think it's pretty
22 much standard in the industry. I mean, you're
23 going to look at these things from a number of
24 different perspectives, both the merits of the

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1 design and then, again, when it gets closer to
2 operational things, from the security surveillance
3 perspective to make sure the operational
4 requirements are met and that was something that
5 is routinely done in the industry.

6 MR. CARROL: I would just add to it
7 as Commissioner McHugh mentioned, the lenders
8 themselves will demand certain assurances in terms
9 of what the project's going to be involved, and
10 you will have access to that material for cross
11 checking and so forth.

12 So the robust, conceptually you're
13 talking about, has many qualities in it that
14 satisfies schematic definition. But in addition
15 to where, as you mentioned, the cost and added on
16 a couple of additional things, there would be
17 additional steps that the Commission would
18 prudently require such as detailed curriculum
19 vitae of the proposed constructors to make sure
20 that they've performed projects of this size and
21 have the wherewithal, both financially and
22 practically, to perform the project.

23 So all of that would be taken into
24 consideration. And each individual project,

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1 obviously, will have a certain level of detail,
2 but like we showed you earlier in the week as just
3 an ample, those things contained a fair level of
4 detail. I mean, even things such as surveillances
5 and security mechanisms and locations of things
6 and plus statutory requirements can all be laid
7 out and would fall somewhere between conceptual
8 and schematic but probably closer to the schematic
9 definition than conceptual.

10 MR. GUSHIN: I'm sure there was --

11 CHAIRMAN CROSBY: And some -- I
12 just don't recall the statute here, but are the
13 construction companies part of the licensing
14 process for vendors?

15 COMMISSIONER ZUNIGA: Yeah. We
16 have the ability to do that, yeah.

17 MR. CARROL: Yes.

18 COMMISSIONER ZUNIGA: Yes.

19 (Inaudible. Multiple speakers.)

20 CHAIRMAN CROSBY: So it's --

21 MR. GUSHIN: Yes.

22 CHAIRMAN CROSBY: -- an important
23 piece.

24 It seems to me, the objective here

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1 is, A, so that we know what we're getting in terms
2 of the facility; and, B, that we can substantiate
3 the costs that we're being told is the capital
4 investment that's going in, and it sounds like
5 from an industry standard, two sides of an
6 industry standard what is being specced out here
7 would give us the ability to genuinely understand
8 what we're getting and, to a large extent,
9 corroborate the alleged capital cost.

10 MR. GUSHIN: That's correct.

11 MR. CARROL: Yes.

12 MR. GUSHIN: Absolutely.

13 CHAIRMAN CROSBY: Thank you. Do
14 you want to?

15 COMMISSIONER ZUNIGA: I know it
16 says in the paper a schematic design level, but I
17 was prepared and I'm prepared to recommend either
18 a robust conceptual design or a schematic design.
19 My larger points, which I know are not unnoticed,
20 are relative to a process for design review and
21 additional documents that will be part of the
22 submission and also through the life cycle, and
23 that is a statement of work and -- well, the
24 statement of work comes at the beginning and the

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1 cost estimates along with the design phases as
2 they progress.

3 COMMISSIONER MCHUGH: But if
4 schematic design is a term of art that architects
5 and everybody else will use, isn't it better to go
6 with that in terms of trying to clarify what we're
7 looking for?

8 COMMISSIONER ZUNIGA: That's the
9 safer.

10 COMMISSIONER MCHUGH: All right.

11 COMMISSIONER ZUNIGA: That's the
12 safer piece. I would note, too, it's also a level
13 that is often agreed to in design build contracts,
14 which is also a -- likely will be the delivery
15 system here.

16 CHAIRMAN CROSBY: So you're
17 recommending that we -- the level of design would
18 be a schematic design level as defined by --
19 understood by AIA along with a statement of work
20 and a detailed cost estimate?

21 COMMISSIONER ZUNIGA: Correct. And
22 in addition, that we establish a process for
23 review of the design evolution.

24 CHAIRMAN CROSBY: Right. Okay. So

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1 moved.

2 COMMISSIONER STEBBINS: Second.

3 CHAIRMAN CROSBY: Second. Okay.

4 Any further discussion? Makes sense to me. All
5 in favor?

6 COMMISSIONER STEBBINS: Aye.

7 COMMISSIONER ZUNIGA: Aye.

8 CHAIRMAN CROSBY: Aye.

9 COMMISSIONER CAMERON: Aye.

10 COMMISSIONER MCHUGH: Aye.

11 CHAIRMAN CROSBY: Opposed? The
12 ayes have it.

13 I'm going to ask for a brief break.
14 We're going to try to get everything done today.
15 I have one other question that I was preparing for
16 tomorrow, so I just need to work on this for a
17 second.

18
19 (Break taken.)

20
21 CHAIRMAN CROSBY: So we finished
22 12, and we are going to postpone -- I'm sorry, we
23 finished 11, right?

24 COMMISSIONER ZUNIGA: 15.

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1 COMMISSIONER CAMERON: 15.

2 CHAIRMAN CROSBY: It's 12. Which
3 one are we not doing? Oh, it's 12, right?

4 COMMISSIONER CAMERON: Correct.

5 CHAIRMAN CROSBY: Got it. So we're
6 now on 36; is that right?

7 COMMISSIONER STEBBINS: Yes.

8 CHAIRMAN CROSBY: Just for the
9 record, we've decided that we needed more analysis
10 done on the issue of where on the process of
11 approvals of permitting and other regulatory
12 process, where they have to be before they get to
13 us, and we decided we need to do more research on
14 that before we discuss it any further.

15 So we will go to number 36, which
16 is Commission Stebbins.

17 COMMISSIONER STEBBINS: Yes.

18 Question 36. If MOU's and other agreements may be
19 part of an applicant's proposal to the Commission
20 to demonstrate their commitment to key evaluation
21 criteria, how should the Commission weigh these
22 agreements and enforce them in the coming years
23 after the license is awarded?

24 I believe this question somewhat

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1 grew out of some early interest that at least one
2 of the state's Convention and Visitors Bureau
3 approached us about with respect to their
4 interests in creating a partnership, creating a
5 relationship with potential applicants in Region
6 II. They -- they're -- they had organized the
7 subcommittee. The subcommittee created an RFP
8 that they wished to share that resulted in those
9 RFPs would result in the crafting of a MOU or a
10 MOA between the Convention and Visitor's Bureau
11 and a potential licensee, and, again, to forward
12 the -- to forward and promote the principles of
13 the statute towards job creation and having a
14 positive impact on local small business and travel
15 and tourism.

16 I didn't find anywhere in the
17 statute, especially under Sections 9, (the detail
18 requirements of the application), or 15 or 18 is
19 there any mention of local agreements/MOU's
20 beyond, obviously, the host community agreements,
21 surrounding community agreements, and any
22 agreements with impacted venues. You know, other
23 studies, you know, you can ask for work force
24 development plans, affirmative action plans, and

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1 marketing plans, and those are all requirements of
2 the applicant.

3 Under Section 18, the Commission --
4 obviously, the language says the Commission shall
5 evaluate and issue a statement of findings and how
6 each applicant proposes to advance the stated
7 objectives in this section. It would appear that,
8 at least from my perspective, critical
9 documentation from an applicant to demonstrate
10 their ability to complete any of the objectives
11 might result in some type of document, a plan,
12 MOU, being included in their application again to
13 demonstrate and show the Commission they have a
14 clear understanding -- so we have a clear
15 understanding how they're going to demonstrate to
16 meet their objectives.

17 We received six written submissions
18 on the question. MAPC was somewhat silent on
19 MOU's and evaluations. They did get to the issue
20 of enforcement of the these agreements.
21 Responsibility for enforcement ultimately lies
22 with the Commission, however, input and guidance
23 from the community and mitigation subcommittees
24 which will be created or an optional local

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1 community mitigation advisory committee should be
2 used to enforce and track mitigation as outlined
3 in the agreement.

4 Sterling Suffolk commented yes,
5 yes, and yes. They believe that such agreements
6 can be evaluated in the licensing process only in
7 the context of the record establishing a
8 connection with a particular application. With
9 respect to a licensee's performance of such
10 agreements, SSR notes the Commission's general
11 oversight power enables it to field complaints
12 from either party. Experience in other
13 jurisdictions suggests parties will not be shy
14 about bringing such issues to the attention of the
15 Commission. Commission not need spend time and
16 resources at this stage to develop procedure or to
17 monitor compliance.

18 Joshua Levin commented violation of
19 any agreement should result in license suspension
20 and severe fines.

21 Martha Robinson commented no
22 comment other than answers given above about
23 strengthening enforcement.

24 Paul Vignoli said violation of any

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1 agreement should result in license suspension and
2 severe fines.

3 Shefsky & Froelich on behalf of the
4 City of Springfield said if an MOU or other
5 agreement is an integral part of an applicant's
6 proposal, then the MOU or agreement should be
7 given appropriate weight. Such MOU's and
8 agreements should be enforced by the party with
9 whom the applicant has made the agreement.

10 Further in the statute, we have --
11 we talked about after granting the license,
12 Section 23 requires Class A and B licensees to
13 issue an annual report to the Commission
14 explicitly stating its progress and meeting each
15 of the stated goals and stipulations put forth in
16 the licensee's original application. Inability to
17 meet stated goals within a reasonable time frame
18 shall result in additional fees as deemed fair and
19 reasonable.

20 Yes. This portion of the statute
21 could be read to allow -- could be read to allow
22 us to review their progress and components of
23 their application, including any submitted MOU's
24 that they use as testimony to their ability to

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1 complete the statute's priorities.

2 In the end, I came down as
3 recommending that we answer this question in the
4 affirmative that MOU's can be included in an
5 application, again, specifically to attest to an
6 applicant's ability to demonstrate an ability to
7 meet the objectives under Section 18 and that for
8 the time being, we defer enforcement measures
9 until later, if appropriate.

10 CHAIRMAN CROSBY: Questions,
11 thoughts, reactions?

12 COMMISSIONER MCHUGH: Strikes me as
13 a sound approach to a whole variety of be good --
14 a signed agreement is good evidence that they've
15 worked out details of meeting some of these
16 objectives, and we can -- the whole variety of
17 enforcement mechanisms that we can consider as we
18 issue the license. So it strikes me as a good
19 approach.

20 COMMISSIONER ZUNIGA: I would agree
21 with that. I have a question that is not
22 necessarily part of this question, if you will,
23 but perhaps it's the next step. And as we bundle
24 criteria or the criteria, the details behind the

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1 criteria in Section 18, will this Commission be
2 grading, if you will, or evaluating the adequacy
3 of some of these MOU's, and there was a little
4 discussion to that effect yesterday to some
5 degree, and I just kind of wanted to throw it out
6 there in these comments. But I do agree with this
7 analysis, and I think it's a relevant piece of
8 information, if nothing else, to be part of the
9 submission. I wonder after once it's been
10 submitted, will we be in a position to be
11 evaluating the adequacy.

12 CHAIRMAN CROSBY: I would say sure.
13 I mean, what -- just like we'd be evaluating
14 everything else to the extent that it's within
15 your ability.

16 COMMISSIONER ZUNIGA: Well, we had
17 a discussion relative to -- a lengthy discussion,
18 I would pose, relative to local control, and if at
19 that point if we were to send it back as
20 inadequate, I would just like to understand it for
21 my benefit.

22 CHAIRMAN CROSBY: The local control
23 concern stops when the application gets to us. I
24 think -- I mean, I think we are empowered to

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1 assess and review everything. And as we've said
2 before, if we think at the local level they did
3 something that we thought was a mistake, we've
4 decided to let them make it so long as it doesn't
5 impede our process, but when it gets to us, we
6 would certainly take it into consideration.

7 COMMISSIONER MCHUGH: Well, let me
8 just give a hypothetical. And we need not decide
9 this now perhaps, but maybe we should. A local
10 tourism board does an MOU with a developer that
11 has a certain set of conditions. We're going to
12 do X, Y, Z, says the developer to help tourism in
13 this area. And we look at that MOU, and do we
14 then have the power, and if we have the power, are
15 we going to assert it to say, no, that's not good
16 enough. You have got to go back and put terms X,
17 Y, Z in that MOU.

18 At that level, I'm not sure -- We
19 probably have the power. I'm not sure whether we
20 ought to do it. But that's also hypothetical,
21 that if -- What we do have the power to do is say
22 this MOU, if this is all you have to promote
23 tourism, is insufficient to show a commitment to
24 meet the tourism standard of Section 18. I mean,

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1 there's no question about that.

2 CHAIRMAN CROSBY: Which was the
3 question he was asking. Can we evaluate the merit
4 of the MOU in accomplishing whatever the criteria
5 is it's meant to accomplish?

6 COMMISSIONER MCHUGH: I understood
7 something a little bit different. I understood
8 can we pick apart a specific MOU and say that MOU
9 is inadequate? You know, let's say we've got five
10 MOU's that are designed to hit the tourism piece,
11 we surely can consider whether the five do it and
12 we can -- or not. I mean, I don't think there's
13 any doubt about that. But the question is, that I
14 thought you were aiming at, can we pick apart a
15 specific one of the five and say this one's
16 inadequate. You've got to make a better deal with
17 entertainment venue A. I have doubts about that.

18 CHAIRMAN CROSBY: I would have said
19 we certainly could. I don't know why we --

20 COMMISSIONER MCHUGH: Well, then we
21 differ.

22 COMMISSIONER STEBBINS: I -- Yeah.
23 And I pick up on your question to be somewhere in
24 assessing how well an applicant is trying to

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1 address the criteria in Section 18. I think --
2 You know, my feeling is, you know, if the MOU says
3 we promise to work together and is signed by two
4 people, that's not going to provide me as much
5 evidence or as much detail for me to be able to
6 make a judgment as to whether they're going to be
7 able to meet the goals and priorities of the
8 statute as opposed to somebody who lays out an MOU
9 with a detailed plan and sharing resource, you
10 know, however detailed it can get. But I think to
11 answer your question, I think we should evaluate
12 that. I'm not sure I want to go back and dissect
13 it and send something back.

14 COMMISSIONER ZUNIGA: Understood.

15 COMMISSIONER STEBBINS: If it comes
16 in as part of the application, it should be part
17 of the application. I'm hoping such a document
18 would be helpful to our evaluation of an
19 application, but not necessarily be in a position
20 to go back and open it up and make
21 recommendations.

22 COMMISSIONER CAMERON: I would
23 agree with that. It's just a way of evaluating
24 one applicant versus another. If one is much

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1 stronger in that area, they get higher marks in
2 that area where someone else may not, but I --

3 COMMISSIONER ZUNIGA: Fair enough.

4 COMMISSIONER CAMERON: I guess if
5 that were the one, and in every other area they
6 were the strongest applicant, but this was weak,
7 could we at that point say, look --

8 CHAIRMAN CROSBY: Or if we only had
9 one bidder and we didn't like it, could we make
10 them go back because we didn't think it
11 implemented the intent --

12 COMMISSIONER CAMERON: Of the law.

13 CHAIRMAN CROSBY: -- of the law?

14 COMMISSIONER MCHUGH: Yeah. And I
15 think we're saying the same things in different
16 ways. I really don't disagree with the macro view
17 of that.

18 CHAIRMAN CROSBY: Okay. And there
19 is a little bit of a larger point. And on this
20 whole local control stuff, I've evolved in my
21 thinking about it to the point where my, sort of,
22 sense is that all of the rights which are
23 initially granted to the local community is
24 subject to the standards that we've now come up

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1 with about impeding our process or impuning the
2 integrity of the process, that I'm leaning, and I
3 will just -- if we get to this, I've made a
4 recommendation on whether we should approve the
5 summaries, the concise summaries. I lean towards
6 giving them a lot of rope, because I think that's
7 what was intended, but I've been doing it thinking
8 that when it gets to us, we ultimately do have
9 pretty broad latitude to implement our judgment.

10 COMMISSIONER MCHUGH: Right.

11 CHAIRMAN CROSBY: So that if we
12 really thought even a host community agreement
13 that we thought were not going to put out minimum
14 criteria, but if a host community agreement came
15 to us that we thought just simply didn't do the
16 job but just seriously overlooked it, and there
17 were going to be other effects that were not
18 mitigated adequately. Again, take the easy case,
19 and there's only one bidder, that it would be
20 complicated, but I had been thinking that we do
21 have this backup right to pretty much intervene on
22 anything we think we need to intervene on to get
23 the law implemented properly, including saying
24 this host community agreement is inadequate.

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1 That particular one raises the
2 question about whether or not they need another
3 referendum and so forth, and there's criteria for
4 that in the law and so forth. But as a general
5 principal, I lean towards giving them a lot of
6 rope, but it's partly because I believe we have a
7 very strong ability to have a corrective mechanism
8 when it finally gets to us, and to the extent that
9 we have that less, then I'm inclined to give less
10 rope.

11 COMMISSIONER MCHUGH: No. I agree
12 with that schematic, and the real question is how
13 we exercise the power that I think we have.

14 COMMISSIONER ZUNIGA: Right.

15 CHAIRMAN CROSBY: Okay. Good. All
16 right. So I think we're all agreed.

17 COMMISSIONER ZUNIGA: That's right.

18 CHAIRMAN CROSBY: Okay. So do you
19 want to frame your motion, Commissioner?

20 COMMISSIONER STEBBINS: Sure. I
21 move that the Commission answers this question in
22 the affirmative that MOU's can be included in an
23 application, and we defer a discussion or
24 development of enforcement measures until a later

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1 date.

2 CHAIRMAN CROSBY: Second?

3 COMMISSIONER ZUNIGA: Second.

4 CHAIRMAN CROSBY: Further

5 discussion? All in favor?

6 COMMISSIONER STEBBINS: Aye.

7 COMMISSIONER ZUNIGA: Aye.

8 CHAIRMAN CROSBY: Aye.

9 COMMISSIONER CAMERON: Aye.

10 COMMISSIONER MCHUGH: Aye.

11 CHAIRMAN CROSBY: Opposed? The

12 ayes have it.

13 Commissioner Stebbins, I guess.

14 Policy question 38.

15 COMMISSIONER STEBBINS: Sure. The
16 question is: As part of an applicant's goal to
17 impact small business, what information should the
18 Commission require?

19 And you'll see the relevant
20 sections. All throughout the statute, and I won't
21 go through it, but all throughout the statute,
22 Section 1, Section 9, Section 15, Section 18,
23 there are continual referrals to presenting plans
24 for outreach to small business. In some cases,

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1 those small business enterprises are identified
2 with a focus on minority, women, and veteran owned
3 businesses. We have the ability to issue a
4 statement of finding on how the applicant plans to
5 promote small business in host surrounding
6 communities, contract with local business owners
7 for provision of goods, et cetera.

8 As I started to weigh in on this
9 question, and this probably is somewhat -- in some
10 way goes back to an issue that anyone in business
11 development would think about is requiring we
12 first understand the definition of small business.
13 The U.S. Small Business Administration creates a
14 spreadsheet that lists small business size,
15 standards, matched to industries. And the size
16 standards are, for the most part, expressed in
17 either millions of dollars in sales or number of
18 employees. And though most industries qualify as
19 small businesses with up to 500 employees, I would
20 harbor a guess most of us around this table or in
21 the Commonwealth would consider a company with 500
22 employees as a large employer.

23 Minority, women, and veteran owned
24 businesses are, obviously, identified with

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1 appropriate registration with their state and
2 federal agencies.

3 I'm not suggesting in answering
4 this question that we create a definition for
5 small business. But, again, I think we
6 acknowledge that established standards might lead
7 to a different perception or definition of small
8 business, and hopefully our applicants would see
9 that as well, but that we encourage our applicants
10 be creative and aggressively seek suitable vendors
11 in the immediate area and report the impact they
12 may have on other businesses required under the
13 statute.

14 I'll jump to some of the comments
15 that we got. MAPC, to best identify potential
16 impacts to small business, a detailed market
17 analysis should be performed, including analysis
18 of potential secondary displacement.

19 Joshua Levin said the host city
20 should submit a detailed proposal on small
21 business impact. This must include independent
22 evidence from other casino sites around the
23 country showing how casinos do or do not have a
24 detrimental impact.

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1 Sterling Suffolk also commented and
2 said we know that the Gaming Act requires an
3 applicant to study its impact on small business.
4 Moreover, an applicant must provide the Commission
5 with a marketing program.

6 They also talk about a
7 collaborative process identifying and contacting
8 key businesses, advertising media and community
9 partnership organizations, chambers of commerce,
10 informing the local small business community
11 through meetings and presentations, conducting
12 outreach to small business.

13 Martha Robinson said the
14 document/info needed, as stated in the PDF, looks
15 good. Chambers of commerce are unreliable.

16 Shefsky & Froelich for the City of
17 Springfield says the Gaming Commission should
18 require applicants to submit information
19 concerning the expected impact of the applicant's
20 project on small business located in the host and
21 surrounding communities and how the applicant
22 expects to mitigate such impact.

23 The statute, again, does call for
24 three documents for the licensee's application

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1 related to small business impact, and I've
2 outlined them there.

3 In considering the information that
4 we're already going to request and, at the same
5 time, considering the position that we posted for,
6 the director of kind of supplier, development, and
7 work force development. I think a helpful piece
8 of information would be asking a license applicant
9 for information relative to their outside spending
10 categories: you know, landscaping services,
11 limousine services, where they might have an
12 opportunity to contract with a local vendor.
13 Information on these categories would be helpful
14 to this staff person we're looking to hire to make
15 sure that an applicant is thoroughly looking
16 around the host community and then maybe fanning
17 out from there to find suitable vendors in the
18 surrounding communities that are even broader
19 within the gaming region.

20 And Mr. Chairman, as you know, we
21 brought a team together to try to figure out --
22 try to make sure that an applicant finds a small
23 business that, for some reason, it's just not at
24 the capacity level they need to be at to be a

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1 suitable vendor, that we continue to try to help
2 that local business get there and work in
3 partnership with a prospective applicant.

4 I recommend that we respond to this
5 question by highlighting for potential applicants
6 that information which is already requested by the
7 statute and additionally request an applicant's
8 expected outside spending categories and projected
9 amounts would be helpful information for us to
10 have.

11 CHAIRMAN CROSBY: Thoughts or
12 comments?

13 COMMISSIONER CAMERON: I think what
14 you're saying is the law covers this pretty well,
15 and you're just looking for us to ask for
16 additional information on how they are planning on
17 using those local folks; is that right?

18 COMMISSIONER STEBBINS: That's it.

19 COMMISSIONER CAMERON: Okay. That
20 sounds like a good recommendation to me.

21 CHAIRMAN CROSBY: It wasn't so much
22 how they're going to use the local folks, it was
23 how much business are they going to have
24 available --

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1 COMMISSIONER STEBBINS: Right.

2 CHAIRMAN CROSBY: -- by various
3 categories?

4 COMMISSIONER STEBBINS: Right.

5 CHAIRMAN CROSBY: Yeah. Because we
6 will definitely be -- we will be getting that
7 earlier up front because we will be -- as you
8 said, we're going to be proactively trying to tie
9 local people into those categories, so how many
10 flowers you're going to buy, how many lunches, et
11 cetera.

12 COMMISSIONER STEBBINS: Exactly.

13 CHAIRMAN CROSBY: Okay.

14 COMMISSIONER STEBBINS: Again,
15 we're hoping that when we say impact on small
16 business, in the statute, that that has a positive
17 connotation instead of a negative connotation.

18 CHAIRMAN CROSBY: Right.

19 COMMISSIONER STEBBINS: I know
20 Michael Pollock from Spectrum wanted to stick
21 around. If he had any thoughts or comments on
22 this topic, I know this is right up his ally.

23 MR. POLLOCK: Just very briefly.

24 There's -- In our experience, there's three ways

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1 in which a casino applicant or a casino licensee
2 can impact small business. One is in what they
3 purchase in goods and services, the other is
4 working with them in helping to share in money
5 spent by visitors, and the third is just in
6 general economic conditions through employment and
7 other areas that they can help local businesses
8 through increased spending levels. And each one
9 of those areas would require its own sort of plan,
10 its own sort of concept as to how to advance it.

11 In New Jersey, we developed
12 something -- It's since been found
13 unconstitutional, but it's called the equal
14 employment business opportunity plan. It was
15 found unconstitutional for the equal employment
16 opportunity aspects of it, not for the business
17 opportunity plan part of it. But what those plans
18 did, it required -- these weren't applicants.
19 These were licensees. It required licensees to
20 put forth very detailed plans as to how they were
21 going to, in part, incubate small business, for
22 example, or help or develop cross marketing
23 arrangements with the small businesses.

24 And I can say that because it did

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1 encourage creativity in terms of developing it,
2 there was definition of putting forth a good faith
3 effort to develop these creative plans. It did
4 work well. At least while it was in existence, it
5 did work well. There are opportunities to be
6 creative and to help incubate small businesses.

7 CHAIRMAN CROSBY: Thank you.

8 COMMISSIONER CAMERON: Thank you.

9 CHAIRMAN CROSBY: Are there
10 thoughts or questions or comments?

11 COMMISSIONER ZUNIGA: Just a minor
12 one, so I won't be lengthy. As a reminder, we
13 are -- we've been undertaking the research agenda
14 piece and that has an economic impact as I
15 mentioned, and at least I always thought of it as
16 one of these subdimensions of the economic impact
17 is that of small business. So I suspect we will
18 be gathering a lot more information to these
19 effects. We could require more of that in the
20 future of our applicants.

21 CHAIRMAN CROSBY: Okay. Anybody
22 else?

23 COMMISSIONER MCHUGH: No. I think
24 it's a sound plan. I think it's a sound approach,

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1 and --

2 CHAIRMAN CROSBY: I like the
3 additional idea, your suggestion. Also, Mr. Levin
4 had an interesting point about when we are testing
5 people's assertions that looking at how they've
6 done at other sites in other places is a good
7 idea. I mean, we should be doing this on
8 everything we do as much as possible because it's
9 one thing to say it, it's another thing to do it.
10 I felt that was a good suggestion.

11 Did you move?

12 COMMISSIONER STEBBINS: No, not
13 quite.

14 CHAIRMAN CROSBY: Would you like to
15 move?

16 COMMISSIONER STEBBINS: I can move
17 again. Again, I move that the Commission respond
18 to this question by highlighting again for
19 potential applicants -- they probably know this
20 already -- that information which is already
21 requested and additionally request an applicant's
22 expected outside spending categories and projected
23 amounts.

24 COMMISSIONER MCHUGH: Second.

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1 CHAIRMAN CROSBY: Further
2 discussion? All in favor?
3 COMMISSIONER STEBBINS: Aye.
4 COMMISSIONER ZUNIGA: Aye.
5 CHAIRMAN CROSBY: Aye.
6 COMMISSIONER CAMERON: Aye.
7 COMMISSIONER MCHUGH: Aye.
8 CHAIRMAN CROSBY: Opposed? The
9 ayes have it.

10 Okay. Question number 44,
11 Commissioners Zuniga and Stebbins.

12 COMMISSIONER ZUNIGA: Can I start
13 with that?

14 COMMISSIONER STEBBINS: Go for it.

15 COMMISSIONER ZUNIGA: Perhaps by
16 coincidence, this is question number 4 that I
17 shared with Commission Stebbins was similar to one
18 question number four in the sense that it's a
19 broad question and one where we don't necessarily
20 have a straightforward recommendation, and one in
21 which we, or at least I, think that we should
22 think of broad definitions, and I'll get into that
23 in a minute. But ask questions in a way that
24 tease out sufficient level of detail to inform in

1 the best way possible.

2 But the particular question is
3 relevant to Section 9(13) and 18(18). Those
4 sections are both from the content of the
5 application and the evaluation criteria rather
6 broad studies, if you will, that start to get to
7 economic benefits, local, social, regional and
8 environmental impacts, impacts on the local and
9 regional economy, the cost to host and surrounding
10 communities, and to some degree we've dealt with a
11 little bit of that in other questions, and
12 estimated municipal and state tax revenue.

13 There are others for Section 18 as
14 well. Some of these have a cross purpose.
15 Section 18 does talk about the total amount of
16 investment, infrastructure improvements related to
17 the project, economic benefits to the region, and
18 in particular, plans for assuring labor and
19 harmony.

20 So let me just get to the general
21 comments, and they were equally broad, but not
22 necessarily off point. Sterling Suffolk goes on
23 to list a number of impact or benefits that are
24 related. I won't list them all here. They're

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1 included in the packet.

2 Shefsky & Froelich believe that the
3 reports and studies in these sections are
4 self-explanatory.

5 The MAPC suggests that an
6 environmental notification form and the criteria
7 should be a baseline process and one that should
8 be completed prior to being given a license. They
9 go on to mention that additional housing, economic
10 development, and social service studies will need
11 to be evaluated, though I believe that that, by
12 definition -- this comment, by definition, can
13 only happen in the future.

14 MGM in Springfield lists a couple
15 of points. Economic impacts should be limited to
16 direct and indirect taxes, wages, employment, and
17 economic activity and that the projections of the
18 gaming revenue should really be a piece for
19 comparing applicants to other municipalities.

20 The Town of Bridgewater states that
21 economic impacts for existing local retail and
22 restaurant traffic impacts on local roads, and
23 reports on social impacts and impacts of public
24 safety, all of which are, I would pose, part of

1 the broad definitions of those two sections.

2 So my -- As I think it's been
3 mentioned in the past, a good example is one of
4 economic benefits, that the Commission should
5 accept economic benefits as broadly as possible,
6 but ask questions and require information that
7 tease out the most detail in a favorable manner to
8 facilitate the analysis. I would say that's the
9 general thought, really, regarding this section.

10 I did include in the memo -- we did
11 include in the memo the last point relative to
12 plans for assuring labor harmony, and those
13 questions could be posed very detailed, and I put
14 them in here for consideration; or they could be
15 posed very broadly, like the statute says, and
16 allow respondents to submit what they have.

17 CHAIRMAN CROSBY: Thoughts?

18 COMMISSIONER ZUNIGA: Do you want
19 me to expound?

20 COMMISSIONER STEBBINS: No. I
21 think just under Section 18, which, again, has the
22 last provision having to do with plans for
23 assuring labor harmony, I think it was calling for
24 any information of violations of state labor laws

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1 within the last ten years, and, obviously, an
2 applicant could also provide any information they
3 have to demonstrate labor harmony in other
4 jurisdictions where they may operate.

5 CHAIRMAN CROSBY: My reaction to
6 this was that the statute is pretty comprehensive.
7 It gives us pretty good guidelines. Do you see a
8 need to flesh this out more in the regs.?

9 MR. MICHAEL: Not necessarily. I
10 mean, there are -- there's the same issue we have
11 in a lot of these areas where, yes, there are
12 broad guidelines, and a lot of them are clearly,
13 you know, fairly well inclusive. And then what is
14 the balance between allowing for creativity among
15 the other proposals within those broad parameters
16 or to be more specific? I don't know that it
17 would be adding that much to have additional
18 regulations to do this, but to the extent that we
19 creatively might come up with something that would
20 give direction to the applicants and the licensees
21 so they know what the attitude of the Commission
22 is in fulfilling those broad parameters would be
23 worthwhile.

24 CHAIRMAN CROSBY: Okay.

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1 COMMISSIONER MCHUGH: I agree with
2 all of that. All of the categories in this
3 statute in 9(a)(13) and 18(18), save one, have a
4 target, a definable target. Labor harmony, what
5 are you going to do? Traffic impacts, what are
6 you going to do? But economic benefits to the
7 region and the Commonwealth is really broad, and I
8 just wonder whether without some guidance, we're
9 going to be able to compare apples to apples when
10 we get the final applications from the applicants.
11 That's who gives you applications, I guess. And I
12 wonder if it wouldn't be worthwhile to take not
13 the detail that we've got, for example, for labor
14 harmony where we look for track record and signed
15 agreements and all of that, but take a look at the
16 criteria or the kinds of things -- and I think
17 this was part of your suggestion -- that we're
18 interested in and leave other. But at least have
19 a basis for comparing apples to apples as we look
20 at the economic benefits that the applicants see.

21 MR. MICHAEL: I agree with that.
22 Instead of the applicant having to act in a vacuum
23 and not know precisely what would be a favorable
24 activity in your minds or not so favorable, this

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1 gives them that kind of guidance.

2 COMMISSIONER MCHUGH: Right. And
3 it could be anything from estimate of job
4 creation, Y, estimate of satellite revenues from
5 tourists, hotels, Y, and the like.

6 COMMISSIONER STEBBINS: I think
7 that you shared with us some information from
8 Pennsylvania that had an economic analysis
9 requirement that I think would be pretty easy to
10 come up with a list, again, some of those.
11 Everybody answer to these criteria and others as
12 you see fit, but to your point, to give us a
13 chance to evaluate apples and apples.

14 MR. MICHAEL: Correct.

15 COMMISSIONER ZUNIGA: Yes. And I
16 think the detail, just to pick on one example, job
17 creation. From my perspective, I'd like to
18 understand all the assumptions and analyses behind
19 a number, even if it's just one number.
20 Hopefully, there's many numbers. There's jobs
21 created, there's jobs preserved, there's indirect
22 jobs, there's multiple effects.

23 COMMISSIONER MCHUGH: Right.

24 COMMISSIONER STEBBINS: But even if

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1 we were asking about ultimately one number, we'd
2 like to understand and communicate that we don't
3 just want one quick calculation because this is
4 what you saw in another jurisdiction. Tell us in
5 detail what are your assumptions relative to
6 multiplier effects and things like that.

7 MR. MICHAEL: That's an excellent
8 point, and that would apply to all the criteria
9 whether you specify some subcriteria or not. All
10 of the submissions should justify whatever
11 conclusions they are coming to.

12 CHAIRMAN CROSBY: So I guess we
13 do -- Is there more conversation about this? I
14 guess we do need a motion.

15 COMMISSIONER ZUNIGA: I don't know
16 that there's much of a motion but for the fact
17 that we will continue to refine the criteria, like
18 we have said, and issue guidelines relative to
19 what we will see as information we may require.

20 CHAIRMAN CROSBY: Okay. And maybe
21 we could ask you to take a step in fleshing that
22 out a little bit. Some of the stuff that Suffolk
23 had was good.

24 COMMISSIONER ZUNIGA: Yes.

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1 CHAIRMAN CROSBY: By you, I meant
2 the team.

3 Okay. That's it for the questions
4 that we're here for today, but we said we would go
5 further if we have time. Commissioner Zuniga and
6 I have to be out of here at 5:00, quite sharply,
7 but we've still got an hour and a half.

8 So if we can get to the point where
9 we don't need to meet tomorrow, I'm sure everybody
10 would find that delightful. I know you folks
11 would love to come, but.

12 COMMISSIONER ZUNIGA: Just a point
13 of administration. Would we need to cancel that
14 after the end of this meeting?

15 CHAIRMAN CROSBY: Yeah. Well, we
16 aren't going to know for sure. I think we're
17 probably going to make it. We aren't going to
18 know for sure. But Janice and Jamie are expecting
19 to get the word and Eileen. If we're going to
20 cancel tomorrow, we'll have to do it by a few
21 minutes of 5:00. So like at 4:30 we'll talk about
22 it.

23 We don't need to make this a
24 different meeting, Commissioner?

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1 COMMISSIONER MCHUGH: No.

2 CHAIRMAN CROSBY: We said we would
3 go ahead if we could. So why don't you -- Let's
4 see. These are --

5 COMMISSIONER CAMERON: I have four
6 questions, Mr. Chair, and you have one, correct?

7 CHAIRMAN CROSBY: No. Do I have
8 one?

9 COMMISSIONER CAMERON: Well, what
10 is this one that was just handed to me?

11 CHAIRMAN CROSBY: Yes. That's a
12 new one, correct.

13 COMMISSIONER CAMERON: Okay. Do
14 you want me to take my four?

15 CHAIRMAN CROSBY: And I'll do the
16 two other.

17 COMMISSIONER CAMERON: They are no
18 longer on the list.

19 CHAIRMAN CROSBY: 22 and 39 are
20 gone?

21 COMMISSIONER MCHUGH: 22, are those
22 the first two on that list?

23 COMMISSIONER CAMERON: Yes.

24 CHAIRMAN CROSBY: Yes.

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1 COMMISSIONER MCHUGH: Those really
2 are subsumed, in my view, in putting together a
3 schedule of requirements and the evaluation
4 criteria that we talked about the other day.

5 CHAIRMAN CROSBY: Okay. All right.
6 So let me just deal with that first of all. So 22
7 and 40 and 39 and are subsumed. Was that question
8 five basically?

9 COMMISSIONER MCHUGH: Yes.

10 CHAIRMAN CROSBY: Elucidation of
11 evaluation criteria. Okay. So then we get to the
12 four from Commissioner Cameron. We have not had a
13 chance to read these. Is it better, do you think,
14 to take a few minutes and let everybody read them,
15 or do you want to walk us through them?

16 COMMISSIONER CAMERON: I think I
17 can walk you through it, and you could be looking
18 at the memo as we speak.

19 CHAIRMAN CROSBY: Okay.

20 COMMISSIONER CAMERON: Policy
21 question 41 is what process should the Commission
22 use or require for testing gaming equipment? And
23 the legislation does speak to this. The
24 Commission shall utilize the service of an

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1 independent testing lab unless the Commission
2 otherwise determines its in the best financial
3 interests of the Commonwealth. The laboratory
4 must be qualified and approved by the Commission
5 to perform the testing of slots and other gaming
6 equipment. Look at applicable data for
7 independent testing laboratories from agencies and
8 other states, which we're fortunate enough to have
9 had the benefit of our consultants who have looked
10 at all of that data.

11 Our strategic plan also speaks to
12 this. They are agreeing that the testing be done
13 by outside laboratories, and they suggest we look
14 at the standards that are developed by Gaming
15 Laboratories International as well as BMM. Those
16 are the two biggest labs used all over the world.
17 There are a couple of smaller labs also that have
18 a portion of the market.

19 Public comment. Sterling Suffolk
20 Racecourse also recommends that we use the two
21 biggest labs and their -- we utilize them for our
22 testing.

23 In looking at all of this and in
24 looking what other jurisdictions have done, I

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1 think it would be wise for the Commission to
2 promulgate regulations for licensing independent
3 testing laboratories. In other words, we
4 shouldn't pick one lab. We should have a set of
5 -- a comprehensive set of standards that all of
6 those laboratories must abide by. We open it up
7 and say that we are soliciting the service of
8 qualified laboratories, these are our standards,
9 and that we should evaluate all those who apply,
10 and those who meet our qualifications, we will
11 leave it up to the -- leave it up to the operators
12 to decide which of the labs they choose to use to
13 have their equipment tested.

14 This is a method used by some other
15 jurisdictions, and I think rather than picking one
16 lab or two labs, this makes the most sense. Here
17 are our standards. We are soliciting services.
18 We will obviously have an expert assist us with
19 that evaluation. We certify these two, three,
20 four laboratories, and then we allow the operators
21 to choose where they have their equipment tested.
22 That's my recommendation.

23 CHAIRMAN CROSBY: What's the
24 argument for letting the operators pick which ones

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1 they want to use rather than us?

2 COMMISSIONER CAMERON: Because they
3 all have -- Well, they all use one of, let's say,
4 four, as it is now, and it just -- it's allowing
5 them that flexibility. They're certified by us,
6 and you can use their services if you choose to.
7 Rather than picking one lab other the over the
8 others who may be equally qualified, this is a way
9 of --

10 CHAIRMAN CROSBY: Well, we could
11 pick more than one lab, if we wanted to, but we're
12 still -- I don't understand what's the -- we can
13 pick as many labs as we want to use. What is the
14 benefit and what's the argument in favor of
15 letting the casino pick? That feels funny to me.

16 MR. MICHAEL: One of the economic
17 advantages to the casino is that there would be
18 price competition as between the various labs. So
19 casinos can get just as good a service for a
20 lesser price if they're allowed to negotiate with
21 the different labs in terms of which ones they
22 want to use.

23 COMMISSIONER MCHUGH: But -- That
24 makes sense. But why isn't -- why doesn't that

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1 create problems similar to the problems we've seen
2 with auditors? In other words, the allegiance is
3 to the --

4 MR. MICHAEL: That's a regulatory
5 issue that the Commission would be overseeing
6 those labs to ensure that the -- You would have,
7 and our recommendation would enter, that there
8 would be staff on the Commission that would be
9 able to review the report of the lab so that you
10 make sure that they have complied with your
11 standards of testing each of the elements of the
12 games that are required to be tested. And they're
13 not going to be able to retest them, but they
14 would make sure that those games at least have
15 been reviewed in that way, and your background
16 investigation of the lab itself would also give
17 you some assurance.

18 These labs would be service
19 industries who would be licensed as casino service
20 industries. So their integrity and their good
21 character would be all part of that evaluation.
22 And a combination of the background investigation
23 plus the overview, to the extent you're able to do
24 it, of their results would give you the assurance

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1 you need that they're going to operate properly.

2 COMMISSIONER ZUNIGA: There could
3 be or there will be, for all the reasons that Guy
4 alludes to, control similar -- not dissimilar to
5 the situation you allude to, Commissioner, in
6 which the reporting is to the Commission, not
7 necessarily to the operator, and that establishes
8 an inherent control, I would argue, relative to
9 that potential for conflict, if you will.

10 MR. MICHAEL: Bob reminds me too
11 that another factor that plays into this is the
12 manufacturers themselves can't afford to have
13 their games corrupted, because if that words gets
14 out, then their name is sullied and their games
15 are less worthwhile.

16 COMMISSIONER MCHUGH: Right.

17 CHAIRMAN CROSBY: So you're saying
18 that mitigates the potential for a conflict of
19 interest?

20 MR. MICHAEL: All of these factors
21 I would think would mitigate the potential for a
22 conflict of interest.

23 CHAIRMAN CROSBY: Is the only
24 benefit to having the operator do it that maybe

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1 they can negotiate a better price?

2 MR. MICHAEL: Well, they may also
3 feel that one lab is better than another. They
4 all meet certain standards, but competition, one
5 casino may have a view that they've used a
6 particular lab for a long period of time. They
7 have an ongoing relationship. They trust that
8 lab. They know the work that that lab does, and
9 they prefer to use it.

10 CHAIRMAN CROSBY: It's
11 counterintuitive to me, it just feels like.

12 COMMISSIONER CAMERON: How would we
13 do it otherwise? One, two, three, four, you go to
14 this lab, you go to that lab, you go to that lab?
15 How would --

16 CHAIRMAN CROSBY: Well, we could do
17 it -- There's any number of ways, and depending on
18 what we thought of the labs, but it could just be
19 random, which would sort of seem to make sense
20 from a security standpoint. But we also could --
21 we could talk with -- once we have qualified
22 everybody, qualified the labs, there would be
23 nothing wrong with talking to a provider, to an
24 operator, and saying if you've got a preference

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1 here, what do you think, and we think about it and
2 we decide, if we think that's okay, fine.

3 But to give -- So we could still
4 honor the benefits that you're talking about, but
5 would it be our choice, and if we felt for some
6 reason that we didn't want to have the operator
7 doing it with the lab because it felt funny to us
8 or whatever, I would -- then we would still have
9 that right.

10 COMMISSIONER CAMERON: But what --

11 MR. MICHAEL: But the process
12 doesn't always go -- Let me clarify. The process
13 doesn't always go from the casino to the lab.
14 Very often, the process goes from the manufacturer
15 to the lab. The manufacturer would send the game
16 to whatever labs are licensed in Massachusetts.
17 It could go to any of the licensed Massachusetts
18 labs, and then those games would be certified for
19 use in Massachusetts. There would be a menu of
20 those games that the casinos could then pick from
21 knowing that they've already been approved.

22 So there are two ways that it goes,
23 one that a casino wants to buy a game that hasn't
24 yet been approved so it's sends it to the lab.

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1 The other that the manufacturer establishes a menu
2 of potential games that they've had approved that
3 casinos can buy.

4 MR. CARROL: If I could add one
5 thing.

6 CHAIRMAN CROSBY: Sure.

7 MR. CARROL: In the jurisdiction
8 where Guy and I actually serve as regulators, we
9 get from the larger labs a inventory on a periodic
10 basis of all machines that have been submitted by
11 a whole universe of manufacturers, and those
12 machines are tested to the standards that have
13 been established.

14 All of the casinos in a particular
15 region in the country, actually, get those
16 documents indicating that these machines from this
17 manufacturer have been certified as, you know,
18 being in compliance with all of those applicable
19 guidelines. They are then given to the various
20 operators, and the operators have them.

21 So as a Commission coming in, in
22 Massachusetts, the operator would probably provide
23 you with certifications that were from the lab,
24 but were generated by the manufacturer in the lab,

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1 all of whom have been licensed, all of whom have
2 been backgrounded and vetted so that the entire
3 process is covered.

4 The net result is that the report
5 that you get will be something that will be of
6 international consequence in the event there's any
7 mischief involved in any course of the process,
8 because number one, the manufacturer can't risk
9 that type of reputation or any discovery of any
10 lab irregularities. The lab itself, it's entire
11 reputation is involved, and licensing of all of
12 those. If they get a license -- For example, if
13 you find a particular lab is in violation, and you
14 sanction that license, that reverberates through
15 their entire network of customers and literally
16 can put them out of business.

17 COMMISSIONER MCHUGH: So these
18 outfits are like Underwriter's Laboratories?

19 MR. CARROL: Exactly. Highest
20 stakes possible for all involved in this to give
21 you that assurance of this.

22 CHAIRMAN CROSBY: There is no
23 Andersen -- there is no Arthur Andersen anymore
24 because they colluded, and who would have thought

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1 that Arthur Andersen would colluded. It's such a
2 -- The separation of those kinds of relationships
3 is just such a natural part of keeping the system
4 clean.

5 COMMISSIONER ZUNIGA: But in that
6 example, the other areas continue to be picked by
7 the companies that are related with the control
8 that I would argue that they now report not to
9 management but to the board of directors, and it's
10 not like now an SEC, let's say, imposes an auditor
11 on a public company. That's not -- I would argue
12 that's the parallel here in which us, as
13 regulators, may not want to impose a lab on an
14 applicant.

15 MR. MICHAEL: The casinos are also
16 audited, but I'm not sure there would be a
17 suggestion that the Commission should designate
18 only certain auditors that could audit the
19 casinos. They choose their own auditors and the
20 possibly remains that someone's going to
21 misbehave. But the controls that are placed on
22 it, the auditors are licensed, the audits are
23 audited by the Commission. The same applies to
24 the slot labs.

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1 COMMISSIONER MCHUGH: I started us
2 down this trail. I'm not sure that the auditor
3 analogy is the right one anyway because these are
4 far less judgmental kinds of testing.

5 MR. MICHAEL: That's true.

6 COMMISSIONER MCHUGH: You hook
7 these things up to a variety of things, you play
8 them 7 million times, and you see if it defaults.

9 CHAIRMAN CROSBY: Has there ever
10 been any trouble, you know, any monkey business of
11 any labs?

12 MR. MICHAEL: Not the labs
13 themselves. The one real problem was -- that I'm
14 aware of was the Nevada state lab where one of its
15 employees -- it was not the lab itself and it was
16 not the State of Nevada, but one of the employees,
17 who, because of his employment, had access to
18 certain algorithms that manufacturers were using,
19 left the lab, then used those algorithms to
20 predict the outcome of games, and he was caught.

21 But that's what -- The labs
22 themselves and the operation of the labs, to my
23 knowledge, have never been accused of being
24 coconspirators to the casino.

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1 MR. CARROL: One other thing, the
2 process itself starts with that initial,
3 obviously, development, delivery of the machine
4 for testing, and the testing processes, but even
5 on the rollout of the machine, even when the
6 machine arrives at the operator's locations and so
7 forth, before that is put on the floor, there's a
8 whole series of testing that's done, including a
9 device known as the Kobetron as well as now more
10 with software testing that allows for the machine
11 to be verified that it's within the exact industry
12 specifications set forth in the testing and so
13 forth before it hits the floor.

14 And in addition to that, there's
15 additional audit that is capable by both the
16 Commission, the manufacturer, and, you know, in --
17 The net result is that before the public ever gets
18 to play, push a button, pull a slot arm, there's
19 been a verification process that started from the
20 initial manufacture of that machine all the way
21 down to when it arrives on the floor. And it's --
22 You know, we've grown to be very confident in the
23 system.

24 It requires the vigilance

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1 continually. It does require industry
2 standards -- safeguards and standards that are
3 applicable and expertise on your staff that can
4 immediately respond any question inquiries,
5 whether it's public question or a regulator
6 question or one of your floor inspectors. And
7 that will be, you know, a whole body of
8 individuals that will be distributed among the
9 different facilities to be available for that.

10 So for what it's worth as
11 consultants, we can say that the system itself has
12 proven to be secure, and certainly you want to,
13 you know, enforce to most rigid standards
14 possible.

15 COMMISSIONER CAMERON: That would
16 be the key for us, correct? As those standards
17 what we --

18 MR. CARROL: Yes.

19 COMMISSIONER CAMERON: -- that we
20 come up with. I really like the idea of
21 competition with all of the labs rather than
22 picking one lab, and I think this is far superior
23 than having our own lab and trying to train
24 people. The games change too quickly, correct?

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1 MR. MICHAEL: It makes sense.

2 MR. CARROL: Yes.

3 MR. MICHAEL: The standards are
4 fairly uniform. So, I mean, there won't be any --
5 I wouldn't anticipate any real peculiar standards
6 that are special to Massachusetts.

7 MR. CARROL: Just as an aside, and
8 maybe we can invite this, we can certainly
9 intercede and see if we can arrange for your visit
10 to one of these labs to see the thoroughness of
11 it. I think you might find it fascinating.

12 CHAIRMAN CROSBY: Well, in due
13 time, that would be interesting, but I don't think
14 that would bear --

15 MR. CARROL: It's not bearing on
16 this, but just to give you a more detailed sense
17 of it.

18 CHAIRMAN CROSBY: I think I would
19 like to. We can always change our minds on this.
20 I mean, it's not the end of the world. I mean,
21 that last sentence to me is kind of gratuitous.
22 It doesn't really go to the what the policy
23 question was. You don't know really have to have
24 it in there or not, but if people feel strongly

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1 about it, you know, if we bring in a licensing
2 person and they have a different idea, we can
3 listen to them and think about it.

4 Anymore conversation?

5 COMMISSIONER CAMERON: No.

6 CHAIRMAN CROSBY: Do you want to
7 structure a motion?

8 COMMISSIONER CAMERON: Okay. I
9 recommend -- make a motion that the Commission
10 promulgate regulations for licensing independent
11 testing laboratories and creating a comprehensive
12 set of standards by which those laboratories must
13 follow. When we should license all qualified
14 testings laboratories. I believe that's the last
15 piece of this motion at this point, so we can
16 think about that for a minute. Right now, we want
17 to -- the motion is to promulgate the regulations
18 for independent testing laboratories, create our
19 own set of standards, and license all those
20 qualified custom elaborates.

21 COMMISSIONER STEBBINS: Second.

22 CHAIRMAN CROSBY: Further
23 discussion? All in favor?

24 COMMISSIONER STEBBINS: Aye.

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1 COMMISSIONER ZUNIGA: Aye.

2 CHAIRMAN CROSBY: Aye.

3 COMMISSIONER CAMERON: Aye.

4 COMMISSIONER MCHUGH: Aye.

5 CHAIRMAN CROSBY: Opposed? The
6 ayes have it.

7 One down. Number 24.

8 COMMISSIONER CAMERON: Next

9 question is what information should the Commission
10 required in respect to an applicant's description
11 of its minimum system of internal procedures and
12 administrative accounting controls for gaming and
13 any simulcast wagering operations? Again, the
14 law, Chapter 23K does speak to this. It
15 establishes that the applicant must have a minimum
16 system of accounting controls and administrative
17 and accounting controls for gaming and any other
18 simulcast, just as the question asks. These
19 controls must be certified by the applicant's
20 chief legal officer and chief financial officer.
21 The controls must be adequate and efficient in
22 compliance with generally accepted accounting
23 principles, conform with any additional standards
24 the Commission requires. The applicant must

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1 submit those controls at least 30 days prior to
2 commencement of operations, and they cannot be
3 altered without the Commission's approval.

4 Our strategic plan speaks to this
5 issue in a very detailed manner. And it talks
6 about the goals of these controls, creating an
7 accounting record, conducting transaction and
8 access assets, only in accordance with management
9 authorization, and seek check assets against
10 records, supervise all games and departments.
11 Again, it speaks to the conformity of the minimum
12 internal control standards. Recommends the
13 Commission consider whether it can promulgate
14 general regulations while maintaining
15 comprehensive minimum standards.

16 This is the key here to this
17 question is, and we've been discussing this with
18 many of our questions, which is can we keep the
19 regulations somewhat generic, but yet have a set
20 of internal control standards that are very
21 specific that would call for -- that would allow
22 the ability to change as needed rather than
23 continually promulgate new regulations? That
24 really is the key to this question.

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1 Our consultants have laid out 27
2 very specific areas of regulation and internal
3 minimum control, as you can see there. I won't go
4 through all of them. But definitions, accounting
5 records, forms, financial statistical reporting,
6 records retention. I mean, the list is extremely
7 comprehensive of the things that we should require
8 the licensees to have as part of their plan we
9 will approve.

10 The public comment on this matter
11 is SSR, Sterling Suffolk Racecourse, that we
12 should adopt this plan for minimum internal
13 control standards sufficiently in advance of the
14 commencement of casino operations to permit gaming
15 licensees to craft their systems in compliance
16 with the standards that we put out. Obviously,
17 the gaming licensees should be precluded from
18 commencing without the Commission issuing written
19 approval for these internal controls. They
20 recommended Missouri as an example that they
21 liked. They noted that New Jersey engaged the
22 local industry in those standards before they
23 changed anything. And it's my recommendation that
24 we -- Again, it gets back to can we do this. We

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1 promulgate a general set of regulations, and then,
2 as outlined, a very detailed set of standards
3 which allows the flexibility to make changes as
4 needed. This bifurcated approach will allow the
5 Commission to avoid any delays created by
6 regulatory changes and be able to quickly update
7 its system of minimal internal control systems
8 when necessary. Using these regulations and
9 standards, casino operators will then create their
10 own set of internal controls, and the executive
11 director will have the power to accept and reject
12 internal control standards developed by the
13 casinos.

14 CHAIRMAN CROSBY: Comments?

15 COMMISSIONER MCHUGH: I like the
16 idea of allowing the casino to develop standards.
17 I think the Commission -- Within broad parameters
18 -- within parameters. And this list is a
19 comprehensive list that are -- The Commission's
20 objectives and the casino's objectives are pretty
21 much aligned in most of these things. But I don't
22 understand the difference between the -- in the
23 recommendation between the first sentence and the
24 second sentence. The first one says we promulgate

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1 a general set of regulations governing the types
2 of controls that they must have in place, and then
3 we should create a comprehensive and detailed set
4 of minimum internal control standards to
5 supplement the regulations. I don't understand
6 the difference between those two.

7 COMMISSIONER CAMERON: I think this
8 list of 27 --

9 COMMISSIONER MCHUGH: Categories.

10 COMMISSIONER CAMERON: --
11 categories would be the standards, correct, and
12 the regulations themselves would be -- would not
13 be this inclusive; in other words, if there's
14 something that had to change, we wouldn't have to
15 change a regulation.

16 MR. MICHAEL: Yes. I understood
17 your recommendation that there would be
18 regulations that would establish the framework
19 within the -- the casino's procedures would have
20 to be established and that the Commission would
21 review the casino's submitted standards to make
22 sure that they complied with the general framework
23 of the regulations. That's what I understood you
24 to be saying, not that the Commission necessarily

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1 would be promulgating both the regulations and the
2 standards. They would be approving the casino's
3 standards that they've promulgated in accordance
4 with the Commission's regulations.

5 COMMISSIONER MCHUGH: Can I ask for
6 an example then? We have this helpful list and
7 comprehensive list of areas, if you will.

8 MR. MICHAEL: Right.

9 COMMISSIONER MCHUGH: That's taken
10 from the strategic plan. So we have a regulation
11 that says you have to establish internal controls
12 to deal with the following 27 areas.

13 MR. MICHAEL: Right.

14 COMMISSIONER MCHUGH: Now, what
15 more would the regulations say apart from you
16 create them, submit it to us, and we approve them?
17 When we approve them, you can't change them
18 without giving us 48 hours notice.

19 MR. MICHAEL: Right. I think, for
20 example, the financial and statistical reporting,
21 you would establish the types of reports that you
22 want.

23 COMMISSIONER MCHUGH: I see.

24 MR. MICHAEL: Okay?

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1 COMMISSIONER MCHUGH: Okay.

2 MR. MICHAEL: And they would
3 provide you with a system that shows how they were
4 going to develop those reports, how they were
5 going to be -- you know, how they were going to be
6 overseen, that they wouldn't be all done by one
7 person, that they would be people in consistent
8 positions to be able to review them so that they
9 were a separation of duties.

10 COMMISSIONER MCHUGH: But -- Okay.
11 But if you go down that path, Guy, what's left for
12 the casino to do? You have to have --

13 MR. MICHAEL: No. I'm saying the
14 casino --

15 COMMISSIONER CAMERON: They would
16 do that.

17 COMMISSIONER MCHUGH: They would do
18 that.

19 MR. MICHAEL: They do that. You're
20 telling them we want a cage report, we want to
21 credit report.

22 COMMISSIONER MCHUGH: I see.

23 MR. MICHAEL: And then they
24 would --

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1 COMMISSIONER MCHUGH: And they
2 would talk about who reviews who, who watches who,
3 what kind of --

4 MR. MICHAEL: Right.

5 CHAIRMAN CROSBY: So is this second
6 sentence, is that a typo? Does that mean the
7 casino would create the comprehensive? I don't
8 know what those two --

9 COMMISSIONER CAMERON: Where are
10 you?

11 CHAIRMAN CROSBY: Under the
12 recommendations. The same question Commission
13 McHugh asked. I didn't understand the distinction
14 between these either.

15 MR. MICHAEL: I read that to mean
16 that the Commission would, in terms of creating
17 it, they would be the ones who would approve them,
18 they approve them. So it can't be done unless you
19 say that it's approved, that it can be done.
20 They'll submit those procedures to you, and then
21 you'll tell them whether those procedures are
22 adequate. Or if they're not adequate, you create
23 the ability on their part to implement them.

24 COMMISSIONER MCHUGH: If we said in

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1 that second sentence Commission should create a
2 regulation requiring approval of a comprehensive
3 and detailed set of minimum --

4 MR. MICHAEL: Right. If that's
5 what the commissioner wants to do.

6 COMMISSIONER CAMERON: Yes. And I
7 think the way I was looking at this was we need to
8 give them a detailed set of standards.

9 MR. MICHAEL: Right.

10 COMMISSIONER CAMERON: So we
11 wouldn't be saying here, this is exactly what you
12 have to do, but these are the standards. We will
13 be looking at all of these things.

14 CHAIRMAN CROSBY: But are the
15 standards these things, or is it more than that?

16 COMMISSIONER CAMERON: Well, the
17 standards would be all of these things but maybe
18 with a little more detail, correct?

19 MR. MICHAEL: That's right.

20 COMMISSIONER CAMERON: That's how I
21 understood this to be. These are the categories.

22 MR. MICHAEL: That's correct.

23 COMMISSIONER CAMERON: Now we have
24 to fill this in with more detail.

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1 MR. CARROL: Let me give you, if I
2 be helpful, a couple of examples. If you look at
3 -- let's just pick one. Number 11, drop box
4 removal and transportation to count room. Casinos
5 have, depending on your physical layouts, a
6 variety of ways of transporting from machines.
7 You know, there's those that still take tokens or
8 whatever else, which are really tricky right now.
9 But different methods of transporting from a
10 machine to a count room. Some may be via vehicle
11 that the security guards will walk next to. Some
12 will have, you know, three people, two people,
13 whatever else.

14 All of those details would be
15 filling in. That would be the population of this
16 general rule that would say the casino operators
17 shall create drop box removal and count room
18 transportation standards, you know, that would be
19 acceptable and approved by the Commission. They
20 will then populate that with detailed internal
21 controls essentially of that.

22 CHAIRMAN CROSBY: We will or they
23 will?

24 MR. CARROL: No. They will. They

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1 will submit it to you for your consideration and
2 review and approval. And then you go right down
3 each one of these.

4 The next one, 12, acceptance of
5 cash at gaming tables, counted and assurance. How
6 many signatures are required. Is the security
7 guard at the table supervising. You know, each
8 one of these has nuances and details that go on
9 down all the way down. Your recommendation would
10 be --

11 MR. MICHAEL: But I think to
12 supplement that, there would be some additional
13 regs., not just listing these 27 items.

14 MR. CARROL: Right.

15 MR. MICHAEL: I mean, within any of
16 those 27 items, control over sensitive keys; in
17 other words, what are the sensitive keys. You
18 would designate in your regulations what you
19 consider to be sensitive keys, and they're going
20 to have to decide how they're going to be
21 controlled.

22 COMMISSIONER MCHUGH: All right.

23 MR. MICHAEL: Information
24 management system responsibilities. Now, what

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1 information management? Are you just talking
2 about the casino gaming information management
3 systems, your hotel information management
4 systems? What is it that you want the casino to
5 be able to submit to you? So there are
6 subcategories to this.

7 CHAIRMAN CROSBY: So the first
8 question -- So what you just described is the 27
9 plus would be the general set of regulations
10 governing the types -- the first sentence,
11 governing the types of controls?

12 MR. MICHAEL: Right.

13 CHAIRMAN CROSBY: It sounds like
14 the second sentence should say and what it means
15 is the casino will submit and the Commission will
16 approve a comprehensive and detailed set of
17 standards to implement those regulations.

18 COMMISSIONER CAMERON: But I don't
19 think the regulations would go into that much
20 detail. That would be more the standards.

21 CHAIRMAN CROSBY: No. That's what
22 I'm saying.

23 COMMISSIONER CAMERON: I'm sorry,
24 so the first sentence, when you said that's the

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1 regulations themselves --

2 MR. MICHAEL: Right.

3 COMMISSIONER CAMERON: -- which
4 would be much less detailed.

5 CHAIRMAN CROSBY: Right. That's 27
6 plus the additional stuff that he just got through
7 talking about.

8 COMMISSIONER CAMERON: No. That
9 would be more the standard, not the -- You don't
10 want all that detail in the regulations.

11 MR. CARROL: No. No. No. I think
12 Steve's saying the 27 plus all written the way
13 they are in those generalized fashions would be
14 your regulations.

15 MR. MICHAEL: With some additional
16 specificity, but not much.

17 COMMISSIONER MCHUGH: You're going
18 to have sensitive key control. Sensitive keys are
19 X, Y, Z.

20 MR. MICHAEL: Right.

21 MR. CARROL: Right. With the
22 standards that would go underneath that, your
23 so-called internal controls would be the detail,
24 the flesh, that would be added.

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1 CHAIRMAN CROSBY: And they would be
2 written by the casino and approved by us.

3 MR. CARROL: Right.

4 CHAIRMAN CROSBY: But not in the
5 regs.

6 MR. MICHAEL: As to Commissioner
7 Cameron's point that these procedures need to be
8 revised fairly regularly, and you just can't do
9 that on a regular system.

10 COMMISSIONER MCHUGH: Okay.

11 CHAIRMAN CROSBY: When you --

12 COMMISSIONER CAMERON: Right.

13 CHAIRMAN CROSBY: Go ahead.

14 COMMISSIONER CAMERON: So it could
15 be worded differently is I think what makes sense
16 to me, too, is --

17 CHAIRMAN CROSBY: The casino shall
18 submit and the Commission shall approve --

19 COMMISSIONER CAMERON: Yes.

20 CHAIRMAN CROSBY: -- a
21 comprehensive and detailed set of minimum control
22 standards to implement --

23 MR. MICHAEL: Correct.

24 CHAIRMAN CROSBY: -- the above

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1 mentioned regulations.

2 COMMISSIONER MCHUGH: Right.

3 CHAIRMAN CROSBY: Now, just a
4 curiosity, Sterling refers to Missouri having some
5 mix, some minimum internal control standards.
6 Does that refer to that which we are now saying --

7 MR. MICHAEL: That's even more
8 detailed than what we're talking about. Minimum
9 is kind of a misnomer. There certainly can be
10 supplemented, but Missouri has them. The National
11 Indian Gaming Commission has minimum internal
12 control standards for Indians --

13 CHAIRMAN CROSBY: But which are
14 they? Are they the ones that we're now saying the
15 casino shall submit?

16 MR. MICHAEL: They're more the ones
17 that the casino should submit than they are the
18 ones that the state should promulgate.

19 CHAIRMAN CROSBY: So the use of
20 minimum internal control standards here is
21 parallel to what Missouri does with their mix, our
22 second sentence?

23 MR. CARROL: Your second sentence,
24 yes.

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1 MR. MICHAEL: Yes, your second
2 sentence.

3 MR. CARROL: Your second sentence,
4 yes.

5 CHAIRMAN CROSBY: Where it says
6 minimum internal controls, correct?

7 COMMISSIONER MCHUGH: Louisiana has
8 what we're talking about here, right?

9 MR. MICHAEL: That's correct.

10 CHAIRMAN CROSBY: And it looks like
11 New Jersey also has some.

12 MR. MICHAEL: New Jersey is more --
13 It -- Initially in New Jersey, they just imposed
14 very specific standards on everybody, and as the
15 years have gone on, they've been retreating from
16 that step-by-step. So now, it's more you give it
17 to us, and we'll approve it type thing.

18 MR. CARROL: Again, this will be
19 fluid. After the properties are operating for a
20 period of time and other continual examination,
21 you'll get proposals from a casino association
22 saying this works, this doesn't work. We can be
23 more efficient doing it this way, and you'll
24 certainly give due consideration to that.

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1 CHAIRMAN CROSBY: Right. Okay.

2 COMMISSIONER CAMERON: Anymore
3 questions? Thank you.

4 CHAIRMAN CROSBY: I have no --

5 COMMISSIONER MCHUGH: No. Thank
6 you.

7 CHAIRMAN CROSBY: -- basis on which
8 to make a judgment. If they think it's right and
9 you think it's right --

10 COMMISSIONER CAMERON: Well, that's
11 why I did rely heavily on a strategic plan on this
12 one because it's an area where -- Okay. So I'm
13 prepared to move that the Commission should
14 promulgate a general set of regulations governing
15 the types of controls that casino operators must
16 have in place, and the casino shall submit a
17 comprehensive and detailed set of minimum internal
18 control standards that supplement the
19 regulations --

20 CHAIRMAN CROSBY: That implement.

21 COMMISSIONER CAMERON: That
22 implement -- Well...

23 CHAIRMAN CROSBY: Well, either.

24 COMMISSIONER CAMERON: It

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1 supplements what we said, too. Supplement the
2 regulations for which the Commission shall
3 approve.

4 CHAIRMAN CROSBY: Any further
5 discussion?

6 COMMISSIONER MCHUGH: No.

7 CHAIRMAN CROSBY: All in favor?

8 COMMISSIONER STEBBINS: Aye.

9 COMMISSIONER ZUNIGA: Aye.

10 CHAIRMAN CROSBY: Aye.

11 COMMISSIONER CAMERON: Aye.

12 COMMISSIONER MCHUGH: Aye.

13 CHAIRMAN CROSBY: All opposed?

14 Ayes have it.

15 Number 40 --

16 COMMISSIONER CAMERON: 42.

17 CHAIRMAN CROSBY: What happened to
18 41?

19 COMMISSIONER STEBBINS: That was
20 41.

21 CHAIRMAN CROSBY: Oh, that's 41 we
22 just did. Sorry. Okay.

23 COMMISSIONER CAMERON: 42. What
24 should be the length of licenses issued to

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1 employees whom the statute requires to be
2 licensed? What could the length of those licenses
3 be?

4 Okay. So the law does not
5 establish a length of license to be issued to the
6 employee. The Commission -- the language in the
7 law is establish the term of a key gaming employee
8 and a gaming employee, which should be licensed,
9 regardless of the length of a license, gives the
10 Commission the power to condition, revoke, or
11 suspend that license when the licensee fails to
12 report changes of a conviction or fails to comply
13 with any of the licensing provisions. Temporary
14 licenses may be given to employees, and those
15 licenses statutorily expire in six months unless
16 the Commission determines otherwise.

17 Also the statute categorized
18 employees into key gaming employees and gaming
19 employees and then gaming service employees. And
20 the law speaks to gaming service employees need
21 only be registered, not licensed. And the
22 Commission has the power to create different
23 durations of the length of the licenses of key
24 gaming employees and gaming employees.

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1 The strategic plan recommends
2 staggering the issuance of employee licenses for a
3 more even rate of activity for initial licensed
4 periods and for the renewal of those licenses.
5 The strategic plan does not speak to the length of
6 the license, which is the essence of this
7 question.

8 Public comment on this matter is
9 from Sterling Suffolk Racecourse, and they point
10 out that the Commonwealth licensing requirements
11 are modelled after New Jersey prior to 2011. And
12 at that time, New Jersey had a five-year length of
13 license with the license holder which would
14 undergo a renewal investigation equally thorough
15 to the one conducted at the initial. Since then,
16 New Jersey has modified it, and every five years,
17 but they do not go through another investigation
18 at that time. They also talk about Nevada having
19 a 15-year license or such shorter term as the
20 Commission deems appropriate.

21 And so in speaking to both our
22 gaming consultants as well as other jurisdictions,
23 both new and established, even those who have a
24 much longer license, their recommendation is that

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1 we do not, as a new gaming Commission, we do not
2 go for a long license. For example, New Jersey
3 has gone to a longer period, but that's after many
4 years of being established, knowing the process,
5 knowing the players, knowing the individuals.
6 Many commissions have started with a two-year
7 license. That really is a -- can be an
8 administrative burden.

9 In speaking to everyone, the
10 consensus really is a three-year license to start.
11 That we issue licenses to gaming employees and key
12 gaming employees, and we're talking about the
13 difference there of, you know, it's the type of
14 background investigation and how much control, how
15 much money. To talk about the difference, and I
16 have some charts here that -- In the next one we
17 talk about the -- we differentiate. But for now,
18 just we're talking about a recommendation of a
19 three-year license for both key gaming employees
20 and gaming employees.

21 This duration would create a
22 balanced tradeoff between the need to ensure
23 public trust in gaming and the avoidance of
24 unnecessary administrative burden. Obviously, we

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1 have the power to condition, revoke, or suspend a
2 license when the licensee fails to comply. And
3 after three years, my recommendation is that we
4 should evaluate that three years.

5 Is that the proper -- Is three
6 years the proper time frame? I'm recommending it
7 is to start with, and then we can evaluate it
8 after three years.

9 As part of this recommendation, the
10 Commission should not require licensure of gaming
11 service employees, but those employees will be
12 registered with the Commission.

13 What we're talking about is a
14 full-blown background investigation with a
15 license, and we're talking about criminal checks,
16 CORI checks, and some key questions of
17 registrants, and those are the folks we're talking
18 about. The sort of gaming service employees we're
19 talking about, the folks who service the rooms in
20 the hotels, they do not have access to sensitive
21 materials or the gaming floor necessarily. Those
22 are the folks that are considered the gaming
23 service employees and that's the group that we're
24 talking about registering.

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1 Again, it's criminal checks, it's
2 CORI checks, it's key questions that they have to
3 answer truthfully.

4 CHAIRMAN CROSBY: Credit and drugs.

5 COMMISSIONER CAMERON: Excuse me?

6 CHAIRMAN CROSBY: Credit and drugs.

7 COMMISSIONER CAMERON: When you say
8 drugs, are you talking a drug screen?

9 CHAIRMAN CROSBY: Yes.

10 COMMISSIONER CAMERON: For a
11 registered --

12 MR. MICHAEL: The casino would do
13 that.

14 COMMISSIONER CAMERON: Yeah. But
15 not the Commission.

16 CHAIRMAN CROSBY: Who would?

17 MR. MICHAEL: The employer, the
18 casino and the employer would usually almost
19 always have a preemployment drug screening.

20 CHAIRMAN CROSBY: And what about
21 credit checks?

22 MR. MICHAEL: Credit checks would
23 be part of the licensing.

24 COMMISSIONER CAMERON: The

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1 licensing, but not the registering.

2 MR. MICHAEL: Not for registration.

3 CHAIRMAN CROSBY: That's what I
4 meant, for registration.

5 MR. MICHAEL: For registration, no.
6 Very often, the people that you're recruiting to
7 have -- the whole idea of creating employment, a
8 lot of them will have credit problems.

9 CHAIRMAN CROSBY: Exactly. And
10 drug, too, I would think.

11 MR. MICHAEL: Right.

12 CHAIRMAN CROSBY: So we're taking
13 the position that we don't think we -- that there
14 needs to be drug tests for gaming service
15 employees. If the facility does it, fine, but if
16 they don't, that's okay with us.

17 COMMISSIONER CAMERON: Yeah. It's
18 typically not part of best practices with
19 registrations.

20 MR. CARROL: With the regulatory
21 agencies.

22 COMMISSIONER CAMERON: Yeah.

23 MR. MICHAEL: Or licensing.

24 COMMISSIONER CAMERON: Or

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1 licensing.

2 CHAIRMAN CROSBY: Oh, they don't do
3 drug tests for licensing either?

4 MR. CARROL: No. That's up to the
5 employer.

6 COMMISSIONER MCHUGH: And I'm
7 sorry, what's the split on credit checks? Is
8 there a split?

9 MR. CARROL: Licensing.

10 MR. MICHAEL: Licensing, yeah.

11 COMMISSIONER MCHUGH: You do credit
12 checks for licensing?

13 MR. MICHAEL: You do credit checks
14 for licensing. It doesn't mean a credit history
15 is disqualifying. It just means --

16 COMMISSIONER CAMERON: Taken into
17 consideration.

18 MR. MICHAEL: Right.

19 COMMISSIONER MCHUGH: It's not
20 disqualifying?

21 MR. MICHAEL: It depends on where
22 you go. It's a fact sensitive evaluation.

23 MR. CARROL: I mean, examples
24 though, you know, we've done thousands of these.

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1 There might be medical histories -- medical bills
2 that have not been paid. There may be a credit
3 issue, but it is completely legitimate.

4 CHAIRMAN CROSBY: All right.

5 MR. MICHAEL: And, again, the
6 public policy in creating opportunities for
7 employment.

8 COMMISSIONER MCHUGH: Right. And
9 that's what I was thinking about.

10 MR. MICHAEL: Because these people
11 may have credit issues.

12 COMMISSIONER CAMERON: Yeah.
13 Right.

14 COMMISSIONER MCHUGH: This whole
15 thing we're doing with that Holyoke community and
16 the training institute.

17 MR. CARROL: It's not exclusionary.

18 COMMISSIONER MCHUGH: Right.

19 COMMISSIONER CAMERON: Case-by-case
20 basis.

21 MR. CARROLL: Right.

22 COMMISSIONER MCHUGH: All right.

23 COMMISSIONER CAMERON: Again, we
24 just -- we -- The three year is basically it gives

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1 us enough without overburdening. Many of them
2 have gone to five, but I write as a new
3 Commission, I think we need to be especially
4 careful, and then we can re-evaluate after three
5 years.

6 COMMISSIONER ZUNIGA: I would agree
7 with that approach. Sounds sensible. Sounds like
8 you've done research on the notion of startup
9 mode.

10 COMMISSIONER CAMERON: Yes.

11 COMMISSIONER ZUNIGA: In which we
12 are in, which is important. And also considering
13 the burden, the administrative burden. So the
14 staggering is also a great recommendation.

15 COMMISSIONER MCHUGH: I agree.

16 CHAIRMAN CROSBY: All right. How
17 about if you --

18 COMMISSIONER CAMERON: Shorten that
19 up for a motion?

20 CHAIRMAN CROSBY: Well, you could
21 just move to accept your recommendation as
22 written.

23 COMMISSIONER CAMERON: I move to
24 accept the recommendation as written.

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1 CHAIRMAN CROSBY: Second?

2 COMMISSIONER ZUNIGA: Second.

3 CHAIRMAN CROSBY: We can give this
4 to you to see.

5 Any further discussion? All in
6 favor?

7 COMMISSIONER STEBBINS: Aye.

8 COMMISSIONER ZUNIGA: Aye.

9 CHAIRMAN CROSBY: Aye.

10 COMMISSIONER CAMERON: Aye.

11 COMMISSIONER MCHUGH: Aye.

12 CHAIRMAN CROSBY: Opposed? Ayes
13 have it. Okay.

14 COMMISSIONER CAMERON: So my last
15 policy question -- well, last for this round is
16 policy question number 43, and what non-gaming
17 vendors should be excused from the licensing
18 process?

19 To quickly summarize the
20 legislation, the law, it defines gaming vendors as
21 those that supply a gaming licensee with equipment
22 related to gaming. Similarly, the section defines
23 non-gaming vendors as those who supply goods not
24 directly related to gaming such as construction

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1 companies, vending machine providers, linen
2 suppliers, garbage handlers, maintenance
3 companies, limousine services, food services,
4 suppliers of alcoholic beverage. And what the law
5 says is non-gaming vendors shall register with the
6 Commission. And also provides that the Commission
7 may require licensure of non-gaming vendors
8 falling into one of two tiers based on the amount
9 of business the vendors conduct with the gaming
10 licensee. The lower tier is \$100,000 worth of
11 business over three years. The higher tier is up
12 to \$250,000 in a 12-month period.

13 So I put a chart in here which just
14 talks about those different numbers, and as you
15 can see, we're looking at the gaming vendor, that
16 that's a licensed position. The non-gaming
17 vendor, we're talking about registration, or the
18 amount of the non-gaming vendor would be a license
19 or a registration, depending. And I have some
20 explanation here.

21 Well, first we'll go to the public
22 comments. Paul Vignoli, all employees, vendors,
23 and vendor employees should have extensive
24 background checks and be licensed without

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1 exception. The integrity is important. Anyone
2 who has access to nonpublic areas. Airport
3 employees are an excellent example.

4 SSR believes that publically traded
5 non-gaming vendors that do business with gaming
6 licensees and applicants should be excluded from
7 the regulatory process entirely. Non-publically
8 traded companies should be required to register
9 with the Commission, with such registration being
10 valid and effective unless and until the
11 Commission revokes, suspends, or administratively
12 removes the approved vendor. And it points out
13 that we have broad discretion in this matter.

14 Mohegan Sun encourages the
15 Commission to establish a system that supports the
16 use of as many Massachusetts-based businesses as
17 possible. In this regard, many of the goods and
18 services that Mohegan Sun project as well as the
19 other gaming projects in the Commonwealth will use
20 will be non-gaming related. They suggest the
21 Commission establish a process that does not
22 discourage or restrict these businesses from
23 participating in the business opportunities by
24 creating non-gaming licenses, thresholds, or

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1 systems that discourage their participation. I
2 think we understand where they're going.

3 Okay. I think what we need to do
4 is balance those interests. We certainly need to
5 have an idea of who's doing business, how much
6 business, what kind of access they have and
7 control they have.

8 So what we're talking about here is
9 requiring licenses for non-gaming vendors
10 conducting over \$250,000 worth of business in each
11 gaming -- in each year with the gaming license.
12 As the legislature requires, the Commonwealth will
13 only require registration, not licensure, of
14 non-gaming vendors conducting under \$33,333 of
15 business per year over a three-year period or less
16 than \$100,000 over a three-year period. For that
17 group of non-gaming vendors over \$100,000 in that
18 three-year period and under 250, we're looking at
19 a heightened registration.

20 So what we're really recommending
21 here is kind of three -- As we just explained, all
22 gaming vendors will be licensed, and the
23 non-gaming vendors will be registered one or two
24 -- And I was really listening to understand the

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1 nuances of the difference between registration and
2 heightened registration, and this is done commonly
3 in other jurisdictions. Again, a registration,
4 and that's the group making under \$100,000 in a
5 three-year period, it is criminal, CORI, and some
6 key identifiers, some key questions, that we ask
7 them to answer honestly.

8 I know you gave me a couple of good
9 examples of that, Guy.

10 MR. MICHAEL: The questions?

11 COMMISSIONER CAMERON: Or Bobby.
12 Yeah, a couple of the questions that we'd asked
13 just for a basic registration.

14 MR. MICHAEL: The civil litigation
15 history and just background of the business
16 operation, bankruptcy history, civil litigation
17 history. If it's a regulated industry, have they
18 ever had any licenses revoked or suspended, those
19 kinds of questions.

20 COMMISSIONER CAMERON: And then for
21 the heightened registration, which is those folks
22 that are making up to \$250,000, I know, Bob, you
23 explained to me some additional questions.

24 MR. CARROL: Yes. Not unlike what

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1 Guy just said. You go a little bit further in
2 terms of their business. Depending on the type of
3 business, there may be some follow-up questions
4 on -- For example, your initial asking may say,
5 you know, who are the operating officers or who
6 are the managers right now? When you go a little
7 bit further up the chain in terms of monetary
8 involvement, it would then move towards, well,
9 other persons in the company, for example, and
10 expand it a little bit further. You're just
11 essentially enhancing your initial set of
12 questions to take it to another level because the
13 exposure's a little bit more. And likewise,
14 financially, you're asking for more additional
15 information from them.

16 And it's a graduating process
17 essentially that results in you having a little
18 bit more information. I also might add as a
19 practical matter that basic identifiers you get in
20 that initial registration process enables modern
21 law enforcement to have an immediate set of
22 identifiers that can be accessed. And with the
23 access today to public information even, the quick
24 checks that can be done and are done as a matter

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1 course are a lot more comprehensive than they were
2 even ten years ago.

3 COMMISSIONER CAMERON: Agreed.

4 MR. MICHAEL: And this'll require
5 the Commission to implement a system that keeps
6 track of the amount of business that's being
7 conducted by any individual vendors so that you
8 have within the registration process where you
9 have a continued record.

10 CHAIRMAN CROSBY: Well, wouldn't
11 this have to be done on a projection basis?
12 You're not going to have somebody come in and do
13 work for a year, and then you decide later on
14 after you've audited their --

15 MR. MICHAEL: It's done on a
16 contract basis. So as soon as a casino enters
17 into a contract with a company that is reported,
18 that the company has to register, and then when
19 you are approaching a threshold, the Commission
20 notifies the vendor that if they anticipate going
21 over the threshold, then they're going to have to
22 apply.

23 MR. CARROL: It's a larger process.

24 CHAIRMAN CROSBY: But that means a

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1 construction company who's going to do \$250,000 or
2 more doesn't have to get required -- doesn't have
3 do get licensed until they get to the 250,000?

4 MR. MICHAEL: No. Once they enter
5 into the contract, and the contract is for over
6 \$250,000 --

7 CHAIRMAN CROSBY: That's what I
8 said, so it's a projection. It's not an actual
9 cash --

10 MR. CARROL: Well, it's a legal
11 obligation that casino's entered into.

12 CHAIRMAN CROSBY: Okay.

13 COMMISSIONER CAMERON: And over
14 250,000, we're talking about a license.

15 CHAIRMAN CROSBY: Yeah. Right.

16 COMMISSIONER CAMERON: Which really
17 does give us the ability to license. Even though
18 they're a non-gaming vendor, they're making that
19 kind of money, we think it's important to license
20 them.

21 COMMISSIONER STEBBINS: Why the
22 averaging?

23 MR. MICHAEL: I'm sorry?

24 COMMISSIONER STEBBINS: Why the

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1 averaging over a three-year period?

2 MR. MICHAEL: That's the statute.

3 COMMISSIONER CAMERON: That's the
4 law. That's what they tell us to do.

5 COMMISSIONER MCHUGH: The statute
6 says regularly conducting over 250 or regularly
7 over 100 within a three-year period. So it does
8 kind of play both, I think, both the contract and
9 a look back if somebody is on a regular basis.
10 And its permissive. We don't have to do that. So
11 this would be a policy that we would do this. We
12 would license them, give them heightened
13 registration, or nothing.

14 COMMISSIONER CAMERON: Or
15 license --

16 COMMISSIONER MCHUGH: So we have
17 the option of not doing any of this, or we have
18 the option of requiring a license for the people
19 who are doing more than \$33,000 a year on a
20 regular basis.

21 So your recommendation is that we
22 exercise the permission that we have to require a
23 license for anybody doing over \$250,000 a year?

24 COMMISSIONER CAMERON: Correct.

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1 COMMISSIONER MCHUGH: And that with
2 respect to the people doing between 33 and 250 a
3 year, we require a heightened registration?

4 COMMISSIONER CAMERON: Correct.

5 COMMISSIONER MCHUGH: And that with
6 respect to the people under 33, we do nothing?

7 COMMISSIONER CAMERON: No. It's a
8 registration.

9 COMMISSIONER MCHUGH: I mean the
10 registration.

11 COMMISSIONER CAMERON: Yes.

12 COMMISSIONER MCHUGH: And we do
13 that for those people who have those -- meet these
14 criteria on a regular basis, or I would assume by
15 a contract --

16 MR. MICHAEL: A contract.

17 COMMISSIONER MCHUGH: -- which is
18 going to show that they're going to do it. A
19 three-year contract for a million dollars would
20 trigger the thing automatically.

21 CHAIRMAN CROSBY: What about
22 Suffolk's point about non -- about publically
23 traded non-gaming vendors, what's the standard?

24 MR. MICHAEL: There are different

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1 jurisdictions handle those different ways. The
2 justification for reducing the scrutiny of
3 publically traded companies has typically been
4 whether they're regulated by the SEC. Recent
5 history may dictate that that regulation may not
6 be consistent with what you may want to regulate
7 those companies by.

8 So the mere fact that they're
9 regulated as a publically traded company is a
10 factor in determining whether or not you can waive
11 their -- or whether you could waive their need to
12 qualify; in other words, to be licensed. But it
13 shouldn't be the determining factor in whether or
14 not you waive their licensing.

15 So there is an authority that you
16 have to waive licensing in particular cases, and
17 typically, that standard is if they're otherwise
18 regulated by a public agency to the same standards
19 that you regulate them. So if the SEC does that,
20 you can waive it. If you don't, then, you know,
21 you don't have to.

22 CHAIRMAN CROSBY: Right. Okay.

23 COMMISSIONER MCHUGH: My only
24 question here is that the statute does say

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1 regularly conducting over \$250,000 worth of
2 business with a gaming licensee within a 12-month
3 period. If there's one occasion in which a vendor
4 conducts more than \$250,000 worth of business in a
5 year, do we have the power under the statute to
6 require them to be licensed? If there is one
7 occasion on which a vendor does more than \$100,000
8 worth of business with a licensee over a
9 three-year period, do we have the power? We
10 certainly have the power. Do we have the power to
11 do anything more than to have them register as a
12 non-gaming vendor? I don't know the answer to
13 that.

14 CHAIRMAN CROSBY: Read it again,
15 what it says.

16 COMMISSIONER MCHUGH: It's the --
17 the statute says all non-gaming vendors basically
18 shall register with the Commission and shall
19 produce such information as the Commission may
20 require provided, however, that the Commission may
21 require any vendor regularly conducting over
22 \$250,000 of business with a gaming licensee within
23 a 12-month period or \$100,000 of business within a
24 three-year period to be licensed as a gaming

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1 vendor. That's what it says.

2 Regularly conducting is the trigger
3 for the licensing requirement. The question is --

4 MR. MICHAEL: I don't know -- I
5 don't know the definite answer to that. I guess I
6 would -- If it's strictly read so that regular
7 means it has to be done more than once, then you'd
8 be licensing no one for the first year.

9 COMMISSIONER MCHUGH: That's right.

10 MR. MICHAEL: And then that doesn't
11 really seem to be the intent of the legislature to
12 do that.

13 COMMISSIONER MCHUGH: And so I --

14 COMMISSIONER CAMERON: Wouldn't
15 that be regular if it's the first year. If it's
16 the first year, and they're doing that kind of
17 business, that is regular because it's only been a
18 year.

19 COMMISSIONER ZUNIGA: It's from the
20 beginning.

21 COMMISSIONER MCHUGH: Well,
22 that's --

23 COMMISSIONER CAMERON: That's the
24 way I would interpret that.

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1 COMMISSIONER MCHUGH: I understand
2 that, but I'm trying to figure out how --

3 CHAIRMAN CROSBY: Appellant Court
4 Judge McHugh.

5 COMMISSIONER MCHUGH: -- my former
6 friends and my former colleagues might interpret
7 it, and that may be two different things.

8 COMMISSIONER CAMERON: It sometimes
9 is.

10 COMMISSIONER MCHUGH: Pardon me?

11 COMMISSIONER CAMERON: It sometimes
12 is.

13 COMMISSIONER MCHUGH: Yeah. It
14 often is. So I think this is -- from everything
15 that I have learned from a public policy
16 standpoint, it makes sense to have people doing
17 this volume of business with a gaming licensee
18 licensed.

19 MR. MICHAEL: Right.

20 COMMISSIONER MCHUGH: And so I
21 favor proceeding with the recommendation as
22 stated, but I do have this caveat, and we will see
23 when we issue the regulations whether there is
24 some considerable concern, and that'll give us

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1 another opportunity to do some more research as to
2 the proper interpretation.

3 So I favor this, but I think
4 everybody ought to understand that we have a --

5 CHAIRMAN CROSBY: Right.

6 COMMISSIONER MCHUGH: -- may have
7 an issue here.

8 MR. MICHAEL: There are a lot of
9 gray areas in this.

10 COMMISSIONER MCHUGH: Right.

11 MR. MICHAEL: I may have told you
12 this before, but we had a situation where -- And
13 every jurisdiction distinguishes between gaming
14 and non-gaming, but even that, what you would
15 think is clear line is not always so clear.

16 One casino had realized that the
17 dimensions of a roulette ball were exactly the
18 same as the dimensions of a particular toilet
19 valve. So they started buying their roulette
20 balls from plumbing supply company for a nickel a
21 piece. And because they were lead balls, they
22 were gaming equipment, and this plumbing supply
23 house that was doing about a dollar and a half
24 worth of business was being required to file as a

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1 gaming service industry, which really didn't make
2 a lot of sense, but really there was no option
3 because it was gaming.

4 So there are all kinds of
5 aberrations in this, but you have to try to make
6 your best judgment.

7 COMMISSIONER MCHUGH: Right. I
8 don't think we need a regulation to cover that.

9 COMMISSIONER CAMERON: I move that
10 we accept the recommendation as written.

11 COMMISSIONER ZUNIGA: Second.

12 CHAIRMAN CROSBY: Further
13 discussion? All in favor?

14 COMMISSIONER STEBBINS: Aye.

15 COMMISSIONER ZUNIGA: Aye.

16 CHAIRMAN CROSBY: Aye.

17 COMMISSIONER CAMERON: Aye.

18 COMMISSIONER MCHUGH: Aye.

19 CHAIRMAN CROSBY: Opposed? The
20 ayes have it. It's 25 of 5:00. We could deal
21 with this issue now, but --

22 COMMISSIONER MCHUGH: Has this
23 appeared on any agenda?

24 CHAIRMAN CROSBY: Yes. Wait. On

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1 any agenda? No. I was preparing it for
2 tomorrow's agenda.

3 COMMISSIONER MCHUGH: No. I
4 understand that. And since we're down to one, and
5 since this one, having quickly looked at it,
6 appears to be relatively straightforward, I would
7 recommend that we deal with this on Tuesday.

8 CHAIRMAN CROSBY: Yeah, I was going
9 to say the same thing. Fine. Okay. Good.

10 All right. Do we have a motion to
11 adjourn this celebration.

12 COMMISSIONER CAMERON: So moved.

13 CHAIRMAN CROSBY: Thank you all.

14
15 (Whereupon the hearing was adjourned at 4:38 p.m.)
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17
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Attachments:

1. Agenda for December 13, 2012
2. Policy Question Number 9
3. Policy Question Number 10
4. Policy Question Number 11
5. Policy Question Number 15 with AIA attachment
6. Policy Question Number 36
7. Policy Question Number 38
8. Policy Question Number 44
9. Agenda for December 14, 2012
10. Policy Question Number 41
11. Policy Question Number 24
12. Policy Question Number 42
13. Policy Question Number 43

SPEAKERS:

Guy S. Michael, Michael & Carroll
Robert J. Carroll, Michael & Carroll
Fredric E. Gushin, Spectrum Gaming Group
Michael J. Pollock, Spectrum Gaming Group

Eileen Glovsky, Director of Administration

C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS

I, Amie D. Rumbo, Professional Court
Reporter, do hereby certify that the foregoing
Pages 1-176 to be a true, complete, and accurate
transcript of the proceedings held at the time and
place hereinbefore set forth to the best of my
knowledge, skill, and ability.



Amie D. Rumbo

Amie D. Rumbo

Notary Public

My Commission Expires:

11/01/2013