There's a New Game in Town:
What Municipalities Need to Know About the Casino Legislation

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This presentation is intended as a policy-neutral overview of the Expanded Gaming Act (St. 2011, c.194)


This presentation is not intended as an exhaustive analysis of every aspect of the legislation
Topics for today

- Gaming legislation (St. 2011, c. 194) overview
- What are the rights of a host community?
- What are the rights of a surrounding community?
- How does the license application process work?
- The Money Trail: How are funds distributed under the Act?
The Expanded Gaming Act expands current legal gambling (i.e., State Lottery; Horse and Dog Racing; and Simulcast Gambling) to include table games and slots.
Important Statutory Changes

- New Gaming Commission Statute (c.23K)
- New Money Laundering Statute (c.267A)
- New Enterprise Crime Statute (c.271A)
- Repeal of Greyhound Council (c.10)
- Repeal of State Racing Commission (c.13)
Conflict of Interest Provisions

New G.L. c.268A, §5(b½)
- Violation for a municipal employee, who participated as such in the implementation, administration or enforcement of chapter 23K, to later become an employee or officer of, or acquire a financial interest in, a gaming license applicant or licensee within one year after the public employment ceases.

G.L. c.23K, §46
- Prohibits an applicant and its affiliate from making gifts to municipal, county or state officials or candidates for such office and political parties.
Gaming Commission

Five (5) Commissioners:

- 1 appointed by the Governor*
- 1 appointed by the Attorney General
- 1 appointed by the Treasurer
- 2 appointed by majority vote

* Stephen P. Crosby has been appointed by the Governor to be Chairman of the Gaming Commission
Commission Chairman Crosby

- $150K Salary/Full time position
- Seven year term; committed for two years
- 2011 - Dean of McCormack Graduate School of Policy and Global Studies, U Mass/Boston
- 2010 - SJC Probation Dept. Task Force
- 2006 - Co-chaired Governor Patrick’s budget and finance transition team
- Chief of Staff to Acting Governor Swift
- Top Budget Official for Governor Cellucci
Gaming Commission

- Contract with persons and government
- Issue Licenses
- Conduct Adjudicatory Proceedings
- Determine surrounding community status
- Set election parameters
- Assist in negotiating an Indian Tribe Compact
- Administer pari-mutuel/simulcasting gambling
- Adopt Regulations
- Enforce Requirements
Types of Licenses

**Category 1 License**

An establishment with table games and slot machines.

**Category 2 License**

An establishment with **no table games** and not more than 1,250 slot machines.
Locations of Licenses

3 Regions (by counties):

A: Suffolk, Middlesex, Essex, Norfolk and Worcester

B: Hampshire, Hampden, Franklin and Berkshire

C: Bristol, Plymouth, Nantucket, Dukes and Barnstable (Preference to Indian Tribe)
Only three Category 1 licenses; Only one per region; Good for 15 years (G.L. c.23K, §19)

Only one Category 2 license (slots only); Good for 5 years (G.L. c.23K, §20(a) & (f))

State will attempt a compact with a Region C Indian Tribe by 7/31/12 (Gaming Act, §91)

No request for applications made by the Commission in Region C, until after July 2012; and then only if a compact is not reached with a recognized Indian Tribe (Gaming Act, §91)
Criteria for Licenses

Category 1 License (G.L. c.23K, §19)
- Applicant must satisfy all eligibility criteria
- Must provide convincing evidence value will be provided to region and Commonwealth

Category 2 License (G.L.c .23K, §20)
- Applicant must satisfy all eligibility criteria
- Must provide convincing evidence value will be provided to Commonwealth
Indian Gaming Regulatory Act, 25 USC 2701

Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by federal law and is conducted within a State which does not prohibit such gaming activity.
Indian Tribe Gaming

State Gaming Act:

- $5 million appropriated to negotiate a compact with a federally recognized tribe
- Governor authorized to negotiate, but the compact is subject to approval by the Legislature (Gaming Act, §91(a))
- The land must be owned or under agreement by the tribe (Gaming Act, §91(c))
Host community:

One in which a gaming establishment is located or in which one is proposed.

Surrounding community:

One in proximity to a host community and likely to experience impacts from the gaming operations. Status conferred either by agreement with the applicant or determined by the Commission.
Community Rights: Additional Definitions

**Governing Body**
- In a Plan D or Plan E city, the city manager and city council;
- In any other city, the mayor and city council;
- In a town, the board of selectmen.

**Impacted Live Entertainment Venue**
A “not-for-profit or municipally-owned performance venue designed in whole or in part for the presentation of live concerts, comedy or theatrical performances,” determined to experience or be “likely to experience negative impacts from the development or operation of a gaming establishment.”
Host Community Rights

No gaming license shall issue unless:

The governing body of the host community signs an agreement with the applicant that sets out mitigation by the applicant, including impact fees (G.L.c. 23K, §15(7), (8) and (14));

The host community votes by affirmative ballot to permit the gaming operation; and

The gaming operation complies with all local by-laws, including zoning. (Most proposals would need zoning changes.) (G.L. c.23K, §15)
Host Community Rights: Considerations in Negotiating Mitigation Agreement

- Infrastructure and Equipment Needs
- Public Safety (note special requirements re: public safety arrangements)
- Traffic Impacts
- Housing Needs
- School Impacts
- Impacts on Local Businesses
- Cross-Marketing (local restaurants, hotels, shops, entertainment venues, etc.)
- Environmental Impacts
- Process Costs (elections, town meetings for zoning changes, consultants, publication and mailings, etc.)
Host Community Rights: Recommendations for Negotiating Mitigation Agreements

Public Process
- Public Notice
- Public Hearings

Studies and Analyses
- Commission early, as they can be time-consuming
- G.L. c.23K, §15 requires $50K of each $400,000 license application fee to be set aside to reimburse host and surrounding communities for the costs of studying impacts and negotiating mitigation agreements. **However**...
Don’t rely on the c.23K, §15 money!

- Its paid only upon application for the license and negotiations should be well underway already
- $50,000 likely would not cover even the host community’s expenses - let alone the expenses of the surrounding communities
- So, request early in the process that the applicant fund a gift account under G.L. c.44, §53A to cover expenses of consultants and attorneys to review impacts and negotiate an agreement
- Request replenishment of the account well before it is depleted. (No deficit spending!) If an applicant walks away, make sure your expenses are covered by collecting the funds before costs are incurred!
The ballot question for the **host community** to vote on would be worded as follows:

Shall the city/town of ____ permit the operation of a gaming establishment licensed by the Massachusetts Gaming Commission to be located at ___________? Yes ____ No ______.

G.L. c. 23K, §15(13)

**Not** required in surrounding communities.
Host Community Rights: Ballot Question

- Only in the host community
- Only after written agreement signed with the host community
- Only after the applicant requests the election
- Happens within 60-90 days after request made
- Happens only after signed agreement is summarized and made public
- If a negative vote occurs, then six months must elapse before a new vote request can be made and a new written agreement must be signed
No gaming license shall issue unless:

- The applicant seeks the signature of the governing body of the surrounding community on an written agreement

*But*, if an agreement is not reached within a specific time frame, then the Commission shall enforce protocols that ensure “the conclusion of a negotiation of a fair and reasonable agreement” G.L. c. 23K, §17(a)
Designation is automatic if there is a signed agreement with the applicant (G.L. c.23K, §17)

If there is not a signed agreement, the Commission considers the following factors:

- The detailed construction plan
- Information provided by the public
- Population
- Infrastructure
- Distance from the establishment
PUBLIC INPUT MATTERS
See G.L. c.23K, §19(d):

“...in determining which gaming applicant shall receive a gaming license in each region, the commission shall also consider the support or opposition to each gaming applicant from the public in the host and surrounding communities as demonstrated by public comment provided by the gaming applicant or directly to the commission pursuant to section 15 and through oral and written testimony received during the public hearing conducted pursuant to section 17.”
License Public Hearing

- 30 days notice to host and surrounding communities
- Held in host community, unless the host community requests a different location
- Commission has full discretion to deny the application (G.L. c.23K, §17(g))
First, the Commission requests applications for the Category 2 License (Slots) (G.L.c.23K, §8)

Second, Commission requests applications for Category 1 Licenses (G.L. c.23K, §8(a))

Commission advertises and sets deadlines and requirements for applications (§8(a)&(b))

The Commission’s Enforcement Bureau then undertakes an investigation into and reports to the Commission on the suitable of proposed applicants (G.L. c.23K, §12)
G.L. c.23K, §15, lists 16 application requirements (to be supplemented by Commission’s Rules and Regulations):

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<thead>
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<tbody>
<tr>
<td>1.</td>
<td>Agree to be a Lottery sales agent</td>
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<td>2.</td>
<td>Capital investment of at least $500 million</td>
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<td>3.</td>
<td>Own or acquire 75 year lease on land</td>
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<td>4.</td>
<td>Meet licensee deposit requirement</td>
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<td>5.</td>
<td>Ability to pay gaming licensing fees</td>
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<td>6.</td>
<td>Address mitigation and impact issues</td>
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<td>7.</td>
<td>Identify infrastructure costs to host/surrounding communities and commit to mitigation plan</td>
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<td>8.</td>
<td>Provide signed Host Community Agreement</td>
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<td>9.</td>
<td>Provide signed Surrounding Communities agreements</td>
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<td>10.</td>
<td>Provide signed Impacted Live Entertainment Venues agreements</td>
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<td>11.</td>
<td>Pay nonrefundable application fee of $400,000</td>
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<td>12.</td>
<td>Comply with state and local building codes and local ordinances and bylaws</td>
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<td>13.</td>
<td>Favorable binding ballot vote in Host Community</td>
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<td>14.</td>
<td>Provide community impact fee to Host Community</td>
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<td>15.</td>
<td>Minority/women/veteran business outreach program</td>
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<tr>
<td>16.</td>
<td>Affirmative action program</td>
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Protect the State Lottery
Promote local businesses
Use existing work force, with training for unemployed
Partner with local hotels, restaurants and retailers to promote regional tourism
Create a “green” establishment (LEEDS, Stretch Energy Code, Energy Star, Mitigate vehicle trips, 10% Renewable Energy, Stormwater Control)
Promote minority, women and veteran businesses
Promote existing workforce
Suitability of an Applicant

- Full investigation (G.L.c.23K, §12)
  - Character/Reputation
  - Financial stability
  - Business ability/history of compliance

- Shall be established by clear and convincing evidence (G.L.c.23K, §13)

- Shall be established for applicant and associates and investors with a greater than 5% ownership interest (G.L.c.23K, §14)
Denial of a license cannot be appealed by an applicant.

Approval of a license can be appealed by a party with standing (G.L.c.30A, §14)

Since G.L. c.23K is new, standing issues will present novel questions.

Right to intervene/participate in administrative proceeding won’t always provide standing. BOH of Sturbridge v. BOH of Southbridge, - Mass.- (January 10, 2012)

BUT, “various aspects of ... [gambling enterprises] give rise to a substantial public concern about the manner in which, and by whom, it is conducted” and “situations [may arise] where a town might intervene as a party to protect the interests of its inhabitants and ... have standing to seek review” of a gambling license. Shaker Com., Inc. v. State Rac. Com., 346 Mass. 213, 216-217 (1963).
Host Municipality shall **either:**

If it has accepted G.L. c.43D (Expedited Permitting), file a proposal with the inter-agency permitting board to designate the proposed Category 1 facility as a priority development site

**or**

If it has not accepted G.L. c.43D, have the Planning Board designate a permitting ombudsman (member of the Planning Board or municipal planning staff) “to help coordinate and expedite local permitting of the category 1 establishment”
A quick look at the Fees, Taxes, and Funds, as well as the various Commissions and Committees established under the Expanded Gaming Act.
Category 1 or 2 License
- Nonrefundable application fee of $400,000
- $50,000 to be set aside to compensate host and surrounding communities for costs of studying impacts and negotiating mitigation agreements

Category 1 License Fee: At least $85M
Category 2 License Fee: At least $25M
Ongoing Fees and Taxes

Category 1 Licensees
- Daily tax of 25% of gross gaming revenue

Category 2 Licensees (Slots only)
- Daily tax of 40% of gross gaming revenue
- Daily assessment of 9% of gross gaming revenue
  (Race Horse Development Fund)

Category 1 and 2 Licensees
- Annual license fee of $600 per slot machine
- Assessments to cover any remaining costs of the Commission
- Annual fee of not less than $5 million (Public Health Trust Fund)
Funds Created by the Act

- Massachusetts Gaming Control Fund (§57)
- Public Health Trust Fund (§58)
- Gaming Revenue Fund (§59)
- Race Horse Development Fund (§60)
- Community Mitigation Fund (§61)
- Transportation Infrastructure Development Fund (§62)
- Gaming Local Aid Fund (§63)
- Education Fund (§64)
- Gaming Licensing Fund (§93)
- Local Aid Stabilization Fund (G.L. c.29, §2CCCCCC)
- Local Capital Projects Fund (G.L. c.29, §2EEEE)
Commission is Trustee

Established to finance operational activities of the Commission

Funded by initial application fees for licenses and other appropriations and funds that are subject to the Commission’s direction and control
Secretary of Health and Human Services is Trustee

Consists of annual fees (not less than $5 million) assessed under §56(e)

To fund programs dedicated to addressing problems associated with compulsive gambling
Commission is Trustee.

Receives all funds collected from the taxes on gross gaming revenues of licensees.

Funds to be distributed as follows:

- All revenue received from a Category 2 Licensee shall be transferred to the Gaming Local Aid Fund.
- Revenue from Category 1 Licensees is distributed to twelve different sources. Of particular note to municipalities:
  - 6.5% to the Community mitigation fund
  - 4.5% to the Local Capital Projects Fund
  - 20% to the Gaming Local Aid Fund
  - 10% to the Commonwealth Stabilization Fund (However, up to half of this amount shall be used to offset any decrease in local aid from the prior fiscal year)
  - 15% to the Transportation Infrastructure and Development Fund
Administered by the Commission

Consists of funds transferred from the Gaming Revenue Fund—i.e. 6.5% of revenue from Class 1 Licensees

Funds to be expended “to assist the host community and surrounding communities in offsetting costs related to construction and operation of a gaming establishment including,” water/sewer, education, transportation, infrastructure, housing, environmental issues and public safety

Funds must be sought through written appropriation request prior to February 1 of each year
Transportation Infrastructure and Development Fund –
G.L. c.23K, §62

Secretary of Transportation is Trustee

Consists of funds transferred from the Gaming Revenue Fund—i.e. 15% of revenue from Class 1 Licensees

Not less than half of funds expended shall be “dedicated for the purpose of supplementing, and not offsetting, any expenditures made for the construction and reconstruction of municipal ways” under G.L. c.6C, §4(b)
Includes funds transferred from the Gaming Revenue Fund—i.e. 20% of revenue from Class 1 Licensees

Monies from this Fund are to be distributed to cities and towns in accordance with the formula used to determine the distribution of unrestricted general government aid and shall be in addition to the balance of the State Lottery Fund
Includes funds transferred under the Gaming Revenue Fund—i.e. 14% of revenue from Class 1 Licensees

Expended by appropriation for purposes of higher education
Gaming Licensing Fund - G.L. c.23K, §93

- Receives all licensing fees (not including initial application fees)
- Funds are distributed to nine different sources. **Of particular note to municipalities:**
  - 10% to the Community mitigation fund
  - 11% to the Local Capital Projects Fund
  - 5% to the Local Aid Stabilization Fund
  - 14.5% to the Transportation Infrastructure and Development Fund
Massachusetts Gaming Commission (G.L. c.23K, §3)

- 5 Commissioners (1 appointed by Governor; 1 by Attorney General; 1 by Treasurer/Receiver General; and 2 by majority vote of Governor, Attorney General and Receiver General)

Gaming Policy Advisory Committee [G.L. c.23K, §68(a)]

- 13 members: Governor or his designee (chair); 2 members of the Senate; 2 members of the House of Representatives; Commissioner of Public Health or his/her designee and eight persons appointed by the Governor.
- Advisory only—makes recommendations re: “matters of gaming policy”
Subcommittee on Community Mitigation [under the Gaming Policy Advisory Committee (G.L. c.23K, §68(b)]

- 12 members (including representatives from each host community, the Commission, the MMA, appointees of the Governor, and others)
- Shall develop recommendations to be considered by the Commission to address issues of community mitigation as a result of the development of gaming establishments, including how to expend monies from the Community Mitigation Fund

Each region may establish a local community mitigation advisory committee [G.L. c.23K, §68(e)]—May designate one member to represent the region on the Subcommittee on Community Mitigation
In conclusion:

Thank you for your participation!

Please feel free to contact us for more information or for any assistance you may require.

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