

NATIONAL COUNCIL OF LEGISLATORS FROM GAMING STATES
STATE-FEDERAL RELATIONS COMMITTEE
NAPA, CALIFORNIA
FRIDAY, JUNE 13, 2008
MINUTES

The State-Federal Relations Committee of the National Council of Legislators from Gaming States (NCLGS) met at the Napa Valley Hotel & Spa in Napa, California, on Friday, June 13, 2008, at 1:45 p.m.

Senator Steven Geller from Florida, Chair of the Committee, presided.

Other members of the Committee present were:

Rep. Michael Caron, CT
Rep. Kevin Ryan, CT
Rep. Jim Waldman, FL
Rep. Arlen Siegfried, KS
Sen. Richard Lerblance, OK
Rep. John Evans, PA
Rep. Tim Solobay, PA

Other legislators present were:

Rep. H. Mac Gipson, AL
Sen. Tom Harman, CA
Rep. Perry Thurston, FL
Rep. Brian Quirk, IA
Rep. Trent Van Haaften, IN
Rep. Charlie Hoffman, KY
Rep. Joni Jenkins, KY
Rep. Dennis Keene, KY
Rep. Darryl Owens, KY
Sen. Walter Michel, MS
Rep. Chris Sainato, PA
Rep. Larry Miller, TN
Sen. Jerome Delvin, WA

Others present were:

Susan Nolan, Nolan Associates, NCLGS Executive Director
Nicholas Brozean, Nolan Associates, NCLGS Assistant Legislative Coordinator

MINUTES

The Committee voted unanimously to accept, as submitted, the minutes of its January 4, 2008, meeting in Scottsdale, Arizona.

STATE AND FEDERAL INTERNET GAMING INITIATIVES

Bruce Zagaris, of Berliner, Corcoran & Rowe LLP, reported that on April 2, 2008, the House Subcommittee on Domestic and International Monetary Policy, Trade, and Technology held a hearing on the Unlawful Internet Gambling Enforcement Act (UIGEA) and related proposed regulations. He said almost every witness testified that the act and regulations are unworkable and the law is too vague, burdensome, and costly.

Mr. Zagaris said the act and regulations will compromise the competitiveness of the financial community and worsen the relationship between members of the U.S. financial community and their foreign counterparts. He said under UIGEA regulations foreign counterparts will need to maintain the same controls as the U.S. financial community in order to process transactions.

Mr. Zagaris said the Frank Bill, which proposes study of the legalization of Internet gaming has 48 sponsors, but most likely will not move until after the national elections.

Mr. Zagaris said on May 19, 2008, a public citizen filed a lawsuit accusing President Bush of illegally withholding the details of U.S. settlement with the E.U. for discriminatory cross-border betting practices. He said Congressional members believe they should have been given a say in the policy and settlement negotiations. He said due to national security issues, the U.S. Trade Representatives feel the settlement should be kept confidential.

Mr. Zagaris said on November 14, 2007, in a House Committee on the Judiciary hearing regarding the prohibition of Internet gaming, Catherine Hanaway, a representative of the Department of Justice (DOJ) and U.S. attorney for the Eastern District of Missouri, testified that the DOJ believes all Internet gaming is illegal. He said Rep. Robert Wexler (D-FL) questioned the DOJ position and their ability to enforce illegal Internet gaming activities.

Mr. Zagaris said in response to Ms. Hanaway's comment, the E.U. on March 11, 2008 began an investigation on U.S. federal government discriminatory practices regarding Internet gaming. He said the E.U. is going after the U.S. for only allowing pari-mutuel wagers and not other online wagers.

In response to a question from Sen. Geller regarding the legality of online pari-mutuel wagering, Mr. Zagaris said UIGEA and existing laws suggest that online pari-mutual wagering is legal.

FLORIDA INITIATIVES

Sen. Geller said Florida is awaiting a ruling from the Supreme Court regarding the legality of a tribal-state gaming compact, which was signed into law by the governor and the Florida Seminole Tribe without the consultation of the legislature. He said the Florida House of Representatives filed suit against the compact's legality and the Senate filed amicus curiae on behalf of the House. He said the compact allows tribal gaming facilities to install Class III machines and card games.

RECENT ACTIVITY REGARDING NIGC/TRIBAL CONSULTATION

Norman H. DesRosiers, vice-chairman of the National Indian Gaming Commission (NIGC), said

Congress recently introduced H.R. 5608, *Consultation and Coordination with Indian Tribal Governments Act*. He said NIGC is being criticized for what has been called failure to consult with tribes on developing and proposing regulation. He said the NIGC believes they do a great job consulting tribal governments.

Mr. DesRosiers said H.R. 5608 singles out three federal agencies, including the Indian Health Service, NIGC, and the Department of the Interior/Bureau of Indian Affairs. He said the bill requires that any policies the three agencies engage in, which would affect tribes, cannot be put into place without an accountable consultation policy.

Mr. DesRosiers said policy is defined as any measure that affects or is likely to have a direct effect on one or more tribes, such as legislative comments, guidance clarification, proposed legislation, and policy statements. He said written notification is required prior to implementation and consideration of new policies.

Mr. DesRosiers said under H.R. 5608, each agency must have an accountable consultation process that must be provided to the House Resources Committee and the Senate Indian Affairs Committee. He said the bill does not define what an accountable consultation process is.

Mr. DesRosiers said NIGC deals with 225 tribes on gaming issues across the country. He said it is not possible for the NIGC to consult with all 225 tribes in relation to the proper regulation of Indian gaming. He said under H.R. 5608 language, NIGC fears going forward with regulations because they may face lawsuits by any of the tribes for improper consultation.

Mr. DesRosiers said prior to proposal of H.R. 5608, NIGC reached out to tribal leaders and the National Indian Gaming Association (NIGA) requesting them to sit down with NIGC and engage in meaningful dialogue on a consultation process for proposed regulations. He said NIGC and NIGA are meeting on June 24, 2008, to talk about a reasonable process. He said NIGC believes this meeting will serve better than the proposed legislation.

In response to a question from Sen. Geller regarding consultation with NIGA, Mr. DesRosiers said NIGC does not believe consultation with NIGA would satisfy the legislation's provisions.

Danielle Her Many Horses, legislative director of the NIGA, said NIGA member tribes are supportive of H.R. 5608 and believe that an accountable consultation process with tribal governments is necessary to maintain the federal intent of Executive Order 13084 and 13175, which make the federal government more responsive.

Ms. Her Many Horses said NIGA and the NIGC have been working together to initiate a dialogue on an appropriate and meaningful consultation process.

In response to a question from Sen. Geller regarding the amount of consultation necessary between tribal governments and NIGC, Ms. Her Many Horses said NIGA does not see a need for NIGC to consult with tribes that don't participate in gaming or that do not wish to consult.

NIGC PUBLISHED REGULATIONS FOR CLASS II & III MACHINES

Mr. DesRosiers said IGRA divides gaming into Class I, II, and III. He said Class II gaming causes the most controversy because it does not require a state compact to run, is only regulated by the tribes, and involves some oversight by the Federal government. He said Class III gaming requires a tribal-state compact and state involvement and regulation.

Mr. DesRosiers said IGRA allows technological aides to the game of bingo or any Class II games, but states that facsimiles of games of chance are Class III and require compacting. He said advancements in technology have progressed so quickly that bingo machines and slot machines look similar, but fundamentally operate differently. He said bingo machines must incorporate more than one player and involve competition, whereas slot machines have a random number generator and players wager against the machine.

Mr. DesRosiers said NIGC's goal is to clarify the difference between Class II and Class III machines in order for manufacturers, tribes, and industry to know what is required for state compacting.

Mr. DesRosiers said NIGC proposed four regulations to clarify the difference between the machines, including technical standards, minimal internal controls, a change in the definition of an "electronic facsimile," and a set of classification regulations. He said the regulations were proposed last October and the public comment period closed in March.

Mr. DesRosiers said NIGC did an economic impact study of the regulations on tribes, which estimated costs between \$1 billion and \$2.8 billion. He said the Federal government also requires the NIGC to engage in a cost-benefit analysis, which is due to be finished in two to three weeks. He said after the report is complete, the effects will be evaluated regulation by regulation.

Mr. DesRosiers said NIGC believes they have support from the industry and tribal representatives on technical standards and minimal internal controls, but received pushback on the definition of an "electronic facsimile," and the classification regulations. He said after receiving input on the proposed regulations, Chairman Phil Hogan of the NIGC announced the NIGC will not be moving forward at this time on the two disputed regulations.

Mr. DesRosiers said part of the decision to withhold the classification regulations is based on a tribal gaming ordinance from the Metlakatla Tribe in Alaska that sought NIGC approval. He said the tribe only participates in Class II gaming and the ordinance had provisions for a one-touch Class II bingo machine.

Mr. DesRosiers said Chairman Hogan did not approve the ordinance because the one-touch machine is too close to an "electronic facsimile" and would not classify as a bingo machine. He said the NIGC anticipates the tribe will appeal the decision to the full Commission, the Commission will uphold the Chairman's decision, and the ruling can then be challenged in court.

Ms. Her Many Horses said NIGA is concerned that the cost-benefit analysis had not been done prior to the proposed regulations release. She said since the comment period is over, tribes will have no ability to comment on the cost-benefit analysis.

Ms. Her Many Horse said NIGA is glad the NIGC is removing the clauses for “electronic facsimile” and classification standards, but questions when this will legally occur.

Ms. Her Many Horses said some concerns remain over the technical standards and Minimal Internal Control Standards (MICS). She said, however, that these concerns can be eliminated through tribal consultation.

Ms. Her Many Horse said the potential economic impact of the Class II and III proposed regulations is a big concern for tribes and will also impact state economies where the tribes reside.

In response to a question from Sen. Geller regarding the Colorado River Indian Tribes (CRIT) decision, Ms. Her Many Horses said CRIT held that NIGC does not have the ability to regulate Class III gaming. She said MICS can only be applied to Class II machines.

GAMBLING MACHINES ON OVERSEAS MILITARY BASES

Nanette Horner, director of the Office of Compulsive and Problem Gambling, Pennsylvania Gaming Control Board, said in 1895, Major General Alexander McCook prohibited gambling within the limits or in the vicinity of any military reservation where he may be on duty in the service of the United States, calling gambling houses “places of vicious tendency.”

Ms. Horner said slot machines were initially placed in military clubs in the 1930s. She said in 1951 slot machines were removed from U.S. military facilities as a result of the Anti-Slot Machine Act. She said in 1965, gambling was banned on domestic bases and on bases in U.S. territories.

Ms. Horner said since the 1970s, slot machines have been acceptable on U.S. military bases in the Pacific and Europe. She said the Department of Defense runs slot machines on the military bases. She said 5,435 slot machines exist on military bases and generate \$184 million in profits for Morale, Welfare, and Recreation (MWR) programs.

Ms. Horner said during deployment, gambling is common because it is readily available for soldiers on downtime and soldiers are in a high-risk environment with a lot of stress, boredom, isolation, and pressure. She said soldiers usually continue to gamble after they come home, as it fills a void and is fun and exciting.

Ms. Horner said U.S. service members may legally engage in slot machine gambling at the age of 18. She said it is estimated that at least 36,000 to 48,000 active duty service members may have a gambling problem. She said none of the military gaming revenue is dedicated to fund problem gambling prevention, education, or treatment services.

Ms. Horner said gambling effects on service members include loss of rank, forced retirement, and bad conduct discharges. She said military personnel with gambling problems are reluctant to seek treatment for problem gambling or to inform anyone who must report to command personnel. She said generally, the safest place for military personnel to seek assistance is from the chaplain who does not have to report the gambling problems to the superiors.

Ms. Horner said in December 2007, Rep. Lincoln Davis (D-TN) introduced H.R. 4497, *Warrant Officer Aaron Walsh Stop Department Of Defense-Sponsored Gambling Act*, which is named after an Army officer that committed suicide because of a gambling addiction. She said the bill had been referred to the Subcommittee on Readiness of the House Armed Services Committee.

Ms. Horner said the bill would ban slot machines and video poker, but would not affect bingo games, occasional “casino nights,” or stateside lottery ticket sales. She said a ban on card games, dice, and sports pools already exists.

Ms. Horner said the Veteran Affairs Southern Nevada Healthcare System has an Intensive Outpatient Program for Problem Gambling, which is run by Dr. Rena Nora.

In response to a question from Rep. Waldman regarding the solution to military gambling problems, Ms. Horner said the Department of Justice should contribute some of the profits from military slot machines into problem gambling prevention, education, and treatment.

In response to a question from Rep. Solobay regarding military gambling problems compared to the general public, Ms. Horner said military personnel in active duty tend to have more gambling problems than the general public, which is primarily due to posttraumatic stress syndrome.

CONSIDERATION OF PROPOSED AMENDMENTS TO THE NCLGS TRIBAL-STATE GAMING COMPACT INFORMATIONAL CHECKLIST

Sen. Geller said NCLGS developed a tribal-state gaming compact checklist for state governments to consider during compact negotiations. He said NCLGS did not develop a model compact because compacts vary according to tribal and state statutes.

Sen. Geller said proposed amendments to update the *NCLGS Tribal-State Informational Checklist* were submitted at the 2007 NCLGS Summer Meeting and have since been distributed and confirmed valid proposals by the organization.

After reviewing proposed amendments, the committee voted unanimously to adopt proposed amendments to update its *NCLGS Tribal-State Informational Checklist*, including language relating to comity and court ordered obligations, identification cards, third-party beneficiaries, minor prohibitions, test laboratories and devices, insurance coverage, and conformity to Indian Gaming Regulatory Act (IGRA).

OTHER BUSINESS

Sen. Geller said the recently the Florida Senate disputed the authorization of a license plate for the Florida Band of Choctaw Indians, which is not a recognized tribe in the state of Florida. He

said the Choctaw Indians are only recognized in Mississippi and Oklahoma. He said about 15 groups in Florida claim to be Indian tribes.

Sen. Geller said uncertainty over state and federally recognized tribes can present many problems for governments and businesses. He said NCLGS should consider looking at this issue further in the future.

ADJOURNMENT

There being no further business, the meeting adjourned at 3:15 p.m.

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