



Massachusetts Gaming Commission Meeting Minutes

Date/Time: September 8, 2022, 9:30 a.m.
Place: Massachusetts Gaming Commission
VIA CONFERENCE CALL NUMBER: 1-646-741-5292
PARTICIPANT CODE: 111 729 9209

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](#) (00:15)

Chair Judd-Stein called to order the 390th 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 provided opening remarks to clarify the Commission's obligations as an agency. She stated that the Commission was a public body required to do its work in public, and the Commission was bound by the Open Meeting Law. She stated that public meetings are meetings that are held in public, and that public hearings allow the citizens of Massachusetts to voice their opinions and comment.

Commissioner O'Brien expressed that she appreciated these comments and that the implementation of sports wagering in the Commonwealth should be equitable and inclusive of all interests. Commissioner O'Brien noted that looking at other jurisdictions the median time taken to implement sports wagering following the signing of sports wagering legislation was eight months.

Commissioner Hill stated that while listening to the radio a guest on the radio show stated that Massachusetts may allow a bet within three weeks. Commissioner Hill explained that timeframe

is not possible, but he had concerns that these messages were broadcasted to a large audience. Commissioner Hill stated that promulgating regulations takes time and that misinformation was harmful to the process.

Commissioner Skinner expressed an interest in ensuring that the Commission is informed and diligent in implementing sports wagering. She stated that the licensees should maintain the same level of integrity for sports wagering as they do for their casino gaming operations.

Commissioner Maynard stated that the Commission was taking every measure to ensure a fair process for all applicants and expressed interest in further input through roundtables.

2. [Treasurer's Request Regarding Sports Wagering Regulations Related to the Massachusetts Lottery](#) (12:17)

Chair Judd-Stein introduced Deborah Goldberg, State Treasurer and Receiver General for the Commonwealth of Massachusetts. Treasurer Goldberg introduced Mark William Bracken, the interim director of the Massachusetts State Lottery and Executive Director of the Unclaimed Property Division.

Treasurer Goldberg explained that her goal as Treasurer was for the lottery to continue to raise revenue for consistent local aid for the 351 cities and towns in the Commonwealth of Massachusetts. She stated that legislators predict sports wagering would result in \$60 million of state revenue annually, and that \$16.5 million would be earmarked for unrestricted local aid. She stated that the lottery produced \$1.1 billion, and the function of the lottery played a vital role in unrestricted local aid. Treasurer Goldberg stated that the Commonwealth sought similar lottery impact mitigation provisions for sports wagering as were placed on existing gaming licensees. She explained that these provisions should include the licensees' partnership with the lottery and cross-promotion for both in-person and online sports wagering.

Treasurer Goldberg stated that the Commission should review other jurisdiction's approaches to unclaimed property when it comes to abandoned sports wagering accounts and unclaimed winnings. She explained that while unregulated stagnant or abandoned sports wagering accounts were not considered unclaimed property, she would consider them to be miscellaneous accounts which are reportable as unclaimed property. Treasurer Goldberg recommended the Commission provide clearer definitions and administrative rules to protect consumers and enable enforcement through the Unclaimed Property Division. The *Treasurer's Request* was included on pages 3 through 4 of the Commissioner's Packet.

Commissioner O'Brien questioned whether advance-deposit wagering accounts' preloaded value was treated as abandoned property. She expressed that she would like Massachusetts to lead on this issue.

Commissioner Skinner agreed with the recommendations, and that other jurisdictions' processes can be used as guidance for consumer protections. Chair Judd-Stein asked if there were any additional protections that could be added for Massachusetts. Mr. Bracken stated that Iowa and New Hampshire do not enumerate the issue in statute, but govern unclaimed wagering accounts

through regulation. He stated that the abandoned accounts can be handled directly through gaming regulations rather than a combination of gaming and unclaimed property regulations. He further suggested language including notice to consumers to be added and stated he will send notes on this to the Commission staff.

Commissioner Maynard appreciated the insights into other jurisdictions and stated that he looked forward to the continued partnership.

Chair Judd-Stein stated that in a seminar she had attended it was stated that Nevada received \$1 billion annually from casino industry wagering, similar to the \$1.1 billion state revenue produced by the lottery. Treasurer Goldberg stated that the lottery is earmarked for unrestricted local aid, and not just state revenue. Chair Judd-Stein stated that the mandate in G.L. Chapter 23K to hold the lottery harmless was reflected in the quarterly casino reports and Director of Research and Responsible Gaming Mark Vander Linden's work on financial literacy. She stated that the Commission had already instructed staff to work with the lottery division regarding the kiosk issues.

3. [MGC Preparations for Matters Related to Sports Wagering](#) (40:54)

Executive Director Karen Wells explained that several issues impacted the sports wagering timeline including certification of independent test labs; regulations that would ensure a quicker timeline; internal staffing; licensing criteria; and technology approval. The *Regulation/Rule Promulgation Process Memorandum* was included on pages 5 through 45 of the Meeting Packet.

a. [Constructing A Regulatory Framework: Promulgation Of Regulations Vs. Adoption Of Policies And Promulgating Regulations Under The Emergency Adoption Provisions Of The Law](#). (41:47)

Executive Director Wells introduced General Counsel Todd Grossman. General Counsel Grossman stated that the upcoming regulations the Commission would review in the coming months would work as a framework for the Commission's decisions regarding sports wagering.

General Counsel Grossman introduced Lon Povich, an attorney from Anderson and Krieger, which serves as outside counsel to the Commission. General Counsel Grossman stated that Mr. Povich would address two issues, the first being what can be done through policy vs regulation and the second being the promulgation of regulations through the use of the emergency promulgation provisions.

Mr. Povich explained that the Administrative Procedures Act provides a broad definition of "regulation." He stated that if an issue addresses the organizational structure of an agency, it could be done in policy form, but anything that substantially effects the public should be drafted in the form of a regulation. Mr. Povich stated that the Commission has set a precedent of regulations governing brick and mortar casinos, and that similar issues for sports wagering should also be addressed through regulations.

Mr. Povich stated that that emergency promulgation powers are found in G.L. Chapter 30A, § 2. He explained that the biggest difference between the emergency promulgation process and the ordinary process is that during the emergency promulgation process, the public hearing occurs after the regulation goes into effect. He stated that the Commission's finding for emergency adoption of the regulation must be based upon the preservation of public safety, public health, or general welfare, in addition to the observance of notice requirements. He stated that the Commission is given every presumption in its favor under caselaw not to be questioned by the judiciary unless the Commission is palpably wrong in determining an emergency under the statutory scheme, and that state agencies are afforded significant discretion.

Mr. Povich explained that emergency regulations are temporary, staying in effect for only three months unless a public hearing and comment period is held. He stated once the public hearing and comment period have occurred, the regulation can be submitted to the Secretary of State to become permanent. He stated that due to public safety and public interest that the Commission could promulgate the regulation by an emergency construct under G.L. Chapter 30A.

Commissioner O'Brien asked for citations to the cases regarding the assessment of agency's exercise of discretion. Mr. Povich stated that the assessment of the exercise of discretion was from *Am. Grain Prods. Processing Inst. v. Dept. of Pub. Health*, 392 Mass. 309 at 323, 467 N.E.2d 455 (1984), which cited *Pioneer Liquor Mart, Inc. v. Alcoholic Beverages Control Com.*, 350 Mass. 1, page 10, 212 N.E.2d 549 (1965). Commissioner O'Brien asked how the process would be affected if the Commission did not utilize the emergency promulgation process, but later discovered that it would preserve public health, safety, or welfare and attempted emergency promulgation at the later point in time. Mr. Povich stated that the decision for emergency promulgation can be determined at any point, and that the Commission would not be bound by a prior determination if circumstances had changed. He stated that the Commission would require good record of the emergency to support the determination.

Commissioner Hill sought clarification for the criteria of public interest. Mr. Povich stated that there are strong imperatives in the legislation about granting temporary licenses, and that the legislative imperative was the expeditiousness of implementing sports wagering. He stated that the Legislature's indication the Commission move quickly might be the basis for a finding in favor of emergency promulgation, and that the public interest may be protected by having a regulatory scheme in place to protect consumers. General Counsel Grossman clarified that the language in the statute referred to general welfare and not public interest.

Commissioner Skinner stated that it was hard to reconcile the notion that there is a threat to general welfare or public safety if the Commission does not act to promulgate emergency regulations for temporary licenses for sports wagering operators. She stated that the public hearings on these issues would be important.

Commissioner Maynard stated that regulatory review and continuous change of regulations is standard. Mr. Povich stated that while changing regulations is standard, there is a public process required for it. Commissioner Maynard stated that if the Commission follows the ordinary promulgation process the sports wagering timeline would be elongated, but if the Commission

promulgates regulations by emergency, they might not receive comments that would affect the regulation until later in the process. He stated that the emergency promulgation process and the required notice and comment period was not too different compared to amending regulations. He stated he wanted as much public comment as possible on the proposed regulations.

Commissioner O'Brien stated that the Commission had a statutory obligation to implement certain regulations prior to the launch of sports wagering and agreed with Commissioner Skinner's statement that these regulations may not satisfy the requirements for emergency promulgation. Commissioner O'Brien expressed that she appreciated the cases for context.

Chair Judd-Stein stated that there was legal support for the use of the emergency promulgation regulatory tool. She explained that while the sports wagering law is in place, the regulatory framework is not; so, there was an emerging public safety and welfare issue as a result of individuals continuing to bet illegally and that nefarious companies could continue to take advantage of them in this interim period. Chair Judd-Stein stated that public input is essential to the Commission's work, and that public roundtables and hearings regarding sports wagering will continue.

Executive Director Wells stated that two proposed draft regulations would be heard later in the meeting, and it was the Commission's decision on whether the emergency promulgation mechanism would be used. General Counsel Grossman explained that the sports wagering regulations would mirror the casino gaming regulations but be placed in the 200s of 205 CMR. He stated that the Commission staff had requested flexibility to adjust numbering in sections when the Commission votes on the draft regulations, so that formal approval is not required to change regulation numbering in the future.

b. [205 CMR 244.06: Independent Testing Laboratory Certification](#) (1:32:50)

General Counsel Grossman explained that the first regulation for consideration was for the certification of independent test labs. He explained that the existing regulation, 205 CMR 144, requires that an entity be certified as an independent test lab prior to being permitted to perform compliance testing for electronic gaming equipment used at gaming establishments. General Counsel Grossman stated that two labs had been certified by the Commission under this regulation, Gaming Labs International ("GLI") and BMM Testlabs (BMM). General Counsel Grossman stated that the draft of 205 CMR 244.06 would authorize GLI and BMM, and any entity certified as an independent test lab for electronic gaming devices in the casino gaming space, to automatically be certified as an independent test lab for sports wagering devices. The *small business impact statement* and *proposed regulation* were located on pages 7 through 10 of the Commissioner's Packet.

General Counsel Grossman stated that the regulation would allow the Commission to begin relationships with the labs and allow the Commission to contract for assistance in the adoption or amending of industry standards regarding sports wagering. General Counsel Grossman stated that the Commission could choose to follow the ordinary promulgation process but should consider the emergency promulgation process.

Commissioner Skinner asked if this regulation would be required regardless of which sports wagering testing options are adopted later in the meeting. General Counsel Grossman stated that the other regulation being discussed was regarding the approval of equipment for use, but the independent test labs must be certified first.

Chair Judd-Stein asked if the Commission would want an audit function for the independent test labs. Chief Information Officer Jagroop-Gomes stated that as the two labs had already been through the rigorous process required to test Massachusetts gaming equipment, the independent test labs undergo an annual audit of their testing facilities.

Commissioner O'Brien questioned whether the regulation should use "may" as opposed to "shall," which would allow for additional Commission discretion. Commissioner Skinner asked if the language of 205 CMR 244.06 mirrored the language in 205 CMR 144. General Counsel Grossman stated that the language was entirely different as 205 CMR 144 had a process for the labs to be certified, whereas 205 CMR 244.06 certified independent test labs for sports wagering that had already been certified for casino gaming. Commissioner O'Brien stated that she had no concerns regarding the existing two independent test labs but wanted the Commission to have the discretion to deny certifications. General Counsel Grossman stated that her concern might be allayed by some of the language which required obligations and reporting requirements.

Commissioner O'Brien asked if there were concerns that an entity not well-versed in sports wagering could qualify as a sports wagering independent test lab due to being certified for slot machine testing. Commissioner Maynard asked if 205 CMR 144 would allow a new entity to become certified as an independent test lab. General Counsel Grossman stated that while it is a possibility based upon the wording, the practical reality is that the two existing independent test labs are the only potential testing labs. Executive Director Wells stated that the expectation is for this to be an initial regulation, and that the Commission may receive more details and address concerns within the next six months.

Commissioner O'Brien asked if there was a downside for using "may" as the language in the regulation. Commissioner Skinner stated that the use of "may" would allow more flexibility for the Commission. Chief Financial and Accounting Officer ("CFAO") Lennon stated that the plan is to allow for specific testing requirements for sports wagering qualifications, and that this regulation will only certify the current independent test labs. He stated that the concern of an entity capable as a gaming lab but not a sports wagering lab applying prior to additional regulations being written for the certification process of sports wagering independent test labs was highly unlikely.

Commissioner Skinner asked if there is a difference between gaming devices tested and sports wagering devices. CIO Jagroop-Gomes stated that sports wagering online systems have different platforms and components and include elements such as geofencing. Commissioner Skinner asked if the word "devices" fully captured the technology involved, or whether the language in the regulation should be expanded. CIO Jagroop-Gomes stated that the definitions in the regulation will be changed to be all-encompassing. She noted that the two existing independent test labs are the only certified test labs in the United States who work with privately owned

casinos. CIO Jagroop-Gomes stated that the term devices would be sufficient for the regulation at the time.

Executive Director Wells stated that if action on this regulation is delayed it would stall the Commission's sports wagering implementation. Commissioner O'Brien sought clarification as to why this particular regulation was required to be expedited. Executive Director Wells stated that a large number of technical requirements for the regulation of sports wagering revolve around the set-up and checking of regulatory standards. She stated that this regulation is being moved forwards as the two existing independent test labs are the only labs in the United States who do this form of testing. She stated that the faster a contract is formed, the faster the Commission staff can receive technical expertise and assistance with sports wagering regulation promulgation. CFAO Lennon stated that the GLI standards were very technical, and operators need to know which standards GLI will test to. General Counsel Grossman stated that without the regulation, the Commission will be unable to establish which entities are uniquely positioned to operate sports wagering, and the sixty to ninety days it would take to perform the promulgation process would delay the launch of sports wagering. CIO Jagroop-Gomes stated that equipment shipped into Massachusetts must be certified and approved as being in compliance with regulations and statutory requirements, and that waiting to pass this regulation would largely affect the sports wagering timeline.

Commissioner O'Brien asked, absent the emergency promulgation, could issues arise if the vendors were communicated with prior to a procurement process, such as utilizing the independent test labs' technical expertise. CFAO Lennon stated that approaching vendors for advice is a best practice if a topic is so narrow only one or two vendors could respond. Commissioner O'Brien sought clarification as to whether there was a risk of not receiving their assistance if engagement had begun. CFAO Lennon stated that the typical route would require two to three months for the independent test lab procurement.

Commissioner Skinner expressed that she did not believe the emergency procurement rules would apply unless the regulation was promulgated under the emergency provision. Chair Judd-Stein sought clarification regarding Commissioner Skinner's comment. Commissioner Skinner stated that this issue is not a threat to public safety, public health, or general welfare, and she struggled to understand how the emergency promulgation process would be utilized. Chair Judd-Stein stated that she did not want a delay in action to result in a compromise of the integrity of the industry, and that counsel had provided advice as to how to responsibly use the emergency promulgation tool. She stated that the legislation noted in the statute that emergency promulgation of regulations could be used.

Commissioner Skinner asked General Counsel Grossman whether the emergency regulation provision in G.L. Chapter 23N would authorize the Commission to promulgate emergency regulations without regard to the recognized standards, provided appropriate procedures are followed. General Counsel Grossman stated that G.L. Chapter 30A sets the standard for emergency adoption of regulations, and that the language in G.L. Chapter 23N is nonspecific and does not address the standard required for emergency adoption. Commissioner O'Brien stated that she did not interpret G.L. Chapter 23N as requiring G.L. Chapter 30A for guidance.

Chair Judd-Stein inquired as to what the next steps would be should the Commission not adopt the proposed regulation through emergency promulgation. Executive Director Wells stated that the Commission staff would be required to perform a sports wagering timeline analysis, and that the process would be delayed by several weeks to several months. Chair Judd-Stein inquired as to what impact on other processes would occur if the emergency promulgation wasn't utilized. Executive Director Wells stated that a delay in certification of independent test labs would prevent expert advice on regulations regarding technology for both the retail and online wagering process and would impact the ability of operators to stand up operations with technical components. Chair Judd-Stein asked if there was a risk to the Commission if they utilized the emergency promulgation process. Mr. Povich said that there is a very slight risk, but general welfare would seem most protected if the Commission would be prudent to move forward expeditiously with the emergency promulgation process.

Commissioner Skinner asked if the certification of independent test labs could be accomplished with internal policy, or would it require the emergency promulgation of a regulation. Mr. Povich stated that the certification of independent test labs for casino gaming had been done by regulation in the past, and that the issue affected outside parties that would not fall in the scope of an internal policy. Commissioner Skinner noted that the Commission would be relying upon the independent test labs' expertise in the drafting of regulations. Mr. Povich stated that the risk of using the emergency promulgation procedure for a regulation was less than the risk of attempting this change as an internal policy. Commissioner Skinner asked how quickly the Commission could hold public comment or public hearing should they proceed on an emergency basis. General Counsel Grossman stated that the process took between sixty and ninety days depending on the Secretary of the Commonwealth's filing schedule, but emergency regulations take effect immediately. Chair Judd-Stein stated that receiving public input was not a rigorous process and can be performed quickly. General Counsel Grossman stated that the statutory public hearing requirements required notice be in a newspaper and filed, which could not be completed before the next week's meeting.

Commissioner Hill moved that the Commission approve the small business impact statement and the draft 205 CMR 244.06 as reflected 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 move that staff shall be able 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 O'Brien sought clarification regarding the language of "to file additional regulation sections as reserved." She asked General Counsel Grossman if these are ministerial changes. General Counsel Grossman explained that they were ministerial changes, and that the Secretary of the Commonwealth may require the Commission file 205 CMR 244 sections .01 through .05 as reserved prior or simultaneously with 205 CMR 244.06.

Commissioner O'Brien requested that the motion's language "as discussed here today" included that the proposed regulation's first use of "shall" would be changed to "may." Commissioner Hill agreed. General Counsel Grossman stated this proposed change would require the

certification of the independent test labs to be brought back before the Commission as it is no longer an automatic certification of the labs, unless the Commission authorized the two existing labs in this meeting. Chair Judd-Stein asked if the proposed change would slow the process. General Counsel Grossman stated that the proposed change would add an additional step, which could be handled quickly.

Commissioner Hill moved that the Commission approve the small business impact statement and the draft 205 CMR 244.06 as reflected in the Commissioner's Packet and discussed here today, and specifically that the first "shall" in the draft regulation shall be changed to "may" 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 move that staff shall be able 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. The motion was seconded by Commissioner Maynard.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Abstain.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

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

c. [205 CMR 238.00: House Rules](#) (2:34:03)

General Counsel Grossman introduced Associate General Counsel Judith Young to present a draft of 205 CMR 238 related to House Rules. General Counsel Grossman explained that under G.L. Chapter 23N, section (6)(c), all sports wagering conducted under the authority of a temporary license shall comply with the house rules adopted under section 10, and that therefore the approval of house rules is required for any temporary licensing. The *small business impact statement* and the *proposed regulation* are included in the Commissioner's Packet on pages 11 through 16.

Associate General Counsel Young stated that the legal division worked with the Investigations and Enforcement Bureau to draft 205 CMR 238.03 establishing house rules for sports wagering operators. She explained that house rules are policies that guide and govern transactions between a sports wagering operator and their patrons, aimed at providing guidance, clarity, support, and notice to patrons. She stated that house rules are unique to each entity, and that the Commission must approve an operator's house rules prior to the commencement of operations.

Associate General Counsel Young stated that 205 CMR 238.01-02 had been reserved, and that 205 CMR 238.03 was modelled after 205 CMR 138.02 regarding the licensee's system of internal controls.

Commissioner Skinner and Commissioner O'Brien noted that the regulation referenced 205 CMR 238 and questioned if integrity was lost if the relevant section of 205 CMR 238 was not also ready for implementation. Chair Judd-Stein stated that it may be practical to include the language "in accordance with its internal controls". General Counsel Grossman stated that section 238.03 and the following section were nearly identical to the section being discussed, and that the Commission would not be lowering standards or lessening control.

Commissioner Skinner stated that as the operations cannot begin until house rules are implemented, it may defeat the purpose of filing as an emergency regulation when 205 CMR 238 was not before the Commission. General Counsel Grossman stated that the next series of regulations presented to the Commission will refer to sections of the internal controls, and that should not stand in the way of this regulation being reviewed.

There was discussion regarding specific wording in the regulation related to how determinations are ultimately made by the Commission and how such determinations may be disputed. Associate General Counsel Young and General Counsel Grossman noted that they would clarify the language based on the questions raised.

Regulatory Compliance Manager Sterl Carpenter stated that the process mirrors the current process for casino house rules found in 205 CMR 138.02, and that the language in that statute was clearer regarding the dispute review process. Mr. Carpenter further stated that the internal controls regulations would take additional time. Commissioner O'Brien stated that the level of specificity in 205 CMR 138.02 was not present in the proposed regulation, and that the regulation required additional language. Commissioner Skinner sought clarification regarding whether the Commission would have to approve the operator's house rules submissions. Chair Judd-Stein stated that the Commission was required to by statute.

Associate General Counsel Young explained that the next section provided a 30-day implementation period that mirrored 205 CMR 138.02. Chair Judd-Stein suggested that the term "designee" be removed as the Commission was statutorily authorized to approve house rules, and she did not believe that statutory power should be delegated. Chair Judd-Stein inquired if the Commission was required by statute to approve amendments to the house rules. Associate General Counsel Young stated that the Commission would need to approve amendments to house rules.

Commissioner Skinner suggested additional language be included to allow the Commission to have the discretion to approve or deny house rules.

Commissioner O'Brien sought clarification regarding the requirement for "prominent display" of house rules for online and mobile applications. Associate General Counsel Young stated that in other jurisdictions, when using the sports wagering application, the patron must click through provisions confirming their legal age, geolocation, and agreeing to the house rules, similar to terms and conditions. Commissioner O'Brien asked if the Commission would have to define prominent display. Associate General Counsel Young stated that the Commission would have discretion to define prominent display. Commissioner O'Brien asked if there were cases in other jurisdictions where the operator's rules were not displayed prominently enough. Mr. Carpenter

stated that he had no knowledge of such cases, but Rhode Island has house rules immediately accessible and displayed on the front page of their applications.

Commissioner Skinner asked if “sports wagering operators” referenced both mobile and retail operators, as retail operators had been referred to as authorized in-person wagering facilities. Associate General Counsel Young stated that sports wagering operator accounts for both mobile and retail operators and is defined in G.L. Chapter 23N. Commissioner Hill stated that in his research into other jurisdictions, they often require that house rules be included on the operator’s website, but don’t indicate where they should be listed. Commissioner O’Brien expressed concerns about operators potentially having their house rules hidden in a tab that could be bypassed. Associate General Counsel Young stated that the requirements for prominent display would be decided by the regulatory body. Commissioner O’Brien asked if the Commission wanted to implement a threshold minimum for prominently displayed. Associate General Counsel Young stated that the reserved section of 205 CMR 238.01 would be for definitions, and that the language for prominent display would be included there.

Chair Judd-Stein stated that the topic of provisions for temporary licensure of sports wagering operators would occur on September 15, 2022, and suggested the commissioners bring further edits for the house rules regulation to the legal division.

d. [Sports Wagering Budget](#) (4:12:28)

CFAO Lennon explained that the Sports Wagering Control Fund was created by G.L. Chapter 23N § 15 as a vehicle for the Commission to use for regulatory oversight of activities related to sports wagering. He stated that initial funding of the Fund was for the application fees and background investigation costs. He stated that once operator licenses are awarded, developing an annual budget will be straightforward and utilize an existing tool for the development of the Gaming Control Fund’s budget. CFAO Lennon stated that the preliminary budget request for the Sports Wagering Control Fund was \$2.2 million, but that the number may change as the Commission makes decisions and authorizes regulations. He explained that the preliminary request was for 12 full-time employees, 6 civilian contract investigators, as well as legal and financial consultants.

Commissioner Skinner stated that the financial overview of regulations will occur later, and that the staffing request is not absolute and may not be realized based upon Commission decisions. She stated that the Commission will have discretion to utilize the funds in accordance with ongoing developments.

Commissioner Hill noted concern that the funding request was so high and asked if it could be mitigated. Commissioner Skinner stated that the request presented was what the financial team perceived to be necessary initial resources to move forward. Executive Director Wells stated that the request was the best estimate for a starting point, and additional funding may be required. She stated that the Commission already authorized the Chief of Sports Wagering position and requested additional personnel to support that position due to the number of potential applicants. She noted that the number of licensees will expand from three to as many as 16, which would require an increase in staffing in the licensing division.

Commissioner Skinner stated that the legal division was preparing over 200 regulations to present to the Commission and expected additional legal resources would be required. Director of the Investigations and Enforcement Bureau Loretta Lillios stated that G.L. Chapter 23N requires the Commission to identify any individuals and entities with ownership or control of companies that apply to become operators. CFAO Lennon stated that entities for gaming licenses typically had ten affiliated entities and fifteen individuals that required review during the deep-dive process. He stated that the average review for suitability and application review cost in excess of \$1 million for casino gaming. He stated that he would attempt to pare down costs.

Commissioner Maynard expressed concern that there may not be enough funding, and that the funding can be adjusted later. Commissioner O'Brien stated she felt comfortable with the request.

Commissioner Skinner moved that the Commission authorize an initial budget of \$2,193,429.86 for sports wagering operations, including the hiring of additional positions and consultant spending as necessary, as included in the Commissioner's Packet, and discussed here today. The motion was seconded by Commissioner Maynard.

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. [Interim Policy for Executive Licensure](#) (4:33:35)

Chair Judd-Stein informed meeting participants that this agenda item would not be discussed until a future meeting.

f. [Discussion Of Criteria For Sports Wagering License Application And Selection Process](#). (4:33:52)

Executive Director Wells asked the Commission for input regarding the criteria for final operator licenses for all categories of sports wagering licenses. She stated that staff had identified several criteria they believed would be helpful in the application review process, including the applicant's history of compliance or litigation history; the applicant's sports wagering experience and expertise; the applicant's overall competence in other jurisdictions; the economic impact for the Commonwealth; responsible gaming; and expertise with sports wagering technology. Executive Director Wells noted that certain entities already found suitable by the Commission would not need to reapply for a suitability review, but recommended that the IEB be given authority to request supplemental information.

Commissioner O'Brien clarified that the applicant's sports wagering experience and expertise for the technical component should include both their retail and mobile experience. Executive Director Wells stated that applications for licensure under categories one and two would be separate from applications for licensure under category three. Commissioner O'Brien stated that she would prefer a whole picture of the applicants' experience in both retail and mobile sports wagering. Executive Director Wells stated that more information will become available as the applicants apply.

Commissioner Hill expressed interest in quarterly updates on community engagement, similar to the casino licensees, and asked how mobile operators could act as community partners. Commissioner Skinner asked if there are recommendations for the evaluation of temporary licenses, as well. Executive Director Wells stated that the discussion regarding criteria for temporary licenses would be the following week, as the threshold question regarding temporary licensure must be addressed first. Commissioner Maynard stated that more information may be required as the Commission progresses, but these criteria are a good starting point.

Chair Judd-Stein suggested diversity, equity, and inclusion should be a separate criterium instead of elements of economic impact. Chair Judd-Stein asked if sports wagering kiosk compliance concerns would be included in technology compliance. CIO Jagroop-Gomes stated that sports wagering kiosks are considered devices and fit within the technology terminology, and that a certified independent test lab will test for compliance concerns. She stated that properties and manufacturers remaining up to date with security patches and updates was a matter of the applicant's competence to maintain industry standards. Chair Judd-Stein asked if the operator's history of data usage from the kiosks would be useful. CIO Jagroop-Gomes stated that small sampled would be check as part of the assessment of the applicant's information security plan.

Chair Judd-Stein asked whether the criteria regarding responsible gaming would include questions regarding the applicant's plans for promotional play. Executive Director Wells stated that those questions would not be in the application but included in the Commission direction prior to launch. Chair Judd-Stein asked if the report from Treasurer Goldberg and issues regarding diversity hiring and spend could be addressed under G.L. Chapter 23N. Executive Director Wells stated that Commission staff will coordinate with the legal division regarding the requirements of G.L. Chapter 23N.

Chair Judd-Stein asked whether esports would have a separate application process. Chair Judd-Stein stated that further discussion would be held on the matter after not receiving a response. Commissioner O'Brien suggested that given the Commission's research, an additional criterion in the application review would be to ask the applicants to discuss their experiences working with researchers. Chair Judd-Stein stated that with the anticipated large pool of applicants, the review should be fair and equitable, but there must also be enough leeway to distinguish between applicants. Executive Director Wells stated that a point-scoring system might be helpful, but staff would look for additional insight from the Commission when approaching the evaluation. Chair Judd-Stein stated that if other jurisdictions had a similar application process, the Commission staff could look towards those jurisdictions for additional procedures.

g. [Discussion Of Process For Approval For Use Of Sports Wagering Systems And Devices.](#) (5:06:45)

Executive Director Wells introduced CIO Jagroop-Gomes to discuss the process of approval for the use of sports wagering systems and devices. Executive Director Wells stated that there were different approaches the Commission could take to ensure technical compliance with Massachusetts regulations and laws. She stated that the first option was to require licensees to contract with an independent test lab and allow the Commission to audit the independent test lab's results. She presented the second option, which was to allow the licensee to initially submit certification of their platforms with the technology being compliant with another jurisdiction's technical standards, and then resubmit for results compliant with the Massachusetts standards within a certain timeframe. Executive Director Wells stated she did not recommend the third option of in-house testing or the fourth option of contracting with a third-party vendor to conduct all testing for the commission due to timeframe concerns and issues with staffing IT employees.

CIO Jagroop-Gomes clarified that the recommendation is to begin with the second option for temporary licensees for expediency in launching sports wagering, and shift to the first option for future licensees. Executive Director Wells mentioned a fifth option, which would be a hybrid style of in-house testing and contracting with a third-party but did not recommend that option due to hiring and training issues.

Commissioner O'Brien stated that option two is good only if the Commission can trust other jurisdictions technical standard requirements. She asked if the reciprocity should be restricted to certain jurisdictions. CIO Jagroop-Gomes stated that it was her strong recommendation to select jurisdictions with similar policies and laws compared to Massachusetts. Commissioner O'Brien inquired that as this was a temporary process, should we include a sunset provision that would expire. Executive Director Wells agreed that the reciprocity was for launch purposes. Commissioner O'Brien expressed interest in a sunset provision for reciprocity for the launch of the regulation of sports wagering. CIO Jagroop-Gomes stated that IT would develop a list of acceptable jurisdictions to accept reciprocity from. Executive Director Wells asked if the list of approved jurisdictions would have to be included in the regulation or if the regulation could refer to a policy. Chair Judd-Stein stated that there would be value in having the list in a side-letter.

Chair Judd-Stein asked if the Commission would have auditing function during the temporary licensure period where reciprocity was accepted. CIO Jagroop-Gomes stated that there would be audit functions, but they would not be as extensive as the ones provided by option one.

h. [Responsible Gaming Update Regarding Sports Wagering.](#) (5:35:20)

Director of Research and Responsible Gaming Mark Vander Linden explained that the Research and Responsible Gaming Division produced two research papers intended to inform measures related to sports wagering. He stated that the first study was done on responsible gaming considerations for responsible gaming policy and practice, and that the second study was done regarding responsible gaming considerations for advertising. Director Vander Linden stated there would be a sports wagering round table focused on responsible gaming in the following week. He anticipated discussions at the round table would include issues regarding voluntary self-

exclusion lists for sports wagering, how to adapt GameSense for sports wagering in a digital format, and how the Commission would implement self-imposed limitations as required by statute.

Director Vander Linden explained that the sports wagering legislation contained three research requirements. He stated that Section 23 of the Act Regulating Sports Wagering directed the Commission to align the sports wagering research agenda with the existing research agenda outlined in G.L. Chapter 23K § 71. He stated that the sports wagering legislation directed the Commission to integrate two additional studies into the research agenda, one on the feasibility of allowing retail sports wagering operators to operate kiosks and the other study on the participation of minority business enterprises, women-owned business enterprises, and veteran-owned business enterprises in the sports wagering industry. The *Research and Responsible Gaming Update* was included on pages 46 through 47 of the Meeting Packet.

Chair Judd-Stein asked if it was possible to include these studies on Dr. Goldberg's team's contract, due the December deadline required by the statute. Director Vander Linden stated that there would be additional costs, but that he believed the additional studies would fit within the original scope of the contract. Chair Judd-Stein asked if there was an opportunity for diversity spending in these studies. Director Vander Linden stated that diversity can be considered, but there was a tight timeline on moving the projects forward. Chair Judd-Stein expressed an interest in GameSense information from other jurisdictions. Director Vander Linden stated he will return with more information on that subject at a later point.

Commissioner Hill explained that in his legislative experience the deadline for the studies was written at the time the bill was drafted, and the dates were likely not changed when passed and signed into law. He stated that the intent of the legislature was likely to give the Commission more time to complete the study, and that no consequences were listed in the legislation should the research not be completed by the deadline. Commissioner Hill stated that he did not want the research division to rush the studies. Director Vander Linden stated any research requires scope and a timeline committed to the research principles and process. Chair Judd-Stein agreed that the deadline may have been in error, but that the Commission should take those dates seriously and provide their best efforts to meet the date in the legislation. Executive Director Wells stated that updates on this research would be an agenda item, but no Commission action was necessary.

a. [Ad Hoc Sports Wagering Paper](#) (6:00:25)

Director Vander Linden introduced two investigators for the Commission's Social and Economic Impacts of Gambling in Massachusetts ("SEIGMA") team, Dr. Rachel Volberg, Professor at the University of Massachusetts Amherst, and Dr. Robert Williams, Coordinator of the Alberta Gambling Research Institute at the University of Lethbridge.

Dr. Volberg stated that the ad hoc sports wagering paper examined the status of legalized sports wagering in the United States; a literature review regarding sports bettors' demographics and attitudes; harms associated with sports betting; and a review of existing Massachusetts and National Council on Problem Gambling studies.

Dr. Volberg and Dr. Williams presented a review of the ad hoc sports wagering paper. The topics included were the history of sports betting in the United States; variations in sports wagering legislations; variations in the regulatory framework for sports wagering in other jurisdictions; variations in operations; identified socioeconomic outcomes; issues of concern; and policy recommendations. The *Ad Hoc Sports Wagering Paper* was included on pages 48 through 155 of the Meeting Packet.

Commissioner O'Brien expressed interest in the idea of banning celebrity endorsements but questioned how it could be implemented. Dr. Volberg stated that Australia and Italy have banned advertising during play time and other time restrictions. Dr. Williams stated that some jurisdictions had banned advertising of sports wagering altogether, and some of them had banned celebrity endorsements. He noted that the celebrity endorsement bans were in European countries but did not have specifics available. Commissioner O'Brien asked who would pay for the proposed initiative benefitting responsible wagering behavior. Dr. Volberg stated that the responsibility would likely fall on the operators and licensees to provide the incentives for responsible wagering, as they already provide incentives for players who engage with wagering consistently. She stated the funds could be raised by a partnership between operators and the Commission. Director Vander Linden stated that he appreciated the innovative ideas being proposed. He noted that the American Gaming Association called out celebrity endorsements as a form of entertainment designed to appeal to youth. Director Vander Linden stated that banning celebrity endorsements is a commonly accepted practice, but there were troubles in properly implementing it. Commissioner O'Brien expressed interest in banning the celebrity endorsement of sports wagering, but that there would be concerns about out-of-state casinos and sports wagering operators not subject to the same rule continuing advertisement in Massachusetts.

Chair Judd-Stein stated that she hoped the research team would make these studies a priority and asked for an update on the general population survey being conducted by SEIGMA. Dr. Volberg stated that due to resource issues, she had yet to receive field data, and would need time to clean and analyze the data after receiving it.

4. [Commissioner Updates](#) (6:48:00)

a. Plan for Sports Wagering Roundtable

Chair Judd-Stein stated that there would be a round table on responsible gaming on September 13, 2022, with experts in the field of responsible gaming providing commentary. She stated that there would be an additional round table, which had yet to be scheduled, for mobile operators. She stated that there would be a meeting on September 15, 2022, regarding temporary licensing of sports wagering operators and a meeting on September 12, 2022, to review an application for horse racing.

Director Vander Linden noted that on September 12, 2022, PlayMyWay would be launched at Encore Boston Harbor. Chair Judd-Stein requested a quick update regarding Encore's PlayMyWay at the beginning of the meeting held that day.

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 2, 2022; revised September 6, 2022
2. [Meeting Packet](#) from the September 8, 2022