

# The Commonwealth of Massachusetts

## Massachusetts Gaming Commission

### Meeting Minutes

**Date:** May 15, 2012

**Time:** 1:00 p.m.

**Place:** Boston Convention & Exhibition Center  
Meeting Room 101  
415 Summer Street  
Boston, Massachusetts

**Present:** Commissioner Stephen P. Crosby, Chairman  
Commissioner Gayle Cameron  
Commissioner James F. McHugh  
Commissioner Bruce Stebbins  
Commissioner Enrique Zuniga

**Absent:** None

#### Call to Order:

Chairman Crosby opened the meeting.

#### Approval of Minutes:

See transcript page 2.

Commissioner McHugh stated that the May 8, 2012 minutes have been posted on the Commission's website and distributed to all the Commissioners.

*Motion made by Commissioner McHugh to adopt the minutes of May 8, 2012 as submitted. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.*

#### Administration:

See transcript pages 2-12.

Executive Director Update – Commissioner Zuniga stated that an RFR for a search firm was issued and the deadline was last Friday. Two responses have been received and at this time staff is conducting a baseline review. Chairman Crosby stated that the gaming consultant was asked to put together a draft position description for the Executive Director. When a search firm has been hired the Commission will give them this draft and a final description will be crafted.

Other Hiring Needs – Chairman Crosby stated that a job posting went out for four jobs at the administration level and there were over 600 applicants. The Commission is in the process of reviewing these applications and narrowing down the field of candidates so there will be a pool

of candidates to draw from for future hires. Commissioners Cameron and Stebbins have indicated they would like an executive assistant and this should be in the pipeline fairly quickly. All hires will be subject to background checks before they are announced. Chairman Crosby and Commissioner Zuniga are talking to applicants who might provide more senior administrative support in lieu of an Interim Executive Director. At this time the Commission does not anticipate hiring an Interim Executive Director.

Outside Counsel – Commissioner McHugh stated that the Commission has signed a contract with outside counsel, Anderson & Kreiger. An initial work plan is in place and will be integrated with the work plan of the gaming consultants to allow them to proceed in unified fashion. Counsel will also provide the legal support necessary to make the transition from the Racing Commission responsibilities to the Gaming Commission.

### **Racing Commission:**

See transcript pages 12-29.

Status – Commissioner Cameron stated that the Commission is mandated by law to transition all responsibilities formerly held by the State Racing Commission to the Massachusetts Gaming Commission on May 20, 2012. To assist in an effective transition the Commission has contracted with the Division of Professional Licensure to perform the day-to-day activities that support the Massachusetts horse racing, pari-mutuel wagering, and simulcasting for the remainder of this racing season. During this interim period the Commission will develop the capacity to perform those activities directly. The Division of Professional Licensure will be responsible for the hiring, personnel management, and administrative decisions through the end of this season. The Gaming Commission will be responsible for the adjudicatory functions previously performed by the State Racing Commission, policy decisions, and approvals necessary for the Department of Professional Licensure to perform these activities. In order to meet the May 20, 2012 deadline the Commission has taken the following steps: drafted emergency regulations that outline the transfer of responsibilities; will be entering into an interdepartmental service agreement to perform the operation duties; and delegating all adjudicatory functions, policy recommendations, and approvals to Commissioner Cameron. The Department of Professional Licensure staff attorney, Charles Kelb, who currently serves as legal counsel to the State Racing Commission, will continue in his capacity for the Massachusetts Gaming Commission with regard to racing matters.

Deputy Director Casey Atkins, who has direct oversight of all State Racing Commission operations today, addressed the Commission and outlined further details of the transition and the day-to-day operations. Commissioner McHugh stated that the State Racing Commission website is very informative and he recommended the Commission keep that website up with appropriate cross-references and cross links. Commissioner McHugh outlined the details of a series of motions to facilitate the transition process.

*Motion made by Commissioner McHugh that the Gaming Commission promulgate emergency regulations effective May 20, 2012, to provide for the orderly transition of the regulation of horse racing, harness racing, pari-mutuel wagering, simulcasting, and related subjects, from the Massachusetts Racing Commission to the Massachusetts Gaming Commission in substantially the form attached, and to authorize the Commission's Secretary to take all necessary actions, including without limitation the filing of emergency regulations with and making any edits and corrections as may be necessary to conform to the Gaming Act and the requirements of the Massachusetts Secretary of the Commonwealth the proper promulgation of these regulations. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 5-0-0 vote.*

*Motion made by Commissioner McHugh that the Gaming Commission issue a Notice of Public Interest substantially in the form attached to the motion explaining the background and reasons for the Commission's promulgation of emergency regulations effective May 20, 2012 concerning the former Massachusetts State Racing Commission, and to authorize the Commission's Secretary to take any actions he may deem appropriate to post a public notice on the Commission's website, in the Massachusetts Register of the Secretary of the Commonwealth, or otherwise. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 5-0-0 vote.*

*Motion made by Commissioner McHugh that the Gaming Commission authorize and direct Commissioner Cameron to negotiate, finalize, execute, and enter into and then administer on behalf of the Massachusetts Gaming Commission an Interdepartmental Service Agreement or Agreements, and any amendments thereto, with the Division of Professional Licensure, an agency of the Office of Consumer Affairs and Business Regulation, concerning matters formerly within the jurisdiction of the State Racing Commission and transferred to the jurisdiction of the Gaming Commission effective May 20, 2012, pursuant to which the Department of Public Licensure will perform for transitional period or periods, day-to-day activities with respect to horse racing, harness racing, pari-mutuel wagering, simulcasting, and related matters, including without limitation matters pertaining to routine simulcasting and laboratory operations, administrative, fiscal, and human resources operations, enforcement and public safety activities, and legal oversight and assistance with respect to adjudicatory proceedings. Motion seconded by Commissioner Zuniga. The motion passed unanimously by a 5-0-0 vote.*

*Motion made by Commissioner McHugh that the Gaming Commission authorize Commissioner Cameron to negotiate, finalize, execute, and enter into and administer on behalf of the Massachusetts Gaming Commission any necessary requests to and interagency agreements or other arrangements with the Division of Administrative Law Appeals, pursuant to which that division will conduct adjudicatory hearings concerning certain classes of administrative appeals formerly within the jurisdiction of the Massachusetts State Racing Commission, and effective on May 20, 2012, now within the jurisdiction of the Massachusetts Gaming Commission related to horse racing, harness racing, pari-mutuel wagering, simulcasting, and related matters. Motion seconded by Commissioner Zuniga. The motion passed unanimously by a 5-0-0 vote.*

Chairman Crosby indicated the legislation calls for the creation of a Horse Racing Committee to make recommendations regarding distributions from the Race Horse Development Fund, and directs that the Chairman, or his designee, be the Commission's representative. He stated that Commissioner Cameron would be the natural person to be on that committee. The Governor's designee will be the Chairman of the Horse Racing Committee.

**Gaming Consultant:**

See transcript pages 29-38.

Chairman Crosby stated that the Commission had planned to have a representative from the gaming consultant come to this meeting to discuss the work plan. The gaming consultant was unable to attend so this discussion will be postponed. Chairman Crosby stated that a statement of work is being negotiated now with the consultant team and will be signed. The work plan represents the totality of the work that is going to be done by the gaming consultants during the course of a 16-week project. Commissioner Cameron pointed out that throughout the work plan the consultant indicates consultation with the Commission will be necessary. She suggested that each Commissioner be responsible for particular portions of the plan so the consultant can consult with the responsible Commissioner and not have to meet with the Commission as a whole. Several Commissioners had questions and suggestions about this plan, but detailed discussion was postponed until the next meeting when the consultant will be present.

**Finance/Budget Update:**

See transcript pages 38-39.

Commissioner Zuniga stated that now that the Commission has executed a contract with outside counsel, and the interagency agreement with the Division of Professional Licensure, he will collect and make part of the financial report the attendant costs.

**Public Education and Information:**

See transcript pages 39-60.

Economic Development Forum – Commissioner Stebbins stated that the forum will be held on Thursday, June 14, 2012. Last week he visited Quinsigamond Community College, the host site for the forum. Additional speakers are being finalized and the final logistics are being worked on.

Other Forums – Chairman Crosby stated that the Commission is considering either June 4 or 8 for the forum on community mitigation and compulsive gambling. The moderators are set and he anticipates a four hour forum.

Responses to Requests for Information – Commissioner McHugh stated that the Commission is receiving a number of questions from the public on the website and it was agreed at last week's meeting to bring forward to the Commission members those questions that are not easily answered. Commissioner McHugh stated that he has two such questions to discuss today.

The first question was submitted by an individual interested in developing a poker room in Massachusetts where live face-to-face poker games would be played between patrons, with the house earning a percentage fee from each pot. The questioner asked if the current gaming regulations would allow for the operation of such a venue, and if so what the licensing requirements would be. Commissioner McHugh raised the concern as to whether the Commission should be responding to what amounts to requests for legal advice by individuals regarding a particular type of activity they would like to undertake. Commissioner Cameron stated that she thinks that the poker question is a legal question and that the Commission should not answer these questions. Chairman Crosby asked if Commissioner McHugh's opinion would be the same if there were regulations and a legal staff in place. Commissioner McHugh stated that giving legal advice to an individual about what his or her business operations can consist of is going to remain a tricky business and the Commission will have to be careful when developing regulations so as to not be in the position of interpreting regulations to permit something that another law enforcement agency may think is not appropriate. Chairman Crosby agreed the Commission should not be giving legal opinions, but stated that there must be someplace the Commission could refer this type of question.

Commissioner McHugh stated that the second question asks whether the citizens of a community have the right to vote on whether negotiations for a casino should commence if the local officials are not willing to engage in negotiations. Commissioner McHugh stated that the law is quite clear that no Class I or II license can be issued without a host community agreement and a vote to accept the agreement. The legislation, however, does not specify the process for negotiating the agreement. He stated that the Commission's position ought to be that the normal rules, regulations, laws, charters and the like that govern municipal operations determine who makes the decision with respect to engaging in negotiations. Chairman Crosby asked if it is clear who has to create the agreement that is voted on. Commissioner McHugh stated that the gaming legislation is silent on this and does not give the Commission a role in the process. Chairman Crosby stated that for the answer to these questions the Commission could direct inquiries to town counsel or town government.

Chairman Crosby stated that the discussion raises a question regarding the extent to which the Commission wants to provide support to potential host and surrounding communities who are dealing with negotiation issues. Commissioner Stebbins asked if the Commission should consider some type of framework as part of the host agreement to help guide municipalities through the process. Commissioner Zuniga stated that creation of such a framework could be addressed as part of the work plan and emergency regulations. Chairman Crosby stated that it is an appropriate role for the Commission to make certain that somebody, whether it is the Mass Municipal Association, the Collins Center, or the RPAs, is proactively communicating, saying we are here to help and providing resources to do so. Commissioner McHugh stated that there is a difference between answering particular issues that the Commission may later have to pass judgment on, and making general statements to help everyone understand the path through the

process. Commissioner Zuniga stated that the Commission needs to be sensitive to the fact that cities and towns have different levels of staffing and needs.

**Other Business:**

See transcript pages 60-65.

Commissioner Zuniga stated that the Treasurer's office conducted a meeting of the Online Products Task Force and he is now a member of this Task Force. He stated that online lottery type products coming into the United States most likely will require legislation and the Task Force will be considering how it can provide guidance to the Legislature. There is a notion that the introduction of online products may not necessarily cannibalize either casinos or the lottery, and may even enhance the two operations. Commissioner Zuniga will continue to provide updates as he continues to meet with the Task Force. Chairman Crosby stated that this is not a big issue now, but could become a significant issue if online gaming is up and running before casinos are in operation.

**Next Meeting:** The next meeting is scheduled for May 22, 2012, at 1:00 p.m.

*Motion made to adjourn, motion seconded and carried unanimously.*

**List of Documents and Other Items Used at the Meeting**

1. Massachusetts Gaming Commission May 15, 2012 Notice of Meeting & Agenda
2. Job Description, Executive Director Massachusetts Gaming Commission
3. Motion Regarding Adoption of Emergency Regulation for the Massachusetts Gaming Commission's Enforcement of Regulations of the Former State Racing Commission
4. 205 CMR: State Racing Commission Emergency Regulations
5. Motion for Issuance of a Notice of Public Interest Concerning Adoption of Emergency Regulations
6. Massachusetts Gaming Commission Notice of Public Interest Regarding Transition of Authority from Massachusetts State Racing Commission to the Massachusetts Gaming Commission
7. Motion Regarding Massachusetts Gaming Commission Interdepartmental Service Agreement with the Department of Public Licensure Concerning transition of responsibility for the State Racing Commission
8. Motion Regarding Referral to Division of Administrative Law Appeals of Massachusetts Gaming Commission Adjudicatory Hearings
9. Gaming Consultants' draft Strategic Plan and Short Term Deliverables for the Massachusetts Gaming Commission

/s/ James F. McHugh  
James F. McHugh  
Secretary