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# The MICHIGAN GAMING Newsletter



## UPPER PENINSULA TRIBE MEETS WITH PUBLIC TO GAUGE SUPPORT FOR CASINO PROJECT

On Wednesday, October 22, 2014, the town of Wakefield, Michigan held a public meeting to gauge support for a proposed casino to be built adjacent to the Indianhead Mountain Ski Resort. The Lac Vieux Desert Band of Lake Superior Chippewa Indians ("Lac Vieux") and Indianhead Mountain are in preliminary talks regarding an off-reservation casino that would include a hotel and convention center.

According to Township Supervisor John Cox, who is in support of the project, the meeting was attended by more than 100 people who provided overwhelming support. "This project would be an economic driver for the area," stated Mr. Cox. "In addition to the proposed hotel and casino offerings, the area would also be marketed to attract those looking for outdoor activities such as hunting, fishing, skiing, and snowmobiling."

During the meeting, organizers noted that a hotel and convention center could be built within two years, with casino construction being completed one year later. The project has a projected cost of \$20-\$30 million and would include a 100-150 room hotel.

Next steps include completing a feasibility study regarding the size and scope of the project and beginning the land-in-trust process with the federal government. Mr. Cox also noted that officials from Lac Vieux, Indianhead Mountain, and the Township have been in talks with the Governor's office regarding the proposed project.

The Lac Vieux Tribe currently operates the Desert Resort Casino in Watersmeet, MI, located approximately 50 miles from the proposed site. The casino features 25,000 square foot gaming space with over 600 slot

machines and 16 table games. In addition to gaming, the resort offers a convention center, a 132-room hotel and three restaurants.

## GOVERNOR CHRISTIE SIGNS NEW JERSEY SPORTS WAGERING LAW

On Friday, October 17, 2014, New Jersey Governor Chris Christie signed into law legislation that would allow for sports wagering to occur in the state's casinos and horse racetracks. The bill, Senate Bill 2460 ("S2460"), would repeal the state's gaming licensing and authorization laws as it relates to sports wagers placed in a casino or horse racetrack by individuals who are 21 years or older.

The legislation was enacted in response to the decision of the Third Circuit Court of Appeals in *National Collegiate Athletic Association v. Governor of New Jersey*, 730 F.3d 208 (Sept. 17, 2013). The case involved a constitutional amendment and state law, the Sports Wagering Act, passed in New Jersey which repealed a ban and authorized sports wagering in New Jersey gaming establishments. Shortly after the Sports Wagering Act was passed into law, the major sports leagues filed a complaint in the US District Court for the District of New Jersey to prevent the law from being implemented. The district court subsequently found in favor of the sports leagues, dismissed the case, and issued a permanent injunction against the law.

New Jersey subsequently appealed this decision to the Third Circuit Court of Appeals. In the Third Circuit case, New Jersey argued that the Professional and Amateur Sports Protection Act ("PASPA"), the federal statute banning all sports wagering in all states except Nevada, Oregon, Delaware, and Montana, was unconstitutional because it violated the 10<sup>th</sup> Amendment by favoring these states over all others. Therefore, PASPA was invalid and could not preempt states from enacting their own forms of sports wagering. The Third Circuit, however, upheld the district court's ruling, finding that PASPA was constitutional and therefore preempted New Jersey's previous attempts to authorize and regulate sports wagering in its casinos. In accordance with its ruling, the Third Circuit affirmed the district court's injunction preventing

New Jersey from authorizing and regulating sports wagering in the state.

The new legislation has been crafted to avoid authorizing and regulating sports wagering by repealing the state's prohibitions on sports wagering in certain instances. Under S2460, sports wagering is not prohibited in casinos and horse racetracks (including former tracks that were in operation within 15 years of the law's effective date). However, college sporting events occurring in New Jersey or involving a New Jersey college team, regardless of the location of the event cannot be wagered upon.

S2460 goes so far as to cite the Third Circuit case documents, quoting the opinion and briefs filed by the US Government in support of PASPA that state that a state government is free to repeal any state laws that prohibit sports wagering. Further, the legislation is premised on the language of PASPA itself, which makes it illegal for a government entity "to sponsor, operate, advertise, promote, license, or authorize by law or compact" gambling based on sporting events or for individuals to do the same in accordance with a state law or compact. 28 USC §3702. The state claims that since S2460 merely decriminalizes sports wagering in specific instances, there is no government authorization or regulation of the activity and thus no violation of PASPA.

In addition to S2460, the state attorney general issued a Law Enforcement Directive (No. 1-2014) and Formal Opinion (No. 1-2014) stating that the "Sports Wagering Act's repeal of prohibitions against sports wagering in casinos and racetracks can be given effect without licensing or otherwise authorizing by law sports wagering, as prohibited by the Third Circuit's decision, and, accordingly, must be given effect." (September 8, 2014, p. 4) Under this rationale, the attorney general directed law enforcement officials and state prosecutors to enforce the Sports Wagering Act by allowing sports wagering in accordance with the law.

This argument has not been tested or evaluated by a court, but the NCAA, NHL, NBA, MLB, and NFL filed a complaint in the US District Court for the District of New Jersey on Monday, October 20, 2014 seeking a declaratory ruling that S2460 is in violation of PASPA and the Third Circuit's

2013 ruling, as well as seeking an injunction against S2460's implementation. The complaint claims that "[w]hile styled as a "repeal," [S2460] is nothing more than a de facto authorization of sports gambling" and that New Jersey's "attempts to authorize sports gambling is just as unlawful as its previous attempts." (Case No. 3:14-cv-06450-MAS-LHG, Complaint, Par. 5, 9). Furthermore, the leagues claim that by only allowing sports wagering in licensed and regulated gaming establishments, the law in fact regulates gambling activity despite claiming the opposite. A hearing has yet to be scheduled in the matter.

Monmouth Park horsetrack has been reported as planning on taking bets on NFL games as of this Sunday, October 26, 2014. It has noted, however, that the wagering will be limited as the track is not yet ready to handle a full sports wagering operation.

## **INDIANA LEGISLATURE CONTINUES DISCUSSION ON POSSIBLE GAMING REFORMS**

On October 8, 2014, the Interim Study Committee on Public Policy ("Committee") of the Indiana Legislature held the second of three hearings to explore potential changes to the state's gaming regulatory structure. The hearing followed a September 25, 2014 meeting that provided background on the state's history with casino gambling and an overview of the current issues facing the industry.

The purpose of the October 8 hearing was to afford the state's casino operators with an opportunity to provide further detail on the statutory and regulatory issues facing the industry and how this has affected their ability to compete in the regional market. Five main issues were discussed: the move from riverboat to land-based facilities, a reform of a tax on free-play promotions, the removal of the riverboat admission's tax, potentially allowing live dealers for table games at horse tracks, and the state of French Lick Casino.

Representatives from the state's riverboat casinos made a joint presentation providing arguments for

why moving riverboat facilities to land would be beneficial to the state. A primary reason is to allow the facilities to better compete with land-based facilities in Ohio and other neighboring jurisdictions. In addition, as noted by Mr. Pete Liguori of Majestic Star Casino and Mr. Steve Jimenez of Rising Star Casino, the move to land-based facilities would create a total of approximately 2,000 construction jobs and generate significant investment as operators create permanent land-based structures. Senator Ron Altig noted that if land-based facilities are allowed, the change in legislation would likely include a minimum capital investment and gaming position limitations.

In regards to changes in the free-play tax system, Mr. Ryan Soultz of Boyd Gaming noted that the legislature should either raise or repeal the current annual deduction limit (currently set at \$5 Million) for free play activity. Further, he and Mr. Mike Smith of the Casino Association of Indiana both noted that operators would like to see a repeal of the riverboat admission's tax, stating that operators are willing to make up payments to local units of government through other, more predictable revenue generating methods.

Representatives from Centaur Gaming, which operates Indiana-based horse tracks, note that there was a strong desire for tracks to be able to offer live table games to patrons. In support, they noted that the change would generate approximately \$15-30 Million in investment and create a total of 600 permanent jobs that have an estimated average salary of \$45,000. The proposed change, however, was opposed by representatives from French Lick Casino, who claimed that the change would further reduce revenues to the facility in the face of increased competition. This opposition was echoed by a representative of Hollywood Casino.

The Committee will meet for its third and final scheduled hearing on the matter on October 30, 2014 at 10:00am. The hearing will discuss video lottery terminals, internet gaming, and horsemen-related issue. For more information on the series of hearings, as well as to obtain meeting materials, please visit the Committee's website at: [https://iga.in.gov/legislative/2014/committees/i\\_public\\_policy\\_interim\\_study\\_committee\\_on](https://iga.in.gov/legislative/2014/committees/i_public_policy_interim_study_committee_on)