

Gaming and the Performing Arts:
Allowing Both to Thrive in Massachusetts

Interim Report to the
House Committee on Tourism, Arts and Cultural Development
by the Task Force on Performing Arts

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Executive Summary

Gaming and the performing arts are competing for some of the same discretionary spending of consumers while operating under significantly different business models. Gaming venues offer headline performances to draw patrons to their facility, under the assumption that once they are there they will spend money gambling. Since the main source of revenue from the event is not from the sale of tickets but from gambling, these gaming venues are able to pay more for these performers and often set lower ticket prices than non-gaming organizations. This poses a challenge for existing performing arts organizations to compete for recreation dollars and for performers and is cause for concern for the health of the cultural sector, which creates local jobs and stimulates the local economy.

To prevent any unintended, collateral harm to the cultural sector, the inclusion of these provisions would allow both gaming venues and the performing arts to thrive in Massachusetts.

Provide dedicated revenue by setting aside 10% of all gaming license fees and 10% of all gaming revenue to the cultural sector through the Massachusetts Cultural Council.

Limit the size of performance spaces in gaming venues to a 350 person capacity, limit the number of performance spaces in a gaming venue to 4, with only 1 exceeding a 100 person capacity, and limit the number of engagements that a performer can have in a casino to 5 every 6 months, reducing competition over performers and recreation dollars while preserving this important source of patrons for gaming venues.

Prohibit the use of geographical restrictions in contracts between gaming venues and their headline performers, allowing them to perform in the venues of performing arts organizations.

Ensure that the performing arts jobs created by gaming venues are good jobs and do not damage the strength of unions operating in the commonwealth by establishing wage

and benefit standards for workers in performance venues in each region.

These small inclusions in legislation would not restrict the ability of gaming venues to operate successfully in the commonwealth, but would provide significant and much needed assistance to the cultural sector in Massachusetts.

Additionally, two important steps would significantly improve the economic environment for cultural organizations, and should be made in conjunction with gaming legislation.

Provide essential funding for the Regional Tourism Councils by observing Chapter 10 Section 35J of the M.G.L. during the budget process, revisiting this formula and establishing a stable level of funding, or providing dedicated revenue for the RTCs by setting aside 5% of all gaming license fees and 5% of all gaming revenue.

Establish the Massachusetts Cultural Trust Fund, as outlined by Senate Bill 1878, filed by Senator Rosenberg and released from the committee with a favorable recommendation.

Introduction

Gaming venues both provide benefits and pose potential problems for performing arts organizations in their area. Some accounts show important benefits beyond additional revenue for state government, particularly in stimulating the local economy with new jobs and tourism dollars, some of which could presumably be spent on local performing arts organizations. Some gaming venues may also chose to partner with an existing performing arts organization to attract patrons. However, gaming is also in direct competition with these organizations for the recreation dollars of Massachusetts residents, particularly when the gaming venues also host a performance space, so there is the potential for local organizations to find their earned revenue diminished. Beyond this, there are several specific areas of conflict which could harm the existing cultural sector, including competition for major acts, duplication of performance spaces, and the promotion of a non-unionized workforce. During this time of economic crisis we must guard against adding to the burden already faced by these organizations, or risk seeing more theatres close their doors. The goal is to make sure existing performing arts organizations also gain from this new form of entertainment in Massachusetts.

The Task Force on Performing Arts has met with many organizations related to the performing arts since it was established on May 20, 2009 by Chairman John Keenan of the House Committee on Tourism, Arts, and Cultural Development. These meetings have focused on a variety of different topics but have revealed several important traits about the industry which illustrate their need for protection in this situation. Performing arts organizations are in a fragile position between a business and a charity, earning large portions of their budget from both earned revenues and charitable contributions. They drive the local economy by attracting patrons to local businesses, employing thousands of Massachusetts residents, and attracting tourism dollars to the state.

This report remains neutral on the issue of allowing gaming venues in Massachusetts, but examines what could be done in that instance to mitigate the potential negative impacts on the performing arts, so that both could thrive within Massachusetts' cultural sector. This report will proceed to discuss the largest problems posed to the cultural sector by gaming venues and four proposals to include in gaming legislation to assist in this pursuit, including restrictions on capacity, a dedicated revenue stream, forbidding the use of radius clauses, and the use of union labor in performance spaces. Additional steps to improve the environment in Massachusetts for performing arts organizations, which the Task Force strongly feels should be considered in conjunction with gaming legislation, are also discussed in this report.

Problems

The Problem of Competition for Recreation Dollars

Gaming venues offer many forms of recreation beyond gambling to draw patrons to their facility, under the assumption that once they are there they will spend money on gambling. One main form of entertainment commonly used is touring musical and theatrical acts, such as big-name singers and Broadway shows. Since the main source of revenue from the event is not from the sale of tickets but from gambling, these gaming venues are able to pay more for these performers and set lower ticket prices than non-gaming organizations. The gaming venues are therefore operating under a significantly different business model from existing performing arts organizations in Massachusetts while offering similar product. This makes it difficult for performing arts organizations to compete for patrons, recreation dollars, and for the attention of the public, and dilutes or eliminates any benefits which the gaming venues' stimulation of the local economy would

bring to these organizations. There is concern that existing performing arts organizations may be forced to close if they are unable to compete with performance spaces in gaming venues, counteracting the benefits of job creation which is a main argument for expanded gaming.

This problem has ramifications for the local economy beyond the impact on performing arts organizations. Numerous studies have shown the great benefits which performing arts organizations provide for the local economy, driving business to local retail outlets, hotels, parking facilities, and restaurants. A large part of this is a result of the fact that performing arts organizations provide a destination for tourists and in-state visitors, without providing everything which the tourist will need for their stay. Many of these businesses, particularly local restaurants, are dependent on these visitors to stay in operation, or open as a result of the need created by the opening of a theatre or concert hall. By contrast, a gaming venue may aim to provide a full experience for its patrons, including an in-house hotel, restaurant, retail, parking, and the added entertainment of gambling. Therefore, when a patron makes the decision to view a performance and spend the evening in a gaming venue rather than an independent performing arts organization, his recreation dollars are usually also lost by local businesses.

The Problem of Competition for Performers

Beyond the booking of big-name singers, comedians, and other performers, there is a growing trend in gaming venues of hosting touring Broadway Shows. When gaming venues draw patrons to their facility through these means, they are in direct competition with many of the existing performing arts organizations in the region for these same performers and acts. Some organizations depend entirely on the booking of touring shows that the public is already interested in, while others use this sort of programming to gain income from their facility while it is not being used, and to raise funds to support their other

independent programming.

In addition to the ability of gaming venues to pay above-market prices to these headliner performances, contracts will often include a “radius clause,” a geographical restriction preventing that performer from playing again within a 90-mile radius within a given time period of the performance. These are included to ensure that the performance will receive the full attention and attendance from fans in the region, but have impacts across city and state boundaries. Organizations in Massachusetts, including those in Worcester and Boston, already report an impact from performers booked by gaming venues in Rhode Island and Connecticut, and this problem would only be intensified with the addition of gaming venues in Massachusetts. Even when a specific clause is not included in the contract, performers and their agents will often enforce a similar rule, in an effort to maximize their own earnings and value from visiting a region.

The Problem of Providing Good Jobs and Maintaining a Skilled Workforce

A strong argument for gaming venues in Massachusetts is the creation of local jobs. While many of these jobs relate directly to gambling and service in the gaming venue, many will result from the other components that gaming venues host in their facility, such as performance spaces for their headline performances. These require lighting and set technicians, stage workers, projectionists, and a variety of other workers. Local performing arts organizations, particularly the mid-sized groups which most effectively drive the local economy and create the most local jobs, depend on a skilled and stable local workforce specializing in these same areas. As in many industries, the interests of this workforce, and therefore their ability to sustain themselves working in this industry and continue to develop the needed skills, are defended by associations in labor unions. If gaming venues in Massachusetts do not hire unionized employees to work in their performance spaces, then the strength of these unions operating in Massachusetts will be compromised.

Massachusetts already has a problem where performing arts workers who are educated in Massachusetts move out of the state to pursue their work, and this would only exacerbate that trend. Beyond the impact that this loss of skilled workers will have on the economy, this weakening of the workforce will adversely impact the existing performing arts organizations which depend on its strength. Since a main benefit of gaming venues is the creation of local employment opportunities, it is essential to ensure that the jobs created are quality jobs for Massachusetts residents.

Solutions

Dedicated Revenue for Cultural Organizations from Gaming Revenue: This also addresses the problem of Competition for Recreation Dollars explored in the previous section.

With headline performances at gaming venues supplying the same type of product as performing arts organizations but operating under a different business model, performing arts organizations are at a significant disadvantage. The funding that they gain from these performances is often used to subsidize other independent cultural work, which is the driving force behind cultural innovation and cultural tourism in the commonwealth. Providing a portion of revenue from these gaming venues to performing arts organizations through the Massachusetts Cultural Council (MCC) will combat this problem, allowing these groups to continue their valuable work with less dependence on headline performances. The funds budgeted for the MCC to make grants to cultural organizations has fluctuated throughout the past decades, leading to inconsistent support of these organizations. A source of dedicated revenue that is independent of the General Fund and substantial will help to control some of this fluctuation and greatly benefit the job producing

cultural sector of the commonwealth.

The Task Force recommends that 10% of all gaming licenses and 10% of all state revenue from gaming be dedicated and earmarked for use by the Massachusetts Cultural Council. To preserve the strength of the sector through this transition, the MCC should consider using this funding to target organizations which are most negatively impacted by the introduction of gaming venues. This funding is a necessity for the sector if gaming moves forward in Massachusetts, but is not a solution for performing arts organizations or the local businesses that their patrons support.

Potential Language: Terms used but undefined here are as defined in House Bill 4068 of the 2009-2010 session and House Bill 4307 of the 2007-2008 session. Structure is based on the structure of these bills.

Add to the section of gaming legislation creating the License Fee Trust Fund, where it specifies the transferring of monies in the fund:

(#) to the Massachusetts cultural trust fund established by section ##, an amount that is 10 percent of all operating licensing payments made to the operating licensing payment fund under this section;

Add to the section of gaming legislation creating the Gaming Operating Licensing Payment Trust Fund, where it specifies the transferring of monies in the fund:

(#) to the Massachusetts cultural trust fund established by section ##, an amount that is 10 percent of all operating licensing payments made to the operating licensing payment fund under this section;

Add as section in gaming legislation:

Section ##: Massachusetts Cultural Trust Fund

There shall be established and set up on the books of the commonwealth a separate fund, to be known as the Massachusetts cultural trust fund, in this section called the cultural fund. The cultural fund shall consist of the monies transferred under section X, and all other monies credited or transferred to the fund from any other fund or source pursuant to law.

The Massachusetts cultural council shall be the trustee of the cultural fund and shall expend monies in the fund, without further appropriation, to assist with the promotion of tourism in the commonwealth. The Massachusetts cultural council may adopt regulations, after a public hearing, governing these expenditures.

Limit the Size of Performance Space in Gaming Venues and Number of Performances within a Six-Month Period: This addresses the problems of Competition for Performers and Competition for Recreation Dollars explored in the previous section.

The most effective way to address the problem of competition for headline performers between performance spaces at gaming venues and existing performing arts organizations is to limit the number and size of performance spaces that gaming venues are allowed to operate and to limit the frequency with which they may host a specific performer. Limiting the number and size of performance spaces that gaming venues can build to four, with only one exceeding a 100 person capacity and that one not exceeding a 350 person capacity, allows them to still bring in headline performers to attract new patrons to the gaming rooms, but also does not eliminate the potential for another regional performance by that artist. Along with the 350 person capacity size limit, restricting the

frequency with which an entertainer can perform at a performance space in a gaming venue to not fall between 5 and 50 performances in a 6-month period, will prevent gaming venues from monopolizing the regional interest in celebrity performers and prominent shows while maintaining the ability of gaming venues to have house bands or comedians. It is important to note that the levels recommended by the Task Force for the capacity of performance space in gaming venues and the frequency with which an entertainer can perform are intertwined.

These provisions would allow existing performing arts organizations to still gain the revenue from these performers and shows, sustaining an important part of their business model. Beyond the benefits to performing arts organizations, preserving their ability to bring in big-name performers will benefit the local economy surrounding these organizations, where local business benefit from the large number of patrons that these shows attract. In addition, some owners of existing performing arts venues point out that this would prevent the duplication of existing performing arts infrastructure, preserving the investments that have already been made in Massachusetts. **These restrictions make an essential component of any plan to mitigate the negative impacts of gaming on the cultural sector, and it is the strong recommendation of the Task Force that they must be included in any gaming legislation.**

Potential Language: Terms used but undefined here are as defined in House Bill 4068 of the 2009-2010 session and House Bill 4307 of the 2007-2008 session. Structure is based on the structure of these bills.

Add the following definition to the section of the legislation providing definitions for the chapter:

“Performance space operating on gaming venue premises”, a building or

part thereof, operating on the site of a gaming venue, in which is intended the presentation of performances for the entertainment of spectators, which has a capacity of more than fifty, with a stage or area which can be used for scenery and other appliances

Add the following item to the section of the legislation outlining what the Gaming Authority specifically must adopt regulations pertaining to:

(#) the standards of operation of performance spaces operating on gaming venue premises, including a maximum number of separate performance spaces per gaming venue, not to exceed 4, and a maximum capacity in each performance space, with only one performance space per gaming venue to exceed a 100 person capacity, and for this performance space to not exceed a 350 person capacity, and including a frequency with which a performer may perform in a performance space operating on the site of a gaming venue, which may not be between 5 and 50 performances in a 6 month period.

Prohibit the Use of “Radius Clauses” in Contracts: This addresses the problem of Competition for Performers explored in the previous section.

When gaming venues are able to get priority in booking performers by offering higher pay and also contractually prevent local performing arts organizations from booking the same performers, it places the local groups at a significant disadvantage. By prohibiting the use of geographical restrictions when booking performances at gaming venues in any gaming legislation, the legislature can send a significant message to our performing arts community to sustain itself during this change. This provision would be difficult to enforce, and performers’ agents would impose the same restrictions even without a contract, to

maximize attendance and interest in their clients' tours. However, some performing arts organizations may benefit from prohibiting the use of radius clauses, especially when an artist is already in the region and has an open night on their tour schedule. For mid-sized organizations this specific situation is often their only opportunity to book a big-name performer, and supplies an important source of revenue to sustain other cultural work. The Task Force does not believe that including this provision will be a help to most performing arts organizations, but that it should be included in any gaming legislation as a statement on the importance of this sector to the health of the Massachusetts economy.

Potential Language: Terms used but undefined here are as defined in House Bill 4068 of the 2009-2010 session and House Bill 4307 of the 2007-2008 session. Structure is based on the structure of these bills.

The contract of any person who enters into a contract with a gaming venue, its holding company, a party in interest, or an intermediary company, for a theatrical engagement in an entertainment facility for any engagement or employment of a person as an actor, performer or entertainer in a circus, agricultural fair, vaudeville, banquet and other stage performances, stage productions in theaters, including floor shows, so called in a building or part thereof, operating on the site of a gaming venue, in which is intended the presentation of performances for the entertainment of spectators, which has a capacity of more than fifty, with a stage or area which can be used for scenery and other appliances may not include any restrictions on future theatrical engagements of said entertainer based on geographical proximity to the site of the gaming venue or a specified time span in relation to the date of the theatrical engagement or engagements.

Encourage the Use of Union Labor in Performance Space in Gaming Venues: This addresses the problem of Maintaining a Skilled Workforce explored in the previous section.

With the creation of good jobs as one of the priorities in gaming legislation, it is important that the jobs created in the performance spaces in gaming venues also create good jobs within the performing arts. For Massachusetts to have a thriving cultural sector strong enough to drive tourism dollars to the region there must be a population of skilled workers in the performing arts living and working in Massachusetts. These workers are usually members of one of the various performing arts associated labor unions, which have requirements of continued employment to maintain their standards. By ensuring that employees in these facilities are offered wages and benefits which meet or exceed the industry standards for the region that the gaming venue is located, this legislation can ensure that it is not harming the performing arts workforce in the commonwealth. Additionally, by ensuring that gaming venues will be open to employees who are in labor unions, this legislation can ensure that the health of these unions in Massachusetts is not compromised.

Potential Language: Terms used but undefined here are as defined in House Bill 4068 of the 2009-2010 session and House Bill 4307 of the 2007-2008 session. Structure is based on the structure of these bills.

Add to the list of items which must be included in an application for a gaming license:

(#) a statement that the applicant will not discriminate against any potential employee in any entertainment facility operating on the site of the gaming venue based on their membership in a labor organization.

Add the following item to the section of the legislation outlining what the Gaming Authority specifically must adopt regulations pertaining to:

(#) minimum wage and benefits standards and other conditions of employment in each region for employees in a performance space operating on the premise of a gaming venue, which standards or conditions must be based on standards and conditions in comparably sized venues located in the region, and which may only be waived in a bona fide collective bargaining agreement;

Stable Funding

The arts have been historically under-funded in Massachusetts, and funding levels have been varied considerably between times of economic prosperity and recession. Stability in arts funding would make a significant difference in the health of the cultural sector, making it more resilient and resistant to changes in the environment, including the current economic downturn and the introduction of competition with gaming venues. The following two recommendations outline additional steps which should be taken to support the cultural sector with a source of stable funding.

Observe section 35J of chapter 10 in the Fiscal Year 2011 and Future Budgets

The thirteen Regional Tourism Councils (RTCs) throughout the state are non-profit membership-based organizations which work to promote tourism in their specific region. They provide essential services to performing arts organizations, including grants to smaller organizations and much needed publicity on their events and programming. With tourism as the third largest sector of the Massachusetts economy, the role that the RTCs play in the

vitality and employment in a region cannot be ignored. Section 35J of Chapter 10 of the Massachusetts General Laws provides a source of funding for this important sector by allocating 35% of the funds generated by the room occupancy excise to a Massachusetts Tourism Fund, 19% of which is then transferred as financial assistance to the RTCs. However, since at least Fiscal Year 2005, the budget has included an outside section indicating that this section will not apply for that Fiscal Year, preventing the RTCs from accessing this essential funding.

Regardless of the source, state funding for these organizations is essential for the health of the cultural sector in the commonwealth, and particularly for local and community based cultural organizations. This can be accomplished in a variety of ways, including by observing section 35J of chapter 10 of the Massachusetts General Laws or by revisiting the formula for an appropriate and reliable amount for Fiscal Year 2011 and future budgets. If the legislature no longer feels that this is the appropriate way to secure funding for the RTCs, then the Task Force recommends including this funding in gaming legislation, by setting aside 5% of all gaming license fees and 5% of all gaming revenue for regional marketing organizations. The Task Force strongly recommends that the RTCs receive a stable level of funding from the State for these essential services by one of these methods.

Pass Senate Bill 1878, An Act establishing the Massachusetts cultural trust fund

Providing a source of dedicated revenue to the Massachusetts Cultural Council (MCC) would allow them to provide stable and necessary funding to job creating cultural organizations. Currently, their funding is highly variable and dependent upon appropriation by the General Court. Senator Stanley Rosenberg's Senate Bill 1878 would establish the Massachusetts Cultural Trust Fund as a non-budgeted fund of the commonwealth which, once fully vested, would provide a source of stable and independent funding to this essential agency. As present, this legislation would require a \$100 million annual investment into the

fund during budget surplus years until it accumulated \$1 billion dollars in principal, at which time the income, earnings, and interest would be appropriated to arts organizations throughout the commonwealth through the MCC. This legislation has received a favorable report from the Joint Committee on Tourism, Arts and Cultural Development, and it is the strong recommendation of the Task Force that it be passed in the 2009-2010 session. As it would remain subject to appropriation, the impact of this legislation would not be felt until the economy and state revenue improved.

In meetings with the Task Force, leaders of performing arts organizations have consistently stressed the importance of funding from the MCC to their organization. MCC funding is one of the few sources of unrestricted funds available to these organizations, allowing them to fund necessary but unglamorous costs, such as administrative overhead. Expanding this funding would further relieve the budget restraints on these organizations, increasing the health of the sector to a degree greatly larger than the investment of funds. In addition, MCC funding is seen as an indication of the health and legitimacy of an organization, often allowing them to procure additional funding from individuals and organizations. Expanding the funding of the MCC would allow them to continue to support the organizations that they currently provide backing for, as well as expand their program to include additional, and smaller, organizations. This legitimacy would provide an essential stimulus for many local organizations, bringing the benefits of this funding to communities throughout the commonwealth.

Conclusion

Incorporating these recommendations into gaming legislation would not restrict the ability of gaming venues to thrive in the commonwealth using their standard business model. However, it would make a significant difference for cultural organization,

preserving the investments, jobs, and hard work of the Massachusetts residents already working in this job-creating sector. The most crucial change discussed here is the limitation of the size of performance spaces in gaming venues. This would address the most significant problems posed for the performing arts by gaming venues, preserving a significant source of revenue for existing organizations and maintaining the benefits to the local economy when patrons visit a local organization.