

**ANNUAL REPORT
OF THE
GAMING STUDY COMMITTEE**



**Indiana Legislative Services Agency
200 W. Washington Street, Suite 301
Indianapolis, Indiana 46204**

December, 2009

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2009

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Jessica Harmon
Fiscal Analyst for the Committee

Ross Hooten
Attorney for the Committee

Michael Landwer
Attorney for the Committee

A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.in.gov/legislative/>.

I. LEGISLATIVE COUNCIL DIRECTIVE

The Legislative Council directed the Committee to study the topics assigned to the Committee in HEA 1001-2009(ss), SECTION 490.

II. INTRODUCTION AND REASONS FOR STUDY

The General Assembly is concerned about the ongoing impact of Native American gaming facilities in Michigan and that proposed gaming facilities in Ohio and Kentucky could soon affect the Indiana gaming industry and state tax revenues. The General Assembly enacted legislation establishing the Committee and directing the Committee to do the following:

- (1) Prepare a market analysis of gaming in Indiana to determine viability and profitability in light of gaming in Michigan and Illinois and the potential of gaming in Ohio and Kentucky.
- (2) Conduct a comprehensive study of issues related to gaming in Indiana, including a review of the following issues:
 - (1) Admission taxes for riverboats.
 - (2) Competition from out of state gaming entities.
 - (3) Waivers for gaming tournaments.
 - (4) Land-based gaming.
 - (5) Non-smoking accommodations.
 - (6) Restrictions on alcohol prizes.
 - (7) Authority to regulate type 2 gaming in for-profit ventures.
 - (8) A referendum concerning gaming in the city of Fort Wayne.
 - (9) Competition from tribal-operated casinos.
 - (10) Issues related to the riverboat in French Lick, including modification of trust payments, subsidies paid by other gaming facilities, and land-based gaming.
 - (11) The movement of riverboats in the city of Gary to new locations.
 - (12) The need to retain United States Coast Guard compliant marine navigation systems.
 - (13) Whether permit holders holding a gambling game license issued under IC 4-35-5 (racinos) are properly promoting and supporting the horse racing activities at the site.
 - (14) Issues related to permit holders holding a gambling game license issued under IC 4-35-5 (racinos), including table games, double taxation, amounts paid to horsemen's associations, bonds, slot machines, and satellite locations.
 - (15) Gaming license fees and suppliers' license fees.
 - (16) Parity of confidentiality rules for riverboat gaming licensees and permit holders holding a gambling game license issued under IC 4-35-5

- (racinos).
- (17) Campaign contribution ban for riverboat gaming licensees.

III. SUMMARY OF WORK PROGRAM

The Committee met in the State House on August 24, September 14, October 19, and December 8.

At the August 24 meeting, the Committee heard testimony concerning the following topics:

- (1) Gaming revenues.
- (2) Racino finances.
- (3) Non-smoking accommodation at the riverboats and racinos.
- (4) Opposition to the expansion of gambling.
- (5) Alcohol promotions.
- (6) Waivers for gaming tournaments at the riverboats.

On September 14, the Committee considered the following subjects:

- (1) Effective gaming tax rates and local distributions of gaming revenue.
- (2) Movement of existing riverboat casinos in Gary to new locations.
- (3) Admissions taxes.
- (4) License fees.
- (5) Campaign contribution bans.

On October 19, the Committee addressed the following issues:

- (1) Interstate competition.
- (2) Maritime issues.
- (3) Local development agreements.
- (4) French Lick.
- (5) Horse racing purses and breed development.
- (6) Gaming in northeastern Indiana.

On December 8, the Committee met to consider the following:

- (1) The participation of minority and women owned business enterprises in the gaming industry.
- (2) The Committee's proposed final report.

The Committee voted 7-0 to approve this final report after discussing the proposed findings and agreeing to amend the Committee's findings concerning referenda and the riverboat admission

tax.

IV. SUMMARY OF TESTIMONY

The Committee received reports from the Legislative Services Agency (LSA) concerning the following: (1) gaming tax revenues; (2) effective gaming tax rates; (3) local revenue distributions from gaming taxes; (4) estimated fiscal impacts from potential out-of-state gaming facilities and from the relocation of a Gary riverboat to an inland location or to Fort Wayne; (5) legal issues associated with the relocation of a riverboat; (6) the fiscal impact of smoking bans on casinos; and (7) the extent that the other states that have racetrack casinos require casino revenues to be used to support horse racing.

The LSA estimates on the potential impact of possible changes to the Indiana gaming markets are as follows:

- (1) That additional Native American gaming operations at Firekeepers Casino near Battle Creek, Michigan, and Gun Lake Casino near Kalamazoo, Michigan could reduce tax revenue from the Blue Chip Casino by \$13.3 M to \$14.7 M annually.
- (2) That gaming facilities at racetracks in Kentucky could potentially displace significant amounts of gaming revenue from riverboat casinos located in Evansville, Harrison County (Louisville, Kentucky area), and southeast Indiana (Cincinnati area):
 - (A) It is estimated that a gaming facility at Ellis Park (Henderson, Kentucky) could reduce tax revenue from Casino Aztar by \$6.6 M to \$7.9 M annually.
 - (B) It is estimated that gaming facilities at Churchill Downs (Louisville, Kentucky) and at Keeneland and/or the Red Mile (Lexington, Kentucky) could reduce tax revenue from Horseshoe-Southern Indiana by \$35 M to \$44.4 M annually.
 - (C) It is estimated that gaming facilities at Turfway Park (Florence, Kentucky) and at Keeneland and/or the Red Mile (Lexington, Kentucky) could reduce tax revenue from the southeastern Indiana casinos (Belterra, Grand Victoria, and Hollywood) by \$90.1 M to \$111.5 M annually.
- (3) Casinos in Cincinnati, Ohio and Columbus, Ohio, or gaming facilities at racetracks in Cincinnati, Columbus, and Dayton, Ohio could potentially displace significant amounts of gaming revenue from riverboat casinos located in southeast Indiana (Cincinnati area) and Hoosier Park in central Indiana.
 - (A) It is estimated that gaming facilities (casinos or racinos) in Cincinnati, Columbus, and Dayton could reduce tax revenue from the southeastern

Indiana casinos (Belterra, Grand Victoria, and Hollywood) by \$73.2 M to \$93.9 M annually.

(B) It is estimated that a gaming facility in or near Dayton could reduce tax revenue from Hoosier Park Casino by \$3.1 M to \$3.3 M annually.

(C) It is estimated that a gaming facility (casino or racino) in Toledo could reduce tax revenue from Hoosier Park Casino by \$9.7 M annually.

(4) A casino in Ft. Wayne could result in net additional gaming tax revenue but it could potentially displace significant revenue from both Hoosier Park Casino and Blue Chip Casino.

(A) It is estimated that a Ft. Wayne casino could generate \$140 M to \$170 M in win annually, however, an estimated 40% of the total (\$56 M to \$68 M) could be displaced from Blue Chip Casino and Hoosier Park Casino.

(B) After accounting for displacement, it is estimated that the net additional admission and wagering tax from a Ft. Wayne casino could range from \$23.0 M to \$30.4 M annually.

(C) It is estimated that the net additional revenue from a Ft. Wayne casino could be reduced by 25% to 26% if a gaming facility is established in Toledo, Ohio.

(5) A new Gary casino located on I-80/94 near I-65 could generate additional wagering tax revenue through bracket creep assuming all the business from the two Buffington Harbor casinos would move to the new land-based operation. However, it is estimated that the new location could displace 10% to 12% of the business at Ameristar Casino in East Chicago and 3% to 5% of the business at Blue Chip Casino in Michigan City. It is estimated the new location would generate net additional wagering tax of about \$11M but would not generate additional admission tax revenue.

The Committee also received a report from the Spectrum Gaming Group stating the group's estimates of the potential impact from out-of-state competition. According to the report, southeast Indiana is the most vulnerable market and could see business decline each year by as much as \$390 M. Southwest Indiana could face an annual decline of \$97 M decline while the central Indiana racetrack casinos could lose as much as \$29.4 M per year. The report also estimates that the not-yet-opened casino in Des Plaines, Illinois could take at least \$8 M a year away from the northwest Indiana casinos. The impact of a casino in downtown Chicago is estimated to be more than \$72 M. The group urged the Indiana gaming industry to provide amenities that would distinguish the properties as regional destinations. Spectrum urged the Committee to provide a tax and regulatory environment that provides incentives to develop the industry and to avoid creating an environment that encourages "disinvestment".

The racetrack casinos described the financial difficulties that the facilities are experiencing. They expressed their concerns about the financial obligations imposed upon their slot machine

operations and requested relief from the General Assembly. Representatives of Indiana's horsemen urged the Committee to resist providing that relief from the slot machine revenues that are dedicated to purses and breed development.

The Indiana Horse Racing Commission described the impact that slot machine revenues have had on purses and breed development since the racetrack casinos began operating.

Indiana riverboats requested tax and regulatory relief in anticipation of losing business to out-of-state competitors.

Local officials from Gary and representatives of the Majestic Star Casinos testified in favor of relocating one Gary riverboat to an inland location to be operated as a land based casino. An inland casino was opposed by the Ameristar Casino in East Chicago. Majestic Star also supported the concept of relocating one license to northeast Indiana. Relocating a casino to northeast Indiana was supported by local officials from Steuben County. However, the idea was opposed by members of the union representing casino workers in northwest Indiana, the Blue Chip Casino in Michigan City, and Hoosier Park in Anderson.

The Committee also heard testimony on the possibility of moving a Gary license to Fort Wayne. The mayor of Fort Wayne requested permission to conduct a city-wide referendum on gaming in Fort Wayne. The Allen County commissioners prefer a referendum open to voters of the entire county. Anti-gaming organizations and others testified against moving a casino to Fort Wayne.

The Attorney General and the Executive Director of the Indiana Gaming Commission agreed that the recipients of local development agreement monies should be subject to greater scrutiny and that additional reporting requirements should be imposed by the General Assembly.

Anti-smoking organizations urged the Committee to support smoking bans within Indiana casinos.

The Committee received a report from the Indiana Gaming Commission concerning the participation of minority and women owned business enterprises in the gaming industry.

The following requests for legislative changes were presented to the Committee:

(1) Racetrack casinos

- (1) Deductions from the calculation of adjusted gross receipts for the required payments for horse racing purposes and the fees collected for the county and to support the French Lick casino.
- (2) A deduction from the calculation of adjusted gross receipts for free play awarded to racetrack casino patrons.
- (3) An income tax credit for investments in the racetrack casino that

- exceeded the statutory minimum amount of \$100 M.
- (4) Permission to offer live table games at the casino's discretion.
- (5) Establish tax structure parity with riverboat casinos.

(2) Various riverboats

- (1) Statewide authority to operate a land based casino.
- (2) Eliminate the propulsion and other maritime requirements found in current law.
- (3) A wagering tax deduction for promotional free play.
- (4) Eliminate the adjusted gross income tax "add back" of wagering taxes that are deductible for federal income tax purposes.

(3) French Lick Casino

- (1) Suspend payments to the West Baden Springs historic hotel preservation and maintenance fund that are payable from the casino's wagering tax remissions for a period of five years.
- (2) Reduce the admission tax applicable to the casino from \$4 to \$3.
- (3) Provide an additional subsidy from the racetrack casinos if table games are permitted at the racetrack casinos.

(4) Casino Association of Indiana

- (1) Permission for the casinos to utilize alcohol in a variety of marketing endeavors such as:
 - (A) accepting promotional market placement offers from alcoholic beverage companies;
 - (B) authorizing private label wines; and
 - (C) providing free alcoholic beverages in customer appreciation events.
- (2) Permission to conduct poker tournaments at locations such as a pavilion or a hotel conference room that are not on board a riverboat.
- (3) Replace the admission tax with a 2.75% wagering tax.
- (4) Eliminate bans on political contributions.

(5) Attorney General

- (1) Require organizations that receive money under the local development agreements between riverboats and their host communities to annually report aggregate payments of more than \$5,000 to a particular entity.

(6) Referenda

- (1) A city only referendum on gaming in Fort Wayne
- (2) A county-wide referendum on gaming in Allen County
- (3) A county-wide referendum on gaming in Steuben County

V. COMMITTEE FINDINGS CONCERNING THE INDIANA GAMING MARKET AND FISCAL IMPACTS THAT COULD RESULT FROM OUT-OF-STATE COMPETITION OR THE MOVEMENT OF INDIANA GAMING LICENSES

The Legislative Services Agency provided the Committee with the analysis of the Indiana gaming market required by the Committee's enabling act. The Committee endorses the estimates submitted by the Legislative Services Agency and makes the following findings of fact concerning the Indiana gaming market:

- (1) Revenue growth from the riverboat admission tax and riverboat wagering tax has slowed significantly in recent years, with the taxes showing year-over-year declines in FY 2008 and FY 2009.
- (2) In the first year of racino operations, the racinos displaced admission tax and wagering tax revenue that would otherwise have been collected from riverboat casinos. However, the racinos did result in net additional wagering tax revenue to the state.
- (3) Effective gaming tax rates were estimated based on the ratio of taxes and required payments to win generated by casinos and racinos. The term "required payments" includes local development agreement payments, payments to horse racing industry organizations, and purse supplements. On this basis, Indiana's effective gaming tax rates are higher than rates currently imposed in other casino gaming states in the Midwest. In particular, Indiana average rates are approximately 38% for riverboat casinos and 46% for the racinos as compared to 36% for Illinois' riverboat casinos and 3.6% for Michigan's Native American casinos.
- (4) Competitive impacts from Native American gaming in Michigan have been realized since 2007. Proposals for casino and racino gaming facilities have been pursued in Ohio and Kentucky in recent years. Ohio could be the first to offer an alternative to the Indiana casinos as the state's voters approved four casinos in a referendum held in November, 2009.
- (5) Competition from nearby Four Winds (a Native American casino located in New Buffalo, Michigan) has displaced approximately 30% of the gaming revenue generated at Blue Chip Casino.

(6) Additional Native American gaming operations at Firekeepers Casino near Battle Creek, Michigan, and Gun Lake Casino near Kalamazoo, Michigan could reduce tax revenue from the Blue Chip Casino by \$13.3 M to \$14.7 M annually.

(7) Gaming facilities at racetracks in Kentucky could potentially displace significant amounts of gaming revenue from riverboat casinos located in Evansville, Harrison County (Louisville, Kentucky area), and southeast Indiana (Cincinnati area):

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(9) A casino in Ft. Wayne could result in net additional gaming tax revenue but it could potentially displace significant revenue from both Hoosier Park Casino and Blue Chip Casino.

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VI. COMMITTEE FINDINGS CONCERNING THE TAX, REGULATORY, AND ADMINISTRATIVE ISSUE

The Committee made the following findings of fact concerning the other tax, regulatory, and administrative issues assigned to the Committee by statute and the Legislative Council:

A. Competition from out-of-state gaming entities

(1) Indiana casinos are facing increased competition from tribal based casinos and the likelihood of new casinos and racinos in neighboring states.

B. Employment at Indiana casinos

(1) Casinos provide employment for approximately 15,000 workers in Indiana.

(2) The Committee believes it is in the best interests of the state and its taxpayers to take reasonable actions designed to protect jobs and future tax revenues from increased competition in neighboring states.

C. Land-based gaming

(1) The Committee believes that if Indiana casinos were permitted to convert to land based casinos it may offer them a better opportunity to compete with out-of-state gaming interests.

(2) If Indiana riverboats are permitted to convert to land based casinos they should be located in the same city or county in which they are currently located/licensed and should pay an appropriate fee to the state.

(3) The Committee believes that the state's interest in the continuing viability of the gaming industry in Gary and the rest of the state may be best served by consolidating the existing two gaming operations into one land based casino located within the city limits. The resulting excess license should be returned to the Indiana Gaming Commission.

D. Referenda concerning gaming in other locations

(1) The Committee believes that a city or county-wide referendum should be required for casino gaming in that city or county.

(2) Based on increased competition from tribal based casinos and the likelihood of new casinos and racinos in neighboring states, the Committee believes an expansion of gaming to new cities or counties where gaming currently does not exist is not in the best interests of the state or the gaming industry at this time.

E. Admission and wagering taxes on riverboats

(1) The Committee heard no compelling reason to alter the structure of the riverboat wagering tax.

(2) The Committee heard no compelling reason to alter the structure of the admission tax. However, the Committee recognizes the additional \$1 imposed upon the French Lick Casino exceeds the admission tax for other riverboats and hinders the ability of the casino to develop its business.

(3) The Committee recognizes that the French Lick Casino often incurs admission tax liability on resort visitors who enter the casino but do not gamble and that an owner given approval for a land based casino will encounter the same hindrance to business development if the structure of the admission tax is not altered.

F. Waivers for gaming tournaments

(1) The Committee recognizes that permitting gaming tournaments in ball rooms and other facilities located directly on resort properties might encourage additional investment in facilities and might help the gaming industry compete with neighboring states. However, any change in this regard should be subject to approval and ongoing oversight of the Indiana Gaming Commission pursuant to rules adopted by the commission.

G. Restrictions on alcohol prizes

(1) The Committee believes that restrictions on the casinos' use of alcoholic beverages for promotional purposes should be relaxed. Any restrictions should generally be consistent with restrictions that exist for other entertainment entities and similar restrictions that exist for casinos in other states as determined by the Indiana Gaming Commission.

H. Issues related to the riverboat in French Lick

(1) The Committee believes the development of the resort in French Lick and West Baden could be enhanced if unnecessary restrictions in the statute governing the use of the West Baden Springs historic hotel preservation and maintenance fund were modified.

I. The need to retain United States Coast Guard compliant marine navigation systems

(1) The Committee finds that maintaining marine navigation systems on riverboats that no longer cruise:

- (A) imposes an undue burden upon licensees;
- (B) impedes the industry's ability to compete with out-of-state gaming interests; and
- (C) is no longer justified.

J. Whether racino licensees are properly supporting horse racing

(1) The Committee heard no compelling reason to alter the amount of slot machine revenue set aside for the horse racing industry.

K. Issues related to the taxation of racinos

(1) The Committee believes that inclusion of slot machine revenue set aside for the horse racing industry and included in the calculation of the racino's adjusted gross receipts for purposes of the wagering tax creates a significant difference in the tax structure between the racinos and the riverboat casinos and imposes an undue burden on the racinos that will make it more difficult for the racinos to compete with casinos in neighboring states.

L. Authority to regulate type II gaming

(1) The Committee heard no compelling reason to remove the Alcohol and Tobacco Commission's regulatory power over type II gaming.

M. License fees

(1) The Committee heard no compelling reason to amend the license fee structure.

N. Confidentiality of information concerning occupational licensees

(1) The Committee finds that current law provides appropriate confidentiality safeguards for the employees of both the riverboats and the racinos.

O. Transparency and accountability for recipients of local development agreement funds

(1) The Committee believes all entities, whether public, private or non-profit, that receive payments under local development agreements should be required to disclose how the payments are used to ensure that revenues are used for public purposes.

P. Campaign contribution bans

(1) Committee finds no compelling reason to remove the contribution bans applying to certain persons involved with riverboat and racetrack operations.

Q. Local Revenues

(1) The Committee finds that local revenues generated from riverboat taxes and local development agreements vary widely among the different locations where casinos are located.

(2) The Committee believes it is in the best interests of both state and local government for all levels of government that receive gaming revenues to share in efforts to help Indiana casinos remain healthy and compete with gaming in other states.

WITNESS LIST

George Angelone, Legislative Services Agency
Don Barden, Majestic Star Casinos
Rep. Sandy Blanton, State Representative District 62
Ted Bogich, Blue Chip
Rep. Charlie Brown, State Representative District 3
Doug Brown, Indiana Live
Jim Brown, Hoosier Park
Larry Buck, Majestic Star Casinos
Fred Burford, Indiana Live
Mayor Rudy Clay, Gary, Indiana
Rev. Loren Clemenz, Indiana Coalition Against Legalized Gambling
Christina Davis, Gary, Indiana
Patrick Early, Indiana Live
Meredith Edwards, Indiana Academy of Family Physicians
Jeri Elliott, Gary, Indiana
Rev. Greg Enstrom, Fort Wayne, Indiana
Mayor Scott Ferguson, Shelbyville, Indiana
Steve Ferguson, Cook Group
Tim Filler, Indiana Campaign for Smoke Free Air
Rev. Dan Gangler, Indiana Conference of the United Methodist Church
Beth Garber-Lock, Governmental Affairs Liaison, Allen County Board of Commissioners
Hon. Gene Garman, Orland Town Council
Joe Gorajec, Indiana Horse Racing Commission
Elaine Guidroz, Grand Victoria
Tim Haffner, Corporation Counsel, Fort Wayne, Indiana
Hon. Mitch Harper, Fort Wayne City Council
Mayor Tom Henry, Fort Wayne, Indiana
Mayor Richard Hickman, Angola, Indiana
Jack Holton, Indiana Standardbred Association
Ross Hooten, Legislative Services Agency
Sen. Lindel Hume, State Senator District 48
Rev. Janet Jacobs, Indiana Conference of the United Methodist Church
Steve Jimenez, Grand Victoria
Mike Jones, Belterra
Jim Landers, Legislative Services Agency
Bill La Penta, Spectrum Gaming Group
Chris Leininger, French Lick Resorts
Kevin Kaufman, Belterra
Jack Kieninger, Indiana Standardbred Association
Bill Kimmel, French Lick Municipal Airport
Ross Mangano, Indiana Live
Eddie Martin, Indiana Thoroughbred Breeders and Owners Association
Robert Meeks, LaGrange, Indiana

Nicolas Mijares, Crown Point, Indiana
David Miller, Deputy Attorney General
Eric Miller, Advance America
Tom Mosley, Quarter Horse Racing Association of Indiana
Gary Nielander, Steuben County Economic Development Corporation
Dan Novreske, Fiscal Analyst, Indiana State Senate
Hon. Wilford Nuttle, Hamilton Town Council
Michael Pollock, Spectrum Gaming Group
John Popp, Fort Wayne, Indiana
Rod Ratcliff, Centaur
Hon. Don Renner, French Lick Town Council
Randy Roberts, Grand Victoria
Sen. Earline Rogers, State Senator District 3
Carlos Ruisanchez, Belterra
Jon Schuster, Indiana Live
Hon. Ronier Scott, Gary City Council
Hon. Loretta Smart, Fremont Town Council
Mike Smith, Indiana Gaming Association
Ryan Soultz, Blue Chip
Hon. Paul Sparks, Steuben County Council
Troy Stremming, Ameristar
Steve Stults, Indiana Horsemen's Benevolent and Protective Association
Larry Smallwood, Indiana Horse Racing and Breeding Coalition
Matt Whetstone
Kurt Wilson, Hoosier Park
Ernest Yelton, Indiana Gaming Commission
Hon. Greg Zoeller, Indiana Attorney General