

1993: A Good Year For Gaming

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Last year — 1993 — proved to be productive for both the gaming regulatory system and Nevada's gaming industry. The year started with the convening of Nevada's biennial legislature, and ended with the opening of three mega-resort properties in Las Vegas. And, in spite of national and regional economic difficulties, Nevada's casinos were able to post impressive gains in gross gaming revenue.

As in previous sessions, the 1993 legislature was responsive to the needs and interests of both the regulatory system and the gaming industry regarding the issues affecting the state's regulatory framework. Since the foundation for effective gaming regulation has been in place in Nevada for a number of years, most of the measures approved in 1993 could well be characterized as amendments necessary to keep pace with changes in competition, technology, and corporate finance. As these proposals were processed by the legislature, each was carefully crafted to continue the state's traditional policy and approach toward strict gaming regulation, while at the same time providing the necessary freedom and flexibility for the state's major industry to compete in an ever-changing world gaming environment.

Much of the gaming-related legislative work in 1993 was facilitated by the work of the Legislative Commission's Subcommittee to Study Gaming (Gaming Subcommittee), chaired by Senator Dina Titus. Having met during the interim preceding the 1993 regular session, this subcommittee closely examined issues known and expected to be considered during the regular session and made informed recommendations in many important areas. Once the session commenced, the Senate and Assembly Judiciary Committees, chaired by Senator Mark James and Assemblyman Robert Sader respectively, processed the bulk of gaming legislation — gaining results that were helpful to both gaming licensees and regulators alike.

One issue examined at length by the Gaming Subcommittee was the proliferation of legalized gaming throughout the world, and the response Nevada gaming regulators would take to encourage Nevada licensees to operate suitably in other jurisdictions.

Prior to the 1993 session, Nevada gaming licensees had been required to receive Nevada Gaming Commission (Commission) approval to involve themselves in gaming operations outside Nevada. Until 1990, such applications for foreign gaming approval were relatively infrequent. Beginning in 1990, the volume of applications increased dramatically as a number of jurisdictions legalized various forms of casino gaming. As Nevada licensees sought business opportunities in these jurisdictions, an increasing amount of Gaming Control Board (Board) resources were being devoted to investigate and process applications for foreign gaming.

In mid-1990, the Commission adopted regulations substantially relaxing the approval requirements that Nevada licensees had been required to secure prior to involving themselves in foreign gaming operations. As an evolutionary development to this process, the 1993 legislature approved Assembly Bill 470 (AB 470), replacing existing Commission approval requirements with continuous reporting requirements, and strengthening the requirement that Nevada licensees conduct their gaming operations in other jurisdictions within the same strict standards as they conduct their Nevada gaming operations. The Board worked extensively with representatives of the Nevada Resort Association to develop AB 470 as a method to both reduce the paperwork requirements for processing applications and to develop standards of accountability for Nevada licensees undertaking gaming operations in other jurisdictions.

Following the passage of AB 470, a memorandum was issued (dated July 1, 1993) to all nonrestricted licensees advising that it was no longer necessary to obtain prior approval from the Commission to become involved in foreign gaming operations. As of that date, all pending applications for foreign gaming approval were considered null and void, as were all orders granting approval to participate in foreign gaming. Additionally, a detailed memorandum was later issued advising all nonrestricted licensees of the reporting requirements necessary to comply with the provisions of AB 470. Internally, the Board's Corporate Securities Division,

which had been charged with processing applications seeking foreign gaming approval, was charged with the responsibility of overseeing the reporting requirements. Specific information regarding these new reporting requirements and how to fully comply with them may be obtained from the Corporate Securities Division.

Another issue presented to the Gaming Subcommittee by the Board was the need to create an institutional investor designation to encourage large institutions, who do not desire to exert control over management, to increase their holdings of Nevada's gaming securities without the necessity of licensing. Because a number of licensees were emerging from bankruptcy, the Board decided, and the Subcommittee concurred, to approach the issue through regulation instead of legislation. The result of this effort was Nevada Gaming Commission Regulation 16.430, which created a two-tiered institutional investor classification for: investors who become equity holders following bankruptcy workouts, and investors who wish to acquire up to 15 percent of a publicly traded company. Under either scenario, the investor must hold the securities only for investment purposes and not for the purpose of effecting management changes.

Two legislative measures — Senate Bill 242 (SB 242) and Assembly Bill 626 (AB 626) — can be considered the direct result of technological advances that had to be addressed by statute in order for the regulatory system to keep pace with changing technology. One of the major portions of SB 242, an omnibus gaming bill that was a work product of the Gaming Subcommittee, was the modification of the definition of "gaming device." This new definition became necessary when the existing statutory definition failed to adequately keep pace with rapidly developing technology, and thereby posed potential difficulties in prosecuting unlicensed gaming device manufacturers and/or distributors. The enacted measure specifies which components are necessary for a device to be considered a "gaming device" and allows the Commission flexibility to add components to the enumerated list as technology changes.

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Assembly Bill 626, a Board-sponsored measure, created the regulatory framework for cashless wagering systems. A cashless wagering system is "a method of wagering and accounting in which the validity and value of a wagering instrument are determined, monitored and retained by a computer which maintains a record of each transaction involving the wagering instrument itself, exclusive of the game or gaming device on which wagers are being made." Prior to the enactment of AB 626, cashless wagering systems met the definition of "associated equipment" under NRS 463.0136 — meaning manufacturers or distributors of these systems were not required to be licensed by the Commission. Because of the importance of cashless wagering systems in determining the accuracy of gross revenue calculations, it was apparent to the Board that the regulatory system needed the authority to hold manufacturers and distributors of these systems to the same standards as other gaming licensees. Additionally, it was necessary to establish and enforce minimum standards and controls on these systems to prevent the systems from illegally tampering. Enactment of AB 626 gave state regulators the necessary tools to investigate and license manufacturers and distributors of these systems and to require such systems to meet minimum internal control requirements.

One issue which has been deliberated, debated, and haggled over in each legislative session was once again a topic of controversy at the 1993 legislature — *i.e.*, taxation of restricted gaming licensees and slot route operators. Because an interim study of the financial health and prospective growth of Nevada slot route operator businesses was directed at the close of the 1991 legislative session, the issue was destined for action in 1993. The call for an interim study resulted from extensive discussion concerning a 1991 measure that sought to impose the same percentage fee rate applied to nonrestricted casino revenues to the revenues derived by slot route operators from the operation or placement of slot machines at restricted gaming locations. The 1991 slot route bill died in committee, but the proposal garnered enough consideration for the legislature to mandate completion of a comprehensive study of the slot route industry prior to the 1993 legislative session.

Based on the study's findings, the Governor's Executive Budget contained a recommendation for the imposition of percentage fees to restricted locations, and anticipated general fund revenues from this source of approximately \$6.6 million dollars over the 1993 – 1995 biennium. Assembly Bill 533, introduced to implement this budget recommendation, called for the application of the same percentage fee rates and quarterly slot tax rates at restricted gaming operations as those applied to nonrestricted locations. This measure was not processed by the legislature. Instead, Assembly Bill 786 was processed as a compromise approach to taxation of restricted gaming licensees. This measure raised the flat quarterly slot fees paid by restricted licensees, making no differentiation between the restricted operations involving slot route operators and those restricted operations where slot machine services are provided by the business operators.

The enacted hike in quarterly flat fees for restricted licensees is projected to generate an additional \$1 million dollars annually for the state's general fund.

Additionally, the legislature approved Board-requested legislation expanding the permissible scope of limited work permit issuances. Senate Bill 393 added persons who have been convicted of a misdemeanor to those who may be considered for limited and/or conditional work permit approvals. Because of concerns over the fiscal impact this may have on the Board, the legislation was "sunsetting," allowing the issue to be revisited during the 1995 legislative session.

While the 1993 legislative session was productive in terms of amendments to the Gaming Control Act, there were mixed results in the budgetary area. As a result of shortfalls experienced by the state during the 1991 – 1993 biennium, the Board lost a number of positions and support funds from its approved 1991 – 1993 biennial budget. The approved budget for the 1991 – 1993 biennium would have provided the Board with approximately 425 positions in fiscal year 1993. However, because of reductions necessitated by revenue shortfalls, the Board was funded for 372 positions during the 1993 – 1995 biennium — some 53 fewer positions than the Board was budgeted for during the 1992 – 1993 fiscal year.

These personnel reductions may go unnoticed by the general public, but gaming licensees, applicants, and practitioners will realize the effect. As detailed in the articles written by the various division chiefs, staff reductions will require a longer period for licensing investigations, enforcement inspections, audits, and responses to licensee or patron concerns. The issue of staffing levels is compounded, of course, by the major growth in the industry that occurred at the end of 1993. However, the Board clearly recognizes that the budget reductions were necessary in order for the state to maintain financial stability and I am encouraged that the positive attitude of Board staff will enable us to successfully manage an increasing work load with fewer employees.

In addition to functioning with decreased financial resources, the Governor's reorganization plan, for instance, provided the Board and Commission with additional responsibilities. As a result of the Governor's proposals, the Board and the Commission assumed the responsibilities and duties of the Nevada Racing Commission, which was eliminated during the reorganization process. With the racing season commencing shortly after the close of the legislature, the Board was required to be a quick study in the racing area. The racing season — comprised of agricultural and county fair association meets in Ely, Elko, and Winnemucca — was successful.¹

In the federal arena, an issue of particular significance is the announced intention of the U.S. Department of Treasury to implement amendments to the federal regulations concerning cash transaction reporting requirements. In May 1985, the Commission promulgated Regulation 6A, "Certain Cash Transactions," requiring all nonrestricted gaming establishments with annual gross revenues exceeding \$1 million dollars to report large cash transactions and to prohibit certain "laundering-types" of transactions. Federal regulations, adopted to implement the Bank Secrecy Act, required casinos to comply with banking industry cash transaction reporting requirements. However, provisions in the Act allowed an exemption for states that adopted a regulatory structure which accomplished the objectives of the federal reporting requirements. Because of the promulgation of Regulation 6A, Nevada was exempted by the Secretary of Treasury from the requirements of the Bank Secrecy Act.

On March 8, 1993, the Treasury Department published numerous amendments to Title 31 regulations that would, if applied to Nevada casinos, create significant, and in some cases costly, modifications to casino procedures. These regulations, originally scheduled to become effective on September 8, 1993, were later deferred to an effective date of March 1, 1994, and

have now been postponed for implementation until early 1995. This implementation delay will allow the Treasury Department additional time to assess the impact of these regulations on the casino gaming industry nationwide and, more broadly, evaluate cash transaction reporting procedures of banks, other financial institutions, and businesses where cash transactions frequently occur.

Because Nevada is exempted from the federal requirements due to its similar regulatory system, the amendments arguably do not directly affect Nevada casinos. However, Treasury officials have begun discussions with both the gaming industry and the Board to determine what effect the increased reporting requirements would have in Nevada. Additionally, legislation has been introduced in the House of Representatives that would repeal the Treasury Secretary's ability to grant exemptions to the Bank Secrecy Act.

Nevada's congressional delegation has indicated they will strongly resist any changes that would effectively limit the Treasury Secretary's ability to grant exemptions to those jurisdictions where a comprehensive regulatory structure exists to thwart money laundering attempts. The Board has worked with the delegation, the House of Representative's Banking Committee staff, and Treasury Department officials to demonstrate that our aggressive enforcement of Regulation 6A enables the federal government to direct their regulatory efforts to other pressing areas. As part of the Board's continuing efforts in this area, legislation will be proposed during the 1995 session to strengthen the Board's enforcement powers over individuals who are involved in money laundering activities. Senator Mark James has already indicated he will sponsor this legislation; its approval will provide an additional weapon to prevent money laundering activities in Nevada casinos.

As the year closed, three major casino properties — the Luxor, Treasure Island, and the MGM Grand — opened in Southern Nevada, providing both a substantial increase to the inventory of rooms and a dramatic increase in the number of games and devices exposed for play to the public. After low growth collections during the third quarter of 1993, the new properties clearly contributed to the year's fourth quarter. During the third quarter, gross gaming revenue increased by 2.68 percent, while the fourth calendar quarter posted a 10.81 percent increase over the same quarter from last year. The opening of the new properties and generally improved economic conditions throughout the country should provide a significant base on which to build gaming revenue gains during 1994.

Looking ahead to the 1995 legislative session, I do not envision substantial modification or change to Nevada's fundamental framework or approach to gaming regulation. But, consistent with the past several years, the gaming world continues to change dramatically and some of these changes may require adaptation on Nevada's part. The growth and spread of legalized gambling are astounding — for the first time, Nevada is quickly finding itself surrounded by competitors for the gaming dollar. However, Nevadans will undoubtedly greet this new era of competition with the same cooperation and tenacity that has made our gaming industry persevere and flourish. The industry will build new markets, regulators will continue to preserve the integrity of the gaming environment, and both will challenge federal efforts that do not better either economics or public policy. As in the past, Nevada's political leaders — whether at the federal or state level — will continue to provide the statutory means and support that are necessary for the state to maintain its competitive position as the leader of the world's gaming industry.

References

¹For further discussion of the work of the 1993 Nevada Legislature, see Robert D. Faiss & Steve Greathouse, *Nevada State Legislature Continues Gentle Evolution of Nevada Gaming Law in 1993*, elsewhere in this issue.

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