



Massachusetts Gaming Commission Meeting Minutes

Date/Time: January 12, 2023, 10:00 a.m.
Place: Massachusetts Gaming Commission

VIA CONFERENCE CALL NUMBER: 1-646-741-5292
PARTICIPANT CODE: 111 492 8950

The Commission conducted this public meeting remotely utilizing collaboration technology. Use of this technology was intended to ensure an adequate, alternative means of public access to the Commission's deliberations for any interested member of the public.

Commissioners Present:

Chair Cathy Judd-Stein
Commissioner Eileen O'Brien
Commissioner Bradford Hill
Commissioner Nakisha Skinner
Commissioner Jordan Maynard

1. [Call to Order](#) (00:00)

Chair Judd-Stein called to order the 423rd Public Meeting of the Massachusetts Gaming Commission ("Commission"). Roll call attendance was conducted, and all five Commissioners were present for the meeting.

2. [Review of Meeting Minutes](#) (01:01)

a. June 22, 2022

Commissioner Hill moved that the Commission approve the minutes from the June 22, 2022, public meeting that are included in the Commissioner's Packet subject to any necessary corrections for typographical errors or other non-material matters. Commissioner O'Brien seconded the motion.

Roll call vote:
Commissioner O'Brien: Aye.

Commissioner Hill: Aye.
Commissioner Skinner: Aye.
Commissioner Maynard: Abstain.
Chair Judd-Stein: Aye.

The motion passed unanimously, 4-0 with one abstention.

3. [Administrative Update](#) (02:00)

Executive Director Karen Wells stated that the Commission staff was finalizing preparations for the launch of the three category one sports wagering operators, and they were on target for the launch date of January 31, 2023. She stated that Communications Division Chief, Thomas Mills was devising a plan for the Commissioners to visit all three casinos at the same time.

Executive Director Wells stated that software was being tested in the lab and would be verified on-site. She stated that a date needed to be figured out for the Commission to grant operations certificates for the three casinos.

Executive Director Wells announced that IEB Assistant Director and Gaming Agents Divisions Chief Bruce Band had been selected to assume the position of Director of Sports Wagering. She announced that Gaming Agent Field Manager Burke Cain would be stepping in as the Interim Division Chief for the Gaming Agents Division.

a. [Casino Update](#) (06:05)

Director Band stated that Plainridge Park Casino (“PPC”) had a New Year’s Eve balloon drop and live entertainment in the Revolution Lounge. He stated that sports wagering kiosks had been placed in position pending approval from the Investigation and Enforcement Bureau (“IEB”) and Gaming Laboratories International (“GLI”). He stated that PPC was getting ready for Chinese New Years celebrations.

Director Band stated that Encore Boston Harbor (“EBH”) had a prom themed party on New Year’s Eve in the Wynn Sports bar. He stated that EBH was having a lion awakening ceremony for Chinese New Year and was selling year of the rabbit chips.

Director Band stated that MGM Springfield (“MGM”) had a successful New Year’s Eve celebration. He stated that MGM was preparing for a winter weekend happening on January 21. He stated that the comedy club was open on Friday and Saturday Nights. The Commission congratulated Director Band on his new position.

b. [Request for Additional IT Hires](#) (12:03)

Chief Information Officer (“CIO”) Katrina Jagroop Gomes presented a request for five additional full-time positions (“FTEs”) for the ITS Division due to the recent expansion of staff

and technical services requires. She stated that the positions requested were gaming technical compliance engineer, business analyst, system administrator, service-desk specialist, and network engineer.

CIO Jagroop-Gomes explained that these positions would allow for a well-needed redundancy that would reduce the risk of a single point of failure and increase effectiveness through the distribution of workloads. She noted that the ITS service desk experienced a 46.17% increase in requests. Chief Financial and Accounting Officer (“CFAO”) Derek Lennon stated that if this request was approved, it would come to the Commission as part of the second quarter of the annual budget update. He stated that he planned to have an update on sports wagering in the budget and that some of these positions would be included there.

Commissioner Skinner moved that the Commission approve the request for five additional IT FTEs including gaming technical compliance engineer, business analyst, network engineer, systems administrator, and service desk specialist as included in the Commissioner's Packet and discussed here today. Commissioner Maynard seconded the motion.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

c. [Sports Wagering License Update](#) (18:22)

a. Temporary Sports Wagering License Request from Plainridge Park Casino

Executive Director Wells presented a request for a temporary sports wagering license from Plainville Gaming and Redevelopment LLC dba Plainridge Park Casino. She stated that she had found PPC to be a qualified gaming entity pursuant to General Law Chapter 23N, § 3 and stated that PPC had paid the initial sports wagering license fee of \$1 million. She recommended the Commission issue PPC the requested temporary sports wagering license and authorize PPC to conduct sports wagering for one year or until a final determination was made on its license application. She noted that PPC would still be required to undergo testing and receive an operations certificate pursuant to the Commission’s regulations.

Commissioner Hill moved that pursuant to General Law Chapter 23N, § 6 (c)(2) and 205 CMR 219.00, the Commission issue Plainville Gaming and Redevelopment LLC a temporary sports wagering license and authorize Plainville Gaming and Redevelopment LLC to conduct sports wagering for a period of one year under a temporary license or until a final determination on its operator’s license application was made. Commissioner O’Brien seconded the motion.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

b. [Full License Update for Category 1 - Retail](#) (21:20)

Executive Director Wells stated that EBH and MGM did not request a temporary license and that they had both paid their \$5 million fee for their operator's license. She stated that the casinos were on target to move forward for the January 31, 2023, launch date.

Chair Judd-Stein requested that the Commission defer discussions on 205 CMR 232.00 and 205 CMR 104.00. She stated that a memorandum could provide more information on integration and options. The Commission reached a consensus to remove those two regulations from the agenda and discuss the topics on a later date.

4. [Racing Division](#) (24:15)

a. Plainridge Park Casino Capital Improvements Request

Director of Racing and Chief Veterinarian Dr. Alex Lightbown stated that PPC had submitted a capital improvement request. She introduced Financial Analyst Chad Bourque to present the request. The *Memorandum for The Capital Improvement Request* was included in the Commissioners packet on pages 23 through 29.

Mr. Bourque stated that PPC has submitted a request for consideration for funds from the Harness Horse Capital Improvement Trust. He explained that each month funds are deposited into the trust that licensees can use to repair, maintain, or improve their property. He stated that distributions are made upon the Commission's approval of the licensee's request for consideration followed by their request for reimbursement.

Mr. Bourque stated that the request was for \$95,000 in funds for preconstruction services for the renovation and expansion of the horse paddock and barn building. He stated that he had reviewed the documentation submitted and that all statutory requirements were met. He noted that the current balance of the fund was \$855,445 and recommended approval of PPC's request.

Director of Racing from PPC Steve O'Toole stated that the paddock barn was twenty-five years old, and that the infrastructure was antiquated. He stated that PPC was working with Currie Building Systems Inc. in coordinating on the project. He noted that the project might extend into the racing season.

Commissioner Hill asked if the \$855,445 balance in the Harness Horse Capital Improvement Trust was before or after the \$95,000 request. Mr. Bourque stated that the \$95,000 had yet to be subtracted from that balance. Chair Judd-Stein noted that this improvement would benefit both the animal athletes and human athletes.

Commissioner Hill moved that the Commission approve the Plainridge Park Casino capital improvement request for \$95,000 for phase-one preconstruction design for the race paddock renovations and expansion as included in the Commissioner's Packet and discussed here today. Commissioner Skinner seconded the motion.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

5. [Community Affairs](#) (32:26)

a. Community Mitigation Fund Budget Update

Chief of the Community Affairs Division Joe Delaney presented a budget modification request for the Community Affairs Division to upgrade the Community Mitigation Fund database. He noted that \$40,000 was allocated for this upgrade and that the quote from the contractor was for \$79,437.75. He stated that the Community Affairs Division would need an additional \$40,000 in its budget.

Chief Delaney explained that under 205 CMR 153.05 the Community Affairs Division could use up to ten percent of the Community Mitigation Fund for administrative costs. He explained that for FY23 the Community Affairs Division had only used 2% of the funds, and that the additional \$40,000 would raise it to 2.2%. He noted that this was well below the 10% established in the regulation.

CFAO Lennon explained that the \$40,000 could have been sufficient if the Commission had a developer in-house, but that the Commission was still hiring for that position. Commissioner O'Brien noted that the database was sorely needed and would make compliance more accurate and easier to effectuate. Chair Judd-Stein and Commissioner Hill agreed that it was an essential tool.

Chair Judd-Stein inquired whether this round of upgrades was enough. Chief Delaney stated that there would be additional enhancements over time, and that the Community Affairs Division would reserve some money each year for upgrades to the program.

Commissioner O'Brien moved that the Commission amend the FY23 budget to transfer an additional \$40,000 to the Community Affairs Division budget from the Community Mitigation Fund for development of the Community Mitigation Fund database as included in the Commissioner's Packet and discussed here today. Commissioner Hill seconded the motion.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

6. [Legal](#) (50:33)

a. Sports Wagering Regulations:

i. 205 CMR 256.00: Sports Wagering Advertising – Draft Regulation and Memorandum for Review and Discussion

Attorney Mina Makarious, outside counsel from the law firm Anderson and Krieger presented 205 CMR 256 related to sports wagering advertising. He noted that an advertising roundtable was held in 2022 and that first amendment considerations and federal statutes relevant to regulating advertising were discussed. The *legal memorandum and draft 205 CMR 256* were included in the Commissioner's Packet on pages 50 through 60. He stated that the Legal Team wanted Commission feedback for edits.

Commissioner Maynard asked, relative to 205 CMR 256.01(3), if it was standard to include language related to the volume of patrons. Mr. Makarious stated that it shows up in other jurisdictions, and it was based on the number of patrons who place wagers as a volume. Chair Judd-Stein suggested clarifying language in this provision.

Commissioner Maynard stated that marketing firms try to drive up volume and expressed concern about restrictions based on the volume of patrons. Chair Judd-Stein stated that the provision was in response to the issue of frequency and intensity of sports wagering advertisements. She noted that other jurisdictions had a barrage of advertising, and that it was an issue from the responsible gaming perspective as well. Mr. Makarious noted that the language was identical to Connecticut's language.

Commissioner Hill sought clarification as to whether operators doing business in another state and advertising in Massachusetts would have to include language in their advertisements, making it clear that they do not do business in Massachusetts. Mr. Makarious stated that was correct; and that the regulation would require a disclaimer making it clear they do not operate in Massachusetts.

Commissioner Hill presented an example that a radio show in Boston may have a New Hampshire company's logo behind the host, and asked how they would include a disclaimer. Mr. Makarios stated that the example's operator would have to figure out whether they wanted to continue advertising in Massachusetts and change the advertisement to clarify they operate in another state.

Chair Judd-Stein stated that operators from other states who advertise in Massachusetts should also be obligated to have the same responsible gaming language Massachusetts operators are required to have. Mr. Makarios stated that there could be an issue of enforceability, as it would require the operators to remain apprised of the responsible gaming language in a forum, they are not licensed in.

Commissioner O'Brien noted that Connecticut did not allow operators to imply patrons had a greater chance to win with their platform as opposed to another operator. She asked if that language should be considered. Mr. Makarios stated that it could be added but was likely already covered by the prohibition on misleading statements.

Chair Judd-Stein suggested a reordering of the subsections. Mr. Makarios noted that removing the word "free" from 205 CMR 256.04 could prevent confusion with 205 CMR 256.06(c)

Commissioner O'Brien asked if the percentages in 205 CMR 256.05(b) and 205 CMR 256.05(e) were backwards. Mr. Makarios noted that those provisions were in the negative, and stated he would clarify the language. Commissioner O'Brien noted that some jurisdictions prevent advertising where less than 85% of the audience was of the age to participate and suggested that the 75% could be raised to 85%. Chair Judd-Stein added that the Massachusetts Cannabis Control Commission used 85%.

Mr. Makarios explained that several states used the term majority with their regulations. Director of Research and Responsible Gaming Mark Vander Linden stated that the advertising white paper recommended 85%. He noted that the American Gaming Association ("AGA") code of conduct suggested 73.6%. Commissioner O'Brien stated a compromise could be reached with 80%.

Chair Judd-Stein asked what the 85% in the white paper was based on. Commissioner O'Brien suggested clarifying language to make clear that 85% of the audience would need to be twenty-one or older.

Commissioner Skinner expressed that the regulation as written seemed clear. She stated she would like to be more informed on which percentage to choose for the regulation. Mr. Makarios stated that the state population was approximately 15% to 20% under the age of twenty-one. Commissioner O'Brien cautioned the idea of using a metric that might change based upon birth

rate. Commissioner Maynard stated that percentages would then have to change dependent upon population change.

Director Vander Linden stated that marketers could tell with great precision who the audience of an advertisement was. Commissioner Maynard stated that targeted advertisements were okay, due to the precision of knowing the audience, but that he was conflicted regarding billboards. He stated that he would like more information about that form of marketing. Commissioner O'Brien stated that she was amazed by the amount of information available to marketers.

Chair Judd-Stein stated that billboards could be addressed if the Commission hears complaints. Mr. Makarious noted that the language would be inversed to 15% rather than 85%. Chair Judd-Stein asked if any jurisdiction had adopted the AGA recommendation. Mr. Makarious stated that most other jurisdictions used majority rather than specific numbers.

Commissioner Maynard expressed an interest in whether the more restrictive provision would affect events at TD Garden or other large stadiums. Chair Judd-Stein stated that the 85% mark could be a dangerous delta that was more restrictive than best practices.

Chair Judd-Stein sought clarification regarding the definition of conspicuous. Commissioner O'Brien noted that Pennsylvania and New York had larger fonts during television ads. Mr. Makarious stated that those jurisdictions defined conspicuous for each media market. He stated that it was a reasonable addition to mirror the language from those two states.

Chair Judd-Stein stated she thought there was an obligation to have the language on the home screen of the platforms and asked if that was included in the responsible gaming provisions. Mr. Makarious stated there was language in 205 CMR 238 regarding the conspicuous identification of problem gambling hotlines as part of internal controls. He stated that cross-referencing that regulation here would allow operators to understand the Commission's parameters for conspicuous would be similar to New York and Pennsylvania. Commissioner Hill stated that would be beneficial.

Chair Judd-Stein asked if links to resources would also be in another regulation. Mr. Makarious stated that language in 205 CMR 238 may require it, and that he believed the language was being developed by the Department of Public Health. Director Vander Linden stated that the issue would be addressed in a forthcoming regulation regarding responsible gaming. He stated that he would like to see space in advertising for the promotion of responsible gaming in addition to the helpline. Director Vander Linden noted that the 85% figure in the whitepaper was from the Cannabis Control Commission.

Commissioner Hill expressed concern that the terms intensity, frequency, and saturation included in 205 CMR 256.08 were too vague. Mr. Makarious stated that Virginia had a similar requirement with respect to sporting events. He stated the standard was hard to define and may be different between sports. He noted it would be worth keeping an eye on Virginia on this issue.

Director Vander Linden noted that Tennessee required advertisements not be placed with such intensity and frequency that they would represent a saturation of that media. Mr. Makarious noted that was the same language from Virginia. Commissioner O'Brien sought clarification as to whether saturation was defined in these jurisdictions. Mr. Makarious stated he would research the issue. Director Vander Linden stated that multiple operators could cause saturation rather than a single operator.

Commissioner O'Brien stated that some of the professional leagues self-police the issue. Mr. Makarious noted that 205 CMR 256.08 was written with intent of sporting events and meant to capture multiple entities combining to saturate the market. He noted that the regulation referred to sports wagering not individual operators. Commissioner Hill expressed he was not as concerned after hearing about how the leagues self-policed the issue. Chair Judd-Stein agreed and stated that each applicant that had appeared before the Commission had heard about this concern.

Commissioner Maynard noted that some operators have exclusivity contracts to prevent saturation. Commissioner Skinner stated that she would like to do additional review of the advertising roundtable and white paper. She stated that she did not see any glaringly questionable issues.

Chair Judd-Stein asked when this regulation would return to the Commission. Deputy General Counsel Carrie Torrisi stated that it would be January 20 or January 26. Mr. Makarious highlighted that there was an inconsistency in 205 CMR 256.09. He clarified to the Commissioners that athletes who were underage could not endorse sports wagering operators, but that footage of an underage athlete was allowed.

Chair Judd-Stein stated that the Commission could quickly require advertisements that don't conform to the regulations to be taken down, and inquired if disciplinary action could be taken as quickly. Mr. Makarious stated that if a single violation was egregious enough, it could be grounds for disciplinary action, and that neither these provisions nor 205 CMR 232 would obviate the Commission's disciplinary abilities. He noted that the language was based on Connecticut's language and that Virginia had similar language.

Mr. Makarious asked if the Commission had further consideration on whether to adopt the 85% language. Chair Judd-Stein noted that she was under the impression that more jurisdictions adopted a percentage range and not the majority language that was used. Commissioner O'Brien stated that all but one applicant that appeared before the Commission stated they complied with the AGA guidelines and that 75% wouldn't have an impact.

Commissioner Maynard suggested to leave the language at 75% and expressed an interest in receiving more information from stakeholders before changing it. Chair Judd-Stein stated that

research and review would be helpful. She stated that the Commission could change the number during the next round of edits. Commissioner Skinner agreed.

ii. [205 CMR 106.00](#): Information and Filings – Amendments to Existing Regulation, and Small Business Impact Statement for review and approval to commence the promulgation process and/or adoption via emergency (2:23:32)

Mr. Makarious presented an amendment to 205 CMR 106. He noted that the changes clarified that the regulation also pertained to General Law Chapter 23N. The *draft 205 CMR 106* was included in the Commissioner's Packet on pages 73 through 78.

iii. [205 CMR 107.00](#): Professional Practice – Amendments to Existing Regulation, and Small Business Impact Statement for review and approval to commence the promulgation process and/or adoption via emergency. (2:25:38)

Mr. Makarious explained that the changes to 205 CMR 107 allowed the addition of professional sports related to sports wagering. He stated that the language was also changed to be gender neutral. The *draft 205 CMR 107 and Small Business Impact Statement* were included in the Commissioner's Packet on pages 79 through 82.

iv. [205 CMR 109.00](#): Authority of the Commission to Act in An Emergency Situation – Amendments to Existing Regulation, and Small Business Impact Statement for review and approval to commence the promulgation process and/or adoption via emergency. (2:26:42)

Mr. Makarious explained that 205 CMR 109 was edited to include reference to G.L. Chapter 23N in addition to G.L. Chapter 23K. He noted that in 205 CMR 109.02, the discipline would come from the Commission. The *draft 205 CMR 109 and Small Business Impact Statement* were included in the Commissioner's Packet on pages 83 through 86.

Chair Judd-Stein inquired whether this regulation would need to be amended if there were changes in the Commission's delegation authority. Mr. Makarious stated that this regulation was only for emergency situations, but it would not preclude the Commission from taking initial or secondary disciplinary action.

Mr. Makarious stated that language could be clarified so that both the IEB and Commission could issue an emergency cease and desist order if necessary. Commissioner Skinner stated that made sense and that the language would be consistent with 205 CMR 109.11.

Commissioner Hill moved that the Commission approve the small business impact statement and the draft 205 CMR 106 as included in the Commissioner's Packet and discussed here today, and further moved that staff be authorized to take the steps necessary to file the required documentation with the Secretary of the Commonwealth by emergency; and thereafter to begin the regulation promulgation process. He further moved that staff shall be authorized to modify

chapter or section number or titles to file additional regulation sections as reserved or to make any other administrative changes as necessary to execute the regulation promulgation process. Commissioner Maynard seconded the motion.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

Commissioner Hill moved that the Commission approve the small business impact statement and the draft 205 CMR 107 as included in the Commissioner's Packet and discussed here today and further moved that staff be authorized to take the steps necessary to file the required documentation with the Secretary of the Commonwealth by emergency; and thereafter to begin the regulation promulgation process. He further moved that staff shall be authorized to modify chapter or section number or titles to file additional regulation sections as reserved or to make any other administrative changes as necessary to execute the regulation promulgation process. Commissioner O'Brien seconded the motion.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

Commissioner Hill moved that the Commission approve the small business impact statement and the draft 205 CMR 109 as included in the Commissioner's Packet and discussed here today and further that staff be authorized to take the steps necessary to file the required documentation with the Secretary of the Commonwealth by emergency; and thereafter to begin the regulation promulgation process. He further moved that staff shall be authorized to modify chapter or section numbers or titles; and to file additional regulation sections as reserved or to make any other administrative changes as necessary to execute the regulation promulgation process.

Commissioner Maynard noted that the discussion included slight amendments to this regulation to add language for both the IEB and Commission to be able to issue emergency cease and desists. Commissioner Hill stated he supported the friendly amendment. Commissioner O'Brien seconded the motion.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: *Aye.*
Commissioner Skinner: *Aye.*
Commissioner Maynard: *Aye.*
Chair Judd-Stein: *Aye.*

The motion passed unanimously, 5-0.

b. [Promotional Play discussion and tax implications](#) (3:23:39)

Deputy General Counsel Caitlin Monahan stated that this topic was last discussed on December 12, 2022, and that the Commission weighed whether they had authority to determine whether promotional play was taxed.

Attorney Lon Povich from Anderson and Krieger stated that the sports wagering statute was not explicit as to the definition of gross sports wagering receipts and whether promotional play was to be included or excluded. He stated that the better reading of the statute based upon the legislative history was that promotional play should not be deducted from gross sports wagering receipts.

Commissioner O'Brien stated that Mr. Povich's summary regarding the best interpretation was consistent with how she interpreted the statute. She noted that the statute and legislative history was consistent with that interpretation, and she believed promotional play was fully taxable. She noted other jurisdictions treated it the same way. Chair Judd-Stein agreed with Commissioner O'Brien.

Commissioner Hill disagreed, expressing that promotional play should not be taxed as it was like a coupon. He stated that the goal should be to get companies up and started and that he would not vote to tax promotional play.

Commissioner Maynard cited *Biogen IDEC MA, Inc. vs. Treasurer and Receiver General*, 454 Mass. 174, (2009), where it was found that deference was given to agencies' interpretations of statutory silence or ambiguity, and that it was appropriate where the regulation in question was promulgated immediately after the enactment of the governing legislation. He stated that there were two questions: the threshold question of whether the Commission had the authority to interpret the statute and the policy question of whether promotional play should be included or excluded from the definition of gross sports wagering receipts. He stated that the Commission had the authority to make this decision.

Commissioner Skinner stated that both arguments were compelling. She noted that the taxation of sports wagering benefitted the Public Health Trust Fund, Workforce Investment Trust Fund, and others, but agreed with Commissioner Hill that there was also a level of business interest to be considered.

Mr. Povich stated that Commissioner Maynard was correct that agencies are given deference in interpreting the statutes which govern them. He noted that either interpretation of the statute was defensible. He explained that the House Bill included language that affirmatively stated promotional play was not taxable, but the bill signed into law that became G.L. 23N was silent about the taxation of promotional play. He stated that taxing promotional play was the better reading.

Commissioner Skinner stated that given the advice, it was less of a legal issue and more of a policy issue. She expressed interest in seeing a potential compromise. Commissioner O'Brien stated that anything other than taxing or not taxing would not be consistent with the available interpretations of the statute. She stated that justifying not taxing promotional play would not follow the intent of the legislature. She noted that Maryland received almost no taxes in its first month of sports wagering because the operators claimed a loss on promotional play to obviate the taxes.

Chair Judd-Stein stated that she became familiar with the legislative history. She recognized that negotiations occurred between the House and Senate, but that the final bill that was signed was silent on excluding promotional play from the definition of gross sports wagering receipts. She noted that other jurisdictions with similar language interpreted that as taxing promotional play. She stated that promotional play was burdensome with respect to revenue collection and responsible gaming. She expressed concern that exercising discretion might not reflect the law that was passed and the policy behind it.

Commissioner Maynard noted that a definition of promotional play remained in G.L. Chapter 23N, which shows that the legislature had considered the issue. Commissioner Hill stated he was struggling with why silence in this provision was being interpreted as the ability to tax promotional play. He stated that he did not view it as an affirmative mandate and that he believed the language was ambiguous.

Chair Judd-Stein stated that other jurisdictions had interpreted that language to mean that promotional play was taxed. Commissioner Hill expressed that the interpretations from the other jurisdictions may be wrong. Commissioner O'Brien stated that the alternative would suggest that the Commission as a body had the discretion to alter the definitions of gross sports wagering receipts, and asked if there would be limitations on the modification of that definition.

Mr. Povich stated that promotional play was different from other forms of advertising as it was not backed by real money. He stated that in the bill that was enacted, promotional play was not deducted from adjusted gross sports wagering receipts. He noted that gross sports wagering receipts was not defined in the statute. He reiterated that the better reading was to not exclude promotional play from gross sports wagering receipts for the purpose of taxation.

Commissioner O'Brien stated that the legislative intent and language of the statute was clear. Commissioner Maynard stated that the legislature also did not affirmatively address the issue. He

stated that the Commission had the right to interpret the statute and make a decision. He stated that the legislature could amend the statute if they disagree with the decision, or that the Commission could amend the regulation.

Commissioner O'Brien stated that from a policy perspective she believed promotional play was taxable. She stated that other jurisdictions that had excluded promotional play revisited the topic to add sunset provisions and change it. She noted that changes to promotional play in Virginia and Colorado were all based on legislative changes rather than regulator changes. Chair Judd-Stein stated that an operator objected to the Maryland regulator's attempts to change the deduction of promotional play.

Chair Judd-Stein stated that the language deducting promotional play was removed before the bill was signed. She stated that the operators had a chance to lobby and address their interests with the legislature and that they did not prevail. She noted that an operator at a round table stated that he did not believe promotional play would be deducted. She stated that the Commission has a great deal of discretion but that did not mean the Commission could fill in language where there was an absence.

Commissioner Maynard stated that there was also an equity issue as gifts such as tickets and trips could be written off. Mr. Povich stated that promotional play was unique from those concepts as it was part of the bet being made in addition to being advertising. He noted that other advertisements were not part of the receipt as they were expenses on the corporate side. CFAO Lennon explained that promotional play accounts are contra revenue accounts and not expense accounts.

Chair Judd-Stein stated that sports wagering analysts from a widely respected publication examined the language of the statute, and their interpretation was that Massachusetts does not offer a deduction on promotional play. She stated that the better interpretation was supported by outside experts.

Commissioner Skinner stated she believed that the Commission had the authority to interpret the statute on this issue. She noted that she wanted to consider that threshold question and whether the Commission ultimately would tax promotional play separately. Chair Judd-Stein expressed that her perspective was that there was no ambiguity after reviewing the statutory language, the legislative intent, and interpretations from other jurisdictions.

Commissioner Skinner noted that the underlying advice from the Legal Team hasn't changed and that both interpretations were defensible. Mr. Povich reiterated that the better reading based on the legislative history was to tax promotional play. Commissioner Maynard expressed that he believed the legislative history helped to prove the ambiguity. Commissioner O'Brien stated that the longer the discussion went on the more confident she was in her position. She stated that the question of taxation rates was not the purview of the Commission unless specifically addressed

by the legislature. Commissioner O'Brien stated that there was no ambiguity in the statute and that the legislative history supports that interpretation.

Chair Judd-Stein stated that her stance had not changed. She stated that she would leave the tax issue to the legislature. Commissioner Maynard stated that supporting the better reading also set a tax rate. Chair Judd-Stein stated that the rate was set in the statute, and expressed she did not feel it should be altered.

Commissioner Maynard offered to make a motion that would summate that the Commission did have the ability to interpret General Law Chapter 23N, and to address the inclusion or exclusion of promo play into its calculation of gross gaming receipts.

Chair Judd-Stein sought clarification as to whether Commissioner Maynard was interpreting the law. Commissioner Maynard clarified that the motion was to establish that the Commission, as the regulator of sports wagering, had the ability to interpret the law. Commissioner Hill seconded the motion.

CFAO Lennon suggested an amendment to clarify that it was gross sports wagering receipts not gaming receipts. Commissioner Maynard accepted the amendment. Commissioner Hill seconded the amended motion.

Commissioner O'Brien asked if this interpretation could be certified as a question to the Massachusetts Supreme Judicial Court ("SJC"). Mr. Povich stated that a motion drawing a legal conclusion was interesting and questioned whether the Commission could certify a question to the SJC. General Counsel Todd Grossman stated that he hadn't heard of an agency certifying a question to the court and that he could look into that option.

Commissioner Maynard asked if there was a better way to phrase the motion language. General Counsel Grossman stated that the motion was adding an intermediate step and that a motion could be moved on simply as to whether to include or exclude promotional play from the definition of gross sports wagering receipts. Commissioner O'Brien stated that the threshold question was whether the Commission had this authority and noted that the Commission had yet to discuss how it would be handled if the answer was yes.

Chair Judd-Stein noted that the Commission had not heard the implications related to responsible gaming and methods used in other jurisdictions. She stated that the Commission had an obligation to evaluate whether a change would benefit the Commonwealth. Commissioner Maynard clarified that his motion was limited to the threshold question of whether the Commission had the authority to interpret G.L. Chapter 23N.

General Counsel Grossman stated that there seemed to be a consensus on the Commission's authority. Commissioner Maynard stated that the motion was to cement the consensus. Chair

Judd-Stein stated that the Commission would likely need more information before evaluating the policy issue.

Commissioner Skinner suggested that the motion could be withdrawn based upon General Counsel Grossman's indication that there was a consensus that the Commission had the authority to interpret the statute. Commissioner Maynard expressed hesitance because the issue of authority may arise during the discussion of the policy question. Commissioner Skinner stated that he could choose to make a motion if the threshold question was returned to.

Commissioner Hill asked which interpretation would be followed if the motion was withdrawn. Chair Judd-Stein stated that the law stands. She expressed she viewed the law as not permitting the deduction of promotional play. Commissioner Hill asked if further discussion could be held on the pros and cons of the taxation of promotional play. Chair Judd-Stein stated that there could be a vote, but she wanted to be respectful of Commissioner Skinner's request for guidance.

Commissioner Skinner stated she struggled with the question of whether the Commission as a body should be setting tax policies or rates. Mr. Povich stated that the discussion could include various ways promotional play could be treated other than taxation, such as limited deduction.

Chair Judd-Stein stated her position that the Commission did not have the legal authority to interpret the statute as it was not ambiguous. She stated past that answer to the threshold question she did not have a position regarding whether promotional play should be deducted or included. Commissioner O'Brien stated she felt strongly that the Commission did not have the authority. She noted that moving past the threshold question related to authority was not on the agenda for this meeting.

Mr. Povich stated that there are many ways to modify the inclusion or deduction based on percentage and time and that this policy question should be discussed at a later meeting.

Commissioner Maynard requested that his motion be called for a vote. He stated that he wanted more information before addressing the policy question of whether promotional play was taxable or deductible. Commissioner Skinner stated that if the Commission could not preserve a consensus to allow for a discussion on policy, a vote was required.

Roll call vote:

Commissioner O'Brien: Nay.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Nay.

The motion passed, 3-2.

Chair Judd-Stein stated that the Commission would return to this as a policy discussion in a future meeting.

7. [Sports Wagering Implementation](#) (4:45:46)

a. Approval of Permitted Sports Wagering Events/Catalog

Regulatory Compliance Manager Sterl Carpenter presented a catalog of potential sports wagering categories, events, and wagers to be voted on for approval. The [Permitted Sports Wagering Events Catalog for Approval](#) was included in the meeting materials.

Commissioner Hill asked if betting on which player wins an MVP award would be considered a select event. Mr. Carpenter stated that the Commission would vote on which awards they think it was acceptable to wager on. He noted that MVP awards could be placed at the beginning of a season based off of statistics, and that wagering could be stopped upon the commencement of the season. He explained that other awards like the Cy Young award are based off of votes from the press and that the Commission would need to make a determination to approve wagering on those awards.

Regulatory Compliance Manager Carpenter stated that the first ten wager types were required by statute and that the next eleven were requested by licensees. Commissioner O'Brien stated that she was not ready to vote on any requests beyond those required by statute. She stated she would need time to reflect on the others. Chair Judd-Stein requested that the catalog return to the Commission for the January 20 meeting for voting. Executive Director Wells stated that was sufficient time for the operators and GLI.

Chair Judd-Stein stated that statute addresses e-sports by stating a request could be made to the Commission. Regulatory Compliance Manager Carpenter stated that e-sports were requested by EBH. Chair Judd-Stein questioned whether the Commission would have to develop regulations to create the governing body for e-sports before approving e-sports as a wagering category. General Counsel Grossman stated that was correct. He stated that e-sports were authorized under the statute but that the Commission would have to adopt regulations to determine the governing body.

Regulatory Compliance Manager Carpenter stated that e-sports events could be requested so long as the operator can validate the event and identify who was overseeing the event. He recommended denying e-sports at this time and revisiting their approval.

Commissioner Hill explained that at a conference there was a recommendation to begin with a small scope. Director of Client Solutions from GLI Joe Bunevith explained that there were over 300 basketball leagues and close to 3,000 professional soccer leagues. He noted that the limited approach was with consideration of the market being so large. He stated that the lists the operators requested were agreeable.

Commissioner Hill asked how many sports and leagues were being requested for approval. Regulatory Compliance Manager Carpenter stated that the document had fifty leagues. Commissioner O'Brien asked what the minimum and maximum number of events approved in other jurisdictions were. Digital Technical Compliance Specialist from GLI Mike Robbins stated that it was dependent upon the maturity of the market. He stated that there were between fifty and sixty on average between Wyoming, Arizona, Colorado, Maryland, and Michigan.

Commissioner Hill inquired whether those jurisdictions started with those numbers. Mr. Robbins stated that Ohio recently launched with twenty-three categories. Commissioner Hill stated that the list provided to the Commission would be good for launch. Chair Judd-Stein stated that there had to be a robust enough market to compete with the illegal market.

Chair Judd-Stein stated that the requests were from the category one licensees, and asked if further approvals would need to happen for online operators. Mr. Bunevith stated that the catalog was universal for both retail and mobile operators. Regulatory Compliance Manager Carpenter stated that category three applicants could follow the regulations and request new events. He stated that the request would be presented to the Commission to vote on. Executive Director Wells stated that category three operators could provide input before the catalog was voted on at the January 20 meeting.

b. [Pre-Launch Marketing and Registration](#) (5:48:15)

Executive Director Wells stated that prospective licensees had submitted inquiries about marketing activities and preregistration. She stated that they were not engaging in Massachusetts specific marketing activities or preregistering potential bettors in Massachusetts.

Executive Director Wells noted that some operators had a shared wallet capacity that allowed them to create generic accounts that could be later used in Massachusetts. She stated that GLI recommended that the Commission allow account set up after the operators are licensed. She noted that damage could be mitigated if operators were required to post a bond to protect the patron's money. She stated that allowing preregistration and loading money into accounts increases the risk of a company going live before being authorized to do so. She stated that there was also an equity issue to operators who did not have the ability to do generic account preregistration.

Chair Judd-Stein asked if a patron could load a shared wallet in another jurisdiction and use that money to bet if they are geolocated in Massachusetts. Executive Director Wells stated that she was unsure. Executive Director Wells stated that one applicant indicated that their generic accounts could not be finalized until they were approved to go live.

Executive Director Wells stated that prior to the casino openings patrons were allowed to get rewards cards. Director Wells stated that she heard from an operator that money does move

between jurisdictions in a shared wallet. Mr. Bunevith stated no other states had this level of oversight over preregistration.

Commissioner Skinner stated that she wanted a comprehensive understanding of the options available and what preregistration looks like between the different operators if the Commission were to undertake this level of oversight.

Commissioner O'Brien asked if these concerns were relative only to the mobile launch. Executive Director Wells explained that category one licensees already had player rewards cards and a customer base and that these concerns were relevant to category three operators. Chair Judd-Stein asked if the Commission wanted to provide oversight here or allow the market to dictate the issues as other regulators allowed. Commissioner Skinner expressed concern that the Commission would be the first regulator with this type of oversight.

Chair Judd-Stein noted that advertising and preregistration were separate issues. Commissioner O'Brien stated the expectation that the Commission would circle back to advertising and marketing. Commissioner Maynard stated that if a Massachusetts patron was unable to get their money back during the preregistration period, the Commission's oversight would extend to dealing with that issue. Executive Director Wells stated that once the operator was a licensee the Commission has an enormous amount of control over them.

Chair Judd-Stein stated that if advertising was occurring before the launch of sports wagering the advertising needs to be in compliance with the Commission's advertising regulations. Commissioner O'Brien noted that the Commission did not vote to adopt the advertising regulation and stated that the guidance would be that the advertising be compliant with the draft regulation and consistent with the AGA responsible marketing and advertising guidelines pending the implementation of the Commission's regulation.

Executive Director Wells stated that the operators are expected to be in compliance with the Commission's draft regulations and the AGA code of conduct with respect to any advertising going forward. The Commission reached a consensus in support of this notice.

The Commission reached a consensus to not put restrictions on pre-registrations but expect that applicants will comply with Massachusetts regulations.

8. [Finance](#) (6:17:17)

a. Daily Fantasy Sports Taxation and Revenue Allocation

CFAO Lennon presented on taxation for fantasy sports contests. He explained that the comments from operators suggested the use of the resident percentage or location percentage methodology for the distributing and accounting for fantasy sports contests. The *Presentation on Daily*

Fantasy Sports Taxation and written comments were included in the Commissioner's Packet on pages 121 through 137.

Commissioner Hill asked if Massachusetts would receive more or less revenue if the taxation was changed consistent with the operators' requests. CFAO Lennon stated that it was dependent upon player skill. He stated that all sixteen jurisdictions that tax daily fantasy sports used this method of accounting for fantasy sports contests.

Chair Judd-Stein asked if this was being considered solely because of the operators' requests. CFAO Lennon stated that he could pull the language from the tax laws of the sixteen other jurisdictions that tax fantasy sports contests. Chair Judd-Stein asked what language would be changed in 205 CMR 240. CFAO Lennon stated that the language suggested by each operator was consistent with other jurisdictions.

Chair Judd-Stein requested that the Commission be apprised of the laws from other jurisdictions. Commissioner Skinner requested that the Finance and Legal Divisions draft the language for the regulatory amendment so that the Commission would be ready for a vote at the next discussion.

CFAO Lennon noted that three licensees had paid taxes, and he was unsure which methodology was used to determine the tax amount. He stated that he wanted to avoid having taxes filed in two different manners. He stated that he would give clarification on this and return with the language for the amendment.

9. [Other Business](#) (6:35:22)

Commissioner Skinner expressed an interest in the Commission discussing sports wagering operators who ban bettors who perform too well and having an opportunity for the Commission to communicate its expectations regarding this issue.

Commissioner Hill stated he hoped to speak to the Commission staff on this topic so that they could reach out for applicant and licensee input. Chair Judd-Stein asked if that would include category one operators. Commissioner Hill stated that it would and expressed that it was an important issue.

Chair Judd-Stein asked Executive Director Wells to arrange for the team to get CPR training. Executive Director Wells stated that CPR training was added to the list in addition to unconscious bias training.

Hearing no other business, Chair Judd-Stein requested a motion to adjourn.

Commissioner Hill moved to adjourn. The motion was seconded by Commissioner O'Brien.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

List of Documents and Other Items Used

1. Notice of Meeting and Agenda dated January 9, 2023
2. [Commissioner's Packet](#) from the January 12, 2023, meeting (posted on massgaming.com)
3. [Permitted Sports Wagering Events Catalog for Approval](#)