

NY POKER: BACK IN THE GAME

In February, NY Senator John Bonacic's S5302 became the first online poker bill to make it out of committee, flying through the process in a record four minutes. **Rachel Hirsch** of Ibrah Law breaks down the bill and its chances for *iGaming Business North America*.

For the third year in the row, the New York Assembly considered a proposal that could see the Empire State join its neighboring state New Jersey, along with Delaware and Nevada, in offering regulated online poker. Last year, New York State Senator John Bonacic (R-42) introduced S5302, marking the second consecutive year that Bonacic introduced online poker legislation. While his attempt in 2014 (which was matched by companion legislation in the Assembly) failed to move beyond committee, his most recent attempt to offer regulated online poker in the state was approved at a record pace of less than four minutes of committee time. Its rapid approval by the Senate Racing, Gaming, and Wagering Committee is undoubtedly a positive sign for proponents of online poker in New York, but it may not be an accurate indicator of how well the bill will be received as it moves up the legislative food chain. As the state continues to focus on licensing for its three new brick-and-mortar casinos and the Attorney General's ongoing legal battle with daily fantasy sports operators, chances of long-term success for the bill may be overshadowed by the state's more pressing gaming concerns.

Bonacic first introduced S5302 in May 2015, but it was never voted on in committee. The bill was put back on the active legislative agenda earlier this year and set for hearing on February 2, 2016. At the same time as its reintroduction, Assemblyman J. Gary Pretlow, head of the Assembly Committee

on Racing and Wagering, also introduced a bill that would legalize and regulate online poker in the state – A9049. Like Bonacic, Pretlow had previously introduced online poker legislation, with no real progress accompanying his bill other than inspiring lawmakers to talk about the issues. When returned to the active legislative agenda in

“Conspicuously absent from both bills is the so-called ‘bad actor’ clause, which would preclude companies, individuals, or assets involved in accepting wagers from the U.S. after the passage of the UIGEA from participating in New York’s regulated market.”

January, Bonacic's bill was amended to match Assemblyman Pretlow's A9049 House bill. The bills share common features, among other things:

- Total number of operator licenses capped at 10;
- A licensing fee of \$10 million, good for 10 years;
- A tax rate of 15% of gross gaming revenue; and
- Activity overseen by the New York State Gaming Commission and Division of Gaming.

Both bills also contemplate shared liquidity with other states, forging the path for future inter-state compacts like

the one between Nevada and Delaware. Conspicuously absent from both bills is the so-called “bad actor” clause, which would preclude companies, individuals, or assets involved in accepting wagers from the U.S. after the passage of the Unlawful Internet Gambling Enforcement Act from participating in New York's regulated market. This is a marked difference from the 2014 bill introduced by Bonacic, which failed to garner support, perhaps due in part to its exclusion of so-called “bad actors.”

Bonacic's latest online poker bill, however,

fared much better, practically flying through the approval process in record speed. The Senate Committee voted 9-0 in favor of advancing S5302-B. While customarily live-streamed, the vote did not take place before the cameras. Rather, Bonacic – who is also Chairman of the Senate Racing, Gaming and Wagering Committee – simply asked if there were any questions, and upon receiving none, announced that the bill was now referred to the Senate Finance committee. The whole affair lasted less than four minutes, in which six separate pieces of legislation were considered by the Senate committee. The results of the February 2 Senate hearing stand in stark contrast to the hearing last

September, in which Bonacic was the lonely politician listening to witness testimony. Although he had started the September hearing flanked by two other legislators, both had made their exits before the day's third of seven scheduled speakers had a chance to take the floor. At the time, Bonacic insisted that the legislators' early exits had nothing to do with the lack of legislative urgency surrounding online gambling in the state, but rather were the result of having made prior commitments. After September's hearing, Bonacic showed no signs of slowing down, noting that the hearing had "brought forth a large amount of good information," including an "interesting" statistic that "85% of those who engaged in online gaming in New Jersey had never set foot in a casino prior to gaming online." Bonacic promised that there would be "significant discussions on a myriad of issues regarding the bill."

And, he certainly delivered. Despite the once-perceived lack of interest in the online poker bill, this month's approval of S5302-B is certainly a vote of confidence for online poker proponents, marking the first time a New York online poker bill has made any legislative progress. Shortly after the February 2 hearing, Bonacic issued a statement saying that his bill had taken "a necessary step forward ... with its vote out of the Racing committee." He also said that he anticipates having "ongoing discussions with [his] colleagues in both Houses" regarding his bill.

His colleagues, however, have not yet had a chance to consider the online poker legislation. The Senate Finance committee has not yet scheduled a hearing on Bonacic's bill, and Pretlow's companion bill in the House is still awaiting its time in the spotlight. In the meantime, there is added momentum surrounding this round of online poker legislation in New York.

First, its neighboring state, Pennsylvania,

appears to be considering legalizing online poker and casino gaming within its own borders. After numerous committee hearings, iGaming legislation in Pennsylvania actually made it to the House floor before progress was halted during budget talks. Nevertheless, the legislature appears poised to consider

"Online poker proponents in the state hope that online poker can piggyback on DFS discussions, which include bills that would declare DFS a game of skill or put DFS under the purview of the state gaming commission."

a gambling expansion package this spring or summer that includes online poker and casino games. Movement in Pennsylvania could certainly incentivize New York to act quickly and pass regulation of its own, before it is outdone by yet another neighboring state.

Second, the New York Attorney General's ongoing legal battle with daily fantasy sports (DFS) operators could stimulate further movement on the online poker bill front. Toward the end of 2015, New York Attorney General Eric Schneiderman opined that DFS constitutes illegal gambling in the state – an opinion that operators DraftKings and FanDuel continue to challenge in court. Yet this battle may prove invaluable for online poker proponents in the state, who hope that online poker can piggyback on DFS discussions, which include bills that would declare DFS a game of skill or put DFS under the purview of the state gaming commission. Efforts to regulate DFS may help the passage of online poker legislation, the thought process being that if the state is going to regulate one type of online gaming, then why not consider other forms of gaming as well. It is certainly possible that such efforts could be undertaken in New York, given that both Massachusetts and California have

floated the idea of an "omnibus" approach to regulate online gambling.

More likely, however, is that the DFS battle in New York could ultimately prove a distraction to efforts to regulate online poker in the state. That, coupled with the state's recent licensing of three new casinos,

may prove too much to bear in one year for the once-reluctant state legislators. For now, it remains to be seen how much traction S5302-B, and Peltrow's bill, will gain in other committees. But, if the February 2 hearing is any predictor of the future, it is possible that the state's other gaming distractions may just take the scrutiny off online poker to move it through the legislature fast enough to go relatively unnoticed.

Rachel Hirsch is an attorney at the Washington, D.C.-based law firm of Ifrah PLLC. Ms. Hirsch focuses her practice on complex litigation and transactions, with a particular emphasis on iGaming and Internet marketing and advertising. Her clients have included PokerStars, Full Tilt Poker, and Microgaming. Ms. Hirsch graduated with honors from the University of Maryland School of Law and practiced at Venable LLP prior to joining Ifrah Law. Email: rhirsch@ifrahlaw.com

