

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Monday, February 09, 2015

TIME: 8:00 A.M.

PLACE: WW55 – Moved to Lincoln Auditorium - WW 02

MEMBERS PRESENT: Chairman McKenzie, Senators Davis, Hill, Winder, Siddoway, Lakey, Johnson (Lodge), Stennett and Werk

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman McKenzie** called the Senate State Affairs Committee (Committee) to order at 8:00 a.m.

S 1011 RELATING TO HORSE RACING: Repeals existing law relating to pari-mutuel betting on historical horse races.

Helo Hancock, Legislative Director for the Coeur D'Alene Tribe (Tribe), presented **S 1011**. **Mr. Hancock** explained that the proposed legislation would repeal Idaho Code § 54-2512A, passed into law in 2013 authorizing pari-mutuel wagering on historical horse races. In Idaho and other jurisdictions, this form of gambling is known as "instant horse racing". **Mr. Hancock** presented a short video and said that an unparalleled expansion of casino gambling has occurred in Idaho under the facade of wagering on horse races. **Mr. Hancock** recounted the original testimony presented in 2013. Based upon statements made in testimony in 2013, tribal leaders did not oppose the legislation. He then presented another video of an instant horse racing machine being operated. **Mr. Hancock** referred to the binder given to each Committee member summarizing the history surrounding other states' experiences with instant racing. He defined traditional pari-mutuel wagering and compared it to instant racing. **Mr. Hancock** explained that the Tribe sought expert advice as to gaming and that the expert's report was included in the binder given to the Committee. **Mr. Hancock** expressed his support of **S 1011**.

Senator Werk summarized a personal visit to Les Bois Park and the use of the machines located there. He questioned the previous testimony concerning the basis for winning. **Mr. Hancock** explained that it was his understanding that winning is based on timing.

Senator Johnson (Lodge) stated she may have a conflict of interest pursuant to Senate Rule 39 (H), but intended to vote. She asked if any negotiations had occurred between the horsemen and the Tribe prior to the introduction of **S 1011**. **Mr. Hancock** recalled prior, unsuccessful negotiations with representatives of the horse racing industry. **Senator Johnson (Lodge)** inquired if any tribal gaming money was being returned to the State or going to education. **Mr. Hancock** replied that a substantial sum went to education and summarized the tribal gaming business within the State.

TESTIMONY: **Paul J. Schneider**, Chairman, Idaho State Racing Commission (Commission) testified in opposition to **S 1011**. He explained that when he was appointed to the Commission four years ago, there was no racing at Les Bois Park. Horse racing in the State was in dire straits. The Commission was broke, breeding was on a downward

trend and the future looked dim. Treasure Valley Racing, comprised of local investors, returned racing to Les Bois Park but with a decline in traditional brick and mortar live racing and with only simulcasting, racing was losing too much money. Les Bois Park draws more people on some Wednesday nights than the Santa Anita Race Track. However, they only bet an average of \$19 per person.

Historical racing has proven to be an answer. The 2013 legislation was applauded by the Commission and horse groups throughout the State. Opponents have stated that historical racing is not pari-mutuel and historical racing would spread. Under current laws, there can only be eight historical racing outlets in the State because historical racing can only be run where there is a live race meet. The dog racing track at Post Falls is the one exception. It is grand-fathered in under Idaho law.

Mr. Schneider provided a brief explanation of how pari-mutuel wagering works. Pari-mutuel wagering on a race can be done from several different locations. He explained that historical horse racing works the same way. The Commission is the regulator of pari-mutuel racing. He said that the United States government has declared that historical horse racing is pari-mutuel and the machines have been patented. The Commission hired the general counsel for Gaming Laboratories International (GLI) to certify that the terminals used in Boise are compliant with state law. The Thoroughbred Racing Protective Bureau was retained by the Commission to audit historical racing in the State.

Without historical racing, live horse racing in the State probably would come to an end. **Mr. Schneider** urged the Committee to vote against **S 1011**.

Senator Hill restated that people are playing the same game at the same time, using the same pool. He asked if the same game meant that it was the same race.

Mr. Schneider deferred the question to the experts. **Senator Hill** referred to the distribution formulas contained in the 2013 legislation: one-half percent goes to the Commission account, two-tenths of one percent goes to the track distribution account and two-tenths of one percent goes to the breed distribution account. He asked what each account was used for. **Mr. Schneider** explained that the Commission gets five percent, the Idaho Horse Breeders Association percentage goes to purses in Idaho bred races, and the small tracks receive funds to cover expenses for races and pay out purses. Most of the recipients are small tracks that run on a volunteer basis. The amount that goes to the Commission is used to oversee and run racing throughout the State. **Senator Hill** asked if the Commission receives any general funds from the State. **Mr. Schneider** answered that they do not get General Fund money.

Senator Lakey stated that simulcasting was described as folks in different locations betting against each other on the same race. **Mr. Schneider** said that all the money goes into a pool, the house takes a percentage but is not involved. **Senator Lakey** referred to the machines and asked if the idea was the same for historical horse racing. **Mr. Schneider** responded "yes."

Senator Davis reported that the Idaho Supreme Court has interpreted that pari-mutuel betting had to include certain elements: some skill, some judgement, horsemanship and not chance. He asked if the historical racing devices required skill, judgement and horsemanship. **Mr. Schneider** listed all the types of betting possibilities and combinations. People do not do much handicapping even at a live race meet.

Senator Davis asked for a description of the skill, judgement and horsemanship required in the use of the historical racing devices. **Mr. Schneider** deferred to others that would testify on the question of skill and judgement. He did say the form for the horse and jockey was available on the machines if one desired to use it. **Senator Davis** asked if it was possible to pick the winner of the race and still not win when using these devices. **Mr. Schneider** said it depends on what type of bet is being placed, for instance, a trifecta in a live race has more than one criteria. Using the information that is on the machine increases the possibility of winning.

Testimony in opposition to S 1011:

Gary Stevens submitted his support and comments regarding pari-mutuel wagering delivered through Historical Horse Racing Terminals (HHRTs). He told of his life in Idaho, how he became a jockey, and talked about how important the horse industry is to Idaho. It affects both the equine industry and individuals (see attachment 1).

Senator Winder asked what has changed from the time Mr. Stevens was starting out that would require financial support from gaming machines to support the industry.

Mr. Stevens responded that purse money has not changed since 1979 and there was very little change prior to 2013. **Senator Winder** inquired if there were other ways to increase the purse and provide a basis to keep horse racing viable without the use of these machines. **Mr. Stevens** answered "no." Casino horse racing has been saving race tracks all over the country. He went on to explain how much purses have increased and how the quality of horses, jockeys and trainers has been raised making a more active betting environment.

Senator Johnson (Lodge) asked what, in Mr. Stevens opinion, is the future of Les Bois and the horse industry in the Treasure Valley. **Mr. Stevens** said that if this bill passes, the doors are closing.

Doug Okuniewicz, General Manager, Coeur d'Alene Racing asked the Committee to vote against **S 1011**. **Mr. Okuniewicz** referred to some excerpts from testimony provided by the GLI to provide assurance that historical racing machines are not slot machines. He stated:

- GLI is the testing body for regulated gaming equipment and programming.
- They represent state agencies and regulators and do not work for any independent entity.
- GLI tested historical racing for Idaho by reviewing state rules and laws at the time the 2013 law was passed.
- There are ways to address the games and how they look.
- Without historical racing, the racing industry in Idaho will not survive.
- There are concerns about the precedent that was being set by repealing this statute.
- The fiscal note attached to the bill is inaccurate.

Senator Siddoway said that previous testimony indicated the same race was being run at all the terminals in different states at the same time and that was the basis of the payout. He visited the Double Down facility and watched the process. The payouts were instantaneous. He asked if the races are pooled together in such a way that they have a payout that corresponds with all of the racetracks around the nation at the same time. **Mr. Okuniewicz** said his understanding is that the bettor does not bet on the same race as someone else who is playing a similar game somewhere else. The bet goes into the same pool for similar games. Those games then use the available races for the outcomes to determine how the bettor finishes. The proceeds are then distributed from that pool. **Senator Siddoway** asked Mr. Okuniewicz to explain the operation of the totalisator. **Mr. Okuniewicz** responded with his understanding of how the totalisator works. **Senator Siddoway** asked what happens to allow instantaneous payouts. **Mr. Okuniewicz** answered his question in detail.

Senator Lakey asked Mr. Okuniewicz to describe a simulcast machine. **Mr. Okuniewicz** said the simulcast terminal is connected to the totalisator system, it has

an address, it prints out a ticket with a specific selection the patron has made on a race that is about to happen, the race is run, the totalisator system knows that the ticket exists and that the person is entitled to a certain amount of dollars if they have won. The ticket is then inserted into the terminal and it prints out a ticket that says how much was won and that ticket is turned into a cashier. **Senator Lakey** referred to testimony given in 2013 and asked if it was an accurate statement that a self-serve terminal for instant horse racing was no different than a simulcast terminal. **Mr. Okuniewicz** replied that he didn't know the context of that statement and gave several scenarios where there would be differences and similarities. **Senator Lakey** asked if the machines are functioning in such a way that a wager based on information from the machine allows the bettor to make an informed decision. **Mr. Okuniewicz** stated that the machines have that capability.

Senator Hill asked if Mr. Okuniewicz was aware that the decision by the Texas Racing Commission was overturned by a Texas court. **Mr. Okuniewicz** stated he was aware of that. The Texas court determined that the Texas Racing Commission was exceeding its authority, and not that historical racing was equivalent to a slot machine.

Mr. Okuniewicz said that repeal of historical racing will kill live racing in Idaho, it will close private enterprises' doors, it may discourage other companies from moving here, and it may cost the State about \$3 million in lost tax revenue each year.

Senator Stennett commented that although live racing may be impacted, there is nothing live about the machines that are being discussed.

Jim Bernard, Double Down Betting Bar & Grill, Idaho Falls, testified that:

- Repeal may deter new businesses.
- It has not been proven that historic racing is illegal; there are only accusations and there should be more investigation.
- There are controls and limits on the number of locations and there are tax benefits going to education.
- The people who have invested in historic horse racing are local, hardworking people.
- There is competition for the betting dollars such as tribal gambling and the lottery. Double Down wants the opportunity to compete for those dollars.

Senator Stennett recalled that Mr. Bernard said he had invested a large amount of resources including the procurement of the gaming machines. She asked what the revenues have been during this time. **Mr. Bernard** stated that they have had very little revenue since 2013, it has been mostly investing to get started. His business was operational 45 days ago. He went on to say that Les Bois Park doubled the purse money and there will be increases at other tracks. There has been a lot of activity throughout the equine community. **Senator Stennett** requested an explanation regarding net profit. **Mr. Bernard** outlined his investment and noted that one machine is about \$11,000. Ninety two percent of the money is paid to the bettors and the remaining eight percent is distributed as outlined in statute. They are hoping to become profitable within the next month.

Senator Siddoway asked if there was a formula that determines what the house gets to keep. **Mr. Bernard** said that ninety-two percent goes to the bettors, and about one half of the remaining eight percent is divided between the Racing Commission, horsemen, small tracks, and schools.

Greg Weitzel, Division Director, City of Idaho Falls Parks and Recreation, said they manage and oversee the Sandy Downs Park. He is here to lend support for the East

Idaho Horsemen's Association, Inc. and Intermountain Racing and Entertainment, Inc. He commented that:

- The political issue has broader implications than what has been presented.
- This is about the economy, boosting tourism, and about agricultural businesses.

Mr. Weitzel requested that a resolution of the City of Idaho Falls be read into the record (see attachment 2).

Mr. Weitzel said that the East Idaho Horsemen's Association, Inc. and Intermountain Racing and Entertainment, Inc. is key to the development of an important city asset.

Louis Cella, Chief Operating Officer and Vice President, Oaklawn Jockey Club (Oaklawn) and Vice President of Racetech LLC, the creator of historical horse

racing also known as instant racing, said that he represents the oldest family in race track management in the United States. He explained that Oaklawn works with governors, state legislators, horsemen, jockeys, veterinarians and others to create an ongoing relationship to offer pari-mutuel wagering on racing. He offered several statements against the bill.

Senator Davis asked Mr. Cella to teach the Committee about the technical aspects of this issue. **Mr. Cella** explained that pari-mutuel has only two types of games, those that are house banked games or pari-mutuel games. Pari-mutuel means a mutual field. The players are betting among themselves and the track does not care who wins or loses. House banked games are slot machines. The distinction is that slot machines have a random number chip that impacts the outcome and tells the player when they win or lose. That is not so with pari-mutuel wagering. He stated that:

- There are several reliable experts who say historic horse racing is pari-mutuel.
- Instant racing machines are synchronized with a computer racing company in Maryland; American Totalisator Company (AmTote).
- All wagers are pooled at AmTote in Maryland. A commission is deducted and the remaining balance goes to the winning patrons.
- The terminal takes the wagers. The difference is that simulcasting is on a race that is about to be run and instant racing is on a race that has previously been run.
- The Association of Racing Commissions, Intl. (ARCI) passed model rules for state racing commissions to use. Idaho belongs to that organization. ARCI only does this for pari-mutuel wagering.

Chairman McKenzie asked for clarification on whether the betting pool is betting on a single race or is the pool betting on different races. **Mr. Cella** responded that they are common wagering pools, they are not betting on the same race. He went on to explain in detail how those wagers occur and the different types of betting that can occur based on one or more races. Pari-mutuel is not defined as an event but as a pari-mutuel pool that carries over.

Senator Davis referred to a letter dated January 30, 2015 from GLI to the Tribe. The Tribe asked if GLI had provided an opinion as to whether these devices were lawful in Idaho. GLI's response in this letter was that GLI has a confidentiality agreement with the Idaho Racing Commission and cannot release any information without their consent. The letter further states that GLI does not ever issue any opinion on whether any equipment is legal in any jurisdiction because GLI is an independent testing laboratory and not a law firm. GLI provides regulators with technical information to make their own evaluation regarding the legality of the equipment. **Senator Davis** asked if Mr. Cella's company provided devices to the State and if they were installed in the State prior to GLI's initial contact to review and recommend compliance to the Idaho Racing Commission. **Mr. Cella** explained how GLI obtained the proper facts on historic horse racing. They would have tested on the high standards required of a testing company but they would not have opined as to the legality of the equipment.

Senator Davis asked if Mr. Cella's company provided and caused to be installed, devices prior to GLI obtaining this technical review. **Mr. Cella** stated he did not know. He continued with an explanation of the process for doing a test. **Senator Davis** asked if Mr. Cella was familiar with the legal standard required in Idaho for pari-mutuel wagering. **Mr. Cella** responded that he has seen some draft language of the requirements related to a horse race and skill.

Senator Davis asked how the answer to Chairman McKenzie's question would involve skill, judgement or horsemanship. He suggested it is based on chance regardless of the internal technology. **Mr. Cella** explained the process. He said there is skill by going to the information screens – the handy helper. **Senator Davis** stated that a player could rely on the terminal to make a choice but that player also had the option of going to the handy helper and getting the information that would then allow the player to have some skill in determining a choice. **Mr. Cella** answered that the terminal cannot be a slot machine by law; there is no random number generator, there is no chance and there is no quick pick. **Senator Davis** inquired about the bonus round and how it relates to skill. **Mr. Cella** outlined how the bonus round rules work.

Senator Hill referred to the statement "there is no random generator." He asked how the races were assigned in the bonus round. **Mr. Cella** indicated that what he said was the terminal did not have a random generator. The totalisator in Maryland has a random number generator that randomly chooses a race that is seen on the screen. In a slot machine, the random number generator determines the outcome. In instant racing, it depends on the bettor picking the right horse.

Senator Lakey asked about a specific theme game and if the bettor had the ability to chose the winner. **Mr. Cella** acknowledged that in that theme game, the bettor did not; in other themes they do have that ability to pick the winner. **Senator Lakey** inquired how the help screens on the terminal related to skill, judgement and horsemanship. **Mr. Cella** talked about how pari-mutuel has to prove that there is skill involved while slot machines must prove winning is pure chance.

Senator Werk asked several questions about the issue of skill. **Mr. Cella** described the process. **Senator Werk** reiterated that whether or not he had any level of understanding of the betting options, all of the payouts are directly linked to a pari-mutuel pool that pays out even if he has no understanding of the process. **Mr. Cella** concurred.

Senator Werk asked about the connection of a terminal to a center that provides it with information and how it relates to other terminals connected to that center. **Mr. Cella** explained that a slot machine could be taken from a place of business and plugged in anywhere else and it will work because all the "brains" are in that one terminal; it is a smart terminal. The terminal used for instant racing is a dumb terminal. It will not function unless it is connected to the central totalisator.

Senator Winder questioned Mr. Cella about the difference between historic and instant racing. **Mr. Cella** said they started with instant racing in 2000, and when one of the states put legislation in place in 2011, they called it historic horse racing. **Senator Winder** remembered that in 2013 he viewed historic horse racing as an activity where one could go somewhere, relax and watch a race. That doesn't occur today. The bettor goes to a machine, puts in money, pushes a button and gets a quick photo flash of the finish line. **Mr. Cella** agreed. The default is to go to the short version. However, the full race is available on every instant racing terminal with the help of a technician. **Senator Winder** stated that he investigated the option of a third party opinion and was unable to find someone. **Mr. Cella** named a few names but they may be considered tainted because of their association with the horse industry. He suggested an attorney.

Chairman McKenzie said he would get some supreme court opinions from other states regarding this issue.

Curtis Linnell, Vice President of Operations and Wagering Analysis, Thoroughbred Racing Protective Bureau (TRPB), stated that he was neutral and was hired by the Idaho State Racing Commission (Commission) to do an audit on the historic racing machines. **Mr. Linnell** told the Committee about his company, how it relates to instant racing and the details of what they do for the Commission. The Wagering Integrity Unit was implemented in 2003-2004 to use algorithms to detect abnormalities in wagering. He also provided his personal qualifications in the wagering arena. TRPB worked with Oaklawn to develop testing for instant racing and have been their auditors since its inception.

Mr. Linnell was called by the Commission to audit for them. After providing the Commission with documentation about their process and requirements, an agreement was reached in July, 2014. A significant clause in the agreements says that TRPB will review and monitor the integrity and security for instant racing. **Mr. Linnell** declared that they are not for or against what is being discussed, they are the auditors contracted by the Commission to audit historical racing in the State.

A second part of the agreement instructs them in the preventing and detecting of any compromise or abnormalities that would allow a player from having an unfair advantage over all other players. He expanded on the scope of TRPB's functions. They have recently completed an extensive on-site audit. By definition, by their contract and by the structure of historic horse racing, it is a pari-mutuel game. The historical racing terminals are pari-mutuel.

Senator Hill asked who paid Mr. Linnell's expenses to bring him here. **Mr. Linnell** said the Commission paid them as part of their contract.

Senator Lakey asked if Mr. Linnell analyzed the simulcast races and, if so, do they have the same criteria applicable to the historic machines. **Mr. Linnell** answered that they analyze all Thoroughbred Racing Association races. There are different standards for current racing. There are stewards at the races to ensure those standards are met. The auditors become the stewards for historic horse racing and the appropriate standards must be met. **Senator Lakey** asked if the audit reflects how many people look at the information that is available on the terminal. **Mr. Linnell** stated the majority of players use the handy helper.

Senator Davis asked if TRPB looked at the different statutes in different states as part of their audit standards, and did they specifically look at Idaho Code § 54-2415 which says that pari-mutuel must be limited to a race involving a live horse race. The rule goes beyond that to say a wagering pool. Was that a part of the analysis in reviewing Idaho's compliance with the statutory requirements? **Mr. Linnell** answered no, it is beyond the scope of their agreement.

Testimony in support of S 1011:

Nathan Small, Chairman of the Business Council for the Shoshone Bannock Tribe (Tribe), stated:

- The tribal gaming statute was enacted after years of discussion by all interested parties and was very transparent.
- The original legislation to incorporate instant horse racing was made without transparency or public input.
- Tribal gaming is heavily regulated as are tribal operations.
- Instant horse racing is not regulated.
- The distribution of proceeds is strictly accounted for by the tribes. Percentages go to people, economic development, and the general welfare of their people (see attachment 3).

Senator Johnson (Lodge) asked for clarification about the distribution of funds and if they are totally for the Indian Nation or do some of them go to state funds. **Mr. Small** answered that employees, most are tribal members, living outside the boundaries pay state taxes. The \$20 million that are distributed among the members of the Tribe are spent outside the boundaries of the reservation.

ADJOURNED: **Chairman McKenzie** announced that the testimony will continue at the regularly scheduled Committee meeting on Wednesday, February 11, 2015, at 8:00 a.m. in the Lincoln Auditorium. **Chairman McKenzie** adjourned the meeting at 11:05 a.m.

Senator McKenzie
Chair

Twyla Melton, Secretary

Marian Smith, Assistant
Secretary