

NATIONAL COUNCIL OF LEGISLATORS FROM GAMING STATES  
STATE-FEDERAL RELATIONS COMMITTEE  
LAS VEGAS, NEVADA  
FRIDAY, JUNE 8, 2007  
DRAFT MINUTES

The State-Federal Relations Committee of the National Council of Legislators from Gaming States (NCLGS) met at the Rio All-Suite Hotel & Casino in Las Vegas, Nevada, on Friday, June 8, 2007, at 3:30 p.m.

Senator Steven Geller from Florida, NCLGS President, presided in the absence of Representative Michael Caron from Connecticut, Committee Chair.

Other members of the Committee present were:

Rep. James Buskey, AL  
Rep. Kevin Ryan, CT  
Sen. Dennis Jones, FL  
Sen. Richard Lerblance, OK

Other legislators present were:

Rep. Mark Desimone, AZ  
Sen. Tom Harman, CA  
Rep. Bill Oberle, DE  
Sen. James King, FL  
Sen. Pete Brungardt, KS  
Rep. Steve Huebert, KS  
Rep. Arlen Siegfried, KS  
Sen. Stan Rosenberg, MA  
Rep. Lois Delmore, ND  
Rep. Ben Lujan, NM  
Rep. Patricia Lundstrom, NM  
Sen. John Arthur Smith, NM  
Rep. Harold James, PA

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 12, 2007, meeting in Duck Key, Florida.

#### FEDERAL INITIATIVES

Jonathan Slade of The Cormac Group, NCLGS federal representative, said since the Democrats took over the House and Senate, the structure of Congress has changed. He said Democrats have a one vote margin in the Senate and a 32 seat advantage in the House. He said President Bush

and the Democratic Congress continue to struggle for power, in effect not passing much legislation in the past five months.

Mr. Slade said Chairman Nick Rahall (D-WV) of the House Resource Committee, which oversees Indian gaming, is supportive of Indian gaming issues. He said Chairman John Conyers (D-MI) of the House Judiciary Committee, which oversees Internet gaming, opposes the Internet gaming ban.

Mr. Slade said Chairman Patrick Leahy (D-VT) of the Senate Judiciary Committee does not have interest in moving a bill, as is the same view of the Senate Banking Committee. He said Chairman Dorgan (D-ND) of the Senate Committee on Indian Affairs, is generally sympathetic to the views of the Indian tribes.

Mr. Slade said the Unlawful Internet Gambling and Enforcement Act of 2006 (UIGEA) was attached to a Safe Port Act. He said the Act passed in the House by a vote of 409-2, after being backed by conservative Republicans. He said the act passed unanimously in the Senate after being supported by Senators Bill Frist (R-TN) and Jon Kyl (R-AZ).

Mr. Slade said the act:

- updates the 1961 Wire Act, which bars gambling entities from using wired base communication to transmit bets
- cuts off money flow from players to Internet gambling sites by barring electronic payments.
- exempts fantasy sports, state lotteries and horse racing
- prohibits banks and credit card companies from processing payments for online gambling bets.
- attempts to stop the flow of money to Internet gaming sites in places like the Caribbean and Europe

Mr. Slade said there is little evidence that suggests UIGEA has reduced online gambling. He said individuals continue to play by transferring money to banks overseas, which allows players to avoid U.S. taxes.

Mr. Slade said online poker advocates have lobbied in Congress for an exemption to UIGEA.

Mr. Slade said Democrats and some Republicans continue to oppose UIGEA. He said the Act leads to states' rights complications, regarding a state's ability to set its own online gambling regulations. He opined that legislators are changing their position on Internet gambling because prohibition is hard to regulate.

Mr. Slade said the Internet Gambling Regulation and Enforcement Act of 2007 was sponsored by the Congressman Barney Frank (D-MA), Chairman of the House Financial Service Committee. He said the bill has 19 cosponsors and is purposed to raise more than \$20 billion in tax revenue in five years.

Mr. Slade said Rep. Shirley Berkley (D-NV) has introduced an Internet Gambling Study Act, which has 64 cosponsors. He said the bill's purpose is not to repeal any law, but to question the

alternatives through a study. He said the bill is supported by the American Gaming Association (AGA) and the Poker Players Alliance (PPA).

Mr. Slade said an Internet gaming bill probably won't pass this year in the House and will not likely be introduced in the Senate.

Mr. Slade said without licensing and regulating Internet gambling, the U.S. is unable to protect against underage and compulsive gambling, money laundering, and fraud for those citizens who gamble online.

Mr. Slade said in March 2007 a bill sponsored by Rep. Mike Rogers (R-MI) was introduced in the House, which would amend the Indian Gaming Regulatory Act (IGRA) and prohibit the Secretary of Interior from approving any new tribal-state gaming compacts for two years.

Mr. Slade said Rep. Daniel Lungren (R-CA) sponsored a House bill, also introduced in March 2007, which would amend IGRA. He said the bill proposes that any newly accepted acquired lands taken into trust by the Secretary of Interior for the benefit of an Indian tribe be used to create new gaming establishments.

Mr. Slade said many observers do not believe that an Indian gaming bill will move during the 110th Congress.

In response to a question by Sen. Geller, Mr. Slade said the World Trade Organization (WTO) has sided both with Antigua and the United States in response to UIGEA. He said the WTO ruling is still pending.

In response to a follow-up question by Sen. Geller, Mr. Slade said UIGEA is hard to enforce, but regulating and taxing internet gambling will become easier after it is initiated.

#### NIGC MINIMAL INTERNAL CONTROL STANDARDS (MICS)

Phil Hogen, chairman of the National Indian Gaming Commission (NIGC), said tribal gaming revenue increased from \$23 billion in 2005 to \$25 billion in 2006.

Mr. Hogen said the NIGC is trying to adopt regulations to define what types of gaming equipment do not require a compact. He said bingo and pull tabs are Class II gaming devices. He said Class II gaming devices can be run on computers, as well as mechanical and electronic devices. He said Class III gaming is not defined to easily distinguish electronic games of chance from that of Class II gaming.

Mr. Hogen said the Indian Gaming Regulatory Act (IGRA) created the NIGC, which mandated the adoption of federal gaming standards. He said in the 1990s concern was voiced over the lack of Minimal Internal Control Standards (MICS) within Indian gaming, as all other gaming jurisdictions have control standards.

Mr. Hogen said the Indian gaming industry put together a task force and came up with recommended standards after concern was voiced. He said the NIGC realized a need for

standards and established a Tribal Advisory Committee, which adopted a set of MICS for all Class II and III Indian gaming.

Mr. Hogen said tribes objected to the MICS that gave NIGC control over Class III gaming, which is determined by tribal-state compacts. He said the NIGC continued to conduct audits until the Colorado River Indian Tribe brought the NIGC to U.S. District Court for conducting MICS audits on their Class III gaming devices. Mr. Hogen said the court ruled in favor of the Colorado River Indian Tribe.

Mr. Hogen said currently the NIGC does not have the authority to conduct MICS audits on Class III gaming. He said about 80 to 90 percent of the \$25 billion revenue received from tribal gaming comes from Class III gaming. He said the NIGC believes MICS on Class III gaming are necessary, however the NIGC has stopped conducting audits on Class III devices.

Mr. Hogen said MICS for Class III gaming should be addressed in tribal-state gaming compacts. He said control standards were not evident prior to IGRA and, therefore, were not included in tribal-state compacts.

Mr. Hogen said the NIGC still has oversight on some aspects of Class III Indian gaming, but not with regard to MICS. He said the NIGC is required to approve and enforce provisions of Class III gaming ordinances. He said the NIGC approves and ensures compliance with Class III management contracts. Mr. Hogen said the NIGC ensures that:

- Class III gaming is conducted in conformance with a compact
- Class III gaming is occurring on Indian lands
- net gaming revenues are used for the purposes outlined in IGRA
- tribal revenue allocation plans (RAPs) are followed
- tribes have the sole proprietary interest in their gaming activity
- tribes provide annual audits to the NIGC
- tribes issue facility licenses for their gaming facilities
- gaming facilities are constructed and operated in a manner that adequately protects the environment, public health & safety
- background investigations are conducted on primary management officials and key employees of gaming operations

Mr. Hogen said NCLGS should make revisions to Sections 9, 10, and 12 of the *NCLGS Tribal-State Gaming Compact Informational Checklist*. He said Section 9: Integrity of Gaming Equipment (on page 23) should read:

“The National Indian Gaming Commission (NIGC) recommends that compacts contain adequate provisions for internal control. The NIGC had established regulations concerning Minimum Internal Control Standards (MICS). However, a federal court ruled that the NIGC did not have the authority to enforce these standards in certain Class III gaming establishments. The NIGC MICS can be adopted or serve as guidance for states and tribes in crafting their own set of internal controls, with the understanding that the NIGC MICS did not cover all areas that should have standards, and that from time to time any standards will need to be updated to reflect advances in technology or industry practice.”

Mr. Hogen said Section 10: Monitoring (on page 25) should read:

“This section should be consistent with IGRA, and NIGC and Tribal Regulations. A set of internal controls should be recognized by the Compact in regards to monitoring. Tribal operators will be required to adhere to whatever standards are referenced in the Compact.”

Mr. Hogen said Section 12 Accounting/Auditing Procedures (on page 29) should read:

“A set of internal controls should be recognized by the Compact in regards to accounting/auditing. Tribal operators will be required to adhere to whatever standards are referenced in the Compact.”

Mr. Hogen said the NIGC MICS is a sovereign issue with tribes and it continues to raise controversies. He said MICS helps provide integrity to Indian gaming. He said tribes currently own and regulate their own gaming operations. He said the NIGC believes Congress will soon be considering revisions to IGRA.

In response to a question by Sen. Geller, Mr. Hogen said a U.S. District Court ruled that labor standards were legal in tribal-state compacts, as tribal casinos are commercial operations.

Jason Giles, deputy executive director and general counsel of the National Indian Gaming Association (NIGA), said the NIGC is engaged with tribes on numerous gaming activities besides MICS. He said current regulatory issues include off-reservation gaming and audit procedures.

Mr. Giles said the NIGC recently released a draft copy of its Facility Licensing Regulations. He said the NIGC has not yet issued a tribal consultation schedule to discuss its Facility Licensing Regulations. He said the NIGC feels there is a need to verify that each tribal gaming facility is located on Indian lands eligible for gaming. He said the NIGC wants to verify that each tribe adopted and is in compliance with its environmental, public health, and safety regulations.

Mr. Giles said a consensus needs to be reached by NIGA and NIGC on MICS. He said the NIGC should consider outreach through technical assistance or a case-by-case approach to addressing individual tribal issues. He said the executive order requirement should be taken into consideration, which calls for federal agencies to first consider tribal law approaches to resolving regulatory issues.

Mr. Giles said he believes that Chairman Hogen’s recommendations for the *NCLGS Tribal-State Gaming Compact Informational Checklist* are appropriate.

Mr. Giles said tribes not only feel that MICS are a sovereign issue, but also a state sovereign issue. He said MICS should be considered on an individual tribal-state basis. He said some tribes, as individual sovereigns, might be able to regulate Class III gaming efficiently without oversight. He said consultation with tribal governments may demonstrate that tribal law processes are more than sufficient to meet the concerns underlying the proposed regulations.

Mr. Giles said NIGA supports the Frank Bill and believes tax and regulation of Internet gaming will solve the problems with the UIGEA.

Mr. Giles said the San Manuel Band of Mission Indians appealed the U.S. Court of Appeals decision in favor of the National Labor Relations Board (NLRB). He said NIGA wants tribal entities treated as fairly under the National Labor Relations Act (NLRA) as state entities that are exempt from unionization practices and jurisdiction.

In response to a question by Sen. Geller, Mr. Giles said the U.S. Court of Appeals decision raises more questions regarding labor standards than answers, and he is not sure if the appeal will be effective.

#### DEPARTMENT OF INTERIOR LETTER TO GOVERNOR SPITZER

Mr. Hogen said on January 17, the Department of Interior (DOI) wrote letters to a number of tribes that requested to enter off-reservation gaming under the two-part determination process. He said the letters from Jim Cason, associate deputy secretary of the DOI, warned that although a tribe is in the two-part determination process the secretary of the DOI might not approve a tribe's request.

Mr. Hogen said the DOI wrote another letter March 15 to Governor Spitzer of New York and to the tribal leader of the Oneida Nation. He said the letter warned that the DOI plans to reconsider the previously established compact because the tribal-state gaming compact did not receive legislative approval.

Mr. Hogen said Governor Spitzer wants to renegotiate a compact with the Oneidas to include revenue sharing, which the tribe objects to. He said a decision regarding the compact from the DOI is expected on June 14.

Mr. Hogen said it is important for states to realize the role of the legislature when negotiating tribal-state gaming compacts.

#### UPDATES TO THE NCLGS TRIBAL-STATE INFORMATIONAL CHECKLIST

Sen. Geller, NCLGS President, said originally NCLGS planned on making a model compact, but decided not to after hearing objections from numerous parties. He said a model compact was objected to because compacts vary according to tribal and state statutes.

Sen. Geller said NCLGS will need to amend parts of compacts relating to employee protection after the National Labor Relations Board ruling.

Sen. Geller said any proposed amendments to the checklist cannot be adopted until the next meeting, as the amendments have not been distributed to meet the NCLGS 30-day deadline. He said the amendments have been proposed by the NCLGS staff and have not yet received legislative input.

Ms. Nolan said proposed amendments were derived from recently introduced compacts. She said the proposed amendments include revisions to already submitted language, as well as new issues of consideration.

Ms. Nolan said proposed amendments that were evident in several tribal-state compacts include those relating to:

- problem gambling and responsible gaming guidelines
- mandated charitable donations
- a environmental impact report and checklist

Ms. Nolan said NCLGS hopes to get tribal entities opinions on proposed amendments.

Ms. Nolan said other proposed amendments to the compact include:

- requirements that financiers of gaming operations to be licensed
- requirements that authorized personnel to wear identification cards
- conflict of interest provisions
- facility prohibitions
- definitions of gaming devices, Class III gaming, sports betting, and sports betting pools
- third-party and cooperative relationships restrictions
- restrictions for minors in gaming facilities
- mandates for gaming equipment and devices
- monitoring requirements
- tax provisions
- court ordered obligations
- public liability insurance
- establishment of precedence regarding IGRA and state statutes

Sen. Geller said he would ask that NIGA and tribal parties take a look at the proposed amendments and make suggestions, as well as other possible additions before the 30-day deadline of the next meeting.

Ms. Nolan said prior to developing the *NCLGS Tribal-State Gaming Compact Informational Checklist* NCLGS took recommendations from NIGA and tribes to omit irrelevant language and add other necessary revisions.

Sen. Geller said the purpose of the checklist is not to have a model compact, but to list of issues for tribes and states to consult when producing gaming compacts.

## ADJOURNMENT

There being no further business, the meeting adjourned at 5:00 p.m.

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