



Massachusetts Gaming Commission Meeting Minutes

Date/Time: September 15, 2022, 10:00 a.m.
Place: Massachusetts Gaming Commission
VIA CONFERENCE CALL NUMBER: 1-646-741-5292
PARTICIPANT CODE: 112 818 2918

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 393rd Public Meeting of the Massachusetts Gaming Commission ("Commission"). Roll call attendance was conducted, and all four commissioners were present for the meeting.

2. [Community Affairs Division](#) (00:38)

a. Community Mitigation Fund 2022 Boston Police Grant Reallocation

Community Affairs Division Chief Joe Delaney presented a request by the City of Boston to repurpose funds from their public safety grant. He explained that due to the City of Boston's internal controls, the city could not apply the grant to a training that took place prior to the grant being awarded. He stated that the City of Boston wanted to reallocate the training funds and an additional \$2,125 of their authorized overtime to purchase \$12,000 of ballistic vests for their human trafficking unit. Chief Delaney recommended that the repurposing of funds be allowed. The *Community Mitigation Fund 2022 Boston Police Grant Reallocation Request* was included on pages 3 through 4 of the Meeting Packet.

Commissioner O'Brien moved that the Commission approve the City of Boston's request to reallocate funds from its 2022 public safety grant to provide \$12,000 for the purchase of ballistic vest carriers as included in the Commissioner's Packet and discussed here today. The motion was seconded by Commissioner Hill

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

3. [Discussion of Temporary Licensure for Sports Wagering](#) (4:12)

a. Discussion of Requirements for Temporary Licensure under G.L. c. 23N, §6(c)

Chair Judd-Stein stated that a potential outcome of implementing temporary licensing under G.L. c. 23N could require a dismantling process of ongoing betting operations who would not receive full operator's licenses, which could result in a destabilization of the new industry.

General Counsel Todd Grossman introduced Deputy General Counsel Caitlin Monahan and Attorney Mina Makarious from Anderson and Krieger. Deputy General Counsel Monahan and Attorney Makarious presented on the Commission's statutory and regulatory responsibilities related to sports wagering. The topics included an overview of the Commission's regulatory responsibility to regulate sports wagering; the responsibility to determine eligibility for licensure; the responsibility to deny or revoke a license; the licensee's responsibilities; temporary licensure per G.L. Chapter 23N; and the potential regulatory framework for temporary licensure. A memorandum regarding Discussion of Requirements for Temporary Licensure was included on pages 5 through 9 of the Meeting Packet.

Deputy General Counsel Monahan noted that the presentation combined this agenda item with other pre-launch considerations. Chair Judd-Stein expressed an interest in a more detailed discussion regarding technology issues. Commissioner O'Brien stated that she wanted more detail regarding the interplay between G.L. Chapter 23K and Chapter 23N. She stated that looking at G.L. Chapter 23N § 5(b), it seemed that temporary operators would have to be full operators, and that she was interested in further discussion regarding house rules. Deputy General Counsel Monahan stated that the Commission had discretion in determining which operator requirements temporary operators would need to abide by, but every operator requirement need not apply to temporary operators. Chair Judd-Stein stated that the definitions in the statute might need to be clarified, as she considered the term operator to refer to those with an operator's license and not a temporary license. Commissioner O'Brien stated that viewing statutory analysis would be necessary to address the operator's requirements in a temporary license setting.

Commissioner Skinner stated that the discussion related to temporary licenses felt premature as the temporary license operators would not be able to engage in sports wagering until operational requirements, such as house rules and technical standards, were met. She stated that she did not see utility in issuing temporary licenses without a process in place for creating a house rules model. Chair Judd-Stein stated that this meeting was to become educated on the temporary licensure process. Commissioner Skinner questioned whether operational requirements should exist before discussing temporary licensure. Chair Judd-Stein stated that operational requirements would be discussed. Attorney Makarious stated that operational requirements needed to be in place before any operations could commence. He stated that applicants would need to have their operational requirements reviewed, and there would be a step between being licensed and operating. Deputy General Counsel Monahan stated that operational requirements and the temporary licensure process could proceed on parallel paths.

Commissioner O'Brien stated that there is a distinction between a license and a certificate of operation present in the statute. Commissioner Skinner asked how the sections outlined in the presentation could be structured to align.

In response to Chair Judd-Stein's request for more information regarding the technology aspects, Executive Director Karen Wells stated that it is important for the public and operators to understand industry best practices. She stated that the technical aspect is enormous in sports wagering and is core to sports wagering's function. She explained that the current setup required potential operators to contract with certified independent test labs to ensure compliance with Massachusetts' technical standards. She stated that there was a temporary basis for reciprocity, where the potential operators could comply by providing technical compliance with a jurisdiction with similar regulations, and later file a GLI letter conforming to Massachusetts' standards within thirty days.

Executive Director Wells stated that there was also a technical standard for geofencing to ensure any sports wagering occurs within the boundaries of Massachusetts. She stated that there were issues of responsible gaming compliance related to Massachusetts directives. She stated that there was additional internal controls testing for sports wagering kiosks at retail sportsbooks. Chair Judd-Stein stated that the Commission should emphasize the acceptable expectations and model for temporary licensure and full operating licenses in the future, in addition to the expectation of suitability.

Commissioner O'Brien stated it would be helpful to receive more detail about the technology requirements for launching mobile sports wagering applications. Chair Judd-Stein noted that even in temporary licensing constructs there was still an expectation of suitability from potential operators. Executive Director Wells stated that the statute directive related to temporary licensure in G.L. Chapter 23N differs from G.L. Chapter 23K where there was not a directive to implement temporary licensure. She stated that casino gaming utilized a temporary process for suitability of primary vendors, and a similar process could be utilized for temporary sports wagering licensure instead of a complete nine-month suitability investigation.

Director of the Investigations and Enforcement Bureau Loretta Lillios stated that the process for temporary or provisional licensure with respect to gaming was not only used for primary

vendors, but secondary vendors, key employees, and gaming employees as well. She stated that there was an interim process for REIT transactions. She explained that it was a truncated security review intended to balance operational needs with the need to review for integrity purposes. She explained that it was a risk-based approach, and staff would develop criteria for this review to present to the Commission.

Executive Director Wells stated that internal controls and responsible gaming measures were critical due to the Commission's focus on protecting vulnerable individuals. She stated there would need to be a discussion related to the differences between mobile operators and retail operators, and that gaming agents were working with casino licensees regarding the location of their sportsbooks. Chair Judd-Stein clarified that the temporary licensing process is limited to mobile sports wagering operators. Executive Director Wells stated that all three categories of sports wagering operators could receive temporary licensing, but the specific provision in G.L. Chapter 23N § 6(c) related to mobile operators.

b. [Discussion regarding potential impacts of temporary licensure](#) (46:24)

1. Impacts on mobile/digital sports wagering operators

Executive Director Wells stated that operators tethered to category one and two licenses were different from untethered category three operators. She stated that upon review of the statute she identified significant potential impacts from implementing the temporary licensure of sports wagering. She explained that the statute allowed the Commission to award up to seven untethered category three licenses, but that there was not a cap on the number of temporary licenses the Commission could award.

Executive Director Wells stated that the Commission received a robust response from potential category three applicants and they might expect thirty entities to compete for the seven untethered category three licenses. She explained that each temporary license applicant was required to pay \$1 million, and that if a temporary licensed operator was awarded for a permanent operator's license that \$1 million would apply to the \$5 million license fee. She stated that there was not a mechanism to return the \$1 million to those who are not granted a full license. She stated that if each potential applicant was awarded a temporary license, 76% would be required to shut down operations once the Commission made the final determination on who would receive full sports wagering operations licenses. Executive Director Wells stated that the Commission would require a regulatory process for the shutdown of operators who were not rewarded a full operation license, and that there are concerns related to consumer protection during the shutdown period.

Executive Director Wells presented potential issues including money remaining in consumers accounts being returned upon shutdown; that the Commission's regulatory authority would be limited as the former operators would no longer be licensed; wagers placed for the future where the operator may shut down prior to the event; how entities ensure patrons are aware of the risk the platform may shut down; potential bonds or insurance to pay wagers in event of a shutdown; and what happens to the operator's patron list and personal financial information after shutdown. She stated that it would be beneficial to hear from potential applicants regarding how to proceed.

She stated that she was unaware of other jurisdictions who utilized this potential structure and did not have the benefit of other jurisdiction's experience.

Commissioner O'Brien stated that, in terms of temporary licensure, her interpretation of G.L. Chapter 23N § 6(d) was that prior to receiving an operator's license, the applicant's suitability would be investigated. She noted that the final number of untethered mobile sports wagering operators was up to seven, but could be zero. She stated an interest in protecting the public from the issues that occur in dismantling temporary operators.

Commissioner Hill stated that there was a potential issue of a temporary operator suing if they were not granted a full operational license and were forced to shut down, and stated concern that a lawsuit could stall the industry. Deputy General Counsel Monahan stated that while anyone could file a claim in court, the claim may not be valid. She stated that she did not believe there was a strong claim in the scenario presented by Commissioner Hill. General Counsel Grossman stated that a plaintiff would have to demonstrate a likelihood of success in order to stall the industry as a whole, and that it was unlikely as the Commission would have assured their processes were in accordance with Massachusetts law. Executive Director Wells stated that a creative claim may not be anticipated.

Commissioner Skinner stated that she wanted to avoid a scenario where a majority of the operators would close down, and that she was interested in exploring the legal authority of the Commission to limit temporary licenses to seven. She stated that given the general authority of the Commission in G.L. Chapters 23K and 23N, there may be room to interpret the authority of the Commission to limit the issuance of temporary licenses to prevent having to shut down operators. General Counsel Grossman stated that it was dependent upon how the Commission interpreted the language in G.L. Chapter 23N that discussed temporary licensure to understand the purpose of the process. He stated that the Commission would need to establish the purpose of the provision before limiting the temporary licensure, and that a competitive process was required. He stated that a competitive licensing process was lengthier than otherwise.

Chair Judd-Stein stated that the language in G.L. Chapter 23N mentioned timeliness, and that narrowing the potential temporary licensees down to seven would require the same suitability process required for full operator's licenses. Chair Judd-Stein stated that suitability could be included but it would add time. General Counsel Grossman stated that the process could be done in a truncated fashion that would not require full suitability. He also noted concern that if the number of temporary licenses was reduced, those who received temporary licenses would have advantage over others when applying for full licenses. Chair Judd-Stein stated that would likely result in duplicative efforts if there was a competitive process for temporary licensure. General Counsel Grossman stated that there would be overlap but overlap was not a dealbreaker, and that while it would extend the process it would only be a little longer, but not lengthy.

Commissioner Skinner expressed she would be comfortable with a truncated suitability review for a reduced number of seven temporary licensees, but would want more in-depth suitability if there was a larger number of potential temporary licensees. Executive Director Wells stated that the Commission would have to review and determine criteria for the competitive temporary process.

Commissioner Maynard raised concern about implementing a licensing construct that would saturate the market with temporary operators that would not ultimately receive category three licenses as it would create instability. He expressed interest in having category three licensure implemented as soon as possible to provide stability and focus on the long-term. Commissioner O'Brien stated she was worried about the lack of a sunshine provision, and that the Commission would need to address potential consequences of shutting down temporary operators. She stated that she had more confidence in the suitability of category one and two operators.

Chair Judd-Stein stated she struggled with the complexity in the statute that the temporary licensing pool was not limited by the legislature in the same way full operational licensing was. She stated she was unsure if the Commission had the legal authority to limit the number of entrants for temporary licensure. She stated that there would be a delay in conducting a competitive review at this stage, but the outcome of having to shutdown potential temporary operators and the potential fallout to customers was untenable. She stated that the operator's input at the roundtable the following week would be beneficial.

Commissioner O'Brien stated that she shared concerns, but there are options that mitigate the risk even if they are not perfect prior to a legislative fix. Chair Judd-Stein stated that customers would need to understand the potential that temporary operators may need to shut down at a later date. Chair Judd-Stein inquired if there was a possibility to reduce the group of potential operators without reducing it at the onset. General Counsel Grossman stated that the operators would require disclaimers or notifications to consumers regarding that status of each of the operations. He stated that linking the temporary licensing process with the permanent licensing process would be more fluid.

Lon Povich, Attorney from Anderson and Krieger, stated that the Commission has broad powers in the area. He explained that if there is a process for an untethered temporary license, part of the application process could require recipients to mitigate issues raised here. He stated that having to shut down temporary operators would be disruptive, but issues can be addressed by incorporating mitigation factors into the application.

Commissioner Skinner stated that it was reasonable to have the legal division research and analyze risks associated with limiting the number of temporary licenses granted to potential operators.

c. [Discussion on simultaneous vs. staggered launch](#) (1:31:43)

Executive Director Wells stated that an early competitive process for untethered mobile operators also affected whether the launch would be simultaneous or staggered. She stated that if there is added time to the licensing component, the Commission would have to address the issue of allowing parties to launch when ready or wait to launch at the same time. She stated that different jurisdictions have done both staggered and simultaneous, and there is precedent for each way. Chair Judd-Stein stated that the Commission would likely be more informed on the issue after the operators' roundtable in the following week.

Commissioner Hill asked approximately how long consumers would anticipate waiting for mobile sports wagering after the category one and two retail sportsbooks were allowed to operate. Executive Director Wells stated that the initial issue with a timeline was how truncated the suitability review would be for temporary licensure. She stated that significant work would be required in evaluating proposals which may take months if the competitive process was used to reduce temporary licenses granted. She stated that there was also the issue of allowing mobile sports wagering operators tethered to category one and category two licenses to operate prior to temporary licensure of category three operators, as they were two similar categories competing for the same market.

Chair Judd-Stein stated that the timeline can not be addressed due to the number of potential applicants for category three licenses, and additional input from operators regarding the temporary licensing procedure would be required. Commissioner Hill stated that while the Commission can't provide a timeline at this juncture, an expected timeline should be provided to the public soon as the Commission was facing criticism due to not releasing a general timeframe. Commissioner O'Brien stated that part of the reason a timeline had not been formed was due to the topics discussed in this meeting.

Executive Director Wells stated that some of the issues would be resolved by the cooperation and ideas presented by the potential licensees in the operators' round table on September 22, 2022. She stated that a relationship between the regulator and licensee can be helpful for understanding. Chair Judd-Stein stated that there might be more comfort amongst the potential operators regarding shutting down than the Commission anticipated. Commissioner Maynard stated that temporary licensure may be a red herring, and it may be more worthwhile to move along the full licensing process if temporary operators would enter and be removed from the market in under a year.

4. [MGC Preparations for Matters Related to Sports Wagering](#) (2:27:22)

a. Update on 205 CMR 238.00: House Rules

General Counsel Grossman stated that adjustments had been made to 205 CMR 238.03 to change language in accordance with past meetings. He stated that the regulation would return to the Commission shortly with additional regulations necessary for the commencement of sports wagering operations. The *Draft of Regulation 205 CMR 238.03 and Small Business Impact Statement* were included on pages 10 through 15 of the Commissioner's Packet.

b. [Process for Sports Wagering Test Lab Certification](#) (2:28:49)

Deputy General Counsel Carrie Torrisi explained that draft regulation 205 CMR 233.06 authorized entities certified as independent test labs for gaming equipment to be certified as independent test labs to provide certification for sports wagering equipment. She stated that staff recommended that the two existing certified independent test labs, Gaming Labs International (GLI) and BMM Testlabs (BMM), submit a petition for authorization for the Commission to review during the September 19, 2022, meeting. The *Draft of Regulation 205 CMR 244.06 and*

Small Business Impact Statement were included on pages 16 through 20 of the Commissioner's Packet.

5. [Horse Racing Application and Related Issues](#) (2:30:51)

- a. 205 CMR 2.01: new regulation governing the application for a new license for the conduct of horseracing, initial review of draft and Small Business Impact Statement

General Counsel Grossman explained that the draft regulation 205 CMR 2.01 codified the statutory directive that an application to conduct horse racing start a review process. He stated that the application reflected provisions of G.L. Chapter 128A and had been approved by the Commission at the September 12, 2022, meeting. He stated that the regulation had not been redlined as it was new. The *Draft of Regulation 205 CMR 2.01 and Small Business Impact Statement* were included on pages 21 through 26 of the Commissioner's Packet.

General Counsel Grossman explained that regulations regarding horse racing had additional administrative requirements regarding the promulgation of regulations under G.L. Chapter 128A § 9(b). He stated that the draft regulation must be submitted to the legislature for a sixty-day review process, and that it would extend the normal sixty-to-ninety-day promulgation process.

General Counsel Grossman stated that the emergency adoption of regulations in the context of horseracing must be designed to protect the health or safety of public participants or animals. Chair Judd-Stein asked how the Commission could reconcile the current regulation with the emergency requirements. General Counsel Grossman stated that the statute affords the Commission clear authority to release the application in the form done previously and that the application incorporates G.L. 128A. He stated that under G.L. 128A § 2. the Commission has authority to add additional questions to the application, as the regulation was simply intended to support the application in the future.

Chair Judd-Stein introduced Dr. Alexandra Lightbown, Director of Racing and Chief Veterinarian. Dr. Lightbown suggested a language change to clarify that the regulation addressed parimutuel wagering that was occurring on live racing, simulcasting, and advance-deposit wagering.

Commissioner O'Brien moved that the Commission approve the small business impact statement and draft of 205 CMR 2.01 as included in the Commissioners' Packet and as further discussed and edited here today, particularly noting Dr. Lightbown's edit and further 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 move the staff be authorized to modify chapter or section numbers or titles and to file any additional regulations as reserved or make any administrative changes as necessary to execute the regulation promulgation process. 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.

- b. [Discussion of impact of Massachusetts Sports Wagering Act on prospective new horse racing licensee\(s\) relative to mobile/digital sports wagering.](#) (2:42:40)

General Counsel Grossman stated that he was actively researching the effect of awarding a horse racing license under G.L. Chapter 128A vis-a-vis sports wagering. Chair Judd-Stein inquired as to whether the new application was available on the Commission website. Executive Director Wells stated that both the application for new applicants and renewals was available on the website. Chair Judd-Stein noted that the deadline for the application, including applications for renewal, is October 1, 2022. General Counsel Grossman stated that Plainridge Park Casino was the only renewal, and that sports wagering would not be an issue for them as they qualify for a category one sports wagering license.

6. [Commissioner Updates](#) (2:46:50)

- a. Plan for Sports Wagering Roundtable related to Mobile/Digital Sports Wagering Operators

Chair Judd-Stein stated that a roundtable for potential mobile sports wagering operators was scheduled for an in-person meeting on September 22, 2022, at the Massachusetts state house. She explained that in recognition of time constraints Executive Director Wells had created two questions which addressed consumer protections should temporary operators shut down and the operators' opinions on a simultaneous or staggered launch.

Commissioner O'Brien asked about the potential length of the meeting given each operator would have five minutes to address the Commission. Chair Judd-Stein stated that with the assumption that there would be thirty to forty operators present, the maximum length of the meeting would be three hours and forty-five minutes. Commissioner O'Brien stated that due to circumstances she would likely be remote and asked for twenty to thirty minutes for the Commissioner's to ask questions.

Commissioner O'Brien stated that the first question might be better suited for the Commission as the potential operators may not have appreciation for regulatory implementation. Executive Director Wells stated that the applicants may be worried about having their license pulled after paying \$1 million, and that potential licensees may want to expedite the final licensure process despite the structure in the statute requiring temporary licensure. Commissioner O'Brien stated that she wanted to narrow the questioning to avoid repetition in topics the Commission had already considered. Commissioner Maynard stated that the potential applicants may not want to apply for a temporary license knowing there would be a later competitive process for full

licensure and they would not be awarded a full operator's license. Chair Judd-Stein stated that the roundtable would allow the Commission to learn the level of interest in the industry related to temporary licensing.

Commissioner Skinner expressed an interest in having time to hear the applicant's concerns. Commissioner Hill stated that in his experience, the Commission would likely hear a theme of similar concerns from the operators. Chair Judd-Stein stated that due to the format it was harder to have a detailed conversation with the applicants, and that the Commission might require additional written comments or a virtual roundtable. Commissioner Skinner stated the Commission should communicate at the roundtable that the applicants would have an opportunity to submit written comments. The Commission edited the questions for the roundtable to address their concerns.

Chair Judd-Stein stated that an issue that arose in the responsible gaming roundtable was the Commission's authority to regulate advertisements. Commissioner Maynard responded that it would be helpful to know the parameters of what the Commission can govern related to nationalized media. Chair Judd-Stein stated that the Commission could look into procuring a law firm with first amendment law experience. Commissioner O'Brien stated that there was also a difference between legal compliance and practicability of regulations being implementing. Commissioner Hill expressed it would be informative to invite national, regional, and local networks to explain how the commercials are implemented.

Chair Judd-Stein stated that while there is consensus related to the legal construct, there may be issues getting comment from various entities. Chief Financial and Accounting Officer Derek Lennon explained that fees under \$10,000 qualified for incidental one-time procurement. He stated that there were existing statewide contracts for legal services that could be utilized, and that the marketing firm contracting with the Research and Responsible Gaming Division could answer questions related to marketing. Chair Judd-Stein stated that the state law contract gave the Commission flexibility.

Chair Judd-Stein asked if the Commission could pick three industry experts or if there were concerns about the process. Attorney Povich stated that the Commission could invite parties to receive information, and there did not seem to be a conflict. He stated that different states have different requirements and national commercials typically had language riders included to address that. Chair Judd-Stein stated that the Commission had questions related to marketing but they needed to understand how markets work differently on a regional versus national level.

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

Commissioner Hill moved to adjourn. 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. Meeting Adjourned.

List of Documents and Other Items Used

1. Notice of Meeting and Agenda dated September 12, 2022
2. [Meeting Packet](#) from the September 15, 2022, Open Meeting