This article will examine each of these bills and briefly summarize the remaining gaming bills passed by the 2011 Legislature and approved by the Governor.

**Assembly Bill 258**

AB 258 was introduced by the Assembly Judiciary Committee at the request of Judiciary Committee Chairman Horne. In its original form, the bill was supported by Internet poker operators and opposed by several major Nevada casino operators. As a result of that opposition, the bill was unlikely to pass without some compromise on the provisions the casino operators found objectionable. The indictment of three major Internet poker operators on April 15, however, effectively put the Nevada casino operators in control of the bill.

In its final form, the bill requires the Commission to adopt regulations governing interactive gaming. Through AB 466 of the 71st Session, the 2011 Legislature had allowed the Commission to enact such regulations, if it first made certain findings. AB 258 changes the word "may" to "shall," requiring the Commission to enact the regulations by January 31, 2012.

However, any licenses granted for interstate interactive gaming do not become effective until federal legislation is enacted authorizing that particular type of interactive gaming, e.g., Internet poker, or the U.S. Department of Justice provides a written determination to the Board or Commission that it is permissible under federal law to operate a specific type of interactive gaming.

Existing law requires that only certain nonrestricted gaming establishments meeting the criteria set forth in NRS 463.750 for numbers of games, hotel rooms and other amenities, or their affiliates, can qualify for an interactive gaming license. AB 258 also allows the Commission to grant a license to an applicant that meets any requirements established by federal law.

Finally, existing law provides that gross gaming revenue from interactive gaming is subject to the same tax as gross gaming revenue from nonrestricted gaming operations. AB 258 makes an exception to the
tax requirement if federal law “provides for a similar fee or tax.”

The net (pun intended) result is that the Commission is required to adopt regulations governing interactive gaming in anticipation of the enactment of federal legislation. The goal is to ensure that Nevada and Nevada-based companies are prepared to take a leadership role when and if the federal legislation passes, while ensuring that Nevada law will not be in conflict with the federal legislation.

**Senate Bill 218**

In the immediate future, SB 218 will have a more significant impact on most of our companies or clients. The bill, which became effective upon passage and approval on May 16, 2011, contains at least three and as many as five major changes (depending upon your definition of “major”) to Nevada Gaming Law, in addition to several minor housekeeping measures.

**Elimination of Mandatory Licensing for Certain Limited Partners and Members of Limited Liability Companies**

Perhaps the most immediately significant change eliminates mandatory licensing of limited partners and members of limited liability companies holding five percent or less of the beneficial ownership of privately-held limited partnership or limited liability company licensees. SB 218, §§ 8 and 9. Licensing of these limited partners and members has been replaced by a registration requirement and discretionary findings of suitability.

While beneficial owners of five percent or less of publicly-traded companies have not been subject to mandatory licensing for many years, this is a major change for passive owners of privately-held limited partnerships and limited liability companies and will open up new opportunities for investment in the gaming industry. In addition, it opens up more options for companies that may be struggling with too much debt in the current economy, with lenders having the option to take some equity in a restructuring deal without the costs and delays of mandatory licensing.

**Hosting Centers**

SB 218 authorizes the Commission, with the advice and assistance of the Board, to provide by regulation for the operation, registration and licensing of “hosting centers” for certain gaming systems. This will allow race and sports book systems, cashless wagering systems, and even server-based gaming systems to be hosted at a secure site away from the gaming establishment itself.

Before adopting such regulations, however, subsection 3 of Section 2 of the bill provides that the Commission must first determine that “hosting centers are secure and reliable, do not pose a threat to the integrity of gaming and are consistent with the public policy of this State . . . ” SB 218, § 2(3). Once it makes such a finding, the regulations must (a) define “hosting center” and (b) provide that the premises on which the hosting center is located is subject to the power and authority of the Board and Commission “as though the premises is where gaming is conducted and the hosting center is a gaming licensee.” SB 218, § 2(4).

The Commission is also authorized to determine where hosting centers may be located and to set minimum internal and operational control standards. The Board recently published a draft of the proposed regulations and will hold workshops to solicit industry and public comment. Owners, operators, and those having a significant involvement in hosting centers will be required to be registered, and the Commission will have the authority to call them forward for findings of suitability.

**Licensing of “Service Providers”**

SB 218 also authorizes the Commission to provide by regulation for the licensing and operation of “service providers.” A “service provider” is defined as a person who:

(1) Acts on behalf of another licensed person who conducts nonrestricted gaming operations, and who assists, manages, administers or controls wagers or games on behalf of such a licensed person, and is authorized to share in the revenue from games without being licensed to conduct gaming at an establishment;

(2) Is an interactive gaming service provider;
(3) is a cash access and wagering instrument service provider; or
(4) Meets such other or additional criteria as the Commission may establish by regulation.

SB 218, § 3(5)(b).

Whether to require the licensing of service providers is at the discretion of the Commission, with the notable exception of interactive gaming service providers. See SB 218, § 3(2) (the Commission “may” require the licensing of service providers).

Interactive gaming service providers are required to be licensed pursuant to Section 11.5 of SB 218, which amends NRS 463.750. SB 218, § 11.5(3)(b)(3).

As with hosting centers, the Commission is authorized to regulate the location from which a service provider conducts business and establish minimum internal and operational controls for service providers. Id., § 3(2)(b).

A “cash access and wagering instrument service provider” is “a provider of services or devices for use by patrons of licensed gaming establishments to obtain cash or wagering instruments through a variety of automated methods . . . .” SB 218, § 1.5. This definition is so broad that the Commission could require every provider of Automated Teller Machines to be licensed. As noted above, however, with the exception of interactive gaming service providers, whether to require the licensing of service providers is at the discretion of the Commission.

The Board’s current policy is to require findings of suitability for a narrow subset of cash access and wagering instrument service providers specifically, those that access a cashless wagering system for the purpose of issuing wagering instruments. Based upon discussions with Board staff, it is this author’s belief that they will recommend regulations that are consistent with the Board’s current policy and will not seek licensing of all cash access and wagering instrument service providers.

Tax Credit For Continuing Operation

Section 7 of SB 218 amends NRS 463.386, which sets forth the conditions under which a license issued to a new entity is deemed a “continuing operation,” entitling the new entity to a credit for prepaid license fees. The lengthy list of specific criteria has been replaced by a grant of authority to the Board Chairman “in consultation with the Chair of the Commission” to administratively determine whether a new entity is a continuing operation for the purposes of granting credit to that entity for prepaid license fees paid by the prior licensee. As with other administrative approval determinations, the Board Chairman may refer the determination to the full Board and Commission or the licensee may appeal the determination of the Board Chairman to the full Board and Commission pursuant to the provisions of Regulation 4.

Elimination of Requirement for Publicly-Traded Companies to File Certain Reports

The last of the arguably “major” changes in SB 218 is the elimination of the requirement for publicly-traded corporations (“PTC’s”) to automatically file copies of certain reports with the Board. Previously, PTC’s were
required to copy the Board on various reports they file with the SEC or, for a foreign FTC, the applicable regulatory body in the country where it is listed. Because most of these reports are now publicly available on-line, SB 218 eliminates the requirement to file copies with the Board except "upon request of the Chair of the Board . . . ." SB 218, § 10. The FTC is still required to notify the Commission of the filing of certain reports, including those filed under sections 13 (d) and 13 (g) of the Securities Exchange Act. This is one more small step in reducing the amount of paper that both FTC's and the Board are required to process.

Assembly Bill 213

AB 213 authorizes the Commission to adopt regulations concerning preliminary findings of suitability. A person would not be required to have entered into a position or transaction that requires licensing to obtain a preliminary finding of suitability. This bill was submitted by the Gaming Law students at UNLV's Boyd School of Law, and would allow companies that are considering an investment in the Nevada gaming industry to be investigated and found (preliminarily) suitable so that they could be licensed or obtain necessary approvals more quickly once a specific investment opportunity is identified.

An application for the required license or approval must still be filed once the company enters into a definitive transaction. Having a preliminary finding, however, should speed up the investigation and processing of the required license application and significantly reduce any doubts about the suitability of the company and its key executives. The preliminary finding of suitability would be valid for two years, unless renewed by the Commission. In early July, the Board published a draft of the proposed regulations and scheduled a workshop to solicit industry and public comment.

Section 2 of the bill makes it clear that the Commission can limit, condition, suspend or revoke a preliminary finding of suitability and clarifies the Board's authority to seek a fine in a complaint filed with the Commission.

Assembly Bill 219

AB 219 provides that the obligation to pay a patron the amount due on a slot machine wagering voucher expires upon the (a) printed expiration date; (b) 180 days after a wager has last been placed with regard to the voucher; or (c) such shorter time as the Commission may provide by regulation. AB 219 then requires that each nonrestricted licensee pay over to the Commission 75% of the amount of all expired slot machine wagering vouchers quarterly on the 24th day of the month following the end of the calendar quarter.
It is unclear whether the 75% paid over to the Commission is deductible from gross gaming revenue, as it would be if it were paid to the patron. Pursuant to Regulation 6.110 (11), wagering vouchers issued to the patron are deductible from gross revenue, but must be added back in to gross revenue if unredeemed after 60 days. If the wagering voucher is subsequently redeemed, it may be deducted from gross revenue again. See Nev. Gaming Comm’n Reg. 6.110 (11) (2011).

The Commission is required to adopt regulations “prescribing procedures which nonrestricted licensees must follow . . .,” and those regulations should clarify this issue. In a recent industry notice, Chairman Lipparelli stated that although the regulations are not required to be adopted until January 31, 2012, they may be enacted as early as the November meeting of the Commission. In addition, Chairman Lipparelli stated that the Board does not “anticipate that policies to be included in the regulation would require reporting anytime prior to January 24, 2012.” See State Gaming Control Board Notice #2011-34 (June 28, 2011).

The bill applies to any slot machine wagering voucher issued on or after July 1, 2011. The unredeemed vouchers do not become reportable for 180 days after issuance, unless they have an earlier expiration date. Currently, slot machine wagering vouchers and payout receipts may expire at any time established by the licensee that is 30 days or more after issuance. See Nev. Gaming Comm’n Reg. 14 Technical Standards 3.130(5) (payout receipts) and 3.150(8) (vouchers). The regulations enacted by the Commission could potentially standardize the expiration date at 180 days to eliminate confusion. Using this 180 day criteria would put the first report due on January 24, 2012, as suggested by Chairman Lipparelli. In an abundance of caution, however, and to avoid any requirement to report on October 24, 2011, licensees may wish to ensure that any slot machine vouchers issued on or after July 1, 2011, not expire any sooner than the fourth quarter of 2011.

Assembly Bill 279

AB 279 requires the Commission to adopt regulations providing for the registration of independent testing laboratories and authorizing the Board to use independent testing labs for the inspection and certification of gaming devices, associated equipment, cashless wagering systems, mobile gaming systems or interactive gaming systems.

This bill is designed to assist the Board in coping with rapid changes in technology, while keeping the Nevada gaming industry competitive with the newest games and systems. The Commission is required to adopt implementing regulations by May 1, 2012.

Assembly Bill 294

AB 294 deletes “[a] storage medium containing a control program” from the list of components that constitute a “gaming device,” as defined in NRS 463.0155. In addition, it repeals the requirement for the registration of independent contractors that was enacted in 2009, and limits the licensing requirement for manufacturers and distributors to those that manufacture or distribute games for use or play in Nevada. See AB 294, §§ 3.4 and 3.8.
The effects of these changes are to reduce the licensing and registration requirements for independent contractors and programmers who provide products and services to licensed manufacturers, and to eliminate the license requirement entirely for companies located in Nevada who manufacture or distribute gaming devices for use or play only in other jurisdictions. Instead, such companies must file a copy of their Johnson Act (15 U.S.C. §§ 1171 - 1178) registration (if required) with the Board within ten days of submission to the Attorney General of the United States. Additionally, distribution of a gaming device, cashless wagering system, mobile gaming system or associated equipment from Nevada into any jurisdiction where its possession, ownership or use is illegal is specifically made unlawful in Nevada.

Finally, AB 294 deletes the statutory prohibition on mobile gaming in hotel rooms and allows the location of a computer system used with a mobile gaming system to be outside a licensed gaming establishment. See AB 294, §§ 3.6 and 4.

Other Bills
AB 500 takes one dollar of the two dollars that are currently paid to the problem gambling fund over the course of the next biennium to assist in balancing the budget. AB 459 provides for a small expansion in the Las Vegas Strip Gaming Corridor to provide more options for Wynn Las Vegas with regard to property it owns east of its current facilities (including the golf course) and west of Paradise Road. AB 545 changes population limits or requirements for various state statutes, including gaming statutes, from 400,000 to 700,000 and from 40,000 to 45,000, to ensure that population growth does not subject a county to new requirements.

Conclusion
The Board and Commission are required or authorized to adopt regulations for interactive gaming, registration of certain limited partners and members of limited liability companies, independent testing laboratories, hosting centers, service providers, preliminary findings of suitability and expired slot machine wagering vouchers. At press time, they are off to a fast start with the publication of the initial drafts of some of these regulations and the holding of the first public workshops. It’s going to be a busy year.

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