MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-sixth Session
March 11, 2011

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:02 a.m. on Friday, March 11, 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 Don Gustavson
Senator Michael Roberson

COMMITTEE MEMBERS ABSENT:

Senator Mike McGinness (Excused)

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Policy Analyst
Bradley A. Wilkinson, Counsel
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Bob Faiss, Cantor Gaming
Daniel Greenspun, Greenspun Corporation
Lee M. Amaitis, Cantor Gaming
Philip Flaherty, Cantor Gaming
Mark A. Lipparelli, Chairman, State Gaming Control Board
Joshua J. Hicks, Global Cash Access
Jennifer Roberts, AEG Live

CHAIR WIENER:
I will open the hearing on Senate Bill (S.B.) 103.

SENATE BILL 103: Authorizes a licensed interactive gaming service provider to perform certain actions on behalf of an establishment licensed to operate interactive gaming. (BDR 41-828)

BOB FAISS (Cantor Gaming):
We appear in support of S.B. 103. We have no involvement in any other Internet gaming bill.

In the wake of a move last year to bring an Internet gaming bill to a vote in the U.S. Congress, many states have been working on bills on this topic, including New Jersey, California and Iowa. There has been much speculation as to which state will be the first to legalize Internet gaming. That question was actually decided ten years ago, in good part due to the contributions and leadership of Chair Wiener and Senator McGinness, with enactment of the Interactive Gaming Act of 2001 (IGA), which was A.B. No. 466 of the 71st Session.

Chair Wiener asked me to open my testimony by explaining how interactive gaming compares with Internet gaming and summarizing the IGA. First, interactive gaming includes Internet gaming. This is codified in *Nevada Revised Statute* (NRS) 463.016425, which states, "'Interactive gaming' means the conduct of gambling games through the use of communications technology ... ." It further states:

> "[C]ommunications technology" means any method used and the components employed by an establishment to facilitate the transmission of information, including, without limitation, transmission and reception by systems based on wire, cable, radio, microwave, light, optics or computer data networks, including, without limitation, the Internet and intranets.

I will also point out that "intranets" are networks contained within a state without crossing that state's borders.

The IGA is codified in NRS 463.750 through NRS 463.780. I was one of the lead attorneys who worked on that bill. We worked hard to satisfy Senator Wiener that the plan protected Nevada's future and its integrity, and to

satisfy Senator McGinness that casinos in small counties had an equal opportunity to be Internet gaming operators along with casino resorts.

Briefly, these are the features of the IGA. There are two classes of licenses with respect to interactive gaming: an operator of interactive gaming systems and a manufacturer of interactive gaming systems. The initial license fee for an operator is $500,000, and the initial license fee for a manufacturer is $125,000. The tax on the gross revenue from interactive gaming is the same as that for casino gross revenue: 6.75 percent. Only resort hotels or certain casinos qualify to be licensed as operators. The Senate Judiciary Committee took care to ensure that only established businesses that have made brick-and-mortar investments in Nevada qualify to be operators.

However, the IGA required regulations to be implemented. The process to produce these regulations was begun, but they were never completed because the U.S. Department of Justice advised the Nevada Gaming Commission that Internet wagering across state lines would violate federal laws. One of those laws is the Wire Act, Title 18 of the United States Code, section 1084, which prohibits the use of the Internet for transmission of certain bets, wagers or information assisting in the placement of such bets or wagers.

Only certain casinos are eligible to be licensed to operate interactive gaming systems. However, because many casinos do not have the capacity by themselves to be system operators, it can be expected that a number of them would welcome the opportunity to contract or be associated with an experienced company, such as Vegas.com or Cantor Gaming, to assist them in minor or major respects.

The bill before you now requires the licensing of those in the class termed "service provider." Service providers, in connection with an interactive gaming system, manage wagers, control the games with which wagers are associated, maintain or operate gaming software or hardware, and/or provide intellectual property that identifies the interactive gaming system to patrons.

CHAIR WIENER:
Since these enterprises have been in the marketplace for a long time as service providers, why is there an interest in this licensing piece now? What prompted the bill?

MR. FAISS:
There are two factors. First, as the years have passed, we now have a different technological system and framework for the gaming industry. Second, there was a move in the U.S. Congress last year to remove the impediment to interactive gaming across state lines. That bill did not pass, but it is now a question of when the change will be made, not if. Parts of the federal bill gave Nevada a central part in issuing the federal license and doing investigations. When we looked at the existing statute, we recognized the absence of legislation regarding a necessary component of interactive gaming. This bill fills that gap.

CHAIR WIENER:
I understand there are companies outside the State and outside the United States that have engaged in Internet gaming. This would certainly provide the template for accountability and management of this part of the product.

DANIEL GREENSPUN (Greenspun Corporation):
I am here to speak in support of S.B. 103. Nevada enacted the IGA in 2001. Since then, technology and gaming have changed. In many areas of business and technology, we are seeing the growth of specialization. This bill addresses these changes by modernizing existing interactive gaming statutes to explicitly require that significant service providers to interactive gaming licensees are subject to the same scrutiny and licensing requirements as the casino licensees they serve.

During the modern era of legally regulated gaming, Nevada has earned a worldwide reputation for integrity. This is due primarily to our regulatory framework that requires all licensees to pass one of the most rigorous application and investigation processes for any industry in the world. This bill seeks to ensure Nevada maintains that reputation by requiring all significant service providers to meet the strict requirements that have made our gaming industry the standard by which others are measured.

LEE M. AMAITIS (Cantor Gaming):
I support this bill. I have written testimony explaining the need for S.B. 103 (Exhibit C).

PHILIP FLAHERTY (Cantor Gaming):
I support this bill. I am here to answer any questions I can based on my experience with Nevada gaming.

SENATOR ROBERSON:

> I don't know when it's appropriate, but at some point I just want to make a disclosure. We talked about the relationship between Cantor and the M Resort [Spa Casino] in 2006. I was actually an attorney for the M Resort, and I was involved in negotiations on certain agreements involving interactive gaming between Cantor and M Resort. I don't really have a dog in this fight otherwise, but I just wanted to put that on the record.

Section 2, subsection 3, paragraph (c) of S.B. 103 states that the Commission will create regulations that set standards for the suitability of those licensed as manufacturers of interactive gaming systems. Unless it is set out in another section, this language should include the phrase, "or service provider."

MR. FAISS:
That was certainly the intent. If that provision does not exist elsewhere, the bill would not be whole, so it should be added.

BRADLEY A. WILKINSON (Counsel):
The bill does not currently include the provision. We can add that in.

SENATOR ROBERSON:
Thank you. There is a duplication of language between this bill and S.B. 218. The two bills seem to be talking about the same thing, but one has a licensing mechanism. At some point, we need to reconcile the two bills.

CHAIR WIENER:
I will close the hearing on S.B. 103 and open the hearing on S.B. 218.

SENATE BILL 218: Revises provisions governing the regulation of gaming. (BDR 41-991)

MARK A. LIPPARELLI (Chairman, State Gaming Control Board):
I note that S.B. 103 has some language in common with S.B. 218. At some point, we may have to reconcile the language. In S.B. 218, we tried to refer to generic service providers and not limit the term to Internet service providers.

I have written testimony describing each section of S.B. 218 (Exhibit D).

With the evolution of technology in the industry, one of the ideas that has come up is network-based gaming. The challenge for our existing nonrestrictive licensees is the likelihood that gaming transactions will occur within computer networks. Historically, gaming has always resided on the casino floor in slot machines or discreet devices that can be audited, disconnected from the system and tracked. That will likely become less and less commonplace over time, to be replaced by networks housed in computing centers.

Today, our statutes prohibit those computer centers from being anywhere other than on the premises of the casino. Several of our nonrestrictive licensees, as well as some of the creative innovators in this room, have asked whether those hosting centers could be placed somewhere other than the premises of a casino. From the perspectives of security, safety and accountability, having hosting centers that can perform these functions on behalf of licensees or by the licensees themselves moving to an off-premises location that has state-of-the-art security and control would be a benefit to the state. This bill provides for that in law.

CHAIR WIENER:
Is it possible these premises could be so remote from the operation that it would be more difficult to do inspections?

MR. LIPPARELLI:
The Board would most likely not approve a location that is difficult to reach. The likelihood is that the hosting centers would have security enhancements that are not possible when the centers are located on the premises of a casino. We anticipate we will be doing site visits and approving any locations proposed.

CHAIR WIENER:
Can we assume these hosting centers will be located within Nevada?

MR. LIPPARELLI:
It is my intention that the hosting centers will be within Nevada boundaries.

With regard to section 3, I will attempt to reconcile the duplication of language between this bill and S.B. 103. Historically, we have defined gaming manufacturers for the purpose of licensing as those who make slot machines. As the technology has evolved, more companies are falling into a midtier category: something less than full-blown slot machine manufacturers, but with significant technological advances.

In section 3, the Board has attempted to create a third class of license called a service provider. It would encompass what you heard about today in S.B. 103 and give the Commission and the Board the ability to craft regulation to allow for this different definition of service provider. Companies like IGT, Bally, WMS and Aristocrat are manufacturers that provide slot machines and other kinds of systems. Examples of this midtier category include cash service and software providers that provide player tracking software or bonusing software.

CHAIR WIENER:
Section 2, subsection 2, paragraph (c) refers to "persons having a significant involvement" with the operation of a service provider. How do you determine when involvement is significant? Is there a scale?

MR. LIPPARELLI:
No, there is no scale. I would consider it significant involvement if a hosting center performed functions on behalf of the licensee, rather than just serving as a physical location for the technology. Hosting centers provide varying degrees of service. Some may be nothing more than a physical structure with a locked enclosure where the licensee works. In other cases, the hosting center may provide comprehensive technology services to the licensee. When that is the case, we would say the hosting center is significantly involved and should be considered a service provider under this definition.

Section 4 relates back to the long-standing practice of requiring the Board's personnel manual to be approved by the Commission. The net effect of this has been that over the years, changes to the personnel manual have taken a substantial amount of time. In the last 12 months, we finally achieved a major revision to our personnel manual that had not been done for more than 10 to 15 years. The chair of the Commission asked why it had to be approved by the

Commission when it should be a Board matter. These are policies of the Board, and requiring the Commission to supervise those changes is probably not necessary. We are therefore requesting that we be allowed to handle the personnel manual at the Board level.

Section 5 is a cost-saving opportunity for the Board. We have a constant dialogue with the industry, and we publish a lot of information on our Website. We make all of our transcripts, drafts of regulation changes, technical notices and industry notices readily available on the Website. We have found that most people access this information through the Website, and mailings typically do not get much response. This section deletes the requirement that we publish such information in newspapers.

CHAIR WIENER:
Would it be burdensome to add the phrase "or transmitted electronically" to section 5, subsection 1, paragraph (a), subparagraph (2)? That would allow you to send such notices via e-mail as well.

MR. LIPPARELLI:
That would not be a problem.

CHAIR WIENER:
Mr. Wilkinson, please add that wherever appropriate. You might also want to consider that possibility in the sections that require you to provide documents to regulatory bodies, if it is appropriate.

MR. LIPPARELLI:
That would be fairly simple. We could also apply it to the sections requiring licensees to provide paper copies of their U.S. Securities and Exchange Commission (SEC) documentation to us. Before we were required to use the SEC's Electronic Data Gathering, Analysis and Retrieval (EDGAR) system, we had to have hard copies so we knew our licensees were complying with the submission requirements. That was expensive but effective. With EDGAR, however, all of the public filings are readily available online 24 hours a day, 7 days a week.

Section 6 eliminates a requirement that the Board chairman present claims to replenish our revolving account for confidential investigations. The Audit

Division of the Legislative Counsel Bureau recommended this requirement be eliminated, since we have only rarely needed to use this mechanism.

Section 7 authorizes the Board chair, in consultation with the Commission chair, to administratively determine that a previously licensed gaming operation is a continuing operation rather than a new one, and thus to grant that operation credit for prepaid license fees. This is an important process improvement for us. In these difficult days of financial challenges and structural changes to companies, there are often times where a licensee's corporate structure may change, requiring a closing audit and the initiation of the licensing process from scratch. This requires a substantial amount of time, to say nothing of the cost. As you may know, licensees are required to prepay taxes. When there is a bankruptcy or a change in corporate structure, the licensee would have to prepay taxes again and then ask for a refund of the previous taxes they prepaid before.

This change, which is supported by the industry, would allow the Board and Commission to determine that a corporation or limited liability company with no change of licensees could be considered a continuing operation and not require such a refunding and repayment of prepaid taxes.

Sections 8 and 9 have to do with the Board's historical zero percent threshold for private companies. Currently, every limited partner of a gaming company must be licensed, no matter how small a percentage of the company they actually own. In Nevada, unlike every other state, any owner of a private company is subjected to our licensing process. This section would change that threshold to 5 percent, so that we could use our discretion as to whether to require licensing from those who own 5 percent or less of a company. This is the common threshold in other gaming markets. This provision does not diminish the Board's ability to require licensing of anyone owning less than 5 percent, if the Board or the Commission feel it is warranted.

In addition, there has been much discussion about access to capital in the various markets where our companies operate. Certainly, the financial challenges of the last five years have presented several problems for private entities that are principally debt-based companies. When those companies sit down with their capital advisors, often equity ownership is not on the table because of the potential for a company to have to go through the licensing process a second time.

CHAIR WIENER:
What do you do now for shareholders who own less than 5 percent of a company?

MR. LIPPARELLI:
Currently, anyone who owns any portion of a private company has to go through the licensing process. The threshold is zero percent.

CHAIR WIENER:
What does the registration process entail?

MR. LIPPARELLI:
I do not recall the exact process, but it starts with the completion of a three-page form.

CHAIR WIENER:
Would you want that information to be maintained on-site?

MR. LIPPARELLI:
It is a requirement for the licensee to maintain a record of all ownership.

CHAIR WIENER:
Would you also have that record in your office?

MR. LIPPARELLI:
Yes. It would be a filing in itself. We have to be able to determine whether the person is a disinterested financial investor or someone with a measure of control over the business who is trying to avoid the licensing process.

The other reasons related to this 5 percent threshold are that in a lot of bankruptcies and reorganizations, private owners find themselves in the position of not having equity as an alternative.

> So in some cases, it's been my view—and having had significant discussions with people who are in really tough positions—there's quite a bit of frustration that they don't have the ability to offer up to their financial advisors the full panoply of options to either save their location from bankruptcy or to negotiate the best deal they

could with creditors because equity, frankly, is not on the table, given the licensing requirement.

Another factor is that in our licensing regime, public companies already have this alternative. In fact, you could argue that the threshold goes up to 10 percent for public companies, because at 5 percent they are notified, and at 10 percent they are required to file. This provision would essentially equalize private and public companies in our licensing regime.

This has been an important process in the history of our licensing, so it is not insignificant to consider something like this. The 5 percent threshold has been in place in most other jurisdictions for the last 10 to 15 years, and I am not aware of any instance where that 5 percent rule has presented a challenge or a problem. All of those jurisdictions maintain the regulatory authority to require an investor to undergo the licensing process regardless of their ownership level if they feel the person is exercising control over the operation.

Sections 10 and 11 relate to the removal of the SEC filing requirements on our licensees.

Section 12 has to do with one of our criminal statutes about advantage play. There was some difference of opinion as to whether NRS 465.075 applies to licensees as well as players. There was also a question as to whether the fact that it is in the criminal statute was a message to industry that innovators could not create products that could potentially be interpreted as advantage play. For that reason, this needed to be clarified in statute.

It is my view that the statute is solely intended to catch cheaters. However, a clause at the end of the statute says, "except as permitted by the Commission." Because of that, there was some debate as to whether the Legislature meant a casino could create a product—a betting alternative or a piece of shuffling equipment—that offered gaming or betting alternatives. Did the Legislature intend to specifically prohibit the creation of devices that create some type of advantage, either for the house or for the player? My opinion is that if it is permitted by the Commission, it is an option for innovators, as long as it is in keeping with the other public policy elements of our statute.

CHAIR WIENER:
In your bill and in S.B. 103, we are addressing the category of service provider. You talked about whether that means the player or the casino. Would it be your intent also to include the new category as one of those accountable parties?

MR. LIPPARELLI:
It could be.

CHAIR WIENER:
Does the language in the bill say that?

MR. LIPPARELLI:
Section 12 is specifically addressing the debate that occurred as to the intention of the Legislature with respect to NRS 465.075.

CHAIR WIENER:
Would it be your intention that the new category of service providers also be covered by the provisions in section 12 of the bill?

MR. LIPPARELLI:
Yes. We believe that where the statute says, "It is unlawful for any person ... " to use or posses such devices, "person" means players and licensees, which includes service providers by definition.

CHAIR WIENER:
Mr. Wilkinson, do we need more specific language, since we are talking about intent?

MR. WILKINSON:
I do not think so. The current language covers everyone, as Mr. Lipparelli said.

MR. LIPPARELLI:
Section 13 of S.B. 218 relates to a dispute over tax payments within the live entertainment category. Our belief as a Board and Commission is that your intention was to include Live Entertainment Tax in total. We do not believe there is an argument to be made that anything other than credit card fees and other types of financial fees are excluded. That came to us in the form of a case, and there was debate on the record about that. This corrective language will address that issue with clarity.

CHAIR WIENER:
Is the debate about whether this is an existing tax as opposed to a new tax? I see some retroactive application here, and the debate will be about how we interpret that. Could you talk more about that?

MR. LIPPARELLI:
One of the inherent challenges of tax disputes with the Board and Commission is that we are charged with deciding whether a tax applies or not. We do not have much flexibility in the case of an honest dispute between a licensee and the Board as to how a situation should be interpreted. In some cases, a licensee might dispute the historical application of the tax, while agreeing to adjust to our interpretation in the future. We do not have the ability to accept that—to forgive the tax that has not been paid and agree that the licensee will owe the tax from now on. We can only find either that the tax has always been owed or that it has not. This provision would allow us to say we have a determination, and it goes back in time.

CHAIR WIENER:
Your summary says this provision would apply retroactively to January 1, 2004. That is a long span of time. Why is this showing up now?

MR. LIPPARELLI:
This section has not been in a dispute until recently. Section 13 of S.B. 218 gives our position based on the case put in front of us. You will hear another position on this matter momentarily from those representing Anschutz Entertainment Group (AEG) Live.

Section 14 is another cleanup item recommended by the Audit Division. It repeals NRS 463.332, which created the Regulation 6A cash account. Regulation 6A was repealed in June 2007 when that function was taken over by the federal government. As I recall, there is about $40,000 trapped in this account, and this provision would return that money to the State.

JOSHUA J. HICKS (Global Cash Access):
We have an amendment to offer (Exhibit E). Our amendment has to do with requiring licensure for our industry, which installs and services cash advancing machines in casinos. This industry is not currently licensed in Nevada as it is in other jurisdictions. Global Cash Access holds 116 licenses from other states and countries. We have been in discussion with Mr. Lipparelli about bringing the

cash access industry into the licensing scheme in Nevada. We all agree to the concept that licensing is appropriate for this industry. Our proposed amendment, Exhibit E, makes this licensure mandatory. We are happy to continue the dialogue with Mr. Lipparelli about the best way to do this.

MR. LIPPARELLI:
We support the notion that these companies should be subject to that level of scrutiny, and we have required it historically through the powers that already exist within the Board. If we cannot find a way to capture this industry in the new service provider category, I would support a statute encompassing it separately.

CHAIR WIENER:
Please continue that conversation and let us know what language you come up with.

JENNIFER ROBERTS (AEG Live):
I have written testimony explaining our objection to section 13 of S.B. 218, which has to do with changes to the Live Entertainment Tax statutes (Exhibit F).

MR. FAISS:
We are currently analyzing S.B. 218. A number of the provisions have our total support. Both S.B. 103 and S.B. 218 use and define the term "service provider" in the context of gaming licenses.

> We hope we may convince Chairman Lipparelli that we make a joint endorsement that S.B. 103 be adopted, and that your "service provider" stay as is for two or three reasons. One, that that class of service provider is very important and has the potential to be greatly important. That bill, if it is adopted, is going to be studied by the federal government as they look further into Internet gaming. It's going to be, I suggest, a model for other states, just as the Gaming Control Board has been for other states and countries throughout the world. It is going to be much easier to define a process and intent by having it as a single component.

CHAIR WIENER:
Is there any public comment or any further business to come before the Committee? Hearing none, I will adjourn this meeting at 9:17 a.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Valerie Wiener, Chair

DATE:

EXHIBITS			
Bill	**Exhibit**	**Witness / Agency**	**Description**
	A		Agenda
	B		Attendance Roster
S.B. 103	C	Lee M. Amaitis	Written testimony in support of S.B. 103
S.B. 218	D	Mark A. Lipparelli	"SB 218 Summary"
S.B. 218	E	Joshua J. Hicks	"Proposed Amendment to Senate Bill 218"
S.B. 218	F	Jennifer Roberts	Written testimony opposing S.B. 218