



Massachusetts Gaming Commission Meeting Minutes

Date/Time: October 19, 2023, 9:00 a.m.
Place: Massachusetts Gaming Commission

VIA CONFERENCE CALL NUMBER: 1-646-741-5292
PARTICIPANT CODE: 112 984 3023

The Commission conducted this public meeting remotely utilizing collaboration technology. The use of this technology was intended to ensure 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 482nd Public Meeting of the Massachusetts Gaming Commission ("Commission"). Roll call attendance was conducted, and all five commissioners were present for the meeting.

Chair Judd-Stein noted that the Commission would not be addressing the agenda item related to the scope of the Interim Executive Director's authority regarding personnel decisions. She stated that this agenda item would be moved to the November 2, 2023, public meeting.

2. [Meeting Minutes](#) (00:50)

Commissioner Maynard stated that August 30, 2023 and September 12, 2023 executive session minutes would be discussed in an executive session later in the meeting.

Commissioner Maynard stated that the minutes for February 23, 2023 and February 27, 2023 public meetings would be presented at the November 2, 2023, public meeting.

3. [Executive Director Screening Committee](#) (01:57)

Commissioner O'Brien stated that the Executive Director position had been posted both internally and externally. She stated that resumes had been received and that the first formal session of the Executive Director Screening Committee would be held to review resumes in the following week. She stated that Commission staff had performed a review of potential executive search firms to be used in this process and was prepared to present recommendations.

a. [Staff Recommendations Regarding Executive Search Firms](#) (02:52)

Finance and Budget Office Manager John Scully stated that during a public meeting on July 27, 2023, the Commission discussed potential means for attracting candidates for the Executive Director vacancy. He stated that a successful search firm would exceed the incidental threshold, and would necessitate the use of a statewide contract, request for response, or procurement exception. He stated that the Commission staff collaborated with the Local Enterprise Assistant Fund ("LEAF") to identify five qualified search firms which could be intentional diverse spend.

Mr. Scully stated that Commission staff evaluated each of the five firms and was prepared to make a final recommendation. He stated that the five search firms identified for potential use were Centum Search LLC, Gumbs and Partners, MH Group LLC, Renaissance Network Inc., and US Professional Services Inc. He stated that interviews were scheduled with all five candidates and that each candidate was provided with the evaluative questions prior to the interview.

Senior Diversity Equity and Inclusion Program Manager Boniswa Sundai noted that Gumbs and Partners had self-selected out of the process. She explained that Renaissance Network Inc. was unwilling to consider this work on a contingency basis and was rejected based upon that decision.

Ms. Sundai stated that each of the remaining three search firms had unique qualities to bring to this search. She stated that the recommendation was to use all three remaining firms— Centum Search LLC, US Professional Services Inc., and MH Group LLC.

Commissioner O'Brien asked what would occur if more than one search firm submitted the same candidate, and that candidate was eventually hired. She asked if the firms would be required to split the contingency payment. Mr. Scully stated that ownership of a candidate could be discerned in a number of ways, such as a checkbox in Taleo, a cover letter, or express confirmation from the search firm.

Chief Financial and Accounting Officer ("CFAO") Derek Lennon stated that if multiple firms submit the same candidate, that the payment would be based upon who was the first firm to submit the successful candidate. He noted that the search firms had indicated that while it was

not their preference to be involved in a search with multiple firms, that they had done so in the past. Ms. Sundai stated that each search firm had indicated that they would provide a candidate profile, and that these profiles could be used to determine who submitted a candidate first.

Chief People and Diversity Officer Dave Muldrew stated that using these three search firms would cast a broad net for qualified candidates. He stated that applications will be timestamped upon receipt and that HR would keep constant contact with the search firms. Commissioner O'Brien noted that the Committee would see all resumes submitted, and that no resume would be screened out in an HR process.

4. [IEB Director Screening Committee](#) (16:33)

a. IEB Director Job Description Distribution

Commissioner Skinner, acting as Committee Chair for the IEB Director Search Committee, stated that she hoped to revise the job description for the Director of the Investigations and Enforcement Bureau ("IEB"). She noted that the job description in the packet was the unedited job description on file with HR, and that she hoped to have further discussion of edits at the November 2, 2023, public meeting. The *IEB Director Job Description* was included in the Commissioner's Packet on pages 4 through 5.

Chair Judd-Stein stated that the job description in the Commissioner's Packet was not consistent with the job description used to hire the last IEB Director and expressed concern that the Screening Committee might not have the most up-to-date job description.

Commissioner O'Brien noted that a prior job posting was a public document and stated that she did not see a reason why it could not be shared with the Screening Committee. Chair Judd-Stein stated that she would like to confirm that the version she had was the description that was posted publicly before distributing it. Commissioner Skinner stated that if there was a more recent job description, she would not send out her proposed edits based upon the job description in the packet. Chair Judd-Stein stated that the job description in her records was labeled final and was more fleshed out than the job description in the Commissioner's Packet.

Commissioner Hill asked if Executive Assistant to the Commissioners Trudy Lartey could distribute the most recent version of the job description so that it could be voted on during the November 2, 2023 meeting. He also noted that the November 2, 2023 meeting was beginning to have a very full agenda. Commissioner O'Brien suggested that the Commission could have a single agenda item meeting following the October 25, 2023 agenda setting meeting to distribute the correct IEB Director job description.

Chair Judd-Stein asked if she could send the redlined job description in addition to the clean version. Interim Executive Director and General Counsel Todd Grossman stated that the red-lined version could be sent, as it was being discussed at a public meeting.

Commissioner Skinner asked if the November 2, 2023 public meeting was in Springfield. Chair Judd-Stein confirmed that was correct. Commissioner Hill stated that he wanted to ensure the job description was finalized on November 2, 2023 to align with the Screening Committee's goals. Commissioner O'Brien stated that a meeting on October 25, 2023 to distribute the job description, would help speed up the process. Chair Judd-Stein stated that a single agenda item meeting would be set up for October 25, 2023.

5. [Administrative Update](#) (32:49)

Interim Executive Director Grossman stated that there were three administrative updates: a diversity, equity, and inclusion ("DEI") presentation, an update on the responsible gaming conference, and an update regarding Encore Boston Harbor's ("EBH") east of Broadway expansion.

a. [MGC DEI Presentation](#) (34:00)

Chief Muldrew and Ms. Sundai presented the diversity equity and inclusion report with topics including diversity, equity, and inclusion, core values, the Commission's diversity action plan, diversity statistics, and outreach. The *Diversity, Equity and Inclusion Report* was included in the Commissioner's Packet on pages 6 through 18.

Commissioner Hill noted that thirty-one percent of Commission employees were diverse and commended the DEI division for their work. Commissioner Maynard stated that the diversity numbers were commendable, but that there was always more work to do. He stated that intentionality in picking vendors and spaces to increase spending were important. He asked what the Commission could do to further their DEI efforts.

Chief Muldrew stated that DEI is an ongoing effort, and that DEI was only successful when implemented from the top down. He stated that presenting thoughts, collaborating, and implementing recommendations helps create a positive culture.

Ms. Sundai expressed the importance of education as DEI was interrelated to everything we do. She stated that fear of DEI could be addressed by continuing to educate and create a positive culture within the agency.

Commissioner Skinner stated that the DEI numbers were fantastic, but expressed an interest in seeing the stats split out into the various diverse categories rather than a single number. She stated that she would also like to see the numbers regarding diversity in management.

Ms. Sundai stated that there were limitations with the applicant tracking system. She stated that HR was figuring out the best way to provide accurate numbers internally. Commissioner Skinner stated that this would be a good first task for the DEI division.

CFAO Lennon stated that while there was \$3.6 million in diverse spend for FY22, the Commission had missed its goal for spending with veteran-owned business enterprises. He stated that the staff was more intentional with spending in FY23. He stated that more reporting and evaluation of this information leads to more intentional procurement practices. Commissioner Skinner noted that the Commission’s procurement team had received recognition from the Supplier Diversity Office.

b. [Responsible Gaming Conference](#) (53:33)

Director of Research and Responsible Gaming Mark Vander Linden stated that the FY24 gaming research agenda planned for an inaugural research conference. He stated that this conference would bring together a diverse network of stakeholders and researchers to collaborate on knowledge mobilization strategies, develop ideas, and deepen research topics. He stated that the tentative date for this conference would be May 14, 2023, in Worcester.

Director Vander Linden stated that a request for information (“RFI”) had been posted related to gambling risk identification and response technology. He stated that this RFI was intended to give the Commission information from knowledgeable parties to advance the understanding of currently available technology capable of identifying risky gambling behavior and response options. He noted that the RFI had been open for over a month and would close on October 20, 2023. He noted that the Division was excited to receive those responses and would share them with the Commission.

c. [East of Broadway Expansion](#) (58:00)

Chief of the Community Affairs Division Joe Delaney stated that in the middle of July EBH had submitted a list of information the Commission had requested to see related to their development project, east of Broadway. He stated that EBH would have to amend their gaming license, operations certificate and Section 61 findings. He stated that on October 16, 2023, the Massachusetts Environmental Protection Act Office (“MEPA”) had issued a final decision and requested that EBH perform a supplemental final environmental impact report.

Chief Delaney stated that the key issues with MEPA were related to parking and traffic. He stated that some agencies had been pushing back about the amount of parking provided. He explained that these agencies wanted to limit parking so that patrons would use public transportation. He stated that the City of Everett had approved the plan for this project. He noted that the Commission had yet to receive an application regarding this project, and that an internal team would be needed to review the plans when they are submitted.

Commissioner Hill asked if the Commission had any responsibilities related to traffic and parking planning. He expressed concern that while using public transportation was good in

theory, that the public did not trust public transportation. He stated that removing parking in favor of public transport could create further traffic issues.

Chief Delaney stated that MEPA, the Massachusetts Department of Transportation, and the City of Everett are the primary drivers for traffic and parking related mitigation. Commissioner Hill noted that during public hearings the citizens of Everett had made complaints regarding traffic. He expressed that he thought the traffic issue was a red flag.

6. [Legislative Update](#) (1:06:29)

Commissioner Hill stated that there was nothing to report in terms of legislative updates.

7. [Legal](#) (1:06:56)

Deputy General Counsel Caitlin Monahan stated that five regulations were before the Commission for review. She stated that 205 CMR 219 and 205 CMR 231 were coming to the Commission for a final vote. She stated that 205 CMR 258 was a brand-new regulation the Commission was seeing for the first time. She stated that 205 CMR 238.12 had changes related to 205 CMR 258. She noted that 205 CMR 2.00, related to amending an application for a new racetrack in the Commonwealth, was only scheduled for a conversation not a vote.

a. [205 CMR 219: Temporary Licensing Procedures – Regulation and Amended Small Business Impact Statement for final review and possible adoption](#) (1:08:54)

Attorney Mina Makarious, outside counsel from the law firm Anderson and Krieger, presented the draft of 205 CMR 219. He stated that no public comments were received on this regulation and that no further changes had been made since the ones approved on August 24, 2023. The *Amended Small Business Impact Statement and draft of 205 CMR 219* were included in the Commissioner’s Packet on pages 20 through 33.

Commissioner Skinner moved that the Commission approve the Amended Small Business Impact Statement and draft of 205 CMR 219 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 to finalize 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.

b. [205 CMR 231: Renewal of a Sports Wagering License - Regulation and Amended Small Business Impact Statement for final review and possible adoption](#) (1:11:38)

Mr. Makarios presented the draft of 205 CMR 231. He stated that no public comments were received and that there was a single edit to fix an incorrect cross-cite in 205 CMR 231.01(3)(b). The *Amended Small Business Impact Statement and draft of 205 CMR 231* were included in the Commissioner's Packet on pages 34 through 38.

Commissioner Maynard moved that the Commission approve the Amended Small Business Impact Statement and draft of 205 CMR 231 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 to finalize the regulation promulgation process. 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.

c. [205 CMR 258: Sports Wagering Operator Cessation – Discussion and Review of Regulation and Small Business Impact Statement for possible emergency adoption, and/or authorization to begin the promulgation process.](#) (1:13:21)

Mr. Makarios presented the draft of 205 CMR 258. The *amended small business impact statement and draft of 205 CMR 258* were included in the Commissioner's Packet on pages 41 through 47.

Mr. Makarios explained that this regulation addresses the cessation and potential closure of sports wagering operations. He stated that various entities had reconsidered whether to stay in all jurisdictions in which they were licensed, and that this regulation addresses the disruption to the Commonwealth and patrons.

Mr. Makarios noted that he worked with bankruptcy counsel to get feedback on the sections related to operator bankruptcy. He stated that the federal bankruptcy code preempts state regulations almost entirely. He stated that the regulation was developed so that the Commission and the Commonwealth would be as protected as possible in case of an operator bankruptcy.

Chair Judd-Stein suggested the catchall provision be amended to also protect the interests of the Commonwealth in addition to the integrity of sports wagering and the commonwealth. Mr. Makarios stated that this change would be made.

Mr. Makarios explained that under 205 CMR 238, the Commission requires financial assurances for a reserve amount of funds equal to unpaid wagers - to ensure operators have enough funds to pay bets. He stated that 205 CMR 258 would allow this financial assurance to be secured through a letter of credit from the bank. He stated that the bank would issue the letter of credit to the Commission, and that if the operator ceased operating, the Commission would go to the bank rather than the operator. Mr. Makarios stated that there was a sizable cost to the letter of credit, but that it would not tie up cash-on-hand.

Commissioner Maynard asked how this practice would compare to other jurisdictions. Mr. Makarios stated that other jurisdictions have a mixture of some of these processes, but that not many had given thought to bankruptcy status.

Attorney Annie Lee from Anderson and Krieger stated that the legal team looked at the regulations in Colorado, Nevada, and Louisiana when drafting this regulation. She stated that the legal team fleshed out what other states had, requiring more checkpoints and ensuring that operators develop and submit interim reports to the Commission. She stated that the provisions that require sports wagering operators to surrender their license upon cessation were taken from the regulations in New York and Colorado. She stated that the provision requiring sports wagering operators to maintain records sufficient to conduct audits after cessation was based off of Louisiana's regulations.

Chair Judd-Stein asked if the communication plan should include communication with the patrons at an early stage. Mr. Makarios stated that the Commission would have flexibility to approve, deny, or implement conditions on the operator's plan. He stated that this step was designed to ensure that the Commission could reject unreasonable proposals that patrons only have a small number of days to address uncollected winnings. He stated that the communication plan has to be approved by the Commission before providing notice to the customers. He stated that the legal team did not envision simultaneous notice to the Commission and customers.

Chair Judd-Stein noted that 205 CMR 258.04 had a provision for delegation, and asked how this was envisioned to work. Mr. Makarios stated that this process was a lot of work day-to-day and that the Commission might want to appoint a staff member or team to be the core operating team addressing the cessation. He stated that it was an option to provide the Commission flexibility, but that it was not required to be used.

Commissioner O'Brien suggested that 205 CMR 258.03(4) be modified to include social media platforms in addition to platforms and websites. Mr. Makarios stated that this change would be made.

Chair Judd-Stein stated that if a designee would be able to approve an amendment to a cessation plan, it would effectively take the issue out of public view, as it would not be reviewed by the Commission. Commissioner Maynard noted that delegation was an option available but that the Commission could choose not to delegate this authority. Mr. Makarios stated that

Commissioner Maynard was correct and noted that the Commission could also delegate authority to a Commissioner or subcommittee.

Chair Judd-Stein asked if an operator had to appear before the Commission for withdrawal. Mr. Makarios stated that an operator that was withdrawing would have to appear before the Commission. Chair Judd-Stein asked if a designee could deny the final cessation request. Mr. Makarios stated that the designee could deny the request, but that only the Commission could give final approval.

Chair Judd-Stein asked which firm assisted with the bankruptcy provisions. Mr. Makarios stated that he worked with Attorney Thomas Bean from the law firm Verill Dana. Chair Judd-Stein asked if this regulation would be voted on as an emergency. Mr. Makarios stated that it would be an emergency vote, but because 205 CMR 238.12 is cross-referenced, he would like to review those changes prior to the vote.

[d. 205 CMR 238.12: Additional Uniform Standards of Accounting Procedures and Internal Controls for Sports Wagering; Reserve Requirement – Discussion and Review of Regulation and Small Business Impact Statement for possible emergency adoption, and/or authorization to begin the promulgation process \(1:59:15\)](#)

Mr. Makarios presented the draft of 205 CMR 238.12. The *Amended Small Business Impact Statement and draft of 205 CMR 238.12* were included in the Commissioner's Packet on pages 48 through 51.

Mr. Makarios stated that 205 CMR 238.12 was regarding which forms of financial assurance were required for the reserve. He stated that a provision was added to allow for an irrevocable letter of credit approved by the Commission to cover sports wagering liability, and that it could be drawn on by the Commission in the event of cessation.

Mr. Makarios noted that this provision was only for the sports wagering liability. He stated that the bankruptcy counsel advised that there were complicated protections for vendors and employees to get paid from a bankrupt company, and that the Commonwealth taxes would still be enforceable against a bankrupt entity. He noted that if the whole reserve was required to be in the letter of credit, it would be exceedingly expensive and difficult to get, so the regulation was carved out to be more feasible.

Chair Judd-Stein asked if the citation which included tax liability was correct based upon his previous statement. Mr. Makarios noted that 205 CMR 238.12 was regarding all financial assurances in place. He stated that only the portion addressing sports wagering liabilities would be through a letter of credit.

Chair Judd-Stein asked if this regulation would be adopted by emergency. Mr. Makarios stated that 205 CMR 258 was being adopted by emergency and that 205 CMR 238.12 was going

through the standard promulgation process and public comment period. Commissioner Maynard stated that the Commission would accept public comments on a regulation even during the emergency period.

Commissioner Hill moved that the Commission approve the Small Business Impact Statement and draft of 205 CMR 258 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 and further that staff shall be authorized to modify chapter or section numbers 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 Skinner moved that the Commission approve the small business impact statement and the draft of 205 CMR 258 as included in the Commissioner's Packet and discussed here today, and that staff be authorized to take the steps necessary to file the required documentation with the Secretary of the Commonwealth to begin the regulation promulgation process, and further, that staff shall be authorized to modify chapter or section numbers 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 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.

e. [205 CMR 2.00: Racing Meeting Licensing – Discussion and Review of Regulation and Small Business Impact Statement](#) (2:20:53)

Mr. Makarios stated that this regulation was modeled off the 200 series of sports wagering regulations. He stated that the goal was to standardize the evaluation of racing meeting license applications using a regulatory framework. He stated that this process would be familiar to the

operators, the public, and to the Commission and its staff. Mr. Makarios noted that General Law Chapters 128A and 128C governed horseracing, and that licensees were required by statute to apply for a new license annually.

Mr. Makarios presented the draft of 205 CMR 2.00. The *Amended Small Business Impact Statement and draft of 205 CMR 2.00* were included in the Commissioner's Packet on page 55 through 76.

Mr. Makarios noted that 205 CMR 2.03(5)(b) differed from the sports wagering regulations in that it required application reviews to be in adjudicatory hearings. Deputy General Counsel Monahan stated that G.L. Chapter 23N, § 6(i) allowed for executive sessions to be held for sports wagering when a licensee was presenting information related to business practices or trade secrets. She explained that there were no such protections for horseracing. She stated that the Commission had been utilizing the adjudicatory hearing process for the last few years.

Chair Judd-Stein stated that the Commission had been conducting an adjudicatory hearing in the public setting and opting to go into private for matters related to business practices and trade secrets. She asked if that process had to be memorialized in regulation. Deputy General Counsel Monahan stated that the Commission could go into closed session during these hearings pursuant to 205 CMR 101, but that it was an option the Commission used sparingly. She recommended using that process for horseracing as there was the lack of ability to enter executive session pursuant to G.L. Chapters 128A and 128C.

Mr. Makarios stated that the process would not need to be included in this regulation as it was already captured in 205 CMR 101. Chair Judd-Stein asked if 205 CMR 101 had been updated. Deputy General Counsel Monahan stated that it had not been updated particularly recently.

Chair Judd-Stein questioned whether 205 CMR 101 referenced a public meeting or hearing. She stated that there was a regulation change relative to that phrasing on her to-do list. General Counsel Grossman stated that he believed the regulation she was referring to was either 205 CMR 115, or 205 CMR 116 regarding suitability hearings pursuant to G.L. Chapter 23K.

Commissioner O'Brien asked if the IEB had any comments on this regulation. Interim IEB Director Heather Hall stated that there were pros and cons to each approach. She stated that the IEB could perform their duties in the way it was written and that it was a fair process.

Commissioner O'Brien asked why the term "temporary suitability" was used as opposed to "preliminary suitability" that was used for sports wagering. Mr. Makarios explained that it was not preliminary because the statute does not presume the suitability would become permanent. He reiterated that the horseracing licensees have to renew their license each year.

Commissioner O'Brien asked if the IEB had any concerns regarding timing. Interim Director Hall stated that the way it is structured would sufficiently address concerns. She stated that the IEB should be okay based upon communications and analysis.

Chair Judd-Stein asked if this regulation would be voted on by emergency. Deputy General Counsel Monahan explained that the regulation was only scheduled for discussion at this meeting. She stated that it would be brought back in November and be voted on by emergency at that point. She noted that there was a potential new applicant for a racing license that might submit their application as soon as Q1 and explained that the legal team wanted this regulation in place prior to that. She noted that the procedural mechanism for racing regulations required the regulation to be sent to the legislature for review for sixty days, which extended the promulgation process.

Commissioner Skinner asked if this regulation would be posted on the website for public comment before being voted on. Deputy General Counsel Monahan stated that the regulation would be posted to the website in the interim, and that she hoped to have the regulation back for emergency vote at the November 16, 2023, meeting.

Chair Judd-Stein expressed an interest in informing all stakeholders of this regulation. Director of the Racing Division and Chief Veterinarian, Dr. Alex Lightbown, stated that she had notified stakeholders that this regulation was being reviewed and that the staff anticipated a public comment period.

8. [Legal and IEB](#) (2:50:45)

- a. Process Considerations in connection with Penn Entertainment and ESPN Deal and information to be requested from Penn Entertainment related to said Deal

Deputy General Counsel Monahan stated that on October 2, 2023, Penn Entertainment ("Penn") announced that they would be rebranding from Barstool Sportsbook to ESPN BET. She stated that if an operator with a temporary sports wagering license has a substantial change to their business, G.L. Chapter 23N, § 6(g) empowers the Commission to require operators to provide documentation and information to demonstrate that the operator would continue to meet the requirements of G.L. Chapter 23N and the rules and regulations of the Commission. She noted that 205 CMR 212.01(1) allowed the Commission to request additional information and documents throughout the review process. She stated that Penn was still going through the application process and that information could continue to be collected.

Deputy General Counsel Monahan stated that the Commission could also collect information by amending the license application. She explained that 205 CMR 211.01(10) allows the Commission to require an amended application if there are substantially significant changes from Penn's initial application.

Deputy General Counsel Monahan stated that according to the ruling within *Covell vs Department of Social Services*, 42 Mass. App. Ct. 427 (1997), agencies have inherent power to reopen their concluded proceedings in compelling situations as justice may require. She stated that while this power should be exercised sparingly, it is appropriate to do so where a licensee's business in the Commonwealth will differ significantly from what was originally presented to the Commission. Deputy General Counsel Monahan stated that the legal team believed there had been significant enough change since the application that the temporary license could be opened and amended.

Deputy General Counsel Monahan stated that if there was a transfer of interest in the license it would be required to go through the transfer of interest process pursuant to 205 CMR 229 and G.L. Chapter 23N, § 6(h). She noted that this process was not particularly relevant at this time. She stated that the Commission needed to decide which mechanism it would want to use to obtain additional information from Penn. She stated that the legal team recommended using the process under 205 CMR 212 as it allows the Commission to ask more specific questions. Deputy General Counsel Monahan stated that once the Commission received the information, it could be reviewed in a public meeting and the Commission could evaluate its impact on the temporary license. Chair Judd-Stein stated that while the transfer of interest issue was not ripe for this discussion, she would like to have that process explained to the Commission in a later meeting.

Interim Director Hall stated that the Licensing Division reviewed Penn's general application and business entity disclosure form and noted that not many references were made to Penn's relationship with Barstool in those documents. She stated that ESPN was acting more akin to a marketing affiliate in this relationship, and that ESPN was not affecting the technology. She asked if there were specific topics the Commission wanted Penn to address, such as the ESPN college football shows and how that would interact with their relationship with Penn. She stated that Penn's Chief of Compliance, Christopher Soriano, stated that Penn was ready to provide any information the Commission requested.

Chief of the Licensing Division, Karalynn O'Brien, stated that ESPN Enterprises Inc., a wholly owned subsidiary of ESPN, had anticipated being a marketing affiliate in the Commonwealth. She noted that ESPN Enterprises Inc. was registered as a sports wagering registrant.

Commissioner O'Brien noted that this licensee was different from the others as their branding was tethered to a separate preexisting entity. She stated that one question she had was how lines would be drawn regarding the college football shows. She stated that employees of ESPN wouldn't be able to recommend specific bets on their platforms. She stated that the same conversation was had with Penn's relationship to Barstool Sports, and that she would like the same information regarding Penn's relationship with ESPN.

Commissioner Skinner stated that she was unaware of any information being submitted by Penn related to the deal with ESPN. She stated that there was a lot of media attention regarding this

deal, but that Penn had not submitted sufficient information regarding the deal directly to the Commission. She stated that she could not develop questions without first having more details regarding the deal.

Chair Judd-Stein agreed with Commissioner Skinner. Chair Judd-Stein expressed that she felt she was at a disadvantage because Penn had not provided the Commission with any more details past the announcement of the deal with ESPN. She noted that she wanted more information as she recalled several mentions of Barstool Sports in Penn's application. She noted that there were significant conditions on Penn's temporary sports wagering license based on their relationship with Barstool Sports.

Commissioner O'Brien agreed with Commissioner Skinner and Chair Judd-Stein. She stated that Penn was unique in how they did their branding of their sports wagering platform. She stated that Barstool Sports and ESPN had different business models, and that it was unclear to her what issues there may be without more information. She stated that the Commission would need the details of the deal to identify areas of concern. Interim Director Hall stated that Penn was prepared to submit that documentation and was poised to answer any questions the Commission discussed.

Commissioner Maynard stated that he agreed with his fellow Commissioners. He stated that he would hold ESPN to the same standard Barstool Sports was held to in the application process. He stated that while they were swapping out their media companies, the media companies were significantly different. He stated that he wanted more information from Penn regarding this relationship swap. Commissioner Hill agreed.

Chair Judd-Stein stated that not enough information was present to know whether all the Commission's concerns were addressed. Commissioner O'Brien stated that it was difficult to categorize the questions and know the scope without further information.

Chair Judd-Stein also sought clarification regarding ESPN's marketing affiliate registrant. Licensing Chief O'Brien explained that ESPN Enterprises Inc. was a wholly owned subsidiary of ESPN and registered as a sports wagering registrant. Chair Judd-Stein asked if any other jurisdiction had addressed an issue like this. Licensing Chief O'Brien stated that she was not certain.

Chair Judd-Stein stated that this meeting put Penn on notice that the Commission needed more information regarding the deal. Chair Judd-Stein noted that Penn's platform was still branded Barstool Sportsbook and that there may be complexities with regard to timing. She sought clarification regarding the term switch. Deputy General Counsel Monahan expressed that she believed the switch would be at the time of rebrand. She stated that before then the Commission could request additional information for evaluation. She stated that there would also be procedural changes, such as changes to house rules and internal controls, which would have to occur prior to rebranding.

Chair Judd-Stein asked if Barstool Sports was treated as a marketing affiliate registrant. Interim Director Hall stated that Barstool Sports was registered as a non-gaming vendor as they were a subsidiary of Penn. Chair Judd-Stein noted that this was different from the relationship with ESPN as there were different control structures. She noted that each licensee was responsible for any branding and content.

Chair Judd-Stein asked if ESPN would have to go through the licensing process. Interim Director Hall stated that they would have to go through the sports wagering registrant process as a marketing affiliate. She stated that once Penn submitted the documents related to the deal there could be further evaluation. Chair Judd-Stein requested information related to the cessation of Barstool Sports branding, and if there would be any overlap in timing.

Interim Director Hall stated that Mr. Soriano indicated that Penn could submit the documentation requested by the Commission during the following week. Chair Judd-Stein stated that this topic could be added to the November 2, 2023, public meeting. Commissioner Maynard stated that he would prefer a discussion as soon as possible.

Deputy General Counsel Monahan stated that the rebrand should not occur until the Commission had reviewed and approved how it would act on Penn's temporary license. She noted that news reported Penn's rebrand would occur on November 20, but that she had yet to hear a date from Penn. She stated that it was important that a representative from Penn was available for the next discussion. Commissioner O'Brien stated that it was hard to know how long the review would take until Penn submits the documentation.

Commissioner O'Brien noted that the next public meeting after November 2, 2023 was November 16, 2023. Commissioner Hill stated that he agreed with Commissioner Maynard that the sooner the Commission sees this information the better.

Chair Judd-Stein asked where November 20, 2023 as a rebrand date came from. Deputy General Counsel Monahan stated that the sports Wagering Division circulated a news report that reported Penn was aiming for a November 20, 2023, rebrand, but that Penn had not yet communicated that to the Commission.

The Commission reached a unanimous consensus to meet on November 7, 2023, for further discussion of this topic and to evaluate Penn's soon-to-be submitted documentation and responses to questions posed in this meeting.

9. [Community Affairs Division](#) (4:01:11)

a. Review of Community Mitigation Fund Draft Guidelines

Chief Delaney presented the FY25 Community Mitigation Fund Draft Guidelines and Municipal Block Grant Formula. The *FY25 Community Mitigation Fund Draft Guidelines* were included in the Commissioner’s Packet on pages 77 through 111. The *Municipal Block Grant Formula* was included in the Commissioner’s Packet on pages 112 through 117.

Chief Delaney stated that the Local Community Mitigation Advisory Committees (“LCMAC”) and the Subcommittee on Community Mitigation had met earlier in the week. He stated that those groups provided positive feedback to Community Mitigation Fund guidelines and municipal block grant formula. He stated that if the Commission votes to put these documents out for public comment, that there would be a public hearing on October 26, 2023. He stated that written comments would be accepted until October 30, 2023. Commissioner Hill stated that there was no negative feedback at the LCMAC or subcommittee meetings.

Commissioner Hill moved that the Commission seek public comment on the FY25 Draft Community Mitigation Fund Guidelines and the FY25 Community Mitigation Fund Municipal Block Grant Formula as included in the Commissioner’s Packet and discussed here today. 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.

10. [Research and Responsible Gaming](#) (4:19:39)

a. GameSense Quarterly Report

Director Vander Linden introduced Chief Operations Officer for GameSense, Chelsea Turner, Director of Recovery Services, Jodie Nealley, EBH GameSense Advisor, Yolanda Gonzalez, and EBH GameSense Advisor, Anna Thomas.

Ms. Turner, Ms. Gonzalez, Ms. Nealley, and Ms. Thomas presented the GameSense Quarterly Report with topics including personnel updates, interaction highlights, GamLine, Responsible Gaming Education Month, recovery month, GameSense awards, the racial justice and health equity committee, communications, and upcoming plans. The *GameSense Q1 Presentation* was included in the Commissioner’s Packet on pages 120 through 133.

Commissioner O’Brien asked if this was the first time GameSense conducted lottery trainings. Ms. Turner stated that lottery training had been conducted, but not in the past three years. She stated that this training was conducted differently and was more customized than previous trainings.

Executive Director for the Massachusetts Council on Gaming and Health, Marlene Warner, stated that lottery trainings used to be once a year, but that this was a more customized approach than previously. She expressed that she hoped the customized approach would yield good results. Ms. Turner stated that it was helpful for the GameSense team to receive the lottery training, and that it would be nice if there was an annual training.

Chair Judd-Stein and Commissioner Skinner commended GameSense for having materials available in nineteen languages. Commissioner Skinner sought clarification regarding the term “urge surfing”. Ms. Turner explained that research discovered people’s cravings typically only last three to five minutes. She stated that the idea behind urge surfing was to listen to meditation until the urge subsides. Commissioner Skinner asked if this was new for GameSense. Ms. Turner stated that it was a relatively new program, and that GameSense was working with a consultant with responsible gaming experience.

Ms. Warner stated that after completing the urge surfing meditation, patrons have the option to enter an evaluation platform. She stated that data was being collected regarding the efficacy of this process. Ms. Turner stated that urge surfing meditation adds another option for patrons struggling with gambling. Commissioner Skinner noted that the tool was being utilized.

Commissioner Skinner commended the GameSense team on their huge gains. Ms. Turner stated that percentages jump quickly when dealing with smaller number sets. She stated on average there were fifty to seventy-five voluntary self-exclusion enrollments per month. She stated that voluntary self-exclusion enrollment had increased following the implementation of sports wagering.

Commissioner Maynard commended the GameSense team. Director Vander Linden stated that the recovery panel could be a great resource for the Commission when designing and promoting responsible gaming tools.

Chair Judd-Stein explained that a topic of discussion at the Global Gaming Expo was that there were inequities in terms of women who are challenged with problem gambling in comparison to men. She stated that this disparity might be something the Commission looks to address moving forward.

11. [MGC Office Lease Update](#) (5:15:30)

a. Executive Session

Chair Judd-Stein stated that the Commission anticipated that it would meet in executive session in accordance with G.L. c.30A, §21(a)(6) to consider the lease of real property, specifically the Commission’s office space at 101 Federal Street in Boston, and associated considerations, as

discussion at an open meeting may have a detrimental effect on the negotiating position of the Commission.

Commissioner O'Brien moved that the Commission go into executive session on the lease matter just referenced and for the reasons stated by the Chair on the record. 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.

12. [Executive Session Meeting Minutes](#) (5:17:27)

a. Executive Session

Chair Judd-Stein stated that the Commission anticipated that it would meet in executive session to review minutes from two previous executive sessions, as their discussion at an open meeting may frustrate the intended purpose for which the executive sessions were convened, pursuant to G.L. c.30A, §21(a)(3).

Commissioner Maynard moved the Commission move to executive session to review the minutes just referenced by the Chair for the reasons just stated by the chair on the record. 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.

Chair Judd-Stein noted that the Commission did not anticipate returning to the public session at the conclusion of the executive session.

Transcriber's Note: The Commission entered executive session and did not reconvene the public session of the meeting.

List of Documents and Other Items Used

1. [Notice of Meeting and Agenda](#) dated October 17, 2023
2. [Commissioner's Packet](#) from the October 19, 2023, meeting (posted on massgaming.com)