

New York State Gaming Commission 11-8-2021

[Williams]

New York State Racing, Pari-Mutuel Wagering and Breeding Law § 102 provides that the New York State Gaming Commission shall consist of seven members appointed by the governor by and with the advice and consent of the Senate. Four members, confirmed by the New York State Senate, are necessary to afford the Commission an ability to establish a quorum and undertake action.

This present meeting of the Commission is now called to order.

This meeting is being conducted in conformity with Chapter 417 of the Laws of 2021. Part E of such Chapter authorizes State and local government entities to meet and take such action authorized by law without permitting public in-person access to meetings and authorizes such meetings to be held remotely by conference call or similar service, provided that the public can view or listen to such proceeding and that such meetings are recorded and later transcribed.

Accordingly, this Commission meeting is being conducted in conformance with such allowance and we are both allowing the public to listen to our proceeding and recording today's meeting for transcription, as required.

Ms. Secretary, please call the roll.

[Buckley]

Commissioner Crotty, Commissioner Moschetti, Commissioner Poklemba, Commissioner Riaño, Commissioner Sample and Commissioner Skurnick.

Ms. Secretary, please have the record reflect that a quorum of qualified members is present, thus enabling transaction of business.

[Sample]

I apologize for the delay. I have requested that Commissioner Moschetti preside over today's meeting.

[Moschetti]

Minutes of the Commission meeting conducted on August 16, 2021 have been provided to the members in advance. I note that the initial document circulated was incorrect and that a correction was made. We are considering the revised draft. At this time, I'd like to ask the members if there are any edits, corrections, or amendments to the revised draft.

Ms. Secretary, please let the record reflect the minutes were accepted.

Mr. Williams, our first item please.

[Williams]

Chapter 59 of the Laws of 2021 amended N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1367 and added a § 1367-a to authorize mobile sports wagering when the sports wager is made through virtual or electronic means from a location within New York and is transmitted to and accepted by electronic equipment located at a Licensed Gaming Facility. The statute directed the Commission to conduct a competitive bidding process to award licenses to Mobile Sports Wagering Platform Providers.

Pursuant to that authority, on July 9, 2021 Commission staff issued a Request For Applications or RFA to award a license to at least two Mobile Sports Wagering Platform Providers such that the result would be the hosting of no less than four Mobile Sports Wagering Operators.

On August 9, 2021, the Commission received six Applications in response to the RFA, with a cumulative associated 14 operators. The primary applicant of the six bids were:

Hillside (New York) LLC dba bet365, Sports Information Services Limited dba Kambi, and colloquially referred to as Kambi #1, Betfair Interactive US LLC dba FanDuel Sportsbook, TSG Interactive US Services Limited dba FOX Bet, Sports Information Services Limited dba Kambi and colloquially referred to as Kambi #2, Score Digital Sports Venture Inc. dba theScore BetAn, awarding and mobile sports wagering license to a platform provider. The commission was required to follow the provisions of section 3367 a.

In awarding a Mobile Sports Wagering License to a Platform Provider, the Commission was required to follow the provisions of § 1367-a, which required the evaluation of an applicant based on factors designed to ensure maximized sustainable, long-term revenue for the State.

An evaluation committee conducted a fair, comprehensive and impartial evaluation of all applications, timely received and scored by consensus on the evaluation criteria, set forth in section 7.2 of the RFA.

That section provides that applicant must meet or achieve a specific technical support to advance for consideration potential license themselves.

That section provides that an applicant must meet or exceed a specific technical score threshold to advance for consideration for potential licensure.

Applications were evaluated based on specific criteria: expertise in the market by the applicant and the applicants proposed operators was valued it up to 25 points. Integrity sustainability and safety of the mobile sports wagering platform are valued up to 20 points. Past relevant experience of the applicant, and the applicant proposed operators were valued it. Capacity to rapidly and efficiently bring Authorized Sports Bettors into the Applicant's Platform were valued at up to 2.5 points. Applicant's efforts to foster racial, ethnic, and gender diversity in Applicant's workforce and the each of the Applicant's proposed Operators' workforce were valued at up to 2.5 points and Other factors impacting revenue to the State were valued at up to 2.5 points

The maximum cumulative score for technical factors was 75 points. With a bonus possibility of 5 additional points dependent upon whether an applicant had a signed agreement or agreements with Native American tribes or nations that are party to a compact with the State.

Only those with a technical factor score -excluding the Native American bonus, if any - at or exceeding 60 points out of 75 points were deemed to be a Qualified Applicant.

Out of the 6 bids received only 3 were advanced as qualified applicants.

Those advanced were Hillside, New York LLC DBA bet 365, Betfair Interactive, Betfair Interactive US LLC dba FanDuel Sportsbook, Sports Information Services Limited dba Kambi #2.

Pricing was only considered for the three advancing applicants after the finalization of the Technical Factor scoring. Points for pricing were, pursuant to RFA Section 7.2, based on a sliding scale, with a tax of: 12.5 percent up to 30 percent valued at up to 3 points, 30 percent up to 40 percent valued at up to 10 points, 40 percent up to 50 percent valued at up to 15 points and 50 percent valued at 20 points

A Qualified Applicant was also awarded an additional point for each full percentage point over 50 percent. Points or pricing we're pursuant to RFA section. 7.2.

A Qualified Applicant's final total score was computed by adding the Technical Factor Score, the Tribe or Nation Bonus (if any), and the Pricing Factor Score

The Evaluation Committee identified Kambi #2 as the Selected Applicant, meaning their application received the highest Total Score. Since their application reached the minimum requirement of two Platform Providers and four Operators without inclusion of other applications, Kambi #2 was the sole applicant selected for initial award.

Accordingly pursuant section 7.4 of the RFA, the evaluation committee established Kambi #2 Tax Max rate matrix as the final tax rate matrix and on October 18th, 2021, all qualified applicants were sent the final tax rate and informed that they had 5 business days from to amend their RFA Appendix B, pricing matrix submission to conform with the final tax rate matrix.

All did enabling the evaluation committee to proceed to an additional license evaluation.

Before each Commission Member is the Report of the Evaluation Committee established for the purposes of evaluating bids submitted pursuant to the New York State Gaming Commission REQUEST FOR APPLICATIONS FOR Mobile Sports Wagering Platform Providers.

The evaluation committee unit unanimously advanced for licensing award as a platform provider: Sports Information Services Limited dba Kambi, with American Wagering, Inc. dba Caesars Sportsbook; Empire Resorts, Inc. dba Resorts World; PointsBet New York LLC dba PointsBet; Rush Street Interactive NY, LLC dba Rush Street Interactive; and WSI US, LLC dba WynnBET as Platform Providers and/or Operators. The proffered tax rate for this bid was 64 percent.

Pursuant to Section 1367-a(4)(d) of the racing, pari-mutuel wagering and breeding Law, the evaluation committee could recommend award of additional licenses to Qualified Applicants if the Committee determined that such additional awards were in the best interests of the State, provided additional licensees pay the same tax rate as that initially selected.

In conducting the additional license review, the Committee considered: the likelihood that the Selected Applicant would be able to achieve full market potential without additional licensees, the likelihood that adding the next highest scoring applicant would result in a larger aggregate market and the impact on long-term revenue to the State by adding the next highest scoring applicant.

To make this determination, the Evaluation Committee reviewed the market analysis materials submitted by the Applicant in addition to undertaking its own supplemental analysis, to determine whether the aggregate revenue to the State was higher than the aggregate revenue without the additional Platform Provider(s) and Operator(s) associated with the next-highest-scoring remaining Qualified Applicant.

The supplemental analysis was to provide a check to the market analysis materials submitted by applicants, which were generally prepared in a manner to advance their position rather than provide independent analysis.

Pursuant to RFA Section 7.5, the evaluation committee considered the remaining qualified applicants sequentially, taking the highest ranking applicant based on technical scoring first.

The Evaluation Committee determined that inclusion of Betfair Interactive US LLC dba FanDuel Sportsbook as an additional Platform Provider and Operator with Bally's Interactive, LLC dba Bally Bet; BetMGM, LLC; and DraftKings as Platform Providers and Operators was in the best interests of the State.

Inclusion of this bid lowered all tax rates to 51 percent.

The Evaluation Committee then considered whether the addition of bet365 would be in the best interests of the State. The inclusion would reduce the overall tax rate from 51 to 50 percent and increase the number of Platform Providers from 8 to 9 and the number of Operators from 9 to 10.

The committee was unable to make a positive determination that the addition the committee was unable to make a positive determination that the additional license awards about 365 would be in the best interest of the state as the totality. The information reviewed could not support a finding that their licensure would expand the mobile sports wagering and increase the aggregate revenue to the state.

Finally, pursuant to RFA Section 8.1, term of license, the term of license awarded was designated to correspond to the Final Tax Rate Matrix, with a three year Term of License if the Final Tax Rate were 12.5 percent up to 30 percent, 5 years if the Final Tax Rate were 30 percent up to 50 percent, and 10 years if the Final Tax Rate were 50 percent and over. Accordingly, a term of ten-years is recommended.

[Sample]

Are there any questions regarding the Report of the Evaluation Committee?

Do any other commissioners have questions regarding the report as the evaluation committee?

Hearing none.

May I have a motion to accept the licensure recommendations of the evaluation committee, which recommends the Advancement of May I have a Motion to accept the licensure recommendations of the Evaluation Committee which recommends advancement of

Sports Information Services Limited dba Kambi, with Operators American Wagering, Inc. dba Caesars Sportsbook; Empire Resorts, Inc. dba Resorts World; PointsBet New York LLC dba PointsBet; Rush Street Interactive NY, LLC dba Rush Street Interactive; and WSI US, LLC dba WynnBET; and Betfair Interactive US LLC dba FanDuel Sportsbook with Operators Bally's Interactive, LLC dba Bally Bet; BetMGM, LLC; and DraftKings as Operators was in the best interests of the State at a tax rate of 51 percent for a term of 10 years?.

[Crotty]

There were some issues and we had address those and went through them at some level, uh, prior to this.

So, here today, and then that they were clarifications on a variety of things within the document, and within the process itself, and it had upon. Asking those questions and get to that. I was satisfied that that report good recommendations. I just wanted to note this for the record.

[Moschetti]

So, in order to John, and I believe a couple other a couple other people have questions as well and those who raise presumably sufficiently answered anyone else. So we're in the posture.

I'm looking for a 6th, any further discussion on the motion. Hearing none all in favor. Aye.

All right.

[Sample]

The motion carried now that recommendation for licensing has been approved, can you provide a brief overview on the steps necessary for mobile sports wagering to commence?

[Williams]

Chapter 59 of the laws of 2021 did not create a new licensing scheme for mobile sports wagering, rather the RFA and the proposals to be considered per commission adoption have platform providers licensed equivalent to a casino vendor enterprise. Additionally entities

offering goods and services that directly relate to the gaming activity with a mobile sports wagering platform provider are also required to be licensed equivalent to a casino vendor enterprise.

As part of the RFA process, each bidder was required to submit materials necessary for licensing of the platform provider and all associated, or affiliated operators within the bed. All complied and bureau of licensing processed all the materials necessary for the selected platform providers and their operators.

All recommended bidders are positioned to receive an award of temporary license and will be conditionally licensed today should the commission adopt the proposed rules.

Each qualified bidder has been informed that they themselves may select a gaming facility, wherein to house its servers, with the commission retaining final approval of the location, not to be unreasonably withheld as well as the review and approval of reasonable and actual costs of physically housing and security the service.

If an agreement cannot be reached between a platform provider and a gaming facility, the commission is reserved its authority to order a housing location.

According with each license platform provider must construct a server room meeting their requirements. They need to get their software tested and approved by an independent testing laboratory to ensure that it operates and accordance with any commission published standards, they need to satisfy all other statutory and regulatory obligations, such as provision and approval of final internal controls, governing the approved activity, assurances regarding geo fencing and state borders, and the payments of license fee at a practical level, presuming regulation adoption. It would be in the control of the recommended bidders when they become operational and thus get to market.

[Moschetti]

New York Racing, Pari-Mutuel Wagering and Breeding Law section 104.19 state authorizes the commission to promulgate rules the regulations that it deems necessary to carry out its responsibilities. Therefore, the commission will from time to time propagate rules and rule amendments pursuant to the State Administrative Procedure Act. Today we have 3 rules for consideration, 2 adoptions in 1 proposal.

[Williams]

For commission consideration, adoption of regulations to govern mobile sports wagering.

And related amendments, regulations, governing in person sports wagering at the four licensed commercial casinos.

This proposed rule making would establish regulations for mobile sports wagering, and a new part 5,330, which would address definitions, various licensing requirements, system requirements, operational aspects and requirements, integrity, protections, accounting and

financial records requirements, patron account requirements, promotions, regulatory costs and anti money laundering program requirements as well as the geo fencing.

Where appropriate the proposed mobile sports wagering requirements, mirror regulatory requirements already in place for sports wagering at the commercial casinos.

Revisions are also proposed to the existing part 5,029 to incorporate new statutory requirements and update statutory cross references, definitions and nomenclature distinguished regulatory requirements, applicable to sports wagering operated by commercial and the potential mobile sports wagering operations. Wagering restrictions for casino and mobile sports, wagering employees and related persons have also been standardized

Comments were received from 7 entities.

Bulletproof, Draft Kings, the New York Racing Association Inc, The New York Thoroughbred Breeders Inc, the New York thoroughbred Horseman's Association Inc., Penn National Gaming and Sport Radar.

Working alphabetically

Bullet Proof, a subsidiary of the independent gaming test laboratory GLI is an IT security consulting firm. They articulated four comments.

Bullet proof, recommended that in line, be added to sections 5329. 10 and 5330.10 a, authorizing the commission to adopt additional technical amendments or requirements against which all licensed independent gaming test laboratories must test for compliance.

This they stated would allow the commission flexibility of adopting additional technical requirements outside rules, which is a practice in effect in Colorado, Michigan, Tennessee, and Wyoming.

Staff agrees with this change and suggests language.

To reflect such Bullet proof also suggest the additional language to section 5,330. To clarify and identify a section in the rules specifically geo location.

Staff agrees that the exchange would clarify geo location related requirements and permit the opportunity for future explanatory bulletins to provide detail if necessary.

Accordingly, staff suggest that previously outlined sections related to geo location be relocated under a new section 5330.44.

Bullet proof suggests that language in section 5,330 requiring changes and upgrades to the mobile sports wagering server, or other hardware and software used to execute mobile sports wagering be recertified before implementation, be specifically reflecting in part. 5,329.

Staff agrees as this practice has already been required of retail sports, setting operations within the commercial.

Bullet Proof suggested addition of language to section 5329.32 to require independent system integrity and security assessments be undertaken at a time certain after launch.

Staff notes that 5329.32 applies to retail sports wagering, which is already launched and notes that 5330.32 simply reflects and applies retail standards, the mobile. As the commission requires testing, prior to launch, we find the additional language unnecessary.

Staff agrees, however, that language should be added to allow for bulletins to provide further detail if necessary.

Draft kings is an applicant as a platform provider and operator. They are also a commission permitted, interactive, fantasy sports operator, and a casino vendor supplier operating the sports book at del Lago casino and resorts.

Draft Kings proposes amendment to section 5,331 b11 X which frequently limits the ability of any employee of a mobile sports wagering licensee and its affiliates to participate in mobile sports wagering in New York state. They suggest limiting language excluding only on the platform of an employees employer, except as otherwise may be permitted by the commission. Staff disagrees and is concerned with the public perception that the suggested change would allow noting that when the New York state attorney general sued to enjoin interactive fantasy sports platforms before the legislature authorized them one of the major concerns was that employees of interactive fantasy sports platforms who are using their knowledge of contest data to gain advantages and contests offered by other platform providers.

Similar concerns exist here. If an employee of a mobile sports wagering licensee learns of betting data that might provide a betting advantage, the employee should not be permitted to use such information to the employees advantage, and possibly disadvantage bettors in the public that do not have access to such information.

Draft kings suggest amendment to 5330.5 by adding a time to when disclosure of certain events is required. Staff agrees that identifying a timeframe for disclosure is to be one of the disclosures to be made as appropriate and proposes a limitation of as prectivable.

Drafting also proposes language be added to section 5330.6 a to clarify employees that will be designated as mobile sports wagering, key employees seeking to limit the designations to only those in a supervisory capacity and empowered to make discretionary decisions, which regulate sports wagering operations.

Staff disagrees with the proposal, knowing that the term casino key employee is defined at Racing Law section 1301.8, which reads in relevant part, as any natural person "in a supervisory capacity and empowered to make discretionary.

Amendment is unnecessary as such statutory definition is incorporated into the proposed regulation.

Draft Kings also proposes language change to section 5303.6. B seeking to limit registration of only non key employees involved in the operation of mobile sports wagering in New York, and seeks to limit the reporting and scope of reporting of such employees on an annualized rather than quarterly basis.

In their comment Draft Kings indicates an intention to only include those employees involved in the operation of mobile sports wagering as conducted within the state. Staff, agrees that the intention of the rule is to only capture those working on New York, mobile sports wagering, irrespective of their status.

But disagrees with other proposed changes from quarterly to annually or the scope of information required in such reporting staff suggests the phrase quote, pursuant to this part end quote be added after mobile sports wagering in the 1st, sentence of 5330.60 to ensure intent. Draft king proposes limiting language section 5330.60 speaking only to encompass a person deploys code or whose presence requires physical access to servers other equipment located at a casino.

Staff disagrees and believes the commission should capture the in licensing anyone with access to the servers.

Draft kings proposed amendment to section 5330.8 in an effort to provide consistency with other jurisdictions regarding the use of official league data.

Staff disagree noting that the regulation is consistent with statutory requirements.

Draft kings commented on section 5,330.8 DraftKings commented on § 5330.8, seeking clarification whether the expedited amendment request contemplated in the section would trigger an additional reporting requirement..

Staff were unable to understand the comment and how a request for internal control amendments would require additional reporting requirements.

Draft King for policy section 5330.10 seeking its application to only software that regards wagering, geo location, identification and rules compliance.

Staff disagrees with the limitation believing that all applicable software used in mobile sports wagering should be tested by an independent laboratory.

DraftKings proposes an amendment to 5330.10, reducing the required reporting of communications interruption to only those that are significant. Additionally, they propose limiting the report of errors necessitating report to the Commission to only those involving odds.

Staff disagrees believing all communication interruptions needs reporting as do all errors.

Draft kings ting proposes amendment to section 5,330,23, removing the requirement that the patron complaint process be displayed prominently on their account landing page.

Staff disagrees and believes that display prominently on the main page is important to ensure patron dispute resolution process is easy to locate.

Draft kings proposes amendment to section 5330.28 seeking to transmit tax revenue monthly rather than weekly.

Staff disagree and note that they that, that we chose weekly to correspond with the remittance requirements of retail sports, wagering and commercial casino licensees.

Draft kings proposes amendment of section 5330.29 seeking an alternative to their accounting department, determining the daily gross gaming revenue amount.

Staff agrees and believe the added flexibility to have the licensees finance department instead determine immaterial and recommends the change.

Draft kings proposes an amendment to section 5330.37 by adding an ability to credit an E wallet.

Staff disagree with making the proposed amendment noting that the use of an e-wallet is already governed under some paragraph. 5330.37.

Draft Kings proposes an amendment to section 5330.38 seeking both a reduction in a time necessary to submit promotions for consideration and a self determined allowance that substantially more approved promotions need not be again submitted.

Staff agree noting that promotions may be generically submitted, reducing the necessity to be concerned with submission deadlines. Staff also believes that affirmative notice of all promotions is presently necessary.

New York Racing Association posed no suggested amendment to the proposed regulations, rather expressing interest in integrating their advanced deposit wagering platform wallet with those used in mobile sports wagering.

Staff notes that a mobile sports wagering platform could seek to integrate advance deposit way during wallets so long as all article, 13 requirements and associated regulations have been satisfied.

The New York Thoroughbred breeders.

The NY Breeders posed no amendment to the proposed regulations, rather expressing interest in integrating horse racing, advanced deposit wagering platform wallets with those used in mobile sports wagering.

Staff notes that a mobile sports wagering platform could seek to integrate advanced deposit wagering wallets. So long as all article, 13 and associated regulations are satisfied.

The New York thoroughbred horseman association posed no substantive amendment to the proposed regulations rather expressing interest in integrating horse racing advanced deposit wagering platform wallets with those used in mobile sports wagering.

Staff notes that a mobile sports wagering platform could seek to integrate advance deposit wagering wallets horse racing advance deposit wagering so long as all article 13 requirements and associated regulations had been satisfied.

Penn National gaming and Penn sports interactive the digital arm of Penn, national gaming commented on 5 of the proposed rules. Penn National is an applicant as an operator.

Penn proposed that section 5330.80 be amended to allow an operator to request and use alternative data sources, provided the commission doesn't make a finding that the use of alternative data source harms the integrity of sports wagering.

Staff disagrees as the rule is consistent with statute, and that this suggestion would improperly place a burden on the commission to reject an alternative data source.

Penn proposed an amendment to section 5330.1 b7 to remove odds benefit and boost from the definition of mobile sports wager and promotions. Penn suggests that requirements, submission of proposed to odds boost would constrain operator, flexibility.

Staff disagrees. preapproval of promotion, such as odds boost, enhances regulatory control and consumer protection.

Then proposes an amendment to section 5330.38 seeking both the reduction in the time necessary to submit promotions for consideration and a self determined allowance that substantially similar approved promotions need not be again submitted.

Staff disagrees noting that promotion may be generically submitted reducing the necessity to be concerned with submission deadlines. Staff also believes affirmative notice of all promotions is presently necessary.

Penn proposes amendments to section 5330.10 suggesting responsibility for having controls in place in maintaining error record should be placed on either the operator or the platform provider. They also suggest distinguishing between system outages and data feeds errors for the purposes of reporting occurrences allowing data feed errors to be made available to the commission, rather than being reported to the commission.

Staff disagrees believing that the suggestions add uncertainty over which entity is responsible for controls and diminish transparency of error reporting. If reporting of data feed errors proves to be of limited regulatory use and practice, Staff is comfortable, revisiting these reporting requirements with the benefit of the experience.

Penn suggest amendment to the section 5330.37, which governs a bettor's withdrawal of funds. Penn suggests removal of the provision requiring notification to a bettor of an investigation into suspicious wagering activity as an exception to the rule requiring receipt a requested funds

within 7 days. They also suggested adding 2 additional exceptions to the prompt withdrawal general rule. If an operator request additional documentation to verify the account ownership. And if the payment processor delays, the withdraw.

Staff disagrees if the provision is eliminated, they better would be able to withdraw funds within 7 days even within seven days even if there is a pending investigation into unusual or suspicious betting activity.

Additionally, once a bettor establishes an account there should be no need for additional documentation to verify the account merely because the account holder wishes to withdraw funds. An operator should be responsible for payment processor delays and not be able to delay a timely withdrawal request by blaming its vendor.

The final comments, provided by sports radar, a data distribution business for Pre match and live sporting event coverage.

Sport radar suggested amendments the section 5,329 8 812 and 5330.8 to authorize sportsradar and other state licensed data suppliers to play a direct role in commissions decision, making process regarding the suitability of alternative data sources in the event that official sources are not available priced at commercially unreasonable rates.

Staff supports amendments of these sections, allowing an operator to use information from data distribution businesses to support their request to the commission to use alternative data sources.

[Moschetti]

Commissioners any questions on the adoption of rules regarding the mobile supports wagering.

Hearing none, man. Go ahead, John.

I was saying, no, no hearing none may have a motion to adopt this rule. So move on a 2nd.

2nd, is there any further discussion on the motion?

Hearing none all in favor. Aye.

Aye, any opposed.

The motion carries.

[Moschetti]

I'm still waiting for certification under the state administrative rule making act presuming that comes up, we can get the adoption package submitted promptly.

[Williams]

When would the rules become a factor according to the New York State Department of state 2021 schedule this counsel's office can get the package submitted by tomorrow at 1159 PM.

From notice, would it be published in the state register of November 24th?

So, now we have another adoption yes.

[Moschetti]

For commission consideration is a consensus rule, making adoption to amend the video lottery gaming regulations to reflect historic amendments to the New York state tax law section 1612.

Recall that legislation, eliminated specific marketing allowances and capital awards provisions for video lottery gaming agents. The previous marketing allowance has now been included in the vendor's fee and is no longer segregated. With respect to capital awards, while the commission still approves each capital project, the reimbursement process has been eliminated the proposed rulemaking also makes other stylistic edits such as adding titles to subdivisions.

The proposed rulemaking would also make other stylistic edits, such as adding titles to subdivisions, improving word choices, and using Department of State style conventions.

Staff recommends that commission adopt this rule. Commissioners, any questions on the adoption of rules regarding amendment of video lottery, gaming regulations.

[Moschetti]

No hearing none. May I have a motion to adopt this rule?

No, 2nd, the motion hearing none all in favor.

Any opposed the motion carried.

[Williams]

For commission consideration as a proposed rule, making authorized organizations to authorize organizations to sell raffle tickets through Internet or mobile device platforms subject to prescribed commission regulation. This proposal supersedes a portion of a broader charitable gaming rulemaking that the commission voted to previously authorize of which the bingo portion has already been adopted.

This proposal harmonizes the location requirements for servers or other electronic equipment that would accept Internet or mobile raffle wages with the requirements for servers or other electronic equipment that would accept sports wages.

This proposal also requires a charitable organization, wishing to conduct the Internet or mobile device raffle sales.

To demonstrate that the server or other electronic equipment from the Internet or mobile raffle sales are initiated where they are initiated is located in compliance with statutory requirements, demonstrate geo location capabilities to comply with statutory location requirements.

Have age verification procedures to prevent play by minors.

Offer parental controls, have procedures to prevent promotional materials being sent to minors.

Have privacy, protection procedures and procedures to protect the security of personal information of ticket purchasers from unauthorized disclosure.

And implement procedures to exclude persons on the statewide self exclusion lists for making a

In addition, software providers and platforms would be required to be licensed as a game of chance, supplier and paragraph 7 through 9 of rule 4620.22 B, would be renumbered as paragraphs 9 through 11.

Staff recommends that the commission propose this rulemaking.

[Moschetti]

Any questions on this proposal.

No, I have a motion to propose this rule.

Very good.

Discussion on the motion hearing none all in favor. Aye aye.

Any opposed motion carries.

[Moschetti]

So the next item on the agenda regarding River's casino resorts, a commercial casino licensee.

[Williams]

Capital region, gaming doing business as rivers, casino and resorts, submitted a written petition on September 10th seeking to reduce the number of their operational slot assets below the minimum detailed within exhibit 1 of their gaming facility license.

The stated purpose of the petition is to remove underperforming slot assets and to maximize the efficiency of slot, the asset utilization and patron opportunities without negative effects on the Patron experience facility employment or state revenue

An evaluation of the request was undertaken by the division of gaming which considered the effect of the petition levels on capital investment made, facility employment and revenues to the state.

Additional considerations of enhancing facility stability eliminating inefficiencies, reducing operational expenses and the potential effect on the patron experience were also undertaken.

Staff found that that the capital investment made exceeded that, which was required that slot utilization data illustrated in overabundance of slot assets exposed for play that proposed reduction of slot assets would have no negative impact on state, gaming, tax revenue and that there would be no negative impact on the employment level

Accordingly staff recommends approval of an amended gaming facility license exhibit 1 item 5 to reflect the requested minimum slot assets of 1050 conditioned on monthly, submission of various written reports, detailing among other things, the results of the proposed 4 amendments.

And that such reports list, relevant data, including utilization percentages, win per unit per day, employment levels. and changes in measurable efficiencies gained as a result of the proposed for amendment.

If approved staff also seeks the authority to conform the operating certificate issues, the capital region gaming.

To the new license conditions. Are there any questions from the commissioners of gaming facility license amendment for capital region gaming, as just outlined.

[Moschetti]

So there are none.

And to conform the operating certificate to such amendment.

I need a 6th.

Is there any discussion on the motion hearing none all in favor? Aye aye.

Oppose.

Motion carries.

[Moschetti]

In new business so we have a decision to discuss and Rob was going to be kind enough to read that in the matter of denial of entries at 7 horses at the Saratoga race scores.

Kenneth McPeek, a license server trainer appeal from the stewardship denying entries of quarantine under his care for races to be run at 3 days at Saratoga race. Course.

The facts of this case regard a barn under quarantine for equine herpes virus 1 a highly contagious virus that can cause neurological impairments or respiratory disease.

Specifically on or about July 15th, 2021 a racehorse stabled than his barn at Saratoga tested positive for Equine herpes virus 1. After consultation between the New York state Department of agricultural and markets, the New York racing Association and the gaming Commission, a quarantine was issued for all horses stabled within the barn. The length of the quarantine was 21 days retroactive to July 11th 2021.

It was the position of the stewards that should there be no additional equine herpes virus 1 cases in the subject barn the quarantine be lifted.

Mr. McPeek wanted to run several horses stabled in barn and 86 and race is scheduled to be conducted after the quarantine was lifted, however, NRA rules required entry of courses prior to the expiration of the 21 day quarantine. As a result of the sorts position Mr. McPeek was denied entry.

Mr. McPeek sought a declaratory judgment arguing that the Steward's decision was arbitrary and capricious. He also demanded the commission be directed to adopt formal protocols in the future addressing this issue to protect all Horseman similarly situated and grant any sundry relief available to assuage the injury to himself and his owners.

The commission heard arguments pursuant to rule 4039.5 with commissioner Moschetti designated to hear and rule upon the matter.

All parties agreed that the matter considered on papers.

Following consideration of submissions Commissioner Moschetti found that a declaratory judgment was not available as the time to enter the horses and the desired races had passed and that there was no longer an existing controversy that would have a direct and immediate effect upon the rights of the parties.

Commissioner Moschetti also found that the granting of the relief sought would constitute issuing an advisory opinion, which was not allowable into the facts and circumstances of the matter.

Finally, commissioner Moschetti found that directing the commission to create a protocol for rule for the future to decide the issue raised was beyond the scope of the appeal.

Therefore, Mr. McPeek's request for declaratory judgment was denied.

[Moschetti]

Thank you.

To conclude this section of the agenda. I want to note that Governor Hochul recently vetoed assembly, bill 7024 that would have removed a ruling requiring married jockeys to be coupled in races for wagering purposes.

In her detailed message, the governor noted that many jurisdictions have relaxed coupling rules over the past several decades especially in stakes races, she tasks the commission to review our existing rule and seek input from racing constituents to assess the continued need for mandatory coupling and the circumstances under which such a requirement might be relaxed.

Accordingly we have instructed staff to review this matter and report back to the members with either a recommendation or pathway to address the governor's concern.

So, that concludes today's published agenda.

Do any of the Commissioners have any items they'd like to present for consideration.

No.

Hearing none the commission traditionally has met on the 4th, Monday of each month.

Which, for December would be the 27th. My understanding is that there are several rulemaking proposals that are being prepared, even in pending the impending close of the calendar year. Perhaps we can find an early to mid December date.

Secretary Buckley will be in contact to consider those availability.

Before we close today's meeting, I would like to remark on the passing of 1 of the commission's employees.

Betty Pearson an office assistant at the lottery Syracuse customer service center.

Betty was a career administrative professional who had recently joined the Commission. Before coming to us, she was employed with the City of Syracuse, the Rochester-Syracuse District Women's Home & Overseas Missionary Society of the AME Zion Church, Syracuse University, CED Baldwin Hall, and The Salvation Army Empire State Divisional Headquarters.

Betty was survived by a large family of 4 brothers. 5 sisters, many nieces and nephews her faith was central to her being. I'd like everyone to take a moment to pray for her.

This meeting of the New York State gaming commission is, is your problem.

Thank you.