

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES

GAMING OVERSIGHT COMMITTEE
PUBLIC HEARING

STATE CAPITOL
HARRISBURG, PA

MAIN CAPITOL BUILDING
ROOM B-31

MONDAY, MARCH 21, 2016
11:00 A.M.

PRESENTATION ON HB 1891 (PAYNE)
CONSOLIDATION OF REGULATORY OVERSIGHT
OF SMALL GAMES OF CHANCE
TO THE PA GAMING CONTROL BOARD

BEFORE:

HONORABLE JOHN PAYNE, MAJORITY CHAIRMAN
HONORABLE ROSEMARY BROWN
HONORABLE RUSS DIAMOND
HONORABLE GEORGE DUNBAR
HONORABLE SUE HELM
HONORABLE AARON KAUFER
HONORABLE KATE ANNE KLUNK
HONORABLE RYAN MACKENZIE
HONORABLE KURT MASSER
HONORABLE TEDD NESBIT
HONORABLE JASON ORTITAY
HONORABLE DAVID PARKER
HONORABLE JAMES SANTORA
HONORABLE PAUL SCHEMEL

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*Pennsylvania House of Representatives
Commonwealth of Pennsylvania*

BEFORE (continued):

HONORABLE NICK KOTIK, DEMOCRATIC CHAIRMAN
HONORABLE TINA DAVIS
HONORABLE MARTY FLYNN
HONORABLE SID MICHAELS KAVULICH
HONORABLE WILLIAM KORTZ II
HONORABLE MARK ROZZI

COMMITTEE STAFF PRESENT:

JOSIAH SHELLY
MAJORITY EXECUTIVE DIRECTOR
SHAWNE LEMASTER
MAJORITY LEGISLATIVE ADMINISTRATIVE ASSISTANT

CHARLES MILLER
DEMOCRATIC EXECUTIVE DIRECTOR

I N D E X

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SUBMITTED WRITTEN TESTIMONY

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(See submitted written testimony and handouts online.)

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P R O C E E D I N G S

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MAJORITY CHAIRMAN PAYNE: Good morning.

I would like to call the House Gaming Oversight Committee meeting to order.

We'll stand for the Pledge of Allegiance.

(The Pledge of Allegiance was recited.)

MAJORITY CHAIRMAN PAYNE: Can I have a roll call, please.

(Roll was taken.)

MAJORITY CHAIRMAN PAYNE: Thank you.

The Chair would just like to make two comments and then I'll turn it over to my colleague, Representative Kotik.

First, there is an agenda that will come out this afternoon to the Committee Members for April's hearing dates. It's an aggressive schedule.

Now, you have to remember, we are restricted under two things. We can only have hearings on session days, so we can't have hearings on nonsession days, and there's no travel permitted. So eliminating Mondays, that

1 means all the hearings have to be on Tuesdays or
2 Wednesdays, and the fact that we're only here 2 weeks and
3 then off 2 weeks means we're doing hearings every Tuesday
4 and Wednesday that we're in session.

5 Second, I encourage the Members to look at the
6 packets that come out. We will start voting bills out of
7 the Committee. We will have all the voting part in the
8 front half of the meeting and the public hearing part in
9 the second half of the meeting in order to get as much done
10 as I'm being asked to do.

11 With that, I'll turn it over to Chairman Kotik.

12 MINORITY CHAIRMAN KOTIK: Let's proceed,
13 Mr. Chairman.

14 MAJORITY CHAIRMAN PAYNE: Thank you.

15 Josiah will do a brief explanation on House Bill
16 1891.

17 MR. SHELLY: House Bill 1891 essentially amends
18 the Small Games of Chance Act to take all of the Department
19 of Revenue's authority over small games and gives it to the
20 Gaming Control Board.

21 We did receive a letter from the Department of
22 Revenue, who was unable to testify today, noting that they
23 are in support of the bill with one suggested legislative
24 change, which will be adding a provision saying that the
25 Department's regulations shall be enforced until the

1 Gaming Control Board promulgates their own.

2 MAJORITY CHAIRMAN PAYNE: Thank you, Josiah.

3 Another question has come up prior to today's
4 hearing, and that was the actual fees associated with the
5 small games and whether revenue is sufficient, based on
6 when was the last time the fee structure was changed. I'm
7 going to ask Josiah and Chuck to work together and look at
8 that, and we can incorporate that into the bill if so need
9 be.

10 With that, we'll turn it over to the first
11 presenter, which is Tom Helsel. Tom, you're up.

12 MR. HELSEL: Good morning.

13 Chairman Payne, Chairman Kotik, Members of the
14 House Gaming Oversight Committee, once again, it's my
15 pleasure to be able to present testimony before this
16 committee.

17 My name is Tom Helsel, and I am the Secretary of
18 the Pennsylvania Association of Nationally Chartered
19 Organizations. PANCO is comprised of individual lodges,
20 posts, and aeries of the Elks, the Moose, the American
21 Legion, the VFW, and the Eagles.

22 With House Bill 1891, Chairman Payne is offering
23 the concept of consolidating the regulatory oversight of
24 small games of chance to the PA Gaming Control Board. This
25 would entail moving legislatively enacted regulatory

1 oversight given to the Department of Revenue under the
2 Local Option Small Games of Chance to the PGCB.

3 PANCO believes that this proposal has merit, yet
4 we have some reservations. We believe this is a great
5 opportunity to look into the pros and cons of shifting the
6 oversight from Revenue and to address a few issues
7 regardless of agency oversight.

8 A major concern to our membership is the
9 inability to obtain a binding legal opinion, or for that
10 matter, any legal opinion, with regard to small games.
11 Over the years, there have been questions asked by our
12 members on the operation and conduct of small games in
13 which a binding legal opinion would have been beneficial.

14 Unlike Act 61 of 1993, which requires the
15 PA Liquor Control Board to provide a binding legal opinion
16 upon written request, small games is devoid of that
17 opportunity. We would like to see a similar provision
18 enacted with whomever the oversight agency is.

19 Act 2 of 2012 established a semiannual reporting
20 requirement for club licensees, which was amended to an
21 annual report by Act 90 of 2013. Due to various issues,
22 the first filing date did not occur until July of 2015, and
23 the biggest complaint we have received has been the amount
24 of time and energy required to file the report.

25 Act 2 requires the reporting of weekly income by

1 type of game. For some larger organizations, that alone
2 could amount to well over 400 entries, while for smaller
3 clubs it amounts to over 150, and that represents just the
4 income reporting requirement. The Committee may recall the
5 testimony from Colleen Freeman on April 23rd of 2015 on the
6 trials and tribulations associated with small games
7 recordkeeping and reporting.

8 It may be presumed one of the major reasons
9 requiring a weekly tabulation on the annual report is the
10 \$35,000 weekly payout limit and that a cursory review of
11 those weekly payouts could potentially identify a possible
12 violation. Should the weekly limit be removed, as being
13 considered in House Bill 1313, this reason is no longer
14 relevant, as no violation would have occurred. We would
15 suggest that the annual report be simplified to require
16 only annual totals for income and would agree that those
17 totals could be delineated by type of game.

18 The current law and regulations require licensees
19 to maintain small games records on a daily, weekly,
20 monthly, and annual basis. It is our belief that
21 simplifying the annual report would not diminish
22 transparency, and since licensees would still be required
23 to maintain those mandated records, any audit done by the
24 oversight agency would pick up potential violations.

25 Requiring licensees to file the extensive income

1 information is akin to asking the personal taxpayer to
2 report his income on a weekly basis on the PA-40. We are
3 not suggesting that the requirement to list the proceeds be
4 altered.

5 PANCO believes that House Bill 1891 would be an
6 ideal vehicle to make several necessary changes to the
7 Small Games Act. Such changes would include the concepts
8 included in Representative Dan Moul's bill, House Bill
9 1313, as well as the aforementioned changes.

10 Several seemingly innocuous changes have been
11 brought to my attention. Number one is amending the
12 definition of costs being able to be deducted from gross
13 revenue to include costs associated with operating a
14 raffle; and two, to allow a club licensee to operate small
15 games off premises on limited occasions.

16 In defining "proceeds," the money available
17 either for charitable or club purposes, only the cost of
18 purchasing the game as well as the prize payouts are
19 permitted to be deducted before determining the proceeds.
20 This may work well for most types of small games, but when
21 it concerns raffles, there are numerous occasions when the
22 organization provides other amenities within the price of
23 the raffle ticket. In most of these occasions, we're
24 talking about providing some type of food, whether it's a
25 sit-down affair or a buffet style.

1 Where the cost of providing these amenities may
2 be deducted is not clearly defined. Should they be
3 deducted as a cost of the game prior to determining
4 proceeds or as a part of the club portion, the 40 percent
5 of the proceeds? We would argue that it represents a
6 legitimate cost of the game and should be deducted prior to
7 determining proceeds.

8 Many of our more rural members had historically
9 operated small games of chance at community fairs. Act 2
10 eliminated the historical provision which had previously
11 allowed club licensees to participate in that style of
12 fundraising at those events. We would suggest either
13 restoring the historical provision or the creation of a
14 special-occasion permit that would allow the same.

15 Again, I appreciate the opportunity that you have
16 provided and would like to commend the Chairman and the
17 Committee on the extensive time and energy that you have
18 put in for the gaming in Pennsylvania, and in particular,
19 everything you have done for us on behalf of small games.

20 MAJORITY CHAIRMAN PAYNE: Thank you.

21 Questions for Tom?

22 Seeing none, we'll -- whoops.

23 Representative Kortz.

24 REPRESENTATIVE KORTZ: Thank you, Mr. Chairman.

25 Thank you, sir, for your testimony.

1 You mentioned in the beginning that one of the
2 major concerns is the inability to obtain a binding legal
3 opinion on matters? That's the major concern of your
4 organization?

5 MR. HELSEL: I have a number of my members that
6 have tried to get an opinion on various matters of small
7 games, and we really have never been able to get a legal
8 opinion from, at this point it's the Department of Revenue.

9 Obviously, PLCB cannot give us one because they
10 have no oversight on that. Our only recourse at this point
11 is to go to Revenue, and at this point in time, there is no
12 requirement for them to give us a binding legal opinion.

13 REPRESENTATIVE KORTZ: Well, do you believe the
14 Gaming Control Board can do that for you?

15 MR. HELSEL: I would believe that either agency,
16 depending on whoever has the agency oversight, would be
17 able to do that. But at this point, there is no
18 requirement for them to do so.

19 REPRESENTATIVE KORTZ: Okay. Thank you.

20 Thank you, Mr. Chairman.

21 MAJORITY CHAIRMAN PAYNE: Thank you.

22 Thank you, Tom.

23 MR. HELSEL: Thank you.

24 MAJORITY CHAIRMAN PAYNE: Next, we'll move on to
25 the Pennsylvania Federation of Fraternal and Social

1 Organizations. Ted, all yours.

2 MR. MOWATT: Good morning.

3 I'm going to similarly try to keep us on schedule
4 today.

5 MAJORITY CHAIRMAN PAYNE: Thank you.

6 MR. MOWATT: I know it's a busy morning for many
7 of us.

8 Chairs Payne and Kotik and the Members of the
9 House Gaming Oversight Committee, I am Ted Mowatt,
10 Executive Director of the Pennsylvania Federation of
11 Fraternal and Social Organizations.

12 I very much appreciate this opportunity to
13 comment on now House Bill 1891 to move the oversight of the
14 Local Option Small Games of Chance Act to the Gaming
15 Control Board.

16 The PFFSO is a statewide organization of
17 approximately 500 social clubs, veterans clubs, fire
18 companies, and other nonprofit service organizations
19 throughout the State. Our clubs provide numerous
20 charitable works in the local communities, funded largely,
21 by law, by small games of chance.

22 We generally agree with the prior comments of
23 Tom Helsel, and my remarks should be seen as supplementary.

24 Our members are now nearly a year into reporting
25 under the updated Local Option Small Games of Chance Act,

1 and by and large, it appears that it's going rather
2 smoothly. We do have some suggestions on possible changes
3 to the reporting requirements and appreciate the
4 opportunity to share them with you today.

5 Although we do recognize that the system in place
6 for applying, reporting, and enforcement involves a handful
7 of unrelated agencies and understand the desire of a more
8 streamlined approach to small games of chance, we have some
9 reservations about moving charitable gaming under the
10 umbrella of for-profit casino gambling.

11 The Department of Revenue has for nearly 30 years
12 now had some responsibility for setting regulations and now
13 for receiving reports regarding the small games of chance,
14 even though there is little "skin in the game" for them
15 since only the tavern-gaming portion is subject to tax.

16 We would, of course, like to keep small games of
17 chance for nonprofits out of the tax discussion and retain
18 the charitable purpose of the raffles and the pull-tabs
19 proceeds. We feel that moving the reporting and regulatory
20 functions of the Gaming Board will result in small games of
21 chance being "lost in the shuffle," so to speak, behind the
22 weightier issues of casinos for the Board and the staff and
23 could further subject the charities to the mindset of the
24 casino interests, when the two industries are distinct.

25 The bulk of this proposed legislation deals

1 primarily with the registration and conduct of distributors
2 and manufacturers, but we believe that putting small games
3 of chance under the Gaming Board would eventually lead to a
4 complete takeover of the charitable gaming infrastructure
5 that our local communities depend on by the Board and the
6 casino industry that is currently generating a lot of money
7 itself for property tax reform and for tourism, but again,
8 is distinct from the local community tradition and culture
9 of small games. We ask that you consider carefully the
10 potential ramifications of this well-intended idea.

11 Let me be clear: We do not oppose this
12 legislation, but we want to be sure that the current
13 structure and culture of small games of chance is
14 preserved.

15 Thank you again for this opportunity, and I would
16 welcome any questions.

17 MAJORITY CHAIRMAN PAYNE: Thank you, Ted.

18 Questions?

19 Thank you.

20 MR. MOWATT: Mission accomplished.

21 MAJORITY CHAIRMAN PAYNE: Next, we have
22 Kevin O'Toole, the Pennsylvania Gaming Control Board.

23 And while Kevin is coming up, let me just state
24 for the record, the Chair, and I believe I can even speak
25 for Nick, our intent here is to streamline the process of

1 reporting: to lower the dollar amount required for
2 application; to remove the provision for a violation that's
3 on the liquor license instead of the Gaming Control -- I
4 mean, instead of the gaming license; and to, if we can,
5 make all the reporting easier, quicker, and more efficient.

6 I believe the Gaming Control Board is the correct
7 place for that. I believe gaming is gaming. If you have a
8 gaming addiction, that's no different whether it's in a
9 casino or a punchboard or a scratch-off ticket or the
10 lottery.

11 And on that, Kevin, it's all yours.

12 EXECUTIVE DIRECTOR O'TOOLE: Thank you, Chairman.

13 Good morning, Chairman Payne and Chairman Kotik
14 and Members of the House Gaming Oversight Committee.

15 As you know, I'm Kevin O'Toole. I'm the
16 Executive Director of the Pennsylvania Gaming Control
17 Board. I'm pleased to be here this morning to testify on
18 House Bill 1891 as introduced by Executive Director Shelly.

19 Our written comments have been submitted. They
20 were a little bit more expansive than HB 1891, but I gather
21 that that is the specific topic for this morning, so I will
22 limit my comments to the Small Games of Chance Act.

23 But first of all, I would like to thank the
24 Committee for their consideration of this proposal, because
25 it does show confidence in the Gaming Control Board's

1 ability to regulate gaming activity. It is much
2 appreciated by members of the Board and by my staff to see
3 our agency recognized in such a positive way.

4 However, you know, gambling need not and should
5 not be considered equal in all contexts, and it does
6 justify different models of regulatory oversight.

7 The Pennsylvania Gaming Control Board was created
8 as a result of legalized commercial gambling in the
9 Commonwealth of Pennsylvania over 10 years ago. It's a big
10 job. It's a big industry. It has generated billions of
11 dollars in revenue and billions of dollars in gaming taxes
12 to the Commonwealth, and it has benefited an enormous
13 number of constituencies throughout the Commonwealth in the
14 relatively short history of legalized gaming.

15 Turning to the Small Games of Chance Act,
16 consolidating that type of gaming activity into the full
17 jurisdiction of the Gaming Control Board does not
18 necessarily fit well into the construct of the Board. In
19 regulating the casino industry, it's important to have
20 stringent and comprehensive oversight in a number of
21 different areas -- licensing, operations through internal
22 controls, testing of gaming equipment, investigations,
23 audits, enforcement. It's quite comprehensive.

24 So our position is that in the current state of
25 small games of chance, it's a different scope. And so long

1 as that scope remains at a relatively modest level -- we
2 certainly are familiar with the tavern gaming legislation.
3 We appeared last week in conjunction with some amendments
4 to the tavern-gaming portion of the Small Games of Chance
5 Act. And so long as the gambling is limited to pull-tabs,
6 daily drawings, and monthly raffles with limits on the
7 price of the pull-tab or the price of a drawing ticket,
8 limits on the maximum payout, and limits on the weekly
9 amount of payouts, we don't think that the Gaming Control
10 Board's full oversight necessarily benefits taking over
11 that component of gambling within the Commonwealth.

12 So those are basically our comments. We also
13 understand that if there was any consolidation of
14 regulatory oversight with the Board, we have been able to
15 carve out an adequate and very limited ability to pay for
16 the background investigations that the Board conducts on
17 the Tavern Gaming Act side. But if that were to expand
18 beyond that, you know, there would have to be a more
19 comprehensive separation to ensure that the casino industry
20 does not foot the bill of regulating small games of chance.

21 And in a concluding note, I would like to
22 emphasize that the casino industry would have no role in
23 regulating either, you know, small games of chance. So
24 with all due respect to the previous testifiers, that point
25 would not be relevant.

1 So I thank you very much for inviting us today
2 and certainly would answer any questions.

3 MAJORITY CHAIRMAN PAYNE: Thank you.

4 And yes, today's hearing is only on House Bill
5 1891. So I appreciate your testimony.

6 Questions?

7 Seeing none, thank you very much.

8 EXECUTIVE DIRECTOR O'TOOLE: You're welcome.

9 MAJORITY CHAIRMAN PAYNE: With that, the Chair
10 will ask if the Members have any other questions of any of
11 the speakers?

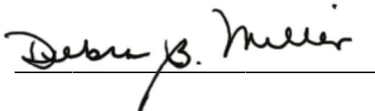
12 Seeing none, the motion for adjournment. So
13 moved.

14 This hearing is adjourned.

15

16 (AT 11:21 a.m., the public hearing concluded.)

1 I hereby certify that the foregoing proceedings
2 are a true and accurate transcription produced from audio
3 on the said proceedings and that this is a correct
4 transcript of the same.

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8 *Debra B. Miller*

9 *Transcriptionist*

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24 *DBM Reporting*

25 dbmreporting@msn.com