

Testimony of Attorney General Martha Coakley
Senate Informational Hearing on Gaming

June 29, 2009

Good morning Chairman Spilka, and members of the Committee. Thank you for this opportunity to discuss the various regulatory aspects of expanded legalized gaming. Today, I would like to identify various regulatory and law enforcement issues that must be addressed before and while you consider legislation to allow legalized gaming facilities, such as casinos or slot machine sites, in the Commonwealth if you intend to do so. I understand that today you are not considering any particular bill or proposal.

I intend today only to raise various issues and questions without providing specific recommendations on how they should be resolved.

Proponents of gaming have claimed, and continue to claim, that gaming facilities will generate economic growth, jobs and revenue for the Commonwealth itself. I assume that the possibility of revenue for the Commonwealth is the primary reason that the Legislature may undertake to legalize forms of gaming that are currently illegal. Therefore, I firmly believe that the promise of revenue must be examined with great scrutiny to determine whether or not that promise has included all the start-up and ongoing costs, and all the social-economic impacts to determine whether it is a good bargain for the Commonwealth.

When considering expanded legalized gaming for the Commonwealth, we should not only use realistic job and revenue estimates; we need also to take into account the full costs of regulating gaming activity, including the costs of effective regulatory oversight, law enforcement, and public health and consumer protection measures.

Moreover, based on historical experience in other states, it would be irresponsible to bring gaming facilities to Massachusetts unless we have the proper regulatory framework and law enforcement structures and tools already in place, even before some of the debate takes place. We are all familiar with the extensive history of criminal prosecutions in other states -- at the municipal, state, and federal level -- of gaming facility operators, employees and public officials alike. Understand that this is a cash industry with the inherent potential for fraud, corruption, and criminal activity. The aim of regulatory and enforcement structures is to prevent such activity and to protect consumers and public health.

1. Regulatory Structure

In designing an appropriate regulatory structure, there are several basic questions to address.

- A. Type of regulatory body. The government body with primary jurisdiction to regulate gaming can take different forms. Whether called a department, board, agency or commission, the regulatory entity must have sufficient regulatory powers to properly oversee the gaming industry.

The regulatory entity must also be accountable, while effectively insulated from potential political pressures and industry capture. Care must be taken to consider how that the regulatory entity is structured.

- i. Will it be a commission type with multiple commissioners or a single overseer?
- ii. Who should make the appointments and employee hires?
- iii. Will there be terms of years and term limits? Are they staggered? Under what conditions can they be removed from office, and if so, by whom and on what grounds? What are the qualifications to be employed by the regulatory entity and who makes that determination?

Each state with gaming facilities handles these important details in different ways. In Michigan, for example, there is a Gaming Control Board within the department of the treasury with five members, all appointed by the governor with the advice and consent of the state senate. The statute requires political party balance among the membership. In Pennsylvania, three members of the independent Gaming Control Board are appointed by the governor, and another four are appointed by respective majority and minority leaders of the state house and senate. The involvement of legislative officials in appointing commission members raises policy and legal questions.

B. Nature of service.

- i. Should members and employees of a regulatory entity be required to serve full-time, or can they hold other jobs as well?

- ii. What is the proper level of compensation for regulatory entity members? It will depend on the level of work involved and controls over the level of compensation; while it is important to have qualified regulatory employees to regulate and oversee the gaming industry, it is also important to attempt to prevent any actual or potential conflicts of interest.

C. Conflicts of interest.

- i. What will be the rules concerning the types of financial interests that such employees and their families must avoid and/or disclose?

- ii. What clear revolving door rules will be adequate to prevent regulators from unduly favoring potential future employers? For instance, Pennsylvania law prohibits Gaming Control Board members from accepting employment with any gaming entity or affiliate for two years after leaving the Board. Should this be extended to other entities not directly employed by the board such as local or state police, and local officials and employees where the gaming facility is located?

D. Funding.

- i. How do you provide for a sufficient independent source of funding for any regulatory agency?

- ii. How do you ensure that a dedicated revenue stream from a portion of gambling proceeds -- which would ensure both that the regulatory agency has sufficient resources and is free from outside influences related to its budget -- is properly administered and audited?

E. Ethics and gift measures.

- i. With respect to the governance structure, are additional ethics protections needed for gaming regulators above and beyond those already in our state ethics laws? For example, in Michigan, gambling regulators are subject to an independent set code of ethics. Just last week, you and your colleagues enacted a strong, wide-reaching bill that closes gaps in our state ethics and lobbying laws. I applaud your work on that bill. However, with respect to the unique nature of the gaming industry, we should consider whether our new gift ban provisions are tough enough.

- a. For instance, the new law prohibits all gifts to public employees by lobbyists. Should the regulatory entity's employees be prohibited from receiving gifts from any person with any interest in gaming, however remote?
- b. The new lobbyist gift ban applies to a public employee's spouse and dependent children. With respect to gaming regulators, should lobbyist and other gift bans apply more broadly to other family members, such as in-laws, siblings, and grown children?

2. **Licensing Process**

A second set of issues concerns the process by which the regulatory entity issues licenses to gaming applicants. There are several important aspects of this stage to consider.

A. Locations of gaming venues.

- i. Should locations for gaming facilities should be designated by the legislation itself, or instead established by the regulatory entity?

The Legislature would have legitimate policy interests in dictating the criteria for appropriate gaming sites, such as proximity to urban areas and impact on the regional infrastructure to support such a facility.

All localities will be affected by the presence of a gambling establishment, including increases in housing needs, school enrollment, traffic impact, water and sewer usage or tangential crimes such as driving under the influence of alcohol. These and other issues impacting the host community must be addressed.

- ii. Regardless of how the site selection process is designed, how can it be carried out in a transparent way so that the public is assured that sites are selected based on valid and meritorious criteria, rather than with hidden influence from interested parties.

B Qualifications for bidders.

- i. Beyond the applicant's ability to pay the upfront application fee, what will be the level of scrutiny as to whether the applicant is able to carry through on the requirements and provisions of the legislation, regulation and its own application? Should companies with prior records involving criminal conduct, environmental and labor violations, or other past problems be allowed to bid? Are there other qualifications that should be specified by statute or regulation? What happens if the selected applicant fails to implement the development? What about showing adequate financing given the difficulties of today's economic market?

- ii. Employee background checks. In Massachusetts, CORI law and reform issues have generated significant emotion and passion on both sides of the debate. When it comes to the gaming industry, what will be the initial level and ongoing type of careful consideration given to background checks that should be required for employees of all gaming licensees?

- iii. De-licensing and transfers of licenses. Legislation that authorizes licensed gaming must also establish processes for the de-licensing of a gaming facility for serious violations. And, if a gaming facility is de-licensed, who should take over the facility? Should the license be put out to bid?

Are there other types of successor-in-interest provisions necessary in the event a licensee declares bankruptcy?

Should the licensee be prevented from selling or transferring its license? The state should never find itself in a situation such as Rhode Island, where its state legislature is now addressing Twin Rivers' chapter 11 reorganization filing.

While not every contingency can be predicted, a commission should have the ability and flexibility to address, in a transparent way, different situations as they arise in order to protect the state's interests.

3. Governmental Oversight

A. Monitoring and oversight.

Any gaming legislation will have to address which state officials will be charged with monitoring and overseeing the regulatory entity's employees. Will it be the Attorney General's office, the State Police, or some other entity?

How many additional and permanent oversight officials will be needed to audit and inspect financial records, gambling machines, table game practices, and other activities?

For example, in New Jersey, the Attorney General's office includes a separate Division of Gaming Enforcement, with investigators who monitor 11 casino operations on a day-to-day, 24-hour-a-day basis. The entire Attorney General's office comprises approximately 1,000 employees; roughly 500 are part of the Division of Gaming Enforcement. In other states, primary responsibility for monitoring and supervising a casino's finances, machines and operations lies with the regulatory entity.

B. Financial audits.

What additional statutes, regulations and resources will you need if you pass legislation that authorizes gaming, to establish the necessary financial audits and other oversight that the primary regulator will be entitled to conduct ?

C. Rules regarding clientele.

With respect to oversight, legislation should also take into account rules regarding prospective clientele. For instance, Pennsylvania law allows a gaming entity to exclude or eject any person convicted of a prior misdemeanor or felony committed in or on facility premises. Pennsylvania also has a provision for individuals to “self-exclude” themselves from gaming venues – a person can voluntarily put his or her name on a list because he or she is a problem gambler. Both types of exclusion rules can serve obvious public health and safety goals. At the same time, if casino or slot hall operators are given access to lists of people with criminal records or self-identified gambling problems, strict rules must be adopted to protect the confidentiality of those lists.

4. Law Enforcement

Proper monitoring and oversight on a regular basis by a regulatory body is critical to identify and prevent potential violations. However, once violations occur, there is a critical law enforcement role for which Massachusetts currently has insufficient investigatory, statutory and resources to assume.

A. Critical law enforcement tools.

Before the legislative debate on gaming even begins, the Commonwealth must have the law enforcement tools necessary to combat potential illegal influences both during the legislative debate and after proposed legislation becomes law in the Commonwealth.

To that end, I urge you to enact legislation that targets:

- Money Laundering;
- Enterprise Crime; and
- Updates to our Wire Interception Law.

Aside from these critical tools, we will have to examine the need for additional crimes directly related to gaming to prevent fraud and corruption such as cheating, counterfeiting, and so on. Also, existing state laws regarding illegal gaming may need to be update to reflect today's technology, such as the state's illegal telephone wagering law.

B. Jurisdiction.

In addition, you must consider whether legislation should dictate who will have the primary law enforcement responsibility for crimes committed on gambling facilities property or involving a facility. Should it be the Attorney General or the District Attorney, or both? Do State Police and/or local police have jurisdiction at the gaming facility? It should be clear where the jurisdiction lies and whether or not it is joint, to mitigate confusion and duplication of issues, and to provide clear responsibility for complaints or tips so that alleged violations do not go uninvestigated.

5. Protecting Public Health

A. Public health.

Just as important as protecting public safety is protecting public health from the potential ills associated with gaming. Any legislation must address the issues of compulsive and addictive gambling, underage gambling and other public health concerns. There must be a commitment by the state to ensure there are sufficient resources to address social impacts arising from gaming. Providing adequate resources for the localities, particularly but not limited to local police and district attorneys, is critical for those affected by the presence of a gambling establishment in their communities. Potential effects could also result from an increase in housing needs, school enrollment, or tangential crimes such as driving under the influence of alcohol, and these must be considered.

B. Consumer protection.

Consumer issues include:

- a. easy dispute resolution for customers by the gaming commission;
- b. potential for deceptive or coercive debt collection practices against gaming customers. Additional funding may be needed to provide mediation, as well as monitor and pursue illegal debt collection activity that violates consumer protection laws.

c. Another consumer issue involves privacy; do we need added measures to protect the privacy interests for individuals who use credit cards or other ways to pay for gaming activities, hotel room rentals or food, beverage and entertainment? Many businesses sell lists of their customers to marketing firms or others. When it comes to casinos and slot halls, we may wish to have added protection for clients – the gaming marketing equivalent of “do not call” telephone lists. The gaming industry, while it is often customer friendly, does aggressively advertise and promote services to its customers, especially through customer reward membership programs. Customers should be able to refuse participating in a reward membership program, and those in the program should be able to control how much information they are to receive from the gaming licensee.

6. Costs and resources

All of these structures, oversight mechanisms, and law enforcement and public health considerations will cost money both in the start-up phase and on an annual maintenance basis. It is crucial to accurately estimate costs of operating a gaming regulatory entity and a licensing regime, and of overseeing gaming operations, investigating and prosecuting gaming violations, and protecting public health. There may be unanticipated cost associated with larger investigations that may require additional funds and personnel, and the gaming commission should be able to charge or assess the unexpected additional costs back to the gaming licensee.

We must not underestimate such costs, and be prepared to spend what is necessary to ensure that all of the proper controls are in place and effective. That cost has to be identified, and included in the cost-benefit analysis for the Commonwealth in any reasonable debate on the financial benefits of pursuing enhanced legalized gaming in Massachusetts.

7. **Miscellaneous issues**

Two other issues merit brief mention.

Indian gaming. The Supreme Court's decision this past February in the Carcieri case effectively puts the Wampanoags and other tribes in Massachusetts on the same footing as any other private party because the Secretary of the Interior's ability to acquire land for Native Americans is limited to those already under Federal Jurisdiction at the time the Indian Reorganization Act was enacted in 1934. Massachusetts' Native American tribes each came under Federal Jurisdiction after 1934. As a result, they are entitled to make an application and bid for a gaming license like anyone else, but do not have special entitlement to conduct gaming under the federal Indian Gaming Regulatory Act or the Indian Reorganization Act. You should be aware that this may change depending on whether Congress desires to revise these laws.

However, to the extent that a tribe may end up gaining a license, there are unique issues related to tribal jurisdiction and immunity that would affect how the Commonwealth would be able to regulate that tribe's activity.

Internet gaming. Another broad issue to consider is whether legislation to authorize gaming facilities should address on-line gaming. Illinois and Nevada have express provisions prohibiting on-line gambling. The issue is complex and raises a host of state and federal jurisdictional and policy questions.

Conclusion

I appreciate the opportunity to come before you today to talk about the protective mechanisms that must be considered in any legislation to legalize gaming in the Commonwealth. Please feel free to contact me and our staff as you consider all these issues in the future. We believe we can be a useful resource for you, and for the Commonwealth, if and when a debate begins in earnest as to the whether or not Massachusetts should consider additional legalized gaming.