

**A Nuts and Bolts Introduction to the State of
Gaming in Massachusetts**

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In the coming months the Massachusetts Gaming Commission will issue the Commonwealth's very first casino license. The development of this new and soon-to-be rapidly growing gaming economy in Massachusetts is set to create any number of challenging legal issues for all those involved. In the first of a series of newsletters following the development of Massachusetts casino gaming and its laws and regulations, AP&S is providing a primer on the current state of Massachusetts gaming and on what to expect in the coming months as the state gears up for its foray into legalized gaming.

General Background:

On Nov 22, 2011, Deval Patrick signed the Expanded Gaming Act into law. The act is largely codified at M.G.L. c. 23K, although it also had effects on several other statutes, including some criminal laws and tax laws, for example. The Expanded Gaming Act allows for the establishment of a maximum of four new casinos in the Commonwealth, and the four potential casinos are broken down into two categories:

Category 1 – Resort casinos

Category 2 – Slots only

The law allows for the creation of **one** Category 2 casino, as well as **three** Category 1 casinos located in three geographically diverse regions of the state.¹ The legislation divides the geographic regions up by county, with a maximum of one Category 1 casino per Region as follows:

Region A – Suffolk, Middlesex, Essex, Norfolk and Worcester counties

Region B – Hampshire, Hampden, Franklin and Berkshire counties

Region C – Bristol, Plymouth, Nantucket, Dukes and Barnstable counties

¹ See M.G.L. c. 23K, §§ 19-20



The enforcement and implementation of the Expanded Gaming Act and the issuance of the state’s casino licenses is done primarily through the newly created Massachusetts Gaming Commission. To date, the Gaming Commission has not yet issued any casino licenses.

General License Application Background:

Roughly speaking, the application process is broken down into two phases. In the Phase 1 application, the gaming license applicant as well as its shareholders, members, officers, directors and other interested parties are required to undergo a thorough background check.³ The background check includes an analysis of the applicants’ criminal history, moral character, financial capabilities, and experience with the gaming industry, among numerous other criteria. Before the applicant can move on to the second phase of the application process, it must hold and pass a referendum in the community where the proposed casino will be. If that passes, and if the Commission finds that the applicant passes the Phase I application, it can then submit a Phase 2 application. The Phase 2 application is focused mostly on the suitability of the proposed location for the casino, including its impact on the surrounding communities, its impact on the Massachusetts lottery, its ability to utilize sustainable energy, its ability to promote local businesses, and a litany of related criteria.⁴ Following the submittal of the Phase 2 application, there are additional public hearings, after which the Commission will decide to whom to grant the gaming licenses.

Applicant Status and Timeline (Slots Casino)

There are currently 3 remaining applicants for the one slots casino license. They are as follows:

Applicant	Host	Host	Host Community	Suitability
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² Picture courtesy of <http://www.massgaming.com>
³ See generally M.G.L. c. 23K, §§ 12, 16, 46-47; 205 CMR 115.0 et seq. – 117.0, et seq.
⁴ See generally 205 CMR 118.0 et seq. – 120.00 et seq.

	Community	Community Agreement	Referendum	Determination
<u>Raynham Park, LLC</u>	Raynham	Signed 6/11/13	8/13/13 YES: 86.1% No: 13.7%	POSITIVE suitability determination 8/5/13
<u>PPE Casino Resorts (Cordish)</u>	Leominster	Signed 7/18/13	9/24/13 YES: 62.0% No: 38.0%	POSITIVE suitability determination (with restrictions) 7/11/13
<u>Penn National Gaming, Inc</u>	Plainville	Signed 7/8/13	9/10/13 YES: 76% No: 24%	POSITIVE suitability determination 10/3/13

The slots applicants have already completed both the Phase 1 and Phase 2 applications. According to the Gaming Commission, they expect to issue the Category 2 Slots Only Casino License in late December '13 or early January '14.

Applicant Status and Timeline (Resort Casinos)

There are currently 4 applicants for the 3 possible resort casino licenses. The applicants can be broken down by the Regions in which their applications are pending:

Region A

Applicant	Host Community	Host Community Agreement	Host Community Referendum	Suitability Determination
<u>Suffolk Downs</u> (Sterling Suffolk Racecourse, LLC)	East Boston, Revere	Signed 8/27/13	11/5/13 East Boston: NO: 56% ⁵ Yes: 44% Revere: YES: 59% No: 36%	POSITIVE ⁶ suitability determination 10/30/13

⁵ Because Suffolk Downs' East Boston referendum failed, the casino cannot be built in East Boston. There are reports of a possible relocation of the casino to be entirely within the city of Revere. See Mark Arsenault, [East Boston rejects casino in Suffolk Downs](#), The Boston Globe (Nov. 6, 2013).

⁶ Suffolk Downs' suitability determination came with a bit of fanfare as Suffolk Downs cut ties with its host casino, Caesar's. See David Wedge, [Suffolk Downs cutting ties with Caesars for casino bid](#), The Boston Herald (Oct. 18, 2013). As of 11/14/13, Suffolk Downs had not partnered with another casino.

<u>Wynn MA, LLC</u>	Everett	Signed 4/19/13	6/22/13 YES: 86.46% No: 13.54%	Suitability determination expected in November/December
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Region B

Applicant	Host Community	Host Community Agreement	Host Community Referendum	Suitability Determination
<u>MGM Springfield</u>	Springfield	Signed 5/14/13	7/16/13 YES: 57.7% No: 42.3%	Suitability determination expected in November/December

Region C

Applicant	Host Community	Host Community Agreement	Host Community Referendum	Suitability Determination
<u>KG New Bedford, LLC</u>	Region C	N/A	N/A	N/A

The Phase 1 applications and investigations for Regions A and B should be completed within the coming weeks, after which time there may be a clearer picture of the field of potential applicants. The Phase 2 application deadline for Regions A and B is on December 31, 2013, and the Commission expects to award the Region A and B casino licenses in April 2014.

Region C and the Mashpee Wampanoag Tribe

It is as of yet unclear whether the Commission will issue a casino license for Region C. This is because of the potential rights of the Mashpee Wampanoag tribe. Although the Mashpee Wampanoag tribe does not, as of yet, have a gaming license, they have a potential to get one under federal law and they are in the process of moving forward with seeking gaming rights at the federal level. The Mashpee Wampanoag tribe has plans to build a resort casino in Taunton, but their right to build is contingent on the federal government's approval of a land-in-trust application, as well as state and federal approval of a Tribal-State compact. When or whether these contingencies will be met is uncertain. Lawmakers had been concerned whether the market could support more than three casinos statewide, and had thus stalled in opening the application process for Region C, the region in which the Mashpee Wampanoag

casino would be built. Nevertheless, in recognition of the uncertainty surrounding the Mashpee's proposed casino, the Commission allowed interested parties to apply for a casino license in Region C.

Currently, the application deadline for Region C's Phase 1 applications has passed and the Commission will presumably begin the Phase 1 background checks on KG New Bedford, LLC, the sole Region C applicant. Although there is currently only one applicant for the Region C license, applicants who are currently seeking casino licenses in other regions may re-apply in Region C without having to submit a new Phase 1 application or application fee. Phase 1 suitability determinations for this Region are not expected until May of 2014, and whether the Commission will ultimately determine to issue a Region C license remains uncertain.

Gaming on Martha's Vineyard

On Tuesday, November 12, 2013, the Aquinnah Wampanoag Tribe stated that it had received federal approval to build a gambling facility on Martha's Vineyard.⁷ The Aquinnah Wampanoags cited a [legal opinion](#) by Eric Shephard, the Acting General Counsel to the National Indian Gaming Commission, for the proposition that its land was eligible for certain gaming activities. In the opinion, Mr. Shephard explained that the Indian Gaming Commission believed that the Aquinnah Wampanoag's lands were subject to the Indian Gaming Regulatory Act (IGRA), and were eligible for gaming activity. If Mr. Shephard's opinion is correct, the Aquinnah tribe will be eligible to establish a Class II gambling facility under IGRA. Such a facility could offer bingo and poker games as well as some types of slot machines, but not blackjack or other casino-style table games. The tribe has said that it will ask Gov. Deval Patrick's administration to begin negotiations on a state compact that would allow the tribe to operate a full-scale resort casino. The Patrick administration has historically taken the position that the Aquinnah Wampanoags could not engage in gaming on their land because of the Massachusetts Indian Land Claims Settlement Act.⁸ The Settlement Act, enacted by Congress in 1987, subjects the Aquinnah Wampanoag's lands to state law. How this issue will play out remains to be seen.

Conclusion

The coming weeks and months will likely see a flurry of gaming activity in the Massachusetts headlines. AP&S will explore these updates and the specifics of the Expanded Gaming Act and its regulations in subsequent newsletters.

For more information please contact our Gaming Law Practice Group Chair, Jonathan Sachs, at (617) 482-0600 or jsachs@apslaw.com

⁷ See Katherine Q. Seelye, [Tribe Claims Approval for Martha's Vineyard Casino, Reviving Fight](#), The New York Times (Nov. 12, 2013).

⁸ 25 U.S.C. § 1771g