MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Fifth Session
April 23, 2009

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 10:10 a.m. on Thursday, April 23, 2009, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was video conferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Bernie Anderson, Chairman
Assemblyman Tick Segerblom, Vice Chair
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblywoman Marilyn Dondero Loop
Assemblyman Don Gustavson
Assemblyman John Hambrick
Assemblyman William C. Horne
Assemblyman Ruben J. Kihuen
Assemblyman Mark A. Manendo
Assemblyman Richard McArthur
Assemblyman Harry Mortenson
Assemblyman James Ohrenschall

COMMITTEE MEMBERS ABSENT:

Assemblywoman Bonnie Parnell (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Nick Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Karyn Werner, Committee Secretary
Steven Sisneros, Committee Assistant

OTHERS PRESENT:

Dennis Neilander, Chairman, State Gaming Control Board
Dan Reaser, Reno, Nevada, representing the Association of Gaming Equipment Manufacturers, Henderson, Nevada

Chairman Anderson:
[Roll called. Opening remarks.]

We will open the hearing on Senate Bill 83 (1st Reprint).

Senate Bill 83 (1st Reprint): Makes various changes relating to the regulation of gaming. (BDR 41-311)

Dennis Neilander, Chairman, State Gaming Control Board:
Before you today is S.B. 83 (R1), the Board's biennial omnibus bill where we take matters that have come up during the last biennium that need to be addressed within the Gaming Control Act, principally modernizing things within the act, and there are a number of housekeeping measures as well.

The first several changes in the bill are in sections 1, 3, 5, and 18.5. What these do is to redefine the term "manufacturer" as it relates to a gaming device. As you go through the bill, you will see that we have deleted the old definition of manufacturer that makes reference to electromechanical things and computer chips, things that are becoming obsolete in the modern era of gaming. Most devices now operate off of a network platform. We have system and server-based gaming. What we have done is update the terminology that is used within these definitions.

As far as licensing goes, that has not changed. We will still require licensing for any person or company that engages in conduct that impacts "win or loss" of the game. We require licensing for anyone who touches those portions of the device that affect the outcome of a wager. In section 1, we have a broader, more modern definition.

Pay particular attention to line 38 on page 3, where we introduce the concept of what we call a "control program." When you go to page 4, line 7, you also see reference to control program. On lines 16 through 19 on page 4, we have the base definition of "control program," which will require further refinement by the Commission regarding what that will mean in terms of licensing. As defined here, "a 'control program' means any software, source language, or executable code which affects the result of a wager by determining win or loss as determined pursuant to regulations adopted by the Commission."

Dan Reaser, who represents some of the manufacturers, is here and will tell you that they support this language. One of the issues they have is that they sometimes need to use third parties to assist in the development of games. It does not make economic sense to license these third parties, so we are creating a system to regulate them, but it may not be full licensing. This will be discussed when we get to section 18.5 of the bill.

Section 4 of the bill, which is also on page 4, expands the categories of individuals who are required to have a work registration. We are adding certain persons who work for affiliates of disseminators. We are also including employees of call centers and the individuals in each company who have access to the Board's private registration network. However, line 34 on page 5 makes it clear that barbacks are not included in the persons to be registered.

Assemblywoman Dondero Loop:
Can you tell me what call centers are?

Dennis Neilander:
Within the sphere of pari-mutuel horseracing, a bill was passed by this Legislature two sessions ago that allows for a pooling of wagers on horseracing. We set up a system, which we call a "call center," where once someone establishes a wagering account he is able to make a wager by calling a call center which is a state-licensed race and sports book here in Nevada.

Assemblywoman Dondero Loop:
Could that be from anywhere in the country?

Dennis Neilander:
It potentially could be; it depends on how the wagering account is set up.

Section 6 allows the Board to enter into lease arrangements for buildings. We have a number of offices outside of the capital; we have offices in Reno, Las Vegas, Elko, and Laughlin, among others. Our Enforcement Division has special needs in its offices for evidence and weapons lockers, security

requirements for our lab, et cetera. We are asking for the ability to enter into leases directly.

Chairman Anderson:
Are you going to change the locations where Board meetings are held? Will you still utilize the Grant Sawyer State Office Building for meetings where the public interface takes place?

Dennis Neilander:
No, we do not intend to move Board meeting locations, and yes, we will be using the Grant Sawyer Building. Our main offices will always be Carson City and Las Vegas. We are addressing our satellite offices here.

Chairman Anderson:
Are these the ancillary programs that need space because of a particular function and not the primary offices where people will go?

Dennis Neilander:
Correct. Statute requires that we have our main office in Carson City, but this makes it easier to deal directly with the lessors.

Section 7 addresses the confidentiality of records. This is an important provision. It amends *Nevada Revised Statutes* (NRS) 463.120. On page 6, line 35, we are adding "or natural person's" criminal record. We are ensuring that, when the Board gets information about someone who is not the applicant during an investigation, that information remains confidential. We have always interpreted it that way, but we thought we should clarify it to prevent future problems. Section 7, subsection 4, paragraph (e), which starts on line 1 of page 7, clarifies what the actions of the Board would be with respect to an agent preparing or obtaining information that is in the scope of "an audit, investigation, determination or hearing." What is key to the existing statute is that all of the information that is listed above line 6 is deemed confidential, but can be revealed pursuant to a lawful court order.

We have added a new subsection 5 to section 7 that begins on line 15 on page 7, which addresses the situation where the Board has gathered information regarding a matter and developed its own work product. The difference between the new and old language is that the Board's work product would be deemed absolutely privileged. It would not be subject to release by a court order as the other information would be. This is to protect the Board's work product. There is a series of cases, in quick reference they are referred to as "*Laxalt* 1" and "*Laxalt* 2", which set forth a four-prong test for the release of

certain confidential records. Basically, if it is a Board record that we produced—our work product—it should not be subject to release.

Section 8 is clean-up language. We previously had an exemption from the United States Department of Treasury anti-money laundering regulations. For a number of years, we were the only state that had such an exemption. Through negotiations with the federal government, we no longer implement that regulation, so this reference is no longer necessary.

Assemblyman Horne:
On the confidentiality portion of section 7, is a court order the only way this information can be dispersed?

Dennis Neilander:
Currently, if the information is deemed confidential as a matter of law, we would only release it under what is called the "necessary administration of the chapter." We may share it with other law enforcement agencies where we have a memorandum of understanding (MOU), but we would generally not release it without a court order.

Assemblyman Horne:
Have you ever had a request from the press?

Dennis Neilander:
It is not the press as much as people involved in litigation. Through the discovery process, people frequently try to use the Board as a one-stop shop to discover matters in civil litigation. We do not reveal those matters without a court order.

Assemblyman Segerblom:
Do you take a position on court orders, or do you go to court and let the parties fight it out to get the judge to order it?

Dennis Neilander:
No, we do not take a position; we simply say that those matters are deemed confidential under state law. The parties can argue in front of the judge whether an order should be issued.

Chairman Anderson:
With the competitiveness of the gaming industry, you want to ensure inside information is kept confidential so the industry remains confident that information shared with you will not be shared outside of the Commission.

Dennis Neilander:
That is correct. When an applicant files an application that is very probing and contains his life history—including medical and financial information—he realizes that he has a duty to be honest and upfront with the regulators. He also realizes that if something in that application is derogatory, it can be used against him in that administrative proceeding. He does not, however, anticipate that a third party involved in litigation can access his gaming application. It could create a chilling effect if we were not able to keep these absolutely confidential.

The statutes specifically require the Board to make a finding that someone has demonstrated honesty if he is to be suitable for licensing. If he fails to make disclosure on the application, it is a concern.

If you go to page 10, you will see that we are picking up call-center activity. On lines 6 through 9, we are clarifying that the Board and Commission have the ability to call forward a table-game developer. We do not necessarily license table-game developers; we do a thorough examination of the game itself. We do a cursory background check on the developers, but unless they are receiving a stream of revenue, they are not in a mandatory licensing position. There are other more general provisions in the law that would allow us to call them forward, but there is nothing specific. We are making it clear that, if the Board or Commission has a concern about a table-game inventor, we have the authority to call them forward for licensing.

Assemblyman Horne:
If I am an inventor, and I invent a cool game, but you find me not suitable for licensing, what happens since the game is already invented?

Dennis Neilander:
It is primarily to address games out in the field when information later comes to our attention that may cause us some concern. It allows us to take a closer look at that individual. If the game is already out in the field, we could pull it if we had some concern about its fairness or integrity. With respect to the individual, he would become a "denied applicant" and would not be able to do gaming business in the State of Nevada. We can look at them up front. If we have a game submitted to our laboratory for testing, and we are in the middle of analyzing the game when some information comes to our attention, we will stop the analysis until we license the person.

Assemblyman Horne:
Then a game would not be licensed unless the inventor is licensed?

Dennis Neilander:
If the Commission so desired, but the normal course of things is the inventor submits the game, we begin the process of analyzing it, and at the same time we run a background check on the inventor. If there are no concerns about him, the game goes through the lab, it is placed out on a field trial, and then based on the results of the field trial, it is approved or not.

Assemblyman Horne:
It seems odd. What happens if an ex-felon invents a good game? He cannot sell the game because he is a felon? It does not seem fair. He is not running the game.

Dennis Neilander:
This is not requiring that the person be licensed. In fact, we have individuals who are ex-felons who have developed table games that went through the process. We need a mechanism to deal with problems when we find something later. Normally we do not license game inventors.

In section 10 on page 12, lines 9 through 14, we are clarifying that the suitability standards that initially apply to licensees are continuing requirements. Although there are other sections in the statute where you can glean that and where we believe it already applies, to eliminate any possible defense that might be raised, we want to make it very clear that there are ongoing standards in respect to disciplinary action.

Chairman Anderson:
In section 11, I am concerned about the "calendar" days and whether the opportunity is there on the weekend to do what is necessary. Why would we look for calendar days? There is obviously a need for clarification or you would not have put it in there. I need to understand.

Dennis Neilander:
The statute was silent: it just said "days." There was confusion about whether it meant business or calendar days, so we thought we would clarify it.

Chairman Anderson:
Would that create an unusual hardship?

Dennis Neilander:
No, I do not believe so.

On lines 27 through 30, page 13, when we set up the worker registration program, we allowed for a five-year, portable card so that people could change

jobs without needing to reapply. That has been very successful, but we have made a number of changes to the program. We charge a fee that covers our administrative costs and the costs that we are charged from the Federal Bureau of Investigation (FBI) and the Criminal Repository. It is a revenue-neutral program; it just pays the costs. When an individual changes job locations, he has to file a notice of change of employment. We underestimated the number of people who would take advantage of that. Although we have the ability to increase the fee on the initial registration to make it neutral, we felt we should charge a specific fee for the change-in-employment notice instead. That fee would be $5. If you have an individual who pays the initial fee but never changes jobs in that five-year period, he should not have to pay more to cover the costs of someone who frequently changes jobs. We felt that it would be fairer to have a separate fee for the change-of-employment notice, which would be the minimal amount of $5.

The next section of interest would be section 12, page 20, on line 1. When there is a casino-patron dispute, that matter has to be reported to the Board immediately. We then have 30 days in which to try to resolve that dispute administratively. We are asking to extend that to 45 days. The primary reason is that the gaming devices today are sophisticated devices, especially slot machines. Sometimes we have to confiscate the device and bring it back to our lab. Trying to get that resolved within that 30-day period is beginning to create a crunch on us, so we are asking to have that extended out to 45 days to render a final decision.

Assemblyman Manendo:
Are the 45 days going to be enough? I know you have been hit hard with the budget, and I am concerned that you will not be able to do it on time.

Dennis Neilander:
I think we can. I do not want to extend it any longer than 45 days in fairness to the patron who has a dispute.

Section 13 provides a number of clarifications to the disseminator statute, which is NRS 463.422. This has not been updated in a long time and will conform to existing Board practices. The changes recognize that it is appropriate to notify disseminators in certain situations in ways other than written notification. We may follow up with written notice after we have given verbal notice. These are just housekeeping measures.

Chairman Anderson:
Are you still going to be able to monitor their economic activity so we do not lose state accountability?

Dennis Neilander:
Yes. Similarly in section 16, you will see reference to an account, which has never been set up because the Commission was never required to have any hearings in this matter. What we are doing is recognizing that it is obsolete.

You may recall there are some new forms of business associations that are allowed in the state now, in particular, a limited-liability partnership (LLP). We initially had the limited-liability company (LLC), which the gaming industry took great advantage of. We are proposing to include the LLP in the LLC statutes rather than trying to amend the business code. On page 22, beginning with line 12 and ending with line 15, we are saying, to the extent practical, they are the same, and we have been treating them that way in practice.

Beginning with line 31, on page 23, is a list of the types of third-party involvement in the manufacture of gaming devices that the Commission will regulate. They are fairly broad to give the Commission authority to take whatever action it deems necessary.

Finally, on page 24, section 19 of the bill addresses a situation that we have encountered more often in the last four years. An estate goes into probate, and an heir—perhaps in another state—is unwilling to cooperate or simply refuses to file the necessary documentation so we can move the licensing forward. This bill creates a remedy so that, if the heir refuses to cooperate, we could go through the probate court to force the licensing process along. I do not anticipate that we would use this very often, but we feel it is warranted. During discussions with probate attorneys, they have suggested that the one-year time frame contained in the bill gives us the ability to administratively extend it. In some probates, it will take that long to determine who the rightful heir is, and that is the concern. You should have a color-coded amendment to S.B. 83 (R1). The green underlined language is the new language we are suggesting, which would grant the Chairman of the Board the authority to grant an administrative extension for a longer period of time.

Chairman Anderson:
What controversy are you trying to avoid by using the phrase "the Chairman of the Board in his sole and absolute discretion"?

Dennis Neilander:
It is to prevent any legal argument that might ensue. In these situations, you may have parties who are heirs to an estate who are at odds with each other, and we do not want to create room for additional arguments.

Section 19.5 is a bill-drafting correction to conform to the previous sections on confidentiality of the records. The rest of the bill is some transitory language regarding effective dates of the act and allowing the Commission to adopt regulations relating to third-party companies assisting with the development of gaming devices.

Chairman Anderson:
It is common in your statutes to use the phrase "his sole and absolute discretion" in describing your office. I see in NRS 463.15995, subsection 2, paragraph (b), "The Chairman of the Board may, in his sole and absolute discretion...." This amendment will give you the authority to grant extensions when dealing with estates, so they can work through the process as long as it takes.

Dan Reaser, Reno, Nevada, representing the Association of Gaming Equipment Manufacturers, Henderson, Nevada:
We endorse this bill as a whole. On behalf of the Association of Gaming Equipment Manufacturers (AGEM), I want to explain sections 1, 3, 5, and 18.5.

As Chairman Neilander indicated, for at least the last ten years—and probably longer than that—there has been significant advancement in the development and manufacture of gaming devices in the State of Nevada. Gaming manufacturers have looked to creative, nonemployee engineers and game developers. I want to preface this area by giving you a brief context. Think of the iPhone. It is a piece of hardware: a telephone that sends emails, surfs the web, and has many applications. When Apple developed the iPhone, it developed some of the core applications, the telephone and the ability to do email. As you have probably seen through media advertising, there are literally hundreds of applications—how to call a taxi in a foreign city, how to go to a restaurant, how to find a hotel, and different types of applications. Those applications are software programs and were not all developed by Apple but by individual entrepreneurs and small engineering groups. This is a phenomenon that the technology industry has across-the-board, whether it is Microsoft, Apple, or the gaming industry. The gaming industry cannot afford to employ every engineer who might have a great idea for a game or an application for a game. The use of independent contractors to develop games, or game concepts, and to sell them to Nevada manufacturers like Bally's, IGT, or Mikohn, has become an important economic driver for the quality of the games, which in turn drives the gaming revenue in our casinos.

In the last few years, the Board has determined that it is sometimes necessary to look at independent contractors who are developing computer parts that affect win or loss. The Association supports this, but we believe blanket,

mandatory licensing for all of these people would cause many of them not to develop games for the gaming industry. Oversight that is modeled to the specific kind of work that an independent contractor is doing should not be so robust that we do economic harm to the need of the industry to use independent contractors. Where the Board and the Commission believe it is necessary to regulate independent contractors through licensing, registration, or a reporting requirement, we believe the powers granted in section 18.5 give the tools needed to fit any problem. So, we endorse these sections not only because it is important for the Commission to be comfortable with its control and that the Board can regulate in this area but also because they provide the appropriate regulatory processes where we can balance the competing economic and regulatory interests.

Chairman Anderson:
We are concerned about the very thing that you are referencing. With the importance of electronic information, the ability to interfere with it by electronic means is going to be very difficult to prevent. That particular manufacturing area is protected by patents for multiple uses, so how are we not going to become compromised? We have situations where the application may have been designed to go in the iPhone, but it is the perfect solution to one of your problems, so this chip goes from over here to over there, and with it comes the issue.

Dan Reaser:
The existing provisions of the Gaming Control Act and the changes in this bill specifically address that. The changes to the definition of manufacturer in section 1 make clear that they have to be licensed. The entities that control the manufacturing of the device, control its assembly, and take responsibility for all of that are companies like IGT, Bally's, and Mikohn. They are responsible for the games and their ultimate development and programming, for the placement of the machines by application before the Control Board and the Commission for approval, and for working on a day-to-day basis with the Control Board on oversight and control of the computer programs. What is important to understand is that the independent contractor is not the manufacturer. He is developing an idea. He is an inventor and has just come up with an idea. By independent contract, he sells that idea to the licensee, and the computer program that the inventor has created comes under the control of and is the property of the gaming manufacturer who is a licensee. That computer source code that may have the next-best, greatest game would be combined by the manufacturer with the full computer program that operates the game. So the manufacturer may take this one idea from an independent contractor, but the whole computer program is written and controlled by the manufacturer who

then puts it before the Control Board for approval. The independent contractor is not going to control the whole game program.

Chairman Anderson:
We know the house is always going to have the advantage, but we would not like the house to be able to change and manipulate the game in the middle of the day to make it more favorable to the house. The game should not be set differently if there is a crowd or not. The house should not be able to set it under the state standard of 95 percent. And that worries me.

Dan Reaser:
Nothing about this change in law would permit that.

Chairman Anderson:
Do the manufacturers feel that this is taking away from their prerogative of development?

Dan Reaser:
No. With the way the bill has been written, there are safeguards and opportunities for the Commission to weigh all of the considerations it needs to.

On behalf of Lionel Sawyer & Collins, I might also indicate for the record that we heartily support section 7 of the bill, which makes changes to NRS 463.120, the confidentiality public record statute. As Chairman Neilander indicated, this is a very critical statute that, in collaboration with NRS 463.3407, provides the protections to licensees, the Control Board, and the Commission to safeguard public records and confidential information. We believe these changes appropriately balance the need to keep materials generated by the Board absolutely privileged, and grants the Board the ability of the judiciary to decide in a case of necessity under the *Laxalt* cases. The information given to the Control Board that is generated by a litigant about himself would be discoverable in absolute necessity cases.

Assemblyman Segerblom:
In your view, does this make it harder for someone to obtain confidential information? Did this not come up when John Smith was trying to get information on Sheldon Adelson? Are we making it harder on someone being sued for libel?

Dan Reaser:
That is an example of the type of case we are talking about; also divorce cases. I think the important distinction is that the work product of the Board—the written summary and mental impressions of agents or Board members in

evaluating information—is what is being protected here with an absolute privilege. That information should not be available to litigants in private cases because none of the litigants have generated the information. Litigants should not be able to use the Control Board as a one-stop discovery shop to get information on the mental impressions of the Control Board. This information could be about someone who is not even an applicant but someone the Board asked the applicant about because he had some business or social association with him. Subsequently, a litigant could try to use the Board's information about that person to establish evidence, and the agent now becomes a witness in a case between two private litigants. This section does not inappropriately limit the ability of private litigants to get information that is of necessity under the *Laxalt* cases, but it does protect the Control Board's private work product.

Assemblyman Segerblom:
It seems that when you deal with defamation and the public-figure standard, any evidence that the defendant can use to say he was reasonable in what he said, even if it was opinion, notes, or observations, would be relevant in defending himself in a defamation action.

Dan Reaser:
That same information is still available to the litigants. The core underlying facts are still available by discovery to the other party in the defamation action.

Assemblyman Segerblom:
How do those facts appear? Based on those facts, does it look like something inappropriate has happened, or do those facts not mean anything? It seems to me the Control Board's observations or interpretations of those facts would be relevant in defamation actions since the defendant is saying, "Based on those facts, I thought it appeared that this person had a shady background, and that is why I wrote the story," while the plaintiff is saying, "These facts had nothing to do with a case of a shady background." If the notes showed that the Gaming Control Board also thought there might be evidence of a shady background, then that would be relevant to the action.

Dan Reaser:
Respectfully, I think you are trying to have the work-product deliberation of a regulatory agency circumvent and supplant the independent judgment of the jury as to what those facts mean. The underlying facts are available, but you are now trying to say to the jury that they should adopt the Control Board's analysis instead of independently evaluating the truth of those facts.

Chairman Anderson:
I presume that part of the final deliberation is made public as a result of the actions taken in a public meeting? That action would be available?

Dan Reaser:
Yes. The transcripts of the public hearings are available.

Finally, regarding the proposed amendment to section 19, we endorse that amendment.

Chairman Anderson:
Is there anyone in opposition? I will close the hearing on S.B. 83 (R1) and bring it back to Committee. The Chair will entertain an amend and do pass motion.

> ASSEMBLYMAN CARPENTER MOVED TO AMEND AND DO PASS SENATE BILL 83 (R1).
>
> ASSEMBLYMAN HORNE SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYWOMAN PARNELL WAS ABSENT FOR THE VOTE.)

We are adjourned [at 11:17 a.m.].

RESPECTFULLY SUBMITTED:

_____
Karyn Werner
Committee Secretary

APPROVED BY:

_____
Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 23, 2009 **Time of Meeting: 10:10 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster