



Online Poker in California: The Final Four Weeks of the Legislative Year

by Leslie Lohse

The California State Legislature reconvened from its summer recess on August 15, 2011 for the final month of California's legislative year. One of the policy issues expected to take center stage during the final four weeks of session is the authorization of intrastate Internet gaming (igaming).

In California, which is home to 107 federally recognized tribes, the authorization of intrastate igaming is a policy issue that's divided Indian Country. There is significant disagreement among California's tribal governments about the impact of igaming on tribal sovereignty, existing gaming compacts, and tribal economies.

The California Tribal Business Alliance (CTBA) believes it is critical for the California State Legislature to exercise its due diligence and provide adequate time to consult with tribal governments before moving forward with a policy that will significantly alter the gaming landscape in California, as well as impact agreements among tribal, state, and local governments.

Much of the debate among California's tribal governments has been focused on two pieces of legislation. Senate Bill (SB) 40, authored by State Senator Lou Correa, would authorize intrastate Internet poker (ipoker). It is sponsored by the California Online Poker Association (COPA), which is comprised of 29 tribes and 30 card clubs. SB 45, authored by State Senator Rod Wright, Chairman of the Senate Committee on Governmental Organization, would authorize any form of intrastate igaming that is compliant with state law and approved by the California Department of Justice (DOJ). SB 45 is an author-sponsored bill.

Although each bill is still in square one of the legislative process, there have been extraordinary lobbying efforts by COPA, including promises of millions of dollars to the State's General Fund via pre-paid license fees, in effort to make an end-of-session play to legalize intrastate ipoker. COPA, and the longest tenured Speaker of the California State Assembly, are advocating for the Legislature to use procedural tactics to circumvent the regular committee process to leapfrog SB 40 to the Assembly floor for a vote.

From CTBA's vantage point, it would be reckless and irresponsible for the Legislature to jam this tremendous expansion of gambling bill through during the 11th hour of the legislative year. There is no consensus among California's tribal governments about the impact of SB 40 on significant issues such as sovereignty, breach of gaming compacts, or taxation - to name a few.

There is no urgency to pass the bill from a state budgetary perspective. The Budget Act of 2011 has been enacted. The

advanced payment of \$250-plus million in license fees would provide a windfall for the State's 2011-12 fiscal year. However, using COPA's own experts' financial projections, it will take 14 - 15 years before the state would see any additional licensing fees from any Internet gambling operator. It's robbing Peter to pay Paul. It is fiscally imprudent.

In addition, there is no urgency to enact a bill in California this year from a federal government pre-emption perspective. The overwhelming majority of people close to this issue on Capitol Hill in Washington, D.C. indicate that a federal Internet poker authorization bill will not be enacted in Congress this year. This is in direct contradiction to testimony that a federal lobbyist from one of COPA's member tribes gave to the California Senate Committee on Governmental Organization on July 12, 2011.

The federal lobbyist was part of an orchestrated panel who testified in support of SB 40 at an informational hearing. The lobbyist was there to create a sense of urgency for California to act - to preserve its rights and give the state the best legal footing to avoid federal pre-emption. The lobbyist has subsequently been hired by the California State Assembly to work on federal policy issues. Hopefully, he will do a better job reading the tea leaves on policies on Capitol Hill and will not attempt to provide undue influence to the State Assembly on California's igaming legislation.

For the record, CTBA does not oppose the legalization of ipoker. CTBA opposes any legislation that does not properly and adequately address concerns regarding tribal sovereignty, the breach of existing compacts, taxation and regulation to name a few. In addition, tribal governments did not create the State's budget morass. It is fiscally imprudent and unfair to place tribal governments at risk by rushing through last minute legislation when there are so many unanswered questions. Until these questions and concerns are addressed, CTBA will not support any ipoker or igaming authorization bills.

CTBA believes the following principles must be adhered to for any igaming legislation at the state or federal level. The legislation must:

- Not compromise the inherent rights of tribal governments, modify the Indian Gaming Regulatory Act or undermine existing Tribal-State Gaming Compacts
- Allow tribes to accept wagers from persons not on Indian lands
- Not limit tribal participation via targeted restrictions
- Be limited to ipoker

- Not allow play at Internet cafes
- Not allow players to withdraw winnings at brick-and-mortar casinos.
- Use regulatory standards comparable to those required of Indian gaming
- Not allow U.S. facing companies, their principals and contractors that violated UIGEA to participate in any authorized igaming system
- Not impose a tax on Indian gaming
- Not violate the federal Wire Act of 1961
- Be based on realistic assumptions, including true costs and the length of time it will take to implement a regulatory regime, and employ qualified regulatory personnel

SB 40 and SB 45 each have provisions that are incongruent with these principles.

For example, SB 40 continues to promote a policy that would give preferential treatment to COPA. Prior iterations of SB 40 attempted to give COPA a monopoly to operate ipoker in California. Although COPA continually denied that SB 40 would give them a monopoly, at a recent informational hearing, COPA finally admitted that SB 40 would indeed have given them a monopoly.

Subsequently, that explicit monopoly language was amended out of the bill and replaced with language that makes another veiled attempt to give COPA a monopoly. As one witness said at the hearing, reading the various iterations of SB 40 is like playing “find the monopoly.”

The latest changes to SB 40 would give COPA an advantageous position to corner California’s online poker market. SB 40 now requires at a minimum \$55 million in license fees from each online poker operator, and, the license fees could go as high as \$250-plus million. That is not a typo - \$250-plus million. And that is just to get a license. It does not include the cost of starting up or operating the online business.

Who better to spread the risk of a \$55 - \$250-plus million investment in year one than a coalition of approximately 60 members? Although not expressly a granting of a monopoly, such a large price tag is economically restrictive and an artificial barrier to entry. This is particularly concerning, considering the ipoker market will be dominated by one or two companies, as is the case in the global ipoker market.

Secondly, the state, online operators and players want to see online poker succeed in California. If the costs to enter the market are too high, the operators will have to charge players more to use their sites, which may drive them underground to play on illegal sites.

This is one example of the flaws in the proposed legislation. Other issues include the potential breach of tribal-state gaming compacts because the bills could be interpreted to

authorize the play of slot machines online and the use of slot machines displays.

The bills do not prohibit the creation of Internet cafes, which could allow for the explosion of ipoker gaming cafes, similar to the proliferation of electronic bingo at so-called charity halls in California a few years ago. SB 40 also requires the regulatory structure to be adopted on an emergency basis by the California Gambling Control Commission (CGCC) within 90 days of enactment of the bill. DOJ says it will take 18 – 24 months, if everything goes smoothly, to establish a regulatory scheme for gaming on the Internet. This will be extremely difficult to do, considering CGCC and DOJ are already stretched thin to do their current duties.

Also, does CGCC have the expertise in-house to regulate the Internet? SB 40 requires CGCC to perform law enforcement duties when currently CGCC has no law enforcement authority or officers. DOJ, the other half of California’s “State Gaming Agency,” performs those duties for brick-and-mortar casinos. SB 40 blurs the lines of responsibility of the State Gaming Agency by assigning the law enforcement functions that currently reside with DOJ to the quasi-judicial CGCC.

Let’s be clear, the regulatory structure is one area that should not be rushed nor should the law enforcement responsibilities be assigned to an agency that has little or no law enforcement experience if you want to protect the integrity of gaming on the Internet.

At the end of the day, these are a few of the major issues with each of the bills. To adequately address the full array of issues requires extensive time and consultations – much more so than what is left during the final month of the legislative year.

We’ve seen the results of poorly crafted agreements on significant policy issues that were completed under inadequate timeframes. We’ve seen the results of fuzzy budget projections being scored in the state budget only to lead to revenue shortfalls. We don’t need to see a repeat scenario as it relates to intrastate ipoker.

The California State Legislature needs to stand firm in its commitment to enact intrastate ipoker legislation that will be open, fair, and lead to the best chance of success. For the Legislature to hastily go forward and to succumb to the pressures a special interest that would receive a monopoly would be another case of going back on one’s word. CTBA hopes that the California Legislature will understand the truly harmful impacts the proposed intrastate gaming bills will have on tribal governments and local communities, and instead work over the interim with all of the interested parties to arrive at a consensus bill. ♣

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