

**JOHN J. VIOLA**  
STATE REPRESENTATIVE  
Twenty - Sixth District



HOUSE OF REPRESENTATIVES  
STATE OF DELAWARE  
LEGISLATIVE HALL  
DOVER, DELAWARE 19901

COMMITTEES  
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Housing & Community Affairs

**Gaming and Pari-mutuels Committee**  
Meeting Minutes  
May 5, 2010

Vice Chair Keeley called the meeting to order at 4:02 p.m. Members present included Chairman Viola, Reps. Barbieri, Hocker, Hudson, Lee, Longhurst, Mitchell, Schwartzkopf, Scott, and B. Short. For a list of guests present, please see attached.

After calling the meeting to order, Vice Chair Keeley chose to address **HB 389 AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO LOTTERIES** and recognized Chairman Viola to explain the bill. Chairman Viola emphasized that the bill is focused on allowing a limited gaming license for a private club that would be equivalent in size to a fast food restaurant. The license fee is \$1,000,000 and members would be required to pay a \$10-20,000 membership fee. More detailed statements regarding the bill would be left to the entities involved.

Next, questions and comments from committee members were heard. Rep. Lee questioned the percent of gross table game revenue given to the state by the proposed private clubs, 6.75%, as compared to what the existing Delaware racinos pay, 29.4%. Rep. Lee also wondered if horseracing would benefit at all from the bill, considering horseracing redevelopment was the original intent of gambling in Delaware. Chairman Viola responded that the discrepancy in percentage is due to the size and limitations placed on the gambling offered at the proposed private club. Furthermore, the entities involved are willing to discuss possible issues with the horsemen. Rep. Lee followed up by asking if there is a guarantee in the bill that the private club would not have slot machines. Chairman Viola said that there is language in the bill addressing the issue, but that tighter language may be necessary to ensure that in the future, private clubs would have to seek approval to operate VLTs from the current racinos, not the legislature.

Rep. Hudson then spoke briefly about her proposed amendment, which adds a provision to ensure that the same business plan would remain intact if a private club is sold.

Rep. Hocker then expressed concern that the bill strays from the original intention of gambling legislation, which was to help Delaware horsemen.

Next, the discussion was open to the public. Bill Fasy, the president of Delaware Park, spoke about the general consensus among reports published by Bank of America, Rochester Institute and Deloitte that the gaming market in the Northeast corridor is close

to or at saturation. Furthermore, when gaming in Maryland opens, it will continue to erode out-of-state customers. Claiming that a private gambling club would not take customers away from the Delaware Park is naïve, especially considering the upper hand private clubs may have with the difference in tax rates. Also, earlier sentiments regarding the lack of attention to horseracing in the bill were reiterated. Mr. Fasy then concluded by repeating that additional saturation of the gaming market will only serve to negatively impact the industry.

Next, Bessie Gruwell, Executive Director of the Delaware Thoroughbred Owners Association, commented. Ms. Gruwell believes the bill is forgetting the original intent of the 1994 Horseracing Redeveloping Act, which was to revitalize the equine industry. The act has been effective with results including preserving Delaware farmland, boarding horses in the state, and maintaining jobs in the industry—about 1,000 at Delaware Park alone related to horses. Ms. Gruwell then quoted an article from the *North American Trainer Magazine* by Kirkpatrick, which states that increasing gambling facilities may end up causing more harm than good because expanding gambling does not necessarily bring in more customers.

Mike Vild, the general council of Delaware Park, spoke next about two possible constitutional concerns with respect to the bill. First, the constitution requires that tax laws treat similarly situated tax payers the same. The disparate percentage of table gaming revenue required to be allotted to the state for the proposed private club versus existing operations may be unconstitutional. Second, the constitution only permits gambling that is a lottery—defined as games in which chance is the predominant element. The bill would authorize gambling on backgammon and bridge, games in which skill is the predominate element. This also may not be constitutional. Next, Mr. Vild enumerated other concerns related to requirements not imposed on a private club that are imposed on current operations. These concerns include not requiring a private club: to submit a table game floor plan to be approved by the Director of Lottery, to pay a sports betting licensing fee, to pay an annual license fee for the privilege of offering table games, and to submit an annual report to the state lottery with respect to full and part time employment.

Rep. Hudson responded by suggesting that the bill would create a ‘new casino category’ that would eliminate the possibility of a tax violation. Mr. Vild responded that the bill still establishes a tax on gross table gaming revenue which treats similarly situated tax payers differently.

Next Karl Agne spoke on behalf of the Delaware Development Associates (DDA) about the institution they are proposing through the bill, the type of clientele they hope to attract, and some specifics about the legislation. The DDA hoped to capitalize on the prime location of Delaware, between New York City and D.C., and follow two proven business models: elite country clubs found in the US and private gambling venues found in Europe. Mr. Agne stressed that their aim is to create a private club in which gambling is offered with an atmosphere akin to a country club or private business club and *not* a

casino. The clientele they aim to market includes Fortune 500 and 100 CEOs, political leaders, those and in the entertainment industry and so forth.

DDA is prepared to have the proposed private club operational within 12 months. Presently they have a building selected, financing, food and beverage agreements, and about 100 letters of intent from prospective members. Mr. Agne explained the intent is not to cut into Delaware's economy but to help it by bringing in people who would not normally visit the state. Furthermore, the clientele they hope to attract are not people who would normally frequent Delaware Park or other local gambling operations. DDA believes that the proposed operation is essential to the continued economic development of Market Street in Wilmington; its proposed location. Plus, they have the support of the mayor of Wilmington. Mr. Agne emphasized that the legislation is not an attempt to expand casinos and that the DDA is ok with not operating slots, rather willing to include stronger language.

Next, Mr. Agne addressed a few of the concerns raised earlier in the meeting. Referring to the tax issue, Mr. Agne quoted from the Deloitte study mentioned before, which states that table games have a higher cost structure associated with them due to labor costs involved in running and supervising the games and a lower margin than slot machines. Meanwhile, 70-80% of revenue of any casino comes from slots. Therefore, when slots are removed as a source of revenue, as is the case for the proposed private club, all that is left are the high labor costs and low margin of table games. In this way, the profitability is dramatically reduced, making the tax percentage realistic for this different structure.

The impact on horsemen was addressed next. Mr. Agne reiterated that the intent of the bill was never to negatively impact the horsemen, and DDA is eager and willing to discuss possible issues. Finally, Mr. Agne said that they would be more than happy to play by the same regulatory rules as other venues operating table games. The discrepancy currently in the legislation is merely the result of it being drafted before the table gaming bill was passed.

Rep. Hudson requested an estimate of the break down of attendees from in-state versus out-of-state and questioned whether the restaurant would be open to the public. Mr. Agne believes that the majority of members would be from out of state and clarified that yes the restaurant would be public.

Rep. Scott questioned whether DDA had obtained a lease for the property. Mr. Agne said no, but they have a signed letter of understanding.

Chairman Viola commented that he attempted to make the bill as tight as possible in areas of possible contention and expressed disappointment that the creation of such a small venue ignites fear in people.

Rep. Barbieri commented that more discussion is needed regarding how the bill could possibly support horsemen.

Rep. D. Short wondered if the Wilmington City Council and county government also support the bill. Chairman Viola said that they have obtained written support from the mayor and verbal support from the Building Trades but is not aware of the position of the city council or county.

Vice Chair Keeley clarified that the bill would require a 3/5 vote because it would institute a new fee.

Chairman Viola motioned to release the bill; Rep. Hudson seconded the motion. The vote in the committee was 5-5, so Vice Chair Keeley requested legal clarification from a House attorney. According to Mr. Nutter, House Rule 35 states that a bill is released from committee when a majority of the members sign the backer of the bill.

Vice Chair Keeley adjourned the meeting at 4:48 p.m.

Respectfully submitted by,  
Kaylynn Palaio