

Impact of Indian gaming law changed casino industry

Washington – The gaming industry changed irrevocably when President Reagan signed the Indian Gaming Regulatory Act on Oct. 17, 1988.

Twenty years later, tribal casinos earn more money than those in Las Vegas and Atlantic City combined.

„I believe the expectation of almost every lawmaker then was that the future of Indian gaming was going to be in high stakes bingo,“ said Phil Hogen, chairman of the National Indian Gaming Commission.

Instead, about 90 percent of the USD 26 billion in Indian gaming revenue last year came from casinos. By comparison, Nevada casinos collected USD 12.8 billion and New Jersey casinos collected USD 4.9 billion.

The Indian gaming industry employs more than 700,000 workers – more than half of them are not Native Americans.

Frank Fahrenkopf, president of the American Gaming Association, said the law „changed the landscape“ of the casino industry.

„I don't think anyone ever thought the result would be as dramatic as it has been,“ Fahrenkopf said.

Senate Majority Leader Harry Reid of Nevada, who played a key role in drafting the legislation, said the objective was to protect Nevada casinos from competition.

„Just the opposite has occurred,“ Reid said.

Northern Nevada has borne the brunt of an explosion of tribal casinos in California. Especially during winter, casinos in

Carson City, Lake Tahoe and Reno see business plummet as customers from the once-fruitful market of Sacramento stay home to play the slot machines and card tables offered by tribes.

On the other hand, some mainstream gaming companies like Harrahs and Boyd Gaming Corp. have entered into lucrative management contracts with tribes.

Despite their success, Indian gaming officials still regard the legislation as a violation of tribal sovereignty.

„What other business in America has a federal law that tells it what it has to do?“ said Ernie Stevens Jr., chairman of the National Indian Gaming Association.

Tribes gained the upper hand in 1987 when the U.S. Supreme Court ruled in California vs. Cabazon Band of Mission Indians that federally recognized tribes could operate gambling businesses without state regulation.

Fearful of being unable to control gambling within their borders, states turned to Congress for help and the result was the 1988 regulatory act.

In addition to Reid, one of the primary architects of the legislation was Sen. John McCain of Arizona, this year's Republican presidential nominee.

The Senate passed the bill by voice vote on Sept. 15, 1988, and 12 days later, the House approved it 323-84.

„It's one of the ugliest pieces of legislation there is. That old saying about legislation being like making sausage fits it,“ said Kevin Washburn, a law professor at the University of Arizona who served as general counsel of the National Indian Gaming Commission from 2000 to 2002.

For example, the law sought to encourage negotiations between tribes and states to establish regulations for Indian gaming.

But that has not happened. After giving the tribes a major victory with the Cabazon decision in 1987, the Supreme Court ruled in Seminole Tribe vs. Florida in 1996 that tribes could not sue states which refused to negotiate gaming compacts.

„The drafters just blew it. They should have caught that when they wrote the bill,“ Washburn said.

Stevens, the NIGA chairman, said every piece of legislation proposed by tribes now includes a provision attempting to „fix“ the Seminole decision.

The law also hamstringing tribes by limiting management contracts with mainstream casino partners to seven years, Washburn said.

„That’s unduly paternalistic,“ Washburn said. „The tribes have become capable business people at this point and if they want a 20-year contract, they should be able to get it.“

Nevertheless, tribes remain fiercely opposed to any attempts by Congress to amend the regulatory act, which has allowed them to finally develop a wildly successful economic tool to help their people.

As Hogen, the chairman of the federal commission overseeing Indian gaming, said, „There were so many abject failures before.“