

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-sixth Session  
May 24, 2011**

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 9:10 a.m. on Tuesday, May 24, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Valerie Wiener, Chair  
Senator Allison Copening, Vice Chair  
Senator Shirley A. Breeden  
Senator Ruben J. Kihuen  
Senator Mike McGinness  
Senator Don Gustavson  
Senator Michael Roberson

**GUEST LEGISLATORS PRESENT:**

Assemblyman William C. Horne, Assembly District No. 34

**STAFF MEMBERS PRESENT:**

Linda J. Eissmann, Policy Analyst  
Bryan Fernley-Gonzalez, Counsel  
Kathleen Swain, Committee Secretary

**OTHERS PRESENT:**

Mark A. Lipparelli, Chair, State Gaming Control Board  
Pete Ernaut, Nevada Resort Association  
Randall Sayre

CHAIR WIENER:

I will open the hearing on Assembly Bill (A.B.) 258.

**ASSEMBLY BILL 258 (2nd Reprint)**: Revises provisions governing the licensing and operation of interactive gaming. (BDR 41-657)

ASSEMBLYMAN WILLIAM C. HORNE (Assembly District No. 34):

This is the online gaming bill. It has been amended, and this is the second reprint. Section 2 of the bill recognizes the importance of the regulatory scheme on Internet gaming for Nevada. Sections 3 through 10 have been deleted. Section 10.5 of the bill denotes that interactive gaming includes Internet poker but not race books and sports pools that use communication technology.

Section 11, subsection 1, paragraph (e) of the bill states licensees are not to:  
... operate, carry on, conduct, maintain or expose for play in or from the State of Nevada any interactive gaming system, without having first procured, and thereafter maintaining in effect, all federal, state, county and municipal gaming licenses as required by statute, regulation or ordinance or by the governing board of any unincorporated town.

Section 12 directs the Nevada Gaming Commission to put the necessary regulatory scheme in place. The first steps toward providing for online gaming regulations were taken in 2001. Those regulations have not been put into place. This is a directive to do so.

A provision on taxation is included. Pete Ernaut will propose an amendment to preclude double taxation between state and federal governments. Section 12, subsection 4, paragraph (a), subparagraph (3) requires that the establishment has held a nonrestricted license for at least five years before the date on which the application to operate interactive gaming is filed. Section 12, subsection 5 allows the Commission to issue licenses to operate interactive gaming to an applicant that meets the qualifications. Licenses can be awarded now, and the Commission can put the regulations in place now, but no one can operate until federal law has been passed or the United States Department of Justice has said it is no longer a problem.

There are concerns regarding whether this bill would prohibit the State from conducting intrastate online gaming within the borders of Nevada. This bill does not prohibit that because federal law does not dictate what we can do inside

the jurisdiction of Nevada. We could go forward today with intrastate online gaming.

The genie is out of the bottle in regard to online gaming. It is generating billions of dollars around the world. There is a great need for regulation. Nevada is recognized as the No. 1 place in the world for gaming regulation. We should remain in that position. There is a race as to who will do this first. No one will do it better than Nevada. Other jurisdictions and states are trying to pass legislation to do online gaming. When the federal law is passed, they are going to provide for licensing. Jurisdictions that want to do it will look to Nevada about how to do licensing. These online gaming companies that can qualify and get a license will pass through Nevada for that license. We must have our ducks in a row and all the regulations in place. We should be able to be operational the day after that law is passed.

CHAIR WIENER:

The mobile gaming bill we just heard included references to communications technology as well. This language will need to reconcile with what we did. Under section 11, subsection 1, paragraph (e), we are talking about unlawful activity. I would think the language contained in paragraph (e) is already not legal, but you are specifying it is not legal.

ASSEMBLYMAN HORNE:

This is the prohibition section. We are stating there is a prohibition against operating, carrying on, conducting or exposing for play interactive gaming on the Internet in Nevada. We are stating it is illegal to do that. That is why we included the ability for licensing to take place now, but not the ability to operate now.

CHAIR WIENER:

Did you want to be specific and state it?

ASSEMBLYMAN HORNE:

Yes.

CHAIR WIENER:

This will not be effective until the federal law is enacted or the Department of Justice notifies that it is allowed under federal law. Would the law pass and

then we would be notified? It says "or." How would the Department of Justice notify us if the law had not been enacted?

ASSEMBLYMAN HORNE:

The Department of Justice has been prosecuting the recent cases. If the Department of Justice deemed the current provisions or prohibitions on Internet gaming do not apply to online gaming to the states, it could give a notice to the states that it is no longer illegal. This would give jurisdictions comfort they would not be prosecuted. The prosecuting authority would be saying online gaming is allowed.

CHAIR WIENER:

Does that have the same weight as federal law?

ASSEMBLYMAN HORNE:

It would be a new interpretation of the law. I do not see that happening.

CHAIR WIENER:

Are you accommodating in statute just in case?

ASSEMBLYMAN HORNE:

Yes.

SENATOR ROBERSON:

I have a question regarding section 12, subsections 3, 4 and 5. Subsection 3 provides "the Commission shall not approve a license for an establishment ... " that basically is not a resort hotel. Paragraph (a) relates to counties with a population of 400,000 and above. Paragraph (b) relates to counties with a population of more than 40,000 and less than 400,000. Paragraph (c) relates to counties with a population of less than 40,000. Subsection 5 appears to read that the Commission may issue a license to anyone who meets the qualification established by federal law. What is the public policy intent? Is it to encourage out-of-state operators to be licensed in Nevada? It seems we would not need subsections 3 and 5. We would only need subsection 5 if the goal is that the Commission can license anyone who meets the federal law. This makes it more difficult for brick-and-mortar companies in the State to obtain the license than anyone outside the state.

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ASSEMBLYMAN HORNE:

I do not see it like that. It is not one or the other.

SENATOR ROBERSON:

Subsections 3 and 4 seem superfluous. Subsection 5 is all that is needed.

ASSEMBLYMAN HORNE:

Is that the existing law? Subsections 3 and 4 are existing law. Subsection 5 deals with the interactive gaming component where these companies would come in and associate with the brick and mortar companies that are here.

SENATOR ROBERSON:

I do not read that they have to associate if you just look at subsection 5.

MARK A. LIPPARELLI (Chair, State Gaming Control Board):

In subsection 5, we cannot know what federal definition might ultimately be adopted for an interactive license. Having this included in the bill would not require us to revisit this. If a set of guidelines is established at the federal level, the Commission could determine on its own if that was a sufficient requirement to allow that entity to be licensed in Nevada.

SENATOR ROBERSON:

Does it make sense that you should have to satisfy subsections 3, 4 and 5? Is the public policy that the Commission will make the decision? Would they look at the qualifications of someone from out of state who would not necessarily have to comply with subsections 3 or 4?

MR. LIPPARELLI:

It is partly a challenge of anticipation. We are not certain what might ultimately be adopted by the federal government. If we did not have a clause like this in the bill, the Commission may be frustrated in its ability to take advantage of the passage of national legislation. I support the bill. I like the language in the bill because it gives the Commission the flexibility to accept whatever standards the federal government might establish.

SENATOR GUSTAVSON:

Section 12, subsection 2, paragraph (d) says:

Provide that gross revenue received by an establishment from the operation of interactive gaming is subject to the same license fee

provisions of NRS 463.370 as the games and gaming devices of the establishment, unless federal law otherwise provides for a similar fee or tax.

Please explain how this will work.

PETE ERNAUT (Nevada Resort Association):

Section 12, subsection 3 of the bill allows for licensure to take place only if an Internet poker company is in partnership with an existing resort hotel. Section 12, subsection 4, paragraph (a), subparagraph (3) regarding the five-year restricted license condition is established so an Internet poker company could not inflate a dormant license or property. It must partner with a legitimate ongoing nonrestricted licensee.

Section 12, subsection 5 of the bill is a tip to the federal bill that was unsuccessful, though it may be a foundation for future federal action, in that it allowed two states to be regulatory bodies, Nevada being one of those. That language allows Nevada to be a regulatory body for the federal regulation if and when it is adopted.

Existing interactive gaming statutes have a tax rate of 6.75 percent, the same as the gross gaming tax. This says that if a federal regulation is adopted that includes taxes, this would not be a tax in addition to that. However, if a federal regulation was passed that did not include a taxation component, the 6.75 percent would take effect. If there is a federal tax, our tax would not apply. If there is no federal tax, our tax would apply.

SENATOR ROBERSON:

If the goal is to ensure an Internet poker company is affiliated with a company in Nevada, should subsection 5 be required in addition to subsections 3 and 4? Should it be subsection 3 or 4 and subsection 5 on top of that? Do we want anyone who is licensed to do this in Nevada also to meet the qualifications established by federal law? If it is subsection 3, 4 or 5, you could have an Internet poker company that has no affiliation with an existing gaming company in Nevada.

MR. ERNAUT:

Subsection 5 was not a condition on the licensees here. It allows the Commission to operate as a regulatory body. Subsections 3 and 4 were

supposed to be the conditions of partnership with an established licensee. They are not connected.

MR. LIPPARELLI:

One of the challenges of not giving the Commission that flexibility is if national legislation does pass, you would want to give the Commission as much flexibility to make good faith determinations of license ability to a number of applications. One of the potential drawbacks of drawing those things together in subsections 3, 4 and 5 is that the national legislation might result in something other than what is contained in subsections 3 and 4 of the legislation, which is usually the case through compromise. We would not want to put Nevada in a position where it could not immediately take advantage of national legislation should that occur. There is a concern that if you try to weave those together, it may set a bar certain licensees may not be able to overcome. Subsection 5 gives the Commission that flexibility. The Commission could make a good faith determination that there is intent in the statute saying we want to license someone with a vested interest in the State. If it was a person who simply met the requirements but would otherwise not be suitable, the Commission could still draw that conclusion. That is an important element of the impact of this possible national legislation.

CHAIR WIENER:

You mentioned two states are established as the licensing states. Is the other one New Jersey? Are they working on similar legislation at this time to be one of the capturing states?

MR. ERNAUT:

It was vetoed by the governor of New Jersey because the New Jersey Constitution does not allow gaming outside of Atlantic City. The legislation that passed would have been in violation of the New Jersey Constitution. The veto was sustained. There will be ballot measures in New Jersey to do a number of these things.

CHAIR WIENER:

If this were to pass, would we be the only state?

MR. ERNAUT:

Part of that is the impetus for this bill. We wanted Nevada to lead and to be ready. Whenever that day comes when the federal ban is lifted, Nevada will be

ready not only with rule making done but licensure complete for many of the companies so Nevada would be first in line. Nevada wants to keep its leadership role in the world as the gaming leader both operationally and with regard to regulations.

CHAIR WIENER:

As other licenses are renewed and if we have enough of a waiting period, would these licenses have the same kind of renewal cycles while they are in the holding pattern?

MR. LIPPARELLI:

All licensees are subject to annual payment for renewal. Regarding section 12, subsection 2, paragraph (g), I suggest we include a provision that any license to operate interstate interactive gaming does not become effective. That would make it clear we are still able to proceed on an intrastate basis. I would not want to ask the federal government for permission to pass regulations for our own activities within the State.

CHAIR WIENER:

Are you comfortable with that? We will offer that. Would that say a license to operate interstate interactive gaming does not become effective?

MR. LIPPARELLI:

Yes.

MR. ERNAUT:

We offer a housekeeping amendment to make it clear how the tax rates apply or do not apply depending on whether the federal statute includes a tax rate. We inadvertently missed one section, and this amendment catches that section to make sure the tax does not apply if federal tax does apply ([Exhibit C](#)). If federal regulation does not include a tax, this tax will apply.

CHAIR WIENER:

Is the sponsor in agreement with the technical amendment?

ASSEMBLYMAN HORNE:

Yes.

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RANDALL SAYRE:

I represent no specific interest but merely have an interest in the bill itself. I have had conversations with European interests interested in penetrating the Nevada market in preparation for federal legislation. Mr. Lipparelli has addressed the issue I wanted to discuss, which is whether this language as presented would prevent the deployment of intrastate systems in preparation for an interstate solution by the federal government. By the addition of the language Mr. Lipparelli has addressed, that issue has been resolved.

SENATOR ROBERSON MOVED TO AMEND AND DO PASS AS AMENDED  
A.B. 258 WITH MR. ERNAUT'S AMENDMENT AND THE VERBAL  
AMENDMENT FROM MR. LIPPARELLI.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR WIENER:

The hearing is open for public comment. There being nothing further to come before the Committee, we are adjourned at 9:39 a.m.

RESPECTFULLY SUBMITTED:

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Kathleen Swain,  
Committee Secretary

APPROVED BY:

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Senator Valerie Wiener, Chair

DATE: \_\_\_\_\_

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 258	C	Pete Ernaut	Proposed amendment