



Massachusetts Gaming Commission Meeting Minutes

Date/Time: April 13, 2023, 9:00 a.m.
Place: Massachusetts Gaming Commission

VIA CONFERENCE CALL NUMBER: 1-646-741-5292
PARTICIPANT CODE: 112 121 5333

The Commission conducted this public meeting remotely utilizing collaboration technology. The 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 448th Public Meeting of the Massachusetts Gaming Commission ("Commission"). Roll call attendance was conducted, and all five commissioners were present for the meeting.

2. [Minutes from Commission Agenda Setting Meetings](#) (00:50)

a. November 14, 2022

The November 14, 2022, Public Meeting Minutes were included in the Commissioner's Packet on pages 3 through 9.

Commissioner Hill moved that the Commission approve the minutes from the November 14, 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: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

Chair Judd-Stein noted that the Executive Director Annual Review would not be addressed during today's meeting, due to a logistical issue that needed to be addressed. She noted to the meeting attendees that this topic would be discussed at a later meeting.

3. [Legal](#) (02:27)

Deputy General Counsel Caitlin Monahan stated that three regulations were to be presented regarding the construction of facilities for category two operators and temporary licensing procedures.

General Counsel Todd Grossman stated that the waiver for the old version of the advertising regulation was set to expire on April 13. Chair Judd-Stein stated that five companies had sought higher levels of licensure as they utilized revenue share agreements. She asked if those companies had paid the associated fees. Executive Director Wells stated that she would check the status of those companies' licensure and fees, and report back to the Commission.

a. [205 CMR 222: Capital Investment and Monitoring of Project Construction](#) (06:30)

General Counsel Grossman stated that 205 CMR 222 pertained to capital investment and monitoring of project construction for category two facilities. He stated that the regulation was largely modelled after the casino regulations. He stated that Raynham Park had submitted a public comment relative to this regulation raising the issue of whether the regulation was beyond the scope of the Commission's authority.

General Counsel Grossman stated that General Law Chapter 23N, § 4, discussed the Commission's authority in this regard and stated that "the Commission shall promulgate regulations necessary for the implementation, administration, and enforcement of G.L. Chapter 23N." He stated that G.L. Chapter 23N, § 3 required category two licensees to have a capital investment of not less than \$7,500,000 within three years of obtaining their sports wagering license. He noted that the capital investments were of a different character and scope than the category one casino establishments; and that the Commission could remove provisions it did not believe to be necessary.

Executive Director Wells noted that she had received a comment requesting that project construction have a certain contractor percentage for minority-owned business enterprises and women-owned business enterprises as was required for the construction of casinos. She noted

that the comment stated that participation compliance was important for the small diverse business community and would provide equal opportunities for contractors.

Chair Judd-Stein asked if the Commission was currently seeking public comments on this regulation. Deputy General Counsel Monahan stated that comments were typically received after the Commission's initial vote to begin the promulgation process.

Outside counsel from the law firm Anderson and Krieger Attorney Paul Kominers presented the draft of 205 CMR 222. The *Draft 205 CMR 222* was included in the Commissioner's Packet on pages 23 through 33. He stated that the definitions section may be updated in 205 CMR 202 at a later point.

Chair Judd-Stein asked when the capital investment needed to take place relative to licensure. Mr. Kominers stated that the capital investment of \$7,500,000 must be made within three years after an Operator's receipt of the sports wagering license. He suggested that language be added to clarify this in the regulation.

Chair Judd-Stein sought clarification regarding 205 CMR 222.06 and whether the language should be shall or may. Mr. Kominers stated that the statute used the language shall, but that discretion was added for cases where the Commission used discipline short of suspension or revocation of license. Commissioner O'Brien expressed that the language should match the statute; and voiced her preference for the use of the term "shall". Chair Judd-Stein stated that the discretion would be helpful in case of an emergency such as a pandemic. Commissioner O'Brien proposed the language, "shall be, unless the Commission decides extraordinary circumstances have been met". She noted that similar language had been used in other regulations. Mr. Kominers stated that language could be used as suspension or revocation of the license would be the default.

Commissioner Hill noted that it would be helpful for the Commission to have discretion in case of unforeseen circumstances. Commissioner Skinner agreed with Commissioner O'Brien and the language proposed by Mr. Kominers. Commissioner Maynard stated that he would be willing to move forward if the language was fully drafted. Commissioner Skinner asked if the 100-series regulations used may or shall for their similar provisions. Mr. Kominers stated that he would need to review the regulations, but he stated that there was not likely to be a directly parallel provision for gaming. General Counsel Grossman stated that this provision was in the gaming statutes, but not present within the gaming regulations. Mr. Kominers stated that the key difference for gaming was that the opening date was tethered to the project schedule, not the licensing date.

Commissioner Skinner suggested clarifying edits related to when the project plan would be submitted in relation to the application review, and Mr. Kominers made the suggested changes. General Counsel Grossman stated that the definition of veteran-owned business entity could be amended, as it reflected the old definition that pertained to gaming. He noted that there had been

an adjustment in the law as to whether certain entities qualified as veteran-owned business entities.

General Counsel Grossman stated that 205 CMR 222.07 cross-referenced 205 CMR 122. He suggested that the Commission review which costs would be included or excluded from the capital investment. Chair Judd-Stein requested that the language from 205 CMR 122 be enumerated in 205 CMR 222 rather than cross-referenced. She suggested adopting subsections one through ten, but not the provisions related to Region C.

Commissioner Maynard asked if there was a catch-all provision that afforded the Commission discretion. General Counsel Grossman stated that there was not a catch-all within the draft. He noted that the licensee had to identify costs up front and adjust when moving through construction. He explained that during the casino process, everything fit into some part of the existing language. Chair Judd-Stein expressed an interest in a catch-all provision being present. General Counsel Grossman stated that a catch-all could be added to the draft.

Commissioner Skinner stated she favored consistency where possible, and questioned why it would be necessary under G.L. Chapter 23N, when it was not necessary under G.L. Chapter 23K.

Chair Judd-Stein asked if the category two licensees received the draft regulation in advance of this meeting. Deputy General Counsel Monahan stated that the Commissioner's Packet was posted on the website following the normal procedure. Chair Judd-Stein stated that potential category two licensee, Suffolk Downs, had indicated they did not see the draft regulation until the morning of the meeting. Commissioner Skinner stated that a license had yet to be granted and that the category two application review was not for several weeks. She added that the Commission had time for further review of this regulation prior to voting. Deputy General Counsel Monahan stated that the draft regulation could be put on a future agenda to allow the potential category two licensees to send initial comments.

Commissioner Hill agreed that waiting for comments would be beneficial. Commissioner Maynard agreed. Commissioner O'Brien agreed and stated that the comments would likely be submitted prior to the Commission moving on any application for category two. Commissioner Skinner requested that the Legal Division enumerate the capital investment exclusions from 205 CMR 122 into 205 CMR 222.

Commissioner Skinner sought clarification regarding the definition of small business. Mr. Kominers stated that he would review the language. Commissioner Skinner stated that the public comments raised concern over the federal definition of small business in comparison to the Massachusetts definition. Deputy General Counsel Monahan stated that G.L. Chapter 30A, § 1, defined small businesses for the purposes of the small business impact statement. She explained that the definition required the business be independently owned and operated. She noted that Raynham Parks' partnership with Caesars Sportsbook precluded them from qualifying as a small

business. She stated that the Legal Division stood by the small business impact statement for this regulation as it was currently drafted.

Commissioner Skinner stated that the specific objections in the public comment provided by Raynham seemed to be based on the requirements for equal opportunities and diversity, equity, and inclusion. She expressed concern about these objections as the Commission takes diversity, equity, and inclusion seriously.

Chair Judd-Stein requested the Legal Team ensure the language regarding diversity, equity, and inclusion be up to date, as that area of the law continued to evolve. Mr. Kominers agreed to perform this review.

Chief of the Community Affairs Division, Joe Delaney asked if a bond was necessary for the category two facilities. He stated that the bond was to incentivize the quick construction of the casinos, but he was unsure whether a bond would be beneficial here as opportunities for sports wagering were already available. General Counsel Grossman stated that if there was no need for a bond, the bond provision could be removed. Chief Delaney stated that the category two facilities would be built on a much smaller scale than the casinos. General Counsel Grossman stated that all building construction would still be overseen by the municipal building department and all permitting requirements would still be in effect.

Chair Judd-Stein asked how burdensome the bond process was for a licensee. Chief Delaney stated that it was not burdensome, but that he was not sure what the purpose of the bond would be in this instance. Chair Judd-Stein inquired whether the Commission should consider measures taken that were green in nature as part of the capital investments even if it did not lead to certification. Mr. Kominers stated that 205 CMR 122.03(5) included costs associated with minimizing environmental impact. Deputy General Counsel Monahan stated that she would return with a revised draft and continue to monitor comments from potential operators.

b. [205 CMR 219: Temporary Licensing Procedures \(Amendments\)](#) (1:30:07)

Mr. Kominers stated that 205 CMR 219 and 205 CMR 231 went together, and he wanted to present both of the regulations before a vote on either. He presented the changes to 205 CMR 219. The *Draft* of 205 CMR 219 was included in the Commissioners Packet on pages 10 through 16.

Commissioner Skinner asked where the regulation required the licensee to apply for a temporary license renewal annually. Mr. Kominers explained that provision was in 205 CMR 231, and that 205 CMR 219.03 and 205 CMR 219.04 set out the process for the operator to request a temporary license renewal at the three-year mark.

Commissioner Skinner inquired whether there was a requirement for a temporary licensee to pay the \$1,000,000 fee annually. Mr. Kominers stated that he did not see a way to require that

payment annually without also requiring a temporary licensee to renew their license annually. He expressed concern about notice and performing this change after the operators had already been issued their temporary licenses. He explained that operators moving to full licensure would pay the remainder of the fee.

c. [205 CMR 231: Renewal of a Sports Wagering License](#) (1:42:16)

Mr. Kominers presented the draft of changes to 205 CMR 231. The *Draft 205 CMR 231* was included in the Commissioners Packet on pages 17 through 22. He noted that a lot of the key language was taken from the existing licensing regulations.

Mr. Kominers stated that if an operator was to operate under a temporary license for a long-term duration, that as a matter of fairness they should be required to pay the same fees as full operators. He stated that renewing the temporary license annually might not provide much new information, but it would provide the opportunity for an additional \$1,000,000 licensing fee.

Commissioner Skinner asked if the Commission was precluded from assessing an annual \$1,000,000 fee prior to the finding of durable suitability. Mr. Kominers stated that temporary licensees may have applied for a license based upon the existing licensing fee scheme. He expressed concerns that changing that scheme now would present problems of not adequately providing notice that this may occur when the license was granted. He recommended that the fee be tied to the issuance of a new temporary license. He stated that additional \$1,000,000 fees at years one, two, and four might upset the expectations the applicant had when they applied.

Commissioner Skinner stated that if there was nothing in the statute that prohibited assessing this fine, then it could be something the Commission considers. She expressed concern about the equity of putting temporary licensees on a level playing field with those granted a durable license.

Chair Judd-Stein stated that the \$1,000,000 fee for temporary licensure was a construct from the statutory structure, and that she did not see the assessment of an additional \$1,000,000 each year as a possibility under that structure. Commissioner Skinner stated that if the durable suitability determination had not been made by year three and year four that the Commission should assess \$1,000,000 at those points. Chair Judd-Stein asked if this would be the case if the delay was due to the Investigations and Enforcement Bureau (“IEB”) taking longer. Commissioner Skinner stated that the temporary license would still be valid even if the investigation was ongoing. Chair Judd-Stein expressed concern about equity related to changing the regulation after applications were submitted.

Mr. Kominers stated that the Legal Team could look into whether the statute would allow such assessments. He stated that operator inputs would also be beneficial so that the Commission could determine how the change would affect the operators’ expectations. He noted that the operators would have to pay the full \$5,000,000 for the full operator's license, and that the

additional assessments might not affect their expectations that much. He recommended delaying the vote on 205 CMR 219 and 205 CMR 231 for further review.

Commissioner O'Brien expressed that it would be helpful to review previous meeting discussions on this topic and engage in discussion of the Commission's authority on this issue. Chair Judd-Stein asked if this delay would disrupt the promulgation process. Deputy General Counsel Monahan answered that more time could be afforded to this issue as nothing raised in the regulations would become an issue for a while.

Chair Judd-Stein asked if the two-week period for winding down reflected the Commission's earlier decisions. Mr. Kominers confirmed that was correct. Chair Judd-Stein stated that the regulations discussed at this meeting would be further discussed at the April 24, 2023, public meeting.

4. [Commissioner Updates](#) (2:22:23)

The Commission had no updates to share.

5. [Other Business](#) (2:24:47)

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

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

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. [Revised Notice of Meeting and Agenda](#) dated April 11, 2023
2. [Revised Commissioner's Packet](#) from the April 13, 2023, meeting (posted on massgaming.com)