



Meeting Minutes

Date: June 27, 2013

Time: 9:30 a.m.

Place: Boston Convention and Exhibition Center
415 Summer Street, Room 106
Boston, MA 02210

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

Absent: None

Clicking on the time posted in the margin will link directly to the appropriate section of the video.

Call to Order

See transcript page 2.

9:31 a.m. Chairman Crosby opened the 70th public meeting.

Approval of Minutes

See transcript pages 2-7.

9:31 a.m. Commissioner McHugh stated that the minutes for the June 13 meeting are ready for approval. The Commission discussed making two changes to the minutes. The Commission also clarified a discussion from the June 13 meeting: although the Commission does not have the storage space for receiving physical models submitted along with an RFA-2 application, the Commission is eager to see any models that applicants create.

Motion made by Commissioner Zuniga that the minutes of June 13, 2013 be accepted with the changes discussed. Motion seconded by Commissioner Cameron.

The motion passed 4-0 with Commissioner Stebbins abstaining due to not being present at the June 13, 2013 meeting.

Administration

Report by Executive Director Day. See transcript pages 7-69.

- 9:36 a.m. Executive Director Day introduced the Commission's new Director of Supplier and Workforce Development, Jill Griffin. Ms. Griffin expressed her excitement for the position, and the Commission asked her several questions regarding how she plans to undertake this new role. The Commission looks forward to working with Ms. Griffin.
- 9:52 a.m. The Commission is continuing in its hiring process. The staff has reached a decision regarding the Director of Licensing position and hopes to present the candidate to the Commission before the end of the month. Responses regarding the financial advisor consultant are due on June 28th. The Commission posted the RFR for a building and site design consultant on June 21. The draft RFR for the economic development consultant is in the final review process. Responses to the RFR for a project manager coordinator are due July 9. Ombudsman Ziemba is working to obtain assistance in evaluating Phase 2 applications from the Department of Transportation and the Department of Energy and Environmental Affairs.
- 9:53 a.m. Commissioner Zuniga discussed his updates to the budget since the prior meeting and the assumptions on which the budget is based, including assumptions regarding the amount and timing of assessments the commission will make when it awards Category 1 and 2 gaming licenses. The Commission expects to describe the mechanism for making those assessments either in its regulations or in a policy posted on its website.
- 10:22 a.m. *Motion made by Commissioner Zuniga to accept the budget for fiscal year 2014 as presented to the Commission. Motion seconded by Commissioner Cameron. The motion passed unanimously.*
- 10:22 a.m. The Commission discussed extending the term of the contract with the gaming consultants, but not extending the monthly retainer fee because the Commission anticipates primarily needing the expertise of the consultants on a project by project basis. The investigation contracts are distinct from and unaffected by this extension. The Commission also discussed the value in requesting advice from the consultants from time to time, even when there is no overarching project. The extended consultant contract should anticipate and allow for this type of service. As a more general matter, the Commission discussed the necessity of having a dollar value threshold for the size of contracts that must come before the Commission for approval.
- 10:36 a.m. *Motion made by Commissioner Zuniga that the Commission extend in time the two current contracts with its gaming consultants for the next fiscal year expiring June*

30, 2014 and consider compensation based on future negotiations on a project or task order basis or as recommended by the Executive Director. Motion seconded by Commissioner Stebbins. The motion passed unanimously.

10:37 a.m. The Commission reviewed the master schedule. The master schedule incorporates minor changes to the Category 2 suitability timeframe. To accommodate the expected increase in staff during the fiscal year, the Commission is acquiring additional office space, which will be ready in approximately two months. For the RFA-2 application, the first applicant has already expressed an interest in the pre-application briefing meeting.

10:46 a.m. The commission took a brief recess.

Racing Division

Report by Director Durenberger. See transcript pages 69-117.

10:56 a.m. Director Durenberger reported on the matters delegated at the last meeting to the Executive Director and the Director of Racing. Director Durenberger described a problem that Suffolk Downs experienced with its financial software and stated that they are working on resolving the issue. The Commission also reviewed the amended small business impact statement that will be filed with the regulations that are going to the Secretary of the Commonwealth.

11:04 a.m. *Motion made by Commissioner McHugh that the Commission approve the amended small business impact statement dated June 24, 2013. Motion seconded by Commissioner Stebbins. The motion passed unanimously.*

11:05 a.m. Director Durenberger provided the Commission with a memo on the changes to the tax law regarding the tax treatment of winnings. The Commission agreed that the change to the tax law may have a significant effect on the racing industry in the Commonwealth and that the Commission cannot take a position on the issue without learning more about the reasons behind the change. The Commission agreed to invite people familiar with the change to speak at the next Commission meeting.

IEB Report

Report by Director Wells and Ombudsman Ziamba. See transcript pages 117-170.

11:50 a.m. The Commission discussed whether to set a deadline for site selection. Currently three of the eleven applicants do not have a firmly established location. Penn National is looking for locations for a possible Category 2 establishment and is considering Region C for Category 1. PPE Casino Resorts is considering a location in Salisbury, with the Board of Selectman scheduled to take a vote on July 1. Mass Gaming and Entertainment is still looking for a site and has released no additional public information.

The Commission has already implicitly set a final deadline for site selection of around July 19, because applicants would not be able to meet the timing deadlines after that date. In order to give applicants more time to provide the election certification required as part of the RFA-2 application, the Commission will consider requests for a waiver of the requirement to include the certification with the submission of the RFA-2 application as long as the applicant submits the uncertified results with the RFA-2 application and submits the certification to the Commission as soon as it is available. Applicants should submit such requests as soon as possible, and the Commission will review the requests on a case-by-case basis.

The Commission discussed whether to set a deadline, after which an applicant would require leave of the Commission to add new qualifiers. The Commission is concerned that it may not be able to fully investigate additional qualifiers prior to the date scheduled for award of the license. The Commission requested that staff formulate a more precise recommendation for the Commission's review and approval at the next meeting.

12:46 p.m. The Commission took a brief recess.

Qualifier Suitability

Report by Director Wells. See transcript pages 170-248.

1:06 p.m. Director Wells went over the investigative process that has occurred thus far and the criteria by which the Commission must determine whether the individual and entity qualifiers are suitable. Each applicant and qualifier has the burden of establishing its qualification for licensure by clear and convincing evidence. Consultants from the Commission's consulting firms, Michael & Carroll and Spectrum Gaming Group also participated in the discussion.

1:24 p.m. The consultants explained that the evaluation of the applicants' and qualifiers' past behavior is done not as a form of punishment for prior bad acts, but rather to predict whether the applicants and qualifiers can be trusted to act reputably and in accordance with the statute and regulations if awarded a license.

1:55 p.m. The Commission discussed in detail the types of activities that can make a qualifier or applicant unsuitable and how the Commission should determine the minimum level of suitability while understanding that suitability will be considered again in conjunction with the RFA-2 application. The Commission then discussed the process for the adjudicatory hearing. Pursuant to the Commission's regulations, an applicant has the option of requesting waiver of an adjudicatory hearing if the IEB finds unconditional suitability. If an applicant requests waiver of an adjudicatory hearing and the Commission grants the waiver, the applicant's suitability report will be reviewed at a public meeting of the Commission.

2:31 p.m. Meeting adjourned.

List of Documents and Other Items Used at the Meeting

1. Massachusetts Gaming Commission June 27, 2013 Notice of Meeting and Agenda
2. Massachusetts Gaming Commission June 13, 2013 Meeting Minutes
3. Curriculum vitae of Jill Griffin
4. June 27, 2013 Massachusetts Gaming Commission Cash Flow Projection with Draft FY'14 Budget
5. Massachusetts Gaming Commission 6-18-2013 Summary Schedule Update
6. Massachusetts Gaming Commission June 24, 2013 Memorandum Regarding Contract Extension with Gaming Consultants
7. Massachusetts Gaming Commission Racing Division Amended Small Business Impact Statement
8. Massachusetts Gaming Commission Racing Division June 27, 2013 Memorandum Regarding Changes In Withholding Requirements on Winning Pari-Mutuel Wagers
9. June 25, 2013 New England Horsemen's Benevolent and Protective Association, Inc. Letter Regarding Impact of Massachusetts' New Withholding Tax on Horse Racing Wagering
10. Department of Revenue Excerpt Regarding Withholding on Wagering Winnings Gaming Commission Evaluation
11. 26 U.S.C. Section 3402
12. 2013 W-2G Form

/s/ Catherine Blue
Catherine Blue
Assistant Secretary